A THE SECURITY ASSOCIATION OF INDIA & ANR.

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 8814 of 2011)

B APRIL 25, 2014

[GYAN SUDHA MISRA AND PINAKI CHANDRA GHOSE, JJ.]

Constitution of India, 1950 – Arts. 246 and 254 and C *Seventh Schedule, List III – Issue pertaining to repugnancy of the State Act in light of the Central Act – When arises – Held: Only if it is found that the two enactments cover the same matter substantially and there is a direct and irreconcilable conflict between the two, the issue of repugnancy arises.*

D

Private Security Agencies (Regulation) Act, 2005 – Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 – Question of repugnancy of the 1981 State Act in light of the 2005 Central Act – E *Whether after enactment of the 2005 Central Act by the Parliament, the 1981 State Act is not applicable to the private security agencies – Held: The subject matter of the two Acts in question are substantially different – The two Acts operate in different fields and there is only incidental connection between the two regarding the regulation of private security* F *agencies – The 2005 Central Act does not occupy the field of labour welfare and thereby there cannot be any conflict between the 1981 State Act and the 2005 Central Act – There is no repugnancy between the 1981 State Act and the 2005 Central Act in the given facts.*

G

Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 – Challenge to – On ground of being violative of Arts. 14 and 19 of the Constitution – Held: Not tenable – Restrictions imposed by the Act are

H

reasonable restrictions envisioned by the Constitution and protect the rights and ensure the welfare of private security guards engaged by private security agencies by means of s.23 and relevant provisions of the Scheme of 2002 – The Act does not violate Articles 14 and 19 or any other Fundamental Rights contained in the Constitution – Maharashtra Private Security (Regulation of Employment and Welfare) Scheme of 2002.

Interpretation of Statutes – Presumption towards constitutionality of a Statute –Held: Courts should proceed to construe a Statute with a view to uphold its constitutionality.

Dismissing the appeals and disposing of the contempt petitions, the Court

HELD:1.1. Prior to determining whether there is any repugnancy or not, it has to be determined that the State Act and the Central Act both relate to the same entry in List-III and there is a 'direct' and irreconcilable' conflict between the two. i.e. both the provisions cannot stand together. Only if it is found that the two enactments cover the same matter substantially and there is a direct and irreconcilable conflict between the two, the issue of repugnancy arises. [Paras 46, 47] [912-C, E-F]

1.2. In the case at hand, the subject matters of the two Acts in question, viz. the Private Security Agencies (Regulation) Act, 2005 (the Central Act) and the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 (the State Act) are substantially different and the conflict in the operation of the two Acts is incidental. Both the Acts operate in different fields and there is only incidental connection between the two regarding the regulation of private security agencies. The two statutes occupy distinct fields. There is no repugnancy between the State Act and the Central Act in the given facts. The Central Act does

A **not occupy the field of labour welfare and thereby there cannot be any conflict between the State Act and the Central Act. The question of applicability of the Central Act and the State Act apply concurrently. [Paras 50, 52 and 55] [913-F-G; 916-E-F; 918-G]**

B

Welfare Association, A.R.P., Maharashtra & Anr. vs. Ranjit P. Gohil & Ors. **2003 (2) SCR 139 = (2003) 9 SCC 358;** *State of Andhra Pradesh vs. K. Purushottam Reddy & Ors.* **2003 (2) SCR 832 = (2003) 9 SCC 564;** *State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors.* **2005 (4) Suppl. SCR 582 = (2005) 8 SCC 534;** *State of MP vs. Rakesh Kohli & Anr.* **2012 (6) SCR 661 = (2012) 6 SCC 312;** *Offshore Holding Pvt. Ltd vs. Bangalore Development Authority & Ors.* **2011 (1) SCR 453 = (2011) 3 SCC 139;** *State of West Bengal vs. Kesoram Industries & Ors.* **2004 (1) SCR 564 = (2004) 10 SCC 201;** *Deep Chand vs. State of Uttar Pradesh & Ors.* **1959 Suppl. SCR 8 = AIR 1959 SC 648;** *Hoechst Pharamaceuticals Ltd & Ors. vs. State of Bihar & Ors.* **1983 (3) SCR 130 : (1983) 4 SCC 45;** *M. Karunanidhi vs. Union of India & Anr.* **1979 (3) SCR 254 = (1979) 3 SCC 431;** *Government of Andhra Pradesh & Ors vs. J.B. Educational Society & Anr.* **2005 (2) SCR 302 = (2005) 3 SCC 212;** *Vijay Kumar Sharma & Ors. vs. State of Karnataka & Ors.* **1990 (1) SCR 614 = (1990) 2 SCC 562;** *State of Uttar Pradesh & Anr. vs. Synthetics and Chemicals Ltd. & Anr.* **(1991) 4 SCC 139 and** *State of Bihar & Ors. vs. Shree Baidyanath Ayurved Bhawan (P.) Ltd. & Ors.* **2005 (1) SCR 334 = (2005) 2 SCC 762 – relied on.**

