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S. SATYAPAL REDDY ETC.

v.

GOVT. OF A.P. AND ORS.

MAY 6, 1994

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[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Constitution of India, 1950 : Articles 246 and 254.

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Seventh Schedule—List-III Entry 35—List-II—Entry 41. Central law—State law—Repugnancy between—Test of determination—What is—Duty of Court—To apply Rule of Harmonious construction—Ascertainment of intention of Parliament from a consideration of the entire scheme occupied field.

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A.P. Transport Subordinate Service Rules : Rule 6—Assistant Motor Vehicles Inspector—Qualifications for recruitment—Prescription of Diploma by Central Government in rules framed under Motor Vehicles Act—Prescription of higher qualification i.e. Degree by State in rules framed under Article 309—State Rule whether inconsistent with Central Rule.

Motor Vehicles Act, 1988 : Section 213—Scope of.

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Under the Rules made by the Central Government, under Section 213(4) of the Motor Vehicles Act, 1988, the qualification laid down for the post of Motor Vehicles Inspector was Diploma in Mechanical Engineering. However, under the A.P. Transport Subordinate Service Rules, framed by the Government under Article 309 of the Constitution, the State Government prescribed higher qualification i.e. degree in Mechanical Engineering. The appellants, Diploma-holders in Mechanical Engineering, applied for the post of Motor Vehicles Inspector, but were not called for interview, they unsuccessfully questioned before the A.P. Administrative Tribunal, the competence of the State Government to prescribe the Degree qualification.

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In appeal to this Court it was contended on behalf of the appellants that (i) as the Motor Vehicles Act was made under Entry 35 of List III of the Seventh Schedule to the Constitution read with Article 246 of the Constitution, the Act receives paramountcy and the Central government alone is competent to prescribe the qualifications for recruitment to the

service under the Act and the power of the State Govt. to that extent gets eclipsed; and (ii) since the State rule is in conflict with the Central rule would prevail over the State rule, be operation of Article 254 of the Constitution. A

On behalf of the Respondent-State, it was contended that (i) in view of the provisions contained in Section 213, the State Govt. is not denuded of its powers to prescribe higher qualifications than the one prescribed by the Central Government; and (ii) there is no conflict between the power exercised by the Central Govt. under the Act vis-a-vis the power of the State Govt. under Entry 41 of List II of "the public service" and power preserved to the Governor exercisable under proviso to Article 309 of the Constitution, and therefore, the State rules are not *ultra vires*. B C

Dismissing the appeals, this Court

HELD : 1. There is no conflict in the exercise of the power by both Central and State Government or inconsistency in operation of the provisions of the statutory rules made by the Governor under proviso to Article 309 and the rules made by the Central Govt. under Section 213(4) of the Motor Vehicles Act, 1988. [941-E] D

2. Whether there is an apparent repugnance or conflict between Central and State Laws occupying the same field and cannot operate harmoniously, in each case the court has to examine whether the provisions occupying the same field with respect to one of the matters enumerated in the concurrent list and whether there exists repugnancy between the two laws. Article 254 lays emphasis "with respect to that matter". Repugnancy arises when both the laws are fully inconsistent or are absolutely irreconcilable and when it is impossible to obey the one without disobeying the other. The repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. But the court has to make every attempt to reconcile the provisions of the apparently conflicting laws and court would endeavour to give harmonious construction. The purpose of determining inconsistency is to ascertain the intention of the Parliament which would be gathered from a consideration of the entire field occupied by the law. The proper test would be whether effect can be given to the provisions of both the laws or whether both the laws can stand together. [940-B-D] E F G H

