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February 14.

MUNICIPAL COUNCIL PALAI

v.

T. J. JOSEPH AND OTHERS

(K. SUBBA RAO, RAGHUBAR DAYAL, and J. R. MUDHOLKAR JJ.)

Motor Vehicles—Public Bus Stand constructed by Municipality—Demand of charges from operators using the stand—Validity—Statutory provisions, if repealed by implication—Travancore District Municipalities Act, (XXIII of 1116 M. E.), (Corresponding to A. D. 1914), ss. 286, 287—Travancore-Cochin Motor Vehicles Act, 1125, s. 72.

The appellant passed a resolution providing for the use of a public bus stand constructed by it for stage carriage buses starting from and returning to the Municipal limits of Palai or passing through its limits. It also prohibited the use of any other public place or public street within the Municipal limits as a bus stand or a halting place. The respondents who were using that bus stand, were served with notices demanding the payment of the charges due from them. They preferred writ petitions before the High Court challenging the validity of the action taken by the appellant and praying for quashing the notices issued against them. The High Court accepted the contention of the respondents that the provisions of ss. 286 and 287 of the Municipalities Act stood repealed by implication by virtue of the provisions of s. 72 of the Travancore-Cochin Motor Vehicles Act. On appeal by special leave this court held :—

Held, that at the basis of the doctrine of implied repeal is the presumption that the legislature which must be deemed to know the existing law did not intend to create any confusion in the law by retaining conflicting provisions on the statute book and, therefore, when the court applies this doctrine it does no more than give effect to the intention of the legislature ascertained by it in the usual way.

Daw v. *The Metropolitan Board of Works, (1862) 142 E. R.* 1104, *Great Central Gas Consumers Co.* v. *Clarke.* (1863) 143 E. R. 331, and *Goodwin* v. *Phillips* (1908) 7 C. L. R. 16, distinguished.

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In the present case, the proper construction of the two sets of provisions would be to regard s. 72 of the Travancore-Cochin Motor Vehicles Act as a provision in continuity with ss. 286 and 287 of the Travancore District Municipalities Act so that it could be availed of by the appropriate authority as and when it chose. The intention of the legislature was to allow the two sets of provisions to co-exist, because both are enabling ones and in such a position, it could not imply repeal.

Deep Chand v. *State of Uttar Pradesh*, [1959] Supp. 2 S. C. R. 8, *Shyamkant Lal* v. *Rambhajan Singh*, [1939] F. C. R. 193, and *Attorney-General for Ontario* v. *Attorney-General for the Dominion*, [1896] A. C. 348, referred to.

As no action under s. 72 had so far been taken by the Government, it could not be said that a conflict would arise and, therefore, the resolutions of the Municipal Council still hold good and the appeals must be allowed.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 79 to 81 of 1961.

Appeals by special leave from the judgment and order dated November 18, 1959, of the Kerala High Court in O. P. No. 579, 580 and 647 of 1959.

M. U. Isaac, Girish Chandra and *Sardar Bahadur*, for the appellant.

The respondent did not appear.

1963. February 14. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR J.— The Municipal Council, Palai, the appellant before us, passed a resolution on September 12, 1958 providing for the use from October 1, 1958 of a public bus stand constructed by it for stage carriage buses starting from and returning to the municipal limits of Palai or passing through its limits. A fee of Re. 1 per day was to be charged

on every such bus and 50 nP. per day on buses which merely pass through the municipal limits. The resolution also prohibited the use after that date of any other public place or the sides of any public street within Palai municipal limits as a bus stand or a halting place. At the request of the bus operators the Municipal Council, by a resolution dated September 24, 1958 reduced the rates from Re. 1 to 80 nP. per day and from 50 nP. to 40 nP. per day. By a further resolution dated November 22, 1959 the Municipal Council modified the resolution of September 12, 1958 and instead imposed a prohibition on using as a bus stand or halting place a public place or side of a public road within a radius of six furlongs from the Municipal bus stand. Some of the operators who were using that bus stand did not pay the charges due from them for the use of the bus stand. Demand notices were, therefore, issued against them. The respondent in this appeal, Joseph, as well as the respondents in the other two appeals, Anthony and Eapen, who were recipients of such notices preferred writ petitions before the High Court of Kerala challenging the validity of the action taken by the Municipal Council and praying for quashing of the demand notices issued against them.