M/s Tradesvel Security Services vs. State of Maharashtra **1982 Bom LR Vol. LXXXIV 608 – approved.**

In re Special Reference No. 1 of 2000, 2004 (3) SCR 534 = (2004) 4 SCC 489; *Security Guards Board for Greater Bombay and Thane District vs. Security & Personnel Services Pvt. Ltd. & Ors.* **1987 (3) SCR 19 : (1987) 3 SCC 413;** *Maharashtra Suraksha Rakshak Aghadi vs. State of*

Maharashtra; *State of Punjab vs. Labour Court, Jallundhar & Ors.* **1980 (1) SCR 953 : (1980) 1 SCC 4**; *Premier Automobiles Ltd. vs. Kamlekar Shantaram Wadke of Bombay & Ors.* **1976 (1) SCR 427 :(1976) 1 SCC 496**; *Krantikari Suraksha Rakshak Sanghatana vs. Bharat Sanchar Nigam Limited & Ors.* **2008 (12) SCR 649 : (2008) 10 SCC 166**; *Bharathidasan University & Anr. vs. All India Council for Technical Education & Ors.* **2001 (3) Suppl. SCR 253 : (2001) 8 SCC 676**; *State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights of West Bengal & Ors.* **2010 (2) SCR 979 = (2010) 3 SCC 571**; *State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.* **2006 (3) SCR 638 = (2006) 9 SCC 1**; *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust vs. State of Tamil Nadu & Ors.* **1996 (2) SCR 422 = (1996) 3 SCC 15**; *H.S. Srinivasa Raghavachar & Ors vs. State of Karnataka & Ors.* **1987 (2) SCR 1189 = (1987) 2 SCC 692**; *State of Kerala & Ors. vs. Mar Appraem Kuri Company Limited & Anr.* **2012 (4) SCR 448 = (2012) 7 SCC 106**; *P.V. Hemlatha v. Kattamkandi Puthiya Maliackal Saheeda,* **2002 (3) SCR 1098 = (2002) 5 SCC 548**; *Ashoka Marketing Ltd. & Anr vs. Punjab National Bank & Ors.* **1990 (3) SCR 649 = (1990) 4 SCC 406**; *Zaverbhai Amaidas vs. State of Bombay* **[1955] 1 SCR 799**; *State of Orissa vs. M.A. Tulloch and Co.* **[1964] 4 SCR 461**; *K.P. Varghese vs. Income Tax Officer* **1982 (1) SCR 629 = (1981) 4 SCC 173**; *State of Tamil Nadu vs. Mahi Traders & Ors.* **1989 (1) SCR 445 = (1989) 1 SCC 724**; *Sanjeev Coke Manufacturing Company vs. M/s Bharat Coking Coal Ltd. & Anr.* **1983 (1) SCR 1000 = (1983) 1 SCC 147**; *NDMC Vs. State of Punjab & Ors.* **1996 (10) Suppl. SCR 472 = (1997) 7 SCC 339**; *Pathumma & Ors vs. State of Kerala & Ors.* **1978 (2) SCR 537 = (1978) 2 SCC 1**; *Rajiv Sarin & Anr. vs. State of Uttarakhand & Ors.* **2011 (9) SCR 1012 = (2011) 8 SCC 708**; *Gram Panchayat vs.*

A *Malwinder Singh & Ors.* **(1985) 3 SCC 661;** *Girnar Traders vs. State of Maharashtra & Ors.* **2011 (3) SCR 1 = (2011) 3 SCC 1,** *State of Rajasthan vs. Vatan Medical & General Store & Ors.* **2001 (2) SCR 729 = (2001) 4 SCC 642;** *K.K. Bhaskaran vs. State* **2011 (3) SCR 527 = (2011) 3 SCC**
B **793;** *H.C. Narayanappa & Ors. vs. State of Mysore & Ors.* **1960 SCR 742 = AIR 1960 SC 1073;** *Khoday Distilleries Ltd & Ors. vs. State of Karnataka & Ors.* **1994 (4) Suppl. SCR 477 = (1995) 1 SCC 574 – referred to.**

C *Maharashtra Rajya Suraksha Rakshak and General Kamgar Union and Ors. vs. State of Maharashtra and Ors.* **(1994) IIILLJ 946 Bom; and** *Krantikari Suraksha Rakshak Sanghatana vs. State of Maharashtra & Ors.* **2006 (6) ALL MR 401 – referred to.**

D *Canadian Western Bank vs. Alberta* **[2007] Canadian S.C.R. 3 – referred to.**

Case Law Reference:

1982 Bom LR Vol. LXXXIV 608	approved	Para 3
E 1987 (3) SCR 19	referred to	Para 5
1980 (1) SCR 953	referred to	Para 14
1976 (1) SCR 427	referred to	Para 14
F 2008 (12) SCR 649	referred to	Para 14
2001 (3) Suppl. SCR 253	referred to	Para 15
1983 (3) SCR 130	relied on	Para 17
G 2005 (2) SCR 302	relied on	Para 17
2010 (2) SCR 979	referred to	Para 17
2006 (3) SCR 638	referred to	Para 17
1996 (2) SCR 422	referred to	Para 18