A 3.1. Section 213 itself made the distinction of the powers exercisable
 by the State Govt. and the Central Govt. in working the provisions of the
 Act. It is the State Govt. that operates the provisions of the Act through
 its officers. Therefore, sub-section (1) of section 213 gives power to the
 State Govt. to create Transport Department and to appoint officers, as it
 B thinks fit. Sub-section (4) thereof also preserves the power. By necessary
 implication, it also preserves the power to prescribe higher qualifications
 for appointment of officers of the State Govt. to man the Motor Vehicles
 Department. What was done by the Central Govt. was only the prescription
 of minimum qualifications, leaving the field open to the State Govt. con-
 C cerned to prescribe, if it finds necessary, higher qualifications. But while
 so prescribing, the State Govt. may accept the qualifications or prescribe
 higher qualification but in no case prescribe any qualification less than
 the qualifications prescribed by the Central Govt. under sub-section(4) of
 section 213 of the Act. In the later event, i.e. prescribing lesser qualifica-
 tions, both the rules cannot operate without colliding with each other.

[940-E-F, 941-B]

D 3.2. When both the rules are construed harmoniously, there is no
 incompatibility or inconsistency in the operation of the both the rules.
 Both the rules can operate harmoniously and effect can be given to both
 the Rules. Thus the qualification of inconsistency or repugnancy under
 E Article 254 of the Constitution does not arise. [941-B]

The Rule 6 of A.P.T.S.S. Rule invalid.

Union of India v. H.S. Dhillon, [1972] 2 S.C.R. 33, referred to.

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4440-42
 of 1994.

From the Judgment and Order dated 30.7.93 of the Andhra Pradesh
 Administrative Tribunal, Hyderabad in O.A.No. 2757 of 1992.

G K. Madhava Reddy, H.S. Gururaj Rao, G. Prakash, Ramakrishna
 Reddy, T.V. Ratnam and A.D.N. Rao for the Appellants.

V.R. Reddy, Additional Solicitor General and T.V.S.N. Chari for the
 Respondents.

H The following Order of the Court was delivered :

Leave granted

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The A.P. Public Service Commission had issued an advertisement on April 20, 1992 calling for applications for recruitment to the posts of Asstt. Motor Vehicles Inspectors in Andhra Pradesh Transport Subordinate Service. Though applicants had applied for the said posts, since they possessed only the qualification of diploma in Mechanical Engineering, they were not called for interview. The appellants, therefore, filed O.A. Nos. 2757/92 and batch in the A.P. Administrative Tribunal questioning the competence of the State Govt. in prescribing the qualification of degree in Mechanical Engineering or Degree in Automobile Engineering or diploma in Automobile Engineering or any equivalent qualification as conditions for recruitment, contending that it was the Central Government which had been conferred with the power under Section 213(4) of the Motor Vehicles Act, 1988, for short 'the Act', of prescribing the qualifications for appointment to any office or class of officers under the Act, which had prescribed the following:

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"1. Qualifications :

(1) Minimum general educational qualification of a pass in X standard; and

2(i) A Diploma in Mechanical Engineering (3 years course) or

(ii)

(iii) a Diploma in Mechanical Engineering awarded by the State Board of Technical Education (3 years course) or

(iv) Any qualification in either of the above disciplines declared equivalent by the Central Govt. or State Govt."

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When the appellants, had, become qualified to apply for and seek recruitment to the said posts, the prescription of qualification of graduation in Mechanical Engineering by the State Government coming in conflict with the Act, stands superceded. The Tribunal by its Order dated July 30, 1993 repelled the contention and dismissed the petitions. Thus, these appeals by special leave.

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Shri K. Madhava Reddy and Shri Guraraja Rao, learned Senior counsel for the appellants contended that as the Act was made under Entry

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- A 35 of List III of the VIIth Schedule to the Constitution read with Art. 246 of the Constitution, the Act receives paramountcy and the Central Govt. alone is competent to prescribe the qualifications as to eligibility for recruitment as Asstt. Motor Vehicles Inspectors and the power of the State Govt. to that extent gets eclipsed and the prescription of qualification of degree in mechanical engineering becomes void since it runs in conflict with the qualifications prescribed by the Central Govt. Therefore, the State rules become inapplicable. In support thereof, it was further contended that other State Governments had fallen in line in prescribing the qualification of Diploma in Mechanical Engg. prescribed by the Central Govt. and the State Govt. of A.P. had not adopted that course. Since the State rule is in conflict with the Central rule, the Central rule would prevail over the State rules, by operation of Art. 254 of the Constitution.