It may be mentioned that the various resolutions of the Municipal Council to which we have adverted were passed by it in exercise of the powers conferred upon it by ss. 286 and 287 of the Travancore District Municipalities Act, XXIII of 1116 M. E. (which corresponds to A. D. 1941). Those provisions read thus :

> "286 (1) The Municipal Council may construct or provide public landing places, halting places and cart-stands and may levy fees for the use of the same.
>
> (2) A statement in English and a language of the district of the fees fixed by the Council for

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the use of such place shall be put up in a conspicuous part thereof.

Explanation : A cart-stand shall, for the purposes of this Act include a stand for carriages and animals.

287 : Where a Municipal Council has provided a public landing place, halting place or cart-stand, the executive authority may prohibit the use for the same purpose by any person within such distance thereof, as may be determined by the Municipal Council, of any public place or the sides of any public street."

The reason given by the Municipal Council for taking action under these provisions is that about 80 stage carriage buses start, halt in, or pass through the municipal limits of Palai and the members of the public using them were being put to serious inconveniences for want of a proper waiting room and other necessary conveniences. Further, the unsystematic manner in which the buses were parked and plied affected the sanitation of the town. In order to improve matters the Municipal Council claims to have utilised a plot of land worth Rs. 50,000 located almost at the centre of the town and constructed a bus stand at a cost Rs. 80,000 wherein, among other things, it has provided separate waiting rooms for men and women, sitting accommodation, electric fans, sanitary conveniences, drinking water etc., as also garages and booking offices free of cost for bus operators using the bus stand. It is claimed on behalf of the Municipal Council that by establishing the bus stand it has not only acted within the scope of the powers conferred by the Act but also in public interest and for preserving the health and sanitation of the town.

On behalf of the respondents it was contended that the provisions of ss. 286 and 287 of the

Travancore District Municipalities Act stood repealed by implication by virtue of the provisions of s. 72 of the Travancore-Cochin Motor Vehicles Act, 1125 M. E. (corresponding to A. D. 1950) which came into force on January 5, 1950. That section reads as follows :

> "Government or any authority authorised in this behalf by Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers."

Incidentally we may mention that this section continued in force until the Travancore-Cochin Motor Vehicles Act was replaced partially by the Motor Vehicles Act, 1939 (Central Act 4 of 1939) on its extension to Travancore Cochin by Part B States (Laws) Act, 1951 (Central Act 3 of 1951). The Central Act, of course, has no bearing upon the argument advanced before us because if in fact ss. 286 and 287 were repealed by implication by s. 72 of the Travancore Cochin Motor Vehicles Act the effect of the partial replacement of the Travancore Cochin Motor Vehicles Act by the Central Motor Vehicles Act does not fall to be considered.

The High Court accepted the contention urged by the respondents in these three appeals and observed :

> "The T.C. Motor Vehicles Act, 1125 was enacted, as the preamble shows, in order to provide 'a uniform law relating to motor vehicles' and we see no reason why sections

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like 286 and 287 to the extent they militate against such uniformity should not be considered as having been repealed by implication."

In support of their conclusion they have placed reliance upon certain decisions. The first of these decisions is *Daw* v. *The Metropolitan Board of Works* (1). The High Court quoted the following observations of Erle C. J., as supporting its conclusion :

> "I think that where the same power is given in two different bodies to number houses, the exercise of these powers concurrently by both bodies would be entirely destructive of the object for which they were conferred; they cannot, therefore, exist together, and in accordance with general principles, the power more recently conferred overrides that which was conferred by the prior Act."