H

1987 (2) SCR 1189	referred to	Para 22	A
2012 (4) SCR 448	referred to	Para 23	
2002 (3) SCR 1098	referred to	Para 24	
1990 (3) SCR 649	referred to	Para 24	B
[1955] 1 SCR 799	referred to	Para 24	
1959 Suppl. SCR 8	relied on	Para 24	
[1964] 4 SCR 461	referred to	Para 24	
1982 (1) SCR 629	referred to	Para 24	C
1989 (1) SCR 445	referred to	Para 24	
1983 (1) SCR 1000	referred to	Para 30	
1996 (10) Suppl. SCR 472	referred to	Para 30	D
2005 (4) Suppl. SCR 582	relied on	Para 31	
1978 (2) SCR 537	referred to	Para 31	
2011 (9) SCR 1012	referred to	Para 31	E
(1985) 3 SCC 661	referred to	Para 31	
2011 (1) SCR 453	relied on	Para 32	
2011 (3) SCR 1	referred to	Para 32	F
(2011) 3 SCC 1	referred to	Para 32	
2001 (2) SCR 729	referred to	Para 32	
2005 (1) SCR 334	relied on	Para 32	
2011 (3) SCR 527	referred to	Para 33	G
1979 (3) SCR 254	relied on	Para 33	
1990 (1) SCR 614	relied on	Para 33	

H

A	1960 SCR 742	referred to	Para 35
	1994 (4) Suppl. SCR 477	referred to	Para 35
	[2007] Canadian S.C.R. 3	referred to	Para 39
B	2003 (2) SCR 139	relied on	Para 44
	2003 (2) SCR 832	relied on	Para 45
	2012 (6) SCR 661	relied on	Para 45
	2004 (1) SCR 564	relied on	Para 47
C	2004 (3) SCR 534	referred to	Para 48
	(1991) 4 SCC 139	relied on	Para 55

CIVIL APPELLATE JURISDICTION : Civil Appeal No. D 8814 of 2011.

From the Judgment & Order dated 14.08.2009 in WP No. 1804/2007 of the High Court of Bombay.

WITH

E

C.A. No. 8670, 8671, 8673, 8709/2011.

Contempt. Pet. (C) No. 268 of 2010 in Contempt Petition (C) No. 68 of 2010.

F Contempt Pet. (C) No. 68 of 2010 in C.A. No. 8814 of 2011, C.A. No. 4889 of 2014.

J.P. Cama, C.U. Singh, J.S. Attri, Krishnan Venugopal, Anand Grover, Sumit Goel, Shashank, Aditya Sharma, R.D. G Suvarna (Parekh & Co.), Meenakshi Chattarji, Ashish Jha ("Coac"), Ashok Mathur, R. Sudhinder, Sunita Sharma, Manita Verma, B.K. Prasad, S.N. Terdal, Priyanka Bharihoke, Aparna Bhat, Parul Kumari, Gopal Singh, Devvrat, Vimal Chandra S. Dave, Amardev J. Uniyal, Udai V.S. Rathore, A. Raghunath, H Ramesh K. Mishra, Krishna Kr. Singh, Rohit Kumar Singh,

Uday B. Dube, Mihir Samson, Asha Gopalan Nair, Jayesh Kanaksinh Ashar for the appearing parties. A

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted in Special Leave Petition (Civil) No.8979 of 2013. B

2. The present batch of appeals has arisen from the common judgment and order dated 14th August, 2009 passed by the High Court of Judicature at Bombay in a batch of writ petitions being Writ Petition Nos. 1804 of 2007, 64 of 2004, C 2316 of 2008 and 200 of 2008.

3. The High Court by means of the common impugned judgment disposed of the writ petitions filed by various security agencies which claimed that after enactment of the Private Security Agencies (Regulation) Act, 2005 (hereinafter referred D to as the "Central Act") by the Parliament, the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 (hereinafter referred to as the "State Act") is not applicable to the private security agencies and if the State Act remains in operation with respect to private security agencies E then the State Government be directed to expeditiously pass orders on the pending applications for exemption under the provisions of the State Act as allowed under Section 23 of the State Act. The High Court found the State Act to be in consonance with the Central Act and directed the State F Government to pass orders on the applications for exemption or applications for renewal of exemption filed by the security agencies.

4. As the present appeals challenge the validity of a State G Act in light of a Central Act, the legislative history of the same has to be examined in the light of the current facts. The State Act which came into force on June 29, 1981 received the Presidential assent envisaged under Article 200 of the Constitution of India on September 24, 1981. Under the said H

A Act, the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme, 1981 (hereinafter referred to as 'Scheme of 1981') was put into place. The constitutional validity of the State Act was challenged before the Bombay High Court in *M/s Tradesvel Security Services vs. State of* B *Maharashtra*[1] and the High Court vide its order dated November 2, 1982 upheld the Act on the ground of it being a complete Code and allowed exemptions under Section 23 at initial stage only. The matters came before this Court as special leave petitions which were dismissed in 1983 and the Scheme C of 1981 was stayed with a direction to the State Government to dispose of all the applications for exemptions and the same order was subsequently modified directing that the scheme be brought into force.