- D Sri V.R. Reddy, learned A.S.G. argued that sub-s. (1) of s.213 of the Act preserves the power to the State Govt. to appoint an officer or class of officers to implement the Act, sub-s.(4) gives power to the Central Govt. to prescribe "the minimum qualifications" for appointment as Officers or class of officers to such posts under the Act and that would not mean that the State Govt. having been given the power to appoint the officers, are denuded of their power to prescribe higher qualifications than the one prescribed by the Central Govt. There is no conflict between the power exercised by the Central Govt. under the Act vis-a-vis the power of the State Govt. under Entry 41 of List II of "the public service" and power preserved to the Governor exercisable under proviso to Art. 309 of the Constitution. Therefore, the State rules are not *ultra vires*.

- F Having given our anxious consideration to the respective contentions, we find that the State's contention merits acceptance. It is seen that marginal note in s.213 for "appointment of Motor Vehicles Officers" indicates the subject-matter of the Section. Sub-section (1) says that the State Govt. may for the purpose of carrying into effect the provisions of this Act, establish Motor Vehicles Department and "appointment as officers thereof such persons as it thinks fit". The power of appointment includes the power to select a fit and competent person who it thinks fit to hold the post and would discharge efficiently the functions assigned under the Act. It includes the power to prescribe qualifications to select suitable officers. The Parliament preserved that power to the State Govt. under s.213(1) itself by allowing it to appoint their officers whom it finds fit to carry into effect the

provisions of the Act. Sub-s. (4) gives power to the Central Govt., having regard to the object of the Act, by a Notification in the Official Gazette "to prescribe minimum qualification" which the officers or class of officers thereof shall possess for being appointed as such officer or to the cadre belonging to the State Govt. Under Entry 41 of List II (State List) of VIIth Schedule to the Constitution, the public service includes the services of the officers to be appointed under sub-s.(1) of s.213 of the Act. No doubt, as contened by the learned counsel for the appellants that the Act receives paramouncty, since under Entry 35, the subject under the Act covers the concurrent field. Sub-s.(4) of s.213 also preserve the power to prescribe qualifications higher than that "minimum qualification" prescribed by the Central Govt. to appoint the "said officers or any class thereof shall possess for being appointed as such".

In *Union of India v. H.S. Dhillon*, [1972] 2 SCR 33 at 47 considering the scope of Art. 246 of the Constitution, a bench of seven Judges of this Court held thus:

"Reading Art. 246 with the three Lists in the Seventh Schedule, it is quite clear that Parliament has exclusive power to make laws with respect to all the matters enumerated in List I and this notwithstanding anything in clauses (2) and (3) of Art. 246. The State Legislatures have exclusive powers to make laws with respect to any of the matters enumerated in List II, but this is subject to clauses (1) and (2) of Art. 246. The object of this subjection is to make Parliamentary legislation on matters in Lists I and III paramount. Under cl. (4) of Art. 246 Parliament is competent also to legislate on a matter enumerated in State List for any part of the territory of India not included in a State. Art. 248 gives the residuary powers of legislation to the Union Parliament."

It is thus settled law that the parliament has exclusive power to make law with respect to any of the matters enumerated in List I or concurrent power with the State legislature in List III of the Seventh Schedule to the Constitution which shall prevail over the State law made by the State Legislature exercising the power on any of the Entries in List III. If the said law is inconsistent with or incompatable to occupy the same field to that extent the State law stands superseded or becomes void. It is settled law that when Parliament and the Legislature derive that power under Art.