That was a case where action had been brought by a Clerk of the Commissioners of Sewers of the City of London against the Metropolitan Board of Works for recovery of damages resulting from the defacement of numbers of houses by the Metropolitan Board of Works from houses in Fann Street, Aldersgate. Those numbers had been inscribed by the Commissioners of Sewers by virtue of the powers conferred upon them by the City of London Sewers Act, 1848, with regard to the sanitation and management of the City of London. The Metropolis Local Management Act, (18 & 19 Vict. c. 120) which was passed in the year 1855 was intended to provide for the better sewerage, drainage etc., of the whole of the metropolis and s. 141 thereof made a general provision as to naming streets and numbering houses. It is in exercise of this power that the Board effaced the numbers which had been inscribed by the

(1) (1862) 142 E.R. 1104.

Commissioners of Sewers on certain houses and put different numbers on them. The court found that the powers conferred by the two statutes were substantially, though not strictly, the same. It also found that in respect of certain matters the powers conferred by the Commissioners of Sewers of the City of London Act were preserved. But in respect of certain general matters the whole work in the Metropolis was expressly brought within the jurisdiction of the Metropolitan Board of Works and s. 141 gave the Board a general authority over the whole of the Metropolis including the City of London. After stating the general principles of construction, the court said that as soon as the legislature is found dealing with the same subject matter in two acts, so far as the later statute derogates from and is inconsistent with the earlier one, the legislature must be held to have intended to deal in the later statute with the same subject matter which was within the ambit of the earlier one. Upon this view they held that the Metropolitan Board of Works had authority to name streets and number houses in the City of London and that the orders of the Board as to numbering of houses in the City of London override the order of the Commissioners in the same matter. A question was posed before the court as to whether the Commissioners of Sewers of the City of London had authority to number the houses and buildings in the streets in the City of London under s. 145 of the City of London Sewers Act even after the passing of the Metropolitan Local Management Act. The learned Judges declined to answer that question and Erle C. J. said :

> "When the metropolitan board of works choose to interfere in a matter which is entrusted to them by the general act, the city commissioners are subject to the metropolitan board. But, whether a concurrent jurisdiction is given to the city commissioners, where the metropolitan

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board have not chosen to exercise their powers, is a question upon which it will be our duty to pronounce an opinion when the point is properly presented to us."

What has to be noted in this case is that the laws with which the court was concerned covered more or less the same subject matter and had the same object to serve. Further, this decision has kept at large the question whether powers conferred upon one authority by an earlier Act could continue to be exercised by that authority after the enactment of a provision in a subsequent law conferring wide powers on another authority which would include some of the powers conferred by the earlier statute till the new authority chose to exercise the powers conferred upon it.

The second decision relied upon is *The Great Central Gas Consumers Co.* v. *Clarke* (1). That was a case in which a company incorporated under a private Act was restricted to charge 4 shillings per 1,000 cft. of gas supplied by it. By a subsequent public Act for the supply of gas to the metropolis an increased standard of purity and illuminating power was required of the companies electing to adopt the provisions of that Act as to price, purity and illuminating power and an increased charge was allowed to be made by them. The question was whether the company was restricted to charge only 4 shillings per 1000 cft. of gas supplied by it. It was urged on behalf of the company that the later Act repealed the earlier one and, that therefore, the company was not restricted to the charge of 4 shillings. After quoting the provision in the private Act containing the restriction the court observed :

> "Although that section is not in terms repealed, yet it becomes a clause in a private act of parliament quite inconsistent with a clause in

(1) (1869) 143 E. R. 331.

> a subsequent public act. That is sufficient to get rid of the clause in the private act. Looking at the 19th section of the general act, we think it is impossible to read it otherwise than as repealing the 24th section of the private act. We are bound as well by the plain words of the act as by the general scope and object of it, and also by the justice of the case."

It will thus be seen that the foundation of the decision was that the later statute was a general one whereas the previous one was a special one and, therefore, the special statute had to give way, to the later general statute.