D 5. The State Government duly considered and rejected all the applications and twenty five writ petitions were filed before the High Court challenging the rejection by the State Government. These writs were dismissed and the Division Bench while disposing of the appeals arising therefrom, vide order dated July 11, 1985 stated that the applications were E rejected as a result of a policy decision not to grant exemption and the same is incorrect, therefore it was directed that the exemption applications be considered afresh on a case by case basis. Against the same, the Security Guards Board constituted under Section 6 of the State Act, filed special leave F petitions before this Court. The said special leave petitions were disposed of in term of the order passed by this Court on April 28, 1987 in *Security Guards Board for Greater Bombay and Thane District vs. Security & Personnel Services Pvt. Ltd. & Ors.*[2], holding that the State Act being a welfare statute is G enacted to prevent exploitation, that exemption is not for any security guard but security guards working in factories or establishments and the like and that agencies can also apply for the same.

1. 1982 Bom LR Vol. LXXXXIV 608.

H 2. (1987) 3 SCC 413.

6. The State Government vide Notification dated March 28, 1990 under Section 23 of the State Act granted exemption to security guards supplied by private security agencies without any reference to a class or classes of factories. The said Notification was challenged by the Trade Unions before the High Court in *Maharashtra Rajya Suraksha Rakshak and General Kamgar Union and Ors. vs. State of Maharashtra and Ors.*[3]. The High Court relying on the judgment of this Court in *Security Guards Board for Greater Bombay and Thane District vs. Security & Personnel Services Pvt. Ltd & Ors.* (supra) and struck down the said Notification on the ground that exemption under Section 23 of the State Act can only be granted to security guards in relation to a class or classes of factories and establishments which were not mentioned in the Notification. A Special Leave Petition was filed against the aforementioned decision of the High Court and this Court issued directions that State Government should make certain clarifications by way of amendments in the State Act

7. Subsequently, the State Act was amended by the Maharashtra Private Security (Regulation of Employment and Welfare) Amendment Act, 1996 and the amending Act explicitly stated that the amendments are clarificatory in nature. It must be noted that the amendments to the State Act were challenged in *Krantikari Suraksha Rakshak Sanghatana vs. State of Maharashtra & Ors*[4]. and the Division Bench upheld the amendments vide order dated October 10, 2006, and stated that the amendments only removed the ambiguities in the State Act. In these backdrop facts arise Civil Appeal No. 8814 of 2011.

8. Appellant No.1 in this appeal is an Association of private security agencies (hereinafter referred to as the "Appellant Association") whose members are engaged in the business of employing training, outfitting and equipping security guards and

3. (1994) IIILLJ 946 Bom.

4. 2006 (6) ALL MR 401.

A thereafter providing and/or supplying exempted security guards to their clients/principal employers. Appellant No.2 is a member of the Appellant Association.

9. Prior to January, 1997, some members of the Appellant B Association on application had obtained an exemption under Section 23 of the State Act read with the Scheme of 1981 vide a common Notification dated January 22, 1997 and amended by Notification dated March 1, 1999. It has been claimed that the agencies named in the Notification had sought renewal of C exmeptions and that respondent No.6 being the State of Maharashtra (hereinafter referred to as "respondent State") failed and neglected to renew the said Notification, which led to the filing of several writ petitions. Pursuant to the orders of the High Court, the members of the Appellant Association continued to carry out their business.

D

10. In November 2002 the respondent State framed the Maharshtra Private Security (Regulation of Employment and Welfare) Scheme, 2002 (hereinafter referred to as 'Scheme of 2002'), replacing the Scheme of 1981. The Scheme of 2002 E was challenged in *Maharashtra Suraksha Rakshak Aghadi vs. State of Maharashtra* in W.P. No.1085/2003 and upheld by the Bombay High Court in the same writ by an order dated June 23, 2003. Subsequently, some of the members of the Appellant Association, on application, obtained exemptions in respect of F the security guards employed by them and deployed at the establishments of their client/principal employers for a period of three years each. Some of the notifications were to expire in July, 2006 and some in 2007. Though all the concerned agencies duly applied for renewal of exemption notifications, G it has been alleged that the State Government wilfully and deliberately delayed the consideration and decision on all such applications for exemption.

11. The Parliament enacted the 'The Private Security Agencies (Regulation) Act, 2005' (hereinafter referred to as the

H

"Central Act") which came into force on March 14, 2006. Under the provisions of the Central Act, the State of Maharashtra along with other States were required to appoint the Controlling Authority as contemplated under Section 3 thereof and frame rules as contemplated under Section 25 of the Central Act. However, it has been stated that the respondent State failed to appoint any Controlling Authority or frame rules, as a result of which the members of the Appellant Association could not obtain the requisite licences under the Central Act. Some of the members of the Appellant Association, therefore, filed a writ petition before the High Court in September, 2006, *inter alia,* praying for a direction to the respondent State for appointing forthwith the Controlling Authority and framing the rules. Writ Petition No.2633 of 2006 along with some other writ petitions were disposed by the High Court as the writ petitioners did not press the same when they learnt that the respondent State was in the process of complying with the Central Act.