- A 246(2) and the entry in the concurrent list, whether prior or later to the law made by the State legislature, Art. 246(2) gives power, to legislate upon any subject enumerated in the concurrent list, the law made by the Parliament gets paramountcy over the law made by the State Legislature unless the State law is reserved for consideration of the President and receives his assent. Whether there is an apparent repugnance or conflict between
- B Central and State Laws occupying the same field and cannot operate harmoniously in each case the court has to examine whether the provisions occupying the same field with respect to one of the matters enumerated in the concurrent list and whether there exists repugnancy between the two
- C laws. Art. 254 laid emphasis "with respect to that matter". Repugnancy arises when both the laws are fully inconsistent or are absolutely irreconcilable and when it is impossible to obey the one without disobeying the other. The repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. But the court has to make every attempt to reconcile the provisions
- D of the apparently conflicting laws and court would endeavour to give harmonious construction. The purpose to determine inconsistency is to ascertain the intention of the Parliament which would be gathered from a consideration of the entire field occupied by the law. The proper test would be whether effect can be given to the provisions of both the laws or whether
- E both the laws can stand together. Section 213 itself made the distinction of the powers exercisable by the State Govt. and the Central Govt. in working the provisions of the Act. It is the State Govt. that operates the provisions of the Act through its officers. Therefore, sub- s.(1) of s.213 gives power to the State Govt. to create Transport Department and to appoint officers, as it thinks fit. Sub-section (4) thereof also preserves the power. By
- F necessary implication, it also preserves the power to prescribe higher qualification for appointment of officers of the State Govt. to man the Motor Vehicles Department. What was done by the Central Govt. was only the prescription of minimum qualifications, leaving the field open to the State Govt. concerned to prescribe if it finds necessary, higher qualifica-
- G tions. The Governor has been given power under proviso to Art. 309 of the Constitution, subject to any law made by the State Legislature, to make rules regulating the recruitment which includes prescription of qualifications for appointment to an office or post under the State. Since the Transport Department under the Act is constituted by the State Govt. and
- H the officers appointed to those posts belong to the State service, while

appointing its own officers, the State Govt. as a necessary adjunct is entitled to prescribe qualifications for recruitment or conditions of service. But while so prescribing, the State Govt. may accept the qualifications or prescribe higher qualification but in no case prescribe any qualification less than the qualifications prescribed by the Central Govt. under sub-s.(4) of s.213 of the Act. In the later event, i.e. prescribing lesser qualifications, both the rules cannot operate without colliding with each other. When the rules made by the Central Govt. under s.213(4) and the statutory rules made under proviso to Art. 309 of the Constitution are construed harmoniously, there is no incompatibility or inconsistency in the operation of both the rules to appoint fit persons to the posts or class of officers the State Govt. vis-a-vis the qualifications prescribed by the Central Govt. under sub-s.(4) of s.213 of the Act.

It is seen that A.P. Transport Subordinate Service Rules have been made by the Governor exercising the power under proviso to Art. 309 of the Constitution and rule 6 thereof prescribes the qualifications as enumerated above. Graduation in mechanical engineering is one of the higher qualifications than diploma. Since s.213 (4) gives such power to the State Govt. by operation of s.217 of the Act, the statutory rules remain valid and operate in the field without colliding with the Central Rules. Both the Rules would operate harmoniously and effect can be given to both the Rules. Thus the question of inconsistency or repugnancy under Art.254 of the Constitution does not arise. Therefore, we do not find that there is any conflict in the exercise of power by both Central and State Governments or inconsistency in operation of the provisions of the statutory rules made by the Government under proviso to Art. 309 and the rules made by the Central Govt. under s.213(4) of the Act. The recruitment as per State Rules is valid and legal.

The appeals are accordingly dismissed, but in the circumstances, without costs.

T.N.A.

Appeal dismissed.