We have not been able to trace the third case upon which the learned Judges have relied because the reference which they have given of that case in the judgment is incomplete. They have merely stated "103 LJKB" without stating the page of the report or the names of the parties. Unfortunately all the citations of the High Court suffer from the latter defect. They have, however, given the following quotations from the judgment of Scrutton, L. J., and Maugham, L. J. The quotation from the former is :

> "I repeal the previous Act also in another way, namely, by enacting a provision clearly inconsistent with the previous Act."

The quotation from the judgment of Maugham, L. J. is :

> "It is quite plain that the Legislature is unable, according to our constitution, to bind itself as to the form of subsequent legislation; and it is impossible for Parliament to say that in no subsequent Act of Parliament dealing with this same subject-matter shall there be an implied repeal."

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The latter observations make it clear that the doctrine of implied repeal was invoked while considering two statutes—one earlier and the other later —the subject-matter of both of which was the same.

The High Court then quoted certain observations of Issacs J., in an Australian case *Goodwin* v. *Phillips* (1), which are much to the same effect as those of Maugham, L. J. Finally, they have relied upon the statement of law made in Sutherland on Statutory Construction, Vol. I, p. 460. The substance of what they have quoted is that the doctrine of implied repeal is well-recognised, that repeal by implication is a convenient form of legislation and that by using this device the legislature must be presumed to intend to achieve a consistent body of law.

It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject and the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new act are so inconsistent with the old ones that the two cannot stand together. As has been observed by Crawford on Statutory Construction, p. 631, para 311 :

> "There must be what is often called 'such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together'. In other words they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal.....for the intent of the legislature to repeal the old enactment is utterly lacking."

The reason for the rule that an implied repeal will

(1) (1908) 7 C. L. R. 16.

take place in the event of clear inconsistency or repugnancy, is pointed out in *Crosby* v. *Patch* (1), and is as follows :—

> "As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable. *Bowen* v. *Lease* (5 Hill 226). It is a rule, says Sedgwick, that a general statute without negative words will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent. 'The reason and philosophy of the rule,' says the author, 'is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all."

For implying a repeal the next thing to be considered is whether the two statutes relate to the same subject matter and have the same purpose. Crawford has stated at p. 634 :

> "And, as we have already suggested, it is essential that the new statute covers the entire subject matter of the old; otherwise there is no indication of the intent of the legislature to abrogate the old law. Consequently, the

(1) 18 Calif. 438 quoted by Crawford "Statutory Construction" p. 633.

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later enactment will be construed as a continuation of the old one".

The third question to be considered is whether the new statute purports to replace the old one in its entirety or only partially. Where replacement of an earlier statute is partial, a question like the one which the court did not choose to answer in *Daw's case* (1), would arise for decision.

It must be remembered that at the basis of the doctrine of implied repeal is the presumption that the legislature which must be deemed to know the existing law did not intend to create any confusion in the law by retaining conflicting provisions on the statute book and, therefore, when the court applies this doctrine it does no more than give effect to the intention of the legislature ascertained by it in the usual way *i. e.*, by examining the scope and the object of the two enactments, the earlier and the later.

The further question which is to be considered is whether there is any repugnancy between the old and the new law. In order to ascertain whether there is repugnancy or not this court has laid down the following principles in *Deep Chand* v. *The State of Uttar Pradesh* (2):

1. Whether there is direct conflict between the two provisions ;

2. whether the legislature intended to lay down an exhaustive code in respect of the subject matter replacing the earlier law ;

3. whether the two laws occupy the same field.

Another principle of law which has to be borne

(1) (1862) E.R. 1104. (2) [1959] 2 S.C.R. 8. 43.

in mind is stated thus by *Sutherland* on Statutory Construction (1) :

> "*Repeal of special and local statutes by general statutes* : The enactment of a general law broad enough in its scope and application to cover the field of operation of a special or local statute will generally not repeal a statute which limits its operation to a particular phase of the subject covered by the general law, or to a particular locality within the jurisdictional scope of the general statute. An implied repeal of prior statutes will be restricted to statutes of the same general nature since the legislature is presumed to have known of the existence of prior special or particular legislation, and to have contemplated only a general treatment of the subject-matter by the general enactment. Therefore, where the later general statute does not propose an irreconcilable conflict, the prior special statute will be construed as remaining in effect as a qualification of or exception to the general law."