12. On February 23, 2007, the State of Maharashtra designated the Principal Secretary (Special), Home Department, Government of Maharashtra (respondent No.2 herein) as the Controlling Authority and his powers and functions were delegated to respondent Nos.3 to 5. By Notification dated 14th March, 2007, the State of Maharashtra framed "The Maharashtra Private Security Agencies (Regulation) Rules, 2007". Thereafter, the members of the Appellant Association made applications for issue of licences under Section 7 of the Central Act so as to enable them to carry on their business of security agency but the same were not issued by the authorities concerned. The Security Guards Board for Greater Mumbai and Thane District (hereinafter referred to as "the Board") started threatening the principal employers with prosecution under the State Act unless the principal employers get themselves registered with the Board and engage security guards of the Board. The members of the Appellant Association and their clients/principal employers started receiving show cause notices for prosecuting them.

A 13. Aggrieved by the aforementioned act of the Board, the members of the Appellant Association filed writ petitions before the Bombay High Court. Upon the statement made by the learned Advocate General that all the applications filed by the writ petitioners under Section 23 of the State Act would be B decided by the State Government within a period of three months, the High Court directed the Board not to take coercive action against the writ petitioners. The High Court by a common judgment and order dated August 14, 2009 disposed of all the writ petitions but directed the interim order to continue for a C period of eight weeks. The appellants are thus before us in these appeals.

14. Mr. J. P. Cama, learned senior counsel, who was leading the case of the appellants in the titled appeal, during the course of hearings submitted a Note, comparing the State D Act, and the Central Act and on the basis of the same it has been contended by him that the two enactments are in the nature of a 'complete code' as they specify the rights, duties and obligations of the parties governed and that there is no provision in either of the enactments making the Central Act E subject to any pre-condition of the State Act. In support of the same, he submitted this Court's decisions in *State of Punjab vs. Labour Court, Jallundhar & Ors.*[5], *Premier Automobiles Ltd. vs. Kamlekar Shantaram Wadke of Bombay & Ors*[6]. and that in *Krantikari Suraksha Rakshak Sanghatana vs. Bharat* F *Sanchar Nigam Limited & Ors*[7]. In those cases, this Court while dealing with the same State Act held that the State Act is a self contained Code applying only to the pool guards i.e the Board Guards. It has been contended that the High Court erroneously concluded that there is nothing in common between G the two acts under different entries of the Union List and Concurrent List; because then it is *ex-facie* unsustainable for the High Court to hold that the operation of the Central Act must

5. (1980) 1 SCC 4

6. (1976) 1 SCC 496

H 7. (2008) 10 SCC 166

be subject to the State Act. Mr. Cama has further contended that if both the Acts are to survive then they must be construed in a manner wherein the security guards get to choose between joining the respondent Board under the State Act or work under the coverage of the State Act without going through the exemption provisions of the State Act and that there is no warrant which restricts or interferes with the rights of licensed security agencies to commence work with the guards who have chosen to work under them. However, if such contention of the respondents is to be accepted then a Security Guard who wants to be covered by the Central Act would first have to compulsorily register and seek exemption under the State Act and then seek employment under the Central Act. It has been submitted that such a circuitous method to come under the Central Act has not been contemplated and is absurd. That if such situation is accepted by this Court then rights of the appellants are not interfered with and the Acts operate separately, however, any other position will lead to repugnancy.

15. Mr. Cama, learned senior counsel, without prejudice to the above, has further submitted that the primary contention between the two parties is that neither of the Acts prescribes that the rights of security agencies shall be subject to exemption of security guards under Section 23 as concluded by the High Court without any reasoning in support of the same. It has been submitted that the language of the Acts is clear without intending to bring any interdependence between the two Acts and that the holding in the impugned judgment is *subjective ipse dixit* subject to their own inference on how the two statutes should be read. The same amounts to judicial legislation which is not permissible under the law as held by this Court in *Bharathidasan University & Anr. vs. All India Council for Technical Education & Ors*[8]. It is submitted that in the impugned judgment Section 9 of the Central Act has been incorrectly interpreted ignoring the fact that though the Central Act does

8. (2001) 8 SCC 676.

not cast an obligation on security agencies to carry on business it certainly recognizes their fundamental right to do so. It has also been submitted that the State of Maharashtra never complied with their statement that they will grant exemption within six months. That the contention of the State and the Board before the High Court that Section 23 only applies to security agencies who were in business on the date of enactment and not thereafter, would completely exclude security agencies starting business after 1981. If such contentions are allowed then the right to carry on business under Article 19(1)(g) of the Constitution would be violative. Furthermore, it has been submitted that the High Court while upholding the validity of the scheme ignored the pertinent submission that Clause 13(1)(b) of the Scheme of 2002 which prohibited the principal employer from engaging any private security guards is incorrect as it allows State monopoly.

16. It has been submitted by Mr. Cama, learned senior counsel that the two Acts are repugnant. Section 23 of the State Act and Section 9 of the Central Act deal with the same issue substantially and only through Section 23 of the State Act private security agencies are permitted to operate subject to conditions imposed by the Board. Section 23 regulates the commencement and operation of private security guard agencies under the State Act, thereby in conflict with the Section 9 of the Central Act which admittedly regulated the commencement and operation of security guards agencies under the Act. Furthermore, different pre-conditions are laid down in both the statutes which created a direct and substantive repugnancy between Section 23 of the State Act and Section 9 of the Central Act. It has also been contended by learned senior counsel that the repugnancy is substantial and not incidental and in light of the same it has been submitted, as held by the High Court, that the commencement of the Central Act and the rights and obligations of the parties under the same are subject to grant of exemption under Section 23 of the State Act, then Section 23 acts as a condition precedent

for the operation of the Central Act. Such break in the operation of the Central Act clearly indicated that the encroachment is not incidental but substantial, as incidental encroachment does not affect the existence of two statutes simultaneously. Furthermore, the holding of the High Court in this regard is also incorrect.

17. It has also been submitted by Mr. Cama, learned senior counsel that Article 246(1) of the Constitution gives the Parliament a blanket power to make law to govern the whole of India. The non-obstante clause makes it clear that irrespective of the rights of the States to legislate under List-II or List-III, the Parliament is supreme and there is no need for the legislations to be in the concurrent list before a ban falls upon the inconsistent State enactment. As per Article 246(1) of the Constitution, legislation of the Parliament will govern and there is no need for direct conflict. Mr. Cama in light of the above submission drew our attention to the decisions of this Court in *Hoechst Pharamaceuticals Ltd & Ors. vs. State of Bihar & Ors.*[9], *Government of Andhra Pradesh & Ors vs. J.B. Educational Society & Anr.*[10], *State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights of West Bengal & Ors.*[11]. Furthermore, Mr. Cama it has been submitted that the conflict between 'policy' of the State Government and 'express legislation' by the Parliament was settled in *State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.*, wherein this Court held that when parliamentary enactment covers a subject then 'state policy' does not apply. Thus, when the Central Act legislates on the issue of security guards at a national level then the State Act which sets out State Policy must give way to the Central Act. In light of the above, it has been brought to our notice that the Central Act which enables the application of nine labour statutes on private security guards, apart from regulation of

9. (1983) 4 SCC 45.

10. (2005) 3 SCC 212.

11. (2010) 3 SCC 571.

12. (2006) 9 SCC 1.

A agencies, deals with all matters relating to private security guards and juxtaposed to the Central Act the State Act has a narrower scope as it is applicable in certain parts of Maharashtra with respect to employment in factories and establishments. That the interpretation of the High Court B creates a situation where two separate statutes apply to security guards and Agencies in factories and establishments in the same State.

18. Mr. Cama in his submissions drew our attention to Article 254 of the Constitution. He submitted that Article 254(1) C demonstrates that the Parliament has an overriding right to make any enactment in respect of the items in the Concurrent List and that as per Article 254 (2), when any law made by the State Legislature under the Concurrent List is repugnant to the provisions of a Parliamentary Law and unless the same has D received Presidential assent the State Law will give way to the Parliamentary Law. It has further been stated that when the High Court held the State Act to fall within the ambit of List-III and Central Act to fall under the residuary power in List-I, then the High Court cannot simultaneously hold that State Act controls E the Central Act as that is possible only when they fall under the same list, thereby attracting Article 254(1). Furthermore, both Section 9 and Section 23 regulate operation of security guard agencies and both the Acts substantively deal with the employment of private security agencies and private security F guards engaged by them and the terms and conditions of their individual employment. It is submitted that the aforementioned submission must be considered in light of the decision in *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust vs. State* G *of Tamil Nadu & Ors.*[13], wherein this Court held that even if two Acts are not in direct conflict, there would be repugnancy of the superior legislation if it shows an intention to cover the whole field.

H 13. (1996) 3 SCC 15.

19. Mr. Cama on behalf of the appellants has also contended that Section 23 of the Central Act violates Article 19(1)(g) of the Constitution because Section 23 when read with the licensing provisions of the Central Act creates a position where a security agency to commence its business is made subject to the vagaries of a possible exemption of necessary security guards and interferes with their fundamental right to commence and carry on business. This position is further worsened when the concerned agency is unable to find a guard who wants to apply for exemption and especially in light of the fact that there is no pool of exempted guards, that there is no time limit for the State Government to act on an exemption application and that is subject to the discretion of the State Government. It has been further submitted that the power of discretion given to the State Government by means of Section 23 is uncanalized and unregulated upon their subjective satisfaction for a specified period only for all or such class or classes and such power interferes with the agency's right to business which will be subject to the opinion of the State Government. It has also been submitted that the benefits under the Central Act are as good or even better than those provided in the State Act. Mr. Cama placed reliance on the comparative Note submitted by him during the course of arguments and stated that the Central Act also allows the State Government to make rules and they can incorporate the beneficial provisions in the Rules under the Central Act.