Of course, there is no rule of law to prevent repeal of a special by a later general statute and, therefore, where the provisions of the special statute are wholly repugnant to the general statute, it would be possible to infer that the special statute was repealed by the general enactment. A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality and, therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the court should try to give effect to both the enactments as far as possible. For as has been pointed out at p. 470 of Sutherland on Statutory Construction, Vol. R I where the repealing effect of a statute is doubtful, "the statute is to be strictly

(1) Vol, 1, 3rd Edn, p, 486,

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construed to effectuate its consistent operation with previous legislation."

In the case before us the contention is not that the whole of the District Municipalities Act has been abrogated by the Motor Vehicles Act but that s. 72 of the latter Act is the complete law on the subject of determining parking places for motor vehicles and that in so far as ss. 286 and 287 of the Travancore District Municipalities Act are in conflict with that law, they must give way to it or in other words they must be deemed to have been repealed by implication. The general principles which apply to a consideration of the question whether the later enactment repeals an earlier one by implication will also have to be applied to the kind of case which is before us.

We have already quoted s. 72 of the Travancore-Cochin Motor Vehicles Act. It empowers the Government or an authority authorised by it to determine in consultation with a local authority places at which motor vehicles may stand or halt. Section 286 of the Travancore District Municipalities Act empowers the Municipal Council to construct or provide public halting places and cart stands and levy fees for their use. On the face of it, we do not see any inconsistency between the two provisions because it is open to the Municipal Council to exercise its powers under s. 286 and charge fees from bus owners making use of the conveniences provided by it. Simultaneously with the exercise of the power under that section by the Municipal Council the Government or other appropriate authority may exercise the power under s. 72 and there will be no conflict in the exercise by them of their respective powers. Since the powers under this provision are to be exercised in consultation with a local authority, in practice actual conflict may be obviated by the Government not exercising its powers under s. 72 of

the Travancore-Cochin Motor Vehicles Act where the Municipality has taken action under ss. 286 and 287 of the Travancore District Municipalities Act. Even assuming that it does, it will have to do so in consultation with the Municipality and it may be legitimate to expect that the ultimate action would be such as not to bring about any conflict.

It has also to be borne in mind that s. 72 of the Travancore-Cochin Motor Vehicles Act was enacted for the purpose of enabling the Government and the appropriate authority to make provisions for parking places not only in municipal areas but in non municipal areas as well as also in municipal areas where the municipality has taken no action under s. 286. Would it then be proper to say that there is a conflict between s. 286 of the Travancore District Municipalities Act and s. 72 of the Travancore-Cochin Motor Vehicles Act ? The latter provision has a wider territorial application than the former and can in that sense be said to be a general one, while the former being applicable only to municipal areas is a special one. Being a special provision s. 286 cannot readily be considered as having been repealed by the more general provision of s. 72 of the Travancore Cochin Motor Vehicles Act. But we must bear in mind that s. 286 does not stand by itself and in order to effectuate the purpose underlying it the legislature has enacted s. 287, apparently intending that when action is taken by a municipality under s. 286 it may also take consequential action under s. 287.

Could it, therefore, be said that there is conflict between ss. 286 and 287 on the one hand and s. 72 of the Travancore-Cochin Motor Vehicles Act on the other because while under s. 287 a municipality can prohibit the use as a halting place of any place within a specified distance of the bus stand constructed by it, the Government or other appropriate authority can by order permit places within the prohibited

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area to be used as halting places ? It is urged before us on behalf of the Municipal Council that until action is taken under s. 72 of the Travancore Cochin Motor Vehicles Act which will have such result, it cannot be said that a conflict will arise and that until such conflict actually takes place, the old provision must stand. In support of this contention learned counsel refers us to the decision of Sulaiman J., in *Shyamakant Lal* v. *Rambhajan Singh* (1). There, the learned Judge in his judgment has stated the principles of construction to be applied when the question arises as to whether provincial legislation is repugnant to an existing Indian law. In the course of his judgment the learned Judge has observed :

> "Further, repugnancy must exist in fact, and not depend merely on a possibility."