20. The submissions of the Appellant Association were finally concluded by Mr. Cama on the Note that in light of the unsustainable view of the High Court both the Acts can operate simultaneously, it is submitted that as canon of construction, every Court can read two independents statutes subject to each other but it also must be noted that where the language of the Act is unambiguous, nothing must be read into it. It was further submitted that a statute must be read as it stands in the facts of legislations by incorporation or legislation by reference, a separate statute can be read into another statute and that

A requires an express statutory provision. In this light, the relief sought before us is that either it must be clarified that the two Acts operate in their own field and that the Central Act is not subject to exemption under Section 23, and if not then the State Act must give way to the Central Act on being repugnant to the B same.

21. It is the case of Dr. A. M. Singhvi, learned senior counsel, appearing for the appellants in the connected appeal, being Civil Appeal No. 8671 of 2011, that Section 1(4) exempts security guards who are direct and regular employees of a C factory or establishment, however the appellant (being HSBC) would prefer to hire security guards of private agencies due to certain advantages. The two private security agencies being respondent Nos.7 and 8 (in Civil Appeal No. 8671 of 2011) were supplying the appellant with security personnel exempted D under Section 23 of the State Act. However, the application for renewal made by the appellant under Section 23 was kept pending by the State Government and the agency had applied for a license under Section 4 of the Central Act and was entitled to commence business in light of the proviso to Section 4. E While the appellants awaited for their licence the State Government initiated penal action against the appellants for engaging non-exempted security guards, against which a writ petition disposed by the impugned judgment was filed. In light of the same, it has been submitted by Dr. Singhvi that certain F parts of the State Act and the Scheme are repugnant to the Central Act.

22. Mr C.U. Singh, learned senior counsel appeared on behalf of Mumbai International Airport Pvt. Ltd. being the G appellant in Civil Appeal No.8670 of 2011 and Convergys India Services P. Ltd & Anr. being the appellants in Civil Appeal No.8709 of 2011. He adopted the arguments tendered by Mr. Cama and Dr. Singhvi and in addition thereto, he advanced arguments on six more grounds. The first ground being that the provisions of the prior State Act of 1981 and the Scheme H

framed thereunder are inconsistent with the provisions of the later Central Act and they must give away to the extent of the inconsistency. In light of the same it has been submitted that regardless of the Central Act being traced to List-I of the Seventh Schedule, the Central Act will prevail to the extent of inconsistency in view of Article 246(1) and if the Act is traceable to List-III, then it will prevail due to the Proviso to Article 254(2). Mr. Singh in furtherance of the same placed the decisions of this Court in *H.S. Srinivasa Raghavachar & Ors vs. State of Karnataka & Ors*[14]. and *State of Kerala & Ors. vs. Mar Appraem Kuri Company Limited & Anr*[15].

23. The second ground raised by Mr Singh is that the State Act does not have any express provisions for registration of private security agencies or for regulating their activities and business under the Scheme and therefore it is only the latter Central Act of 2005 which can regulate or control their activities. In light of the same it has been put forth by Mr. Singh that the State Act is an enabling legislation which operates through the Scheme and in the entire corpus of the State Act and the Scheme of 2002 there is no provision requiring registration of private security agencies and that only the Central Act regulates and governs private security agencies, which fall out of the scope of the State Act and cannot be forced to seek an exemption from the same. Furthermore, this also indicates that Section 23 is in conflict with the Central Act.

24. The third ground of submission raised by Mr. Singh is that the Central Act juxtaposed to the State Act is a special statute whereas the State Act is a special statute in relation to the Board Guards and a general statute with respect to the private security guards, who choose not to register with the Board and that the latter specific statute passed by the Parliament must prevail over the prior general statute of a State legislature. In furtherance of the same he placed before us the

14. (1987) 2 SCC 692.

15. (2012) 7 SCC 106.

A decision of this Court in *P.V. Hemlatha v. Kattamkandi Puthiya Maliackal Saheeda*[16] and a Constitutional Bench decision in *Ashoka Marketing Ltd. & Anr vs. Punjab National Bank & Ors.*[17], which upheld the maxim *"leges posteriors priores contrarias abrogant"*. The fourth ground of submission is that B in any event the application and operation of the later Central Act are made subject to compliance with the prior State Act, then the State Act is clearly repugnant to the Central Act; and being a prior statute, must give way either under Article 246(1) read with Article 248, or under the proviso to Article 254(2). He C has placed before the decisions in *Zaverbhai Amaidas vs. State of Bombay*[18], *Deep Chand vs. State of Uttar Pradesh & Ors.*[19], *State of Orissa vs. M.A. Tulloch and Co.*[20], and *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust vs. State* D *of Tamil Nadu & Ors.* (supra). The fifth contention raised by Mr. Singh is that the State and/or the Board cannot purport to create a monopoly for the Board and to make the very existence of private security agencies dependent upon exemption granted at the whims and fancies of the State Government, after the E enactment of the Central Act in 2005 and that there is no enabling power or authority conferred by the State Act to do so. The final contention raised by Mr. Singh is that the Central Government, which has enacted the later Central Statute and is responsible for implementing the same, has filed a Counter F Affidavit in the in C.A. No. 8670 of 2011 completely supports the contentions of the appellants. Therefore, placing reliance on the decisions of this Court in *K.P. Varghese vs. Income Tax Officer*[21] and *State of Tamil Nadu vs. Mahi Traders & Ors.*[22],

16. (2002) 5 SCC 548.