He relied upon the decision in *Attorney-General for Ontario* v. *Attorney-General for the Dominion* (2), in support of his view. In that case there was a prior provincial law enabling local authorities to adopt certain provisions of a provincial law for enforcing prohibition. Then a later Dominion law was enacted called the Canada Temperance Act, 1886 which provided that part II of that law could be brought into operation in a province by an order of the Governor General of Canada in Council. It may be mentioned that there were certain provisions in the Dominion Act which purported to repeal the prohibitory provisions of the provincial Act. The Privy Council held that those provisions were *ultra vires*. It was contended before the Privy Council alternatively that the provisions of the Provincial Act being repugnant to the Dominion Act stood repealed by implication by the provisions of part II of the Dominion Act by resorting to which local authorities could introduce prohibition in their areas. The Privy Council pointed out that those provisions were inapplicable until an order was made by the Governor General of Canada in Council

(1) [1939] F.C.R. 193, 212. (2) [1896] A.C. 348, 369-370.

applying Part II of the Act to a province and in fact no such order was made. That case is clearly distiguishable because Part II of the Act had not come into force at all and since it was not in force in a province the question of its being in conflict with the provincial law did not arise.

It seems to us however, clear that bearing in mind the fact that the provisions of s. 72 of the Travancore Cochin Motor Vehicles Act were intended to apply to a much wider area than those of ss. 286 and 287 of the Travancore District Municipalities Act it cannot be said that s. 72 was intended to replace those provisions of the Travancore District Municipalities Act. The proper way of construing the two sets of provisions would be to regard s. 72 of the Travancore-Cochin Motor Vehicles Act as a provision in continuity with ss. 286 and 287 of the Travancore District Municipalities Act so that it could be availed of by the appropriate authority as and when it chose. In other words the intention of the legislature appears to be to allow the two sets of provisions to co-exist because both are enabling ones. Where such is the position, we cannot imply repeal. The result of this undoubtedly would be that a provision which is added subsequently, that is, which represents the latest will of the legislature will have an overriding effect on the earlier provision in the sense that despite the fact that some action has been taken by the Municipal Council by resorting to the earlier provision the appropriate authority may nevertheless take action under s. 72 of the Travancore Cochin Motor Vehicles Act, the result of which would be to override the action taken by the Municipal Council under s. 287 of the District Municipalities Act. No action under section 72 has so far been taken by the Government and, therefore, the resolutions of the Municipal Council still hold good. Upon this view it is not necessary to consider certain other points raised by learned counsel,

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For these reasons we allow the appeals and set aside the orders of the High Court and quash the writs issued by it. There will, however, be no order as to costs as the respondents have not appeared.

Appeals allowed.

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February 15.

P. H. KALYANI

v.

M/S. AIR FRANCE CALCUTTA

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA and J. C. SHAH JJ.)

Industrial Dispute—Dismissal—Industrial Disputes Act, 1947 (14 of 1947), s. 33.

The appellant was charged with gross dereliction of duty. The appellant in answer to the charge sheet admitted the mistakes and contended that he was over-worked and that it was the duty of others also to check the load sheet and balance chart prepared by him. Enquiry was held by the Station Manager to whom the appellant objected on the ground of bias. On the findings of the enquiry the appellant was dismissed by the Regional Representative of the respondent company and was given one month's wages and was informed that the approval of the action taken was being sought from the Industrial Tribunal before whom some industrial disputes were pending. The order of dismissal was communicated to the appellant on May 30, and the application for approval was made the same day. An application under s. 33A was made on June 3, 1960, by the appellant challenging the order of dismissal. The appellant objected to the maintainability of the application for approval but the Tribunal accorded approval to the action taken by the respondent and dismissed the application of the appellant under s. 33-A, on appeal by special leave.

Held, that the application for approval was in accordance with the proviso of s. 33 and properly made.