G 17. (1990) 4 SCC 406.

18. [1955] 1 SCR 799.

19. AIR 1959 SC 648.

20. [1964] 4 SCR 461.

21. (1981) 4 SCC 173.

H 22. (1989) 1 SCC 724.

it has been submitted that the statements made on oath by the Central Government are entitled to the highest weight based on the principle of *contemporanea expositio*. A

25. In light of the above contentions, Mr. Singh has submitted that through the impugned judgment, a monopoly has been created in favour of respondent No.1, being the Board, as the principal employer has no freedom in choosing the security agency or the security guards deployed in their establishments. Thus, the High Court overlooked the interest of the principal employer and private security agencies and that the State Act takes away the fundamental right of the private security agencies from operating and conducting business conferred by the Central Act. It was also submitted that the Parliament clearly intended its legislation to be a complete and an exhaustive Code relating to the subject and it is, therefore, deemed that the Central Act has replaced the Maharashtra Act. It is also submitted that Clauses 8, 25 and 28 of the Scheme of 2002 are arbitrary and violate the appellants' fundamental rights under Articles 14 and 19(1)(g) of the Constitution being an unreasonable encroachment on the right of the appellants to seek deployment of the most suitable class or classes of security guards from the Appellants' viewpoint. It is further submitted that the Central Act and the State Act are enacted under the same legislative entry of the seventh Schedule, substantially covering the same field and as the Parliament sought to cover the same field the State Act, insofar as the agency guards are concerned, must give way and after 2005, the State Act applies only to guards deployed by the Board. B C D E F

26. It is also the case of Mr. Singh that the Central Act is a complete and self-contained code covering the entire business of security services through private security agencies throughout the length and breadth of India, without exception or limitation; furthermore, the Central Act constitutes a comprehensive regulatory mechanism headed by a Controlling Authority in each State which is in charge of all matters G H

A pertaining to private security agencies and private security guards with the State. It was also submitted that the prohibition of agencies of middlemen by the State Act cannot ban or prohibit a private security agency which complies with the requirements of the Central Act and is licensed thereunder, B from functioning and supplying guards to factories or establishments; that even if there is no repugnancy then the only way to interpret the State Act and particularly Section 23 thereof, which will save the Constitutionality of the State Act, is to read it down and treat it as a purely regulatory provision for C safeguarding those service conditions of private security guards which are not governed or regulated by the Central Act.

27. Mr. Singh further submitted that the State Act operates through the Scheme of 2002 which expressly allows principal employers and guards the free choice of employment and D deployment has not been challenged. That this free choice cannot be curtailed by relying on an earlier interpretation given by this Court in *Security Guards Board for Greater Bombay and Thane District vs. Security & Personnel Services Pvt. Ltd. & Ors.* (supra).

E

28. Mr Singh has also drawn our attention to Clauses 13(1)(b), 25(2) and 26(4) of the Scheme of 2002 and submitted that on account of the aforementioned clauses, a user or consumer of security services is forced to use the Board and its sub-F standard guards, even if the user is completely dissatisfied with the services provided, solely on the ground that earlier they were registered with the Board that sometime in the past, such user (or even some imaginary predecessor of such user or consumer) had made the mistake of registering with the Board. Moreover, Clause 42 creates a penal liability, if any of the G clauses of the Scheme of 2002 is contravened.

29. Furthermore, it has been submitted that the provisions of the Scheme of 2002 and the State Act which enable the Board to monopolize the supply of security guards and H restricting right of choice of a private security guard or a

principal employer are *ultra vires* the provisions of the State Act as amended in 1996 and of Articles 14 and 19(1) (g). Mr. Singh concluded by contending that any interpretation of the State Act which prohibits or restricts the business of agencies will create an irreconcilable conflict between the two Acts, with the Central Act prevailing. In light of the same, he submitted that courts should adopt an interpretation which sustains the constitutionality of provisions, and avoid an interpretation which would bring the provisions in conflict with other laws which might prevail over them.

30. Mr. Krishnan Venugopal, learned senior counsel appearing for the State of Maharashtra, while replying to the alleged violation of Articles 14 and 19(1)(g) of the Constitution of India and the repugnancy of the State Act to the Central Act, submitted that there is a presumption of constitutionality to every statute irrespective of it being passed by the Union or a State legislature and an apprehension of abuse by a statutory authority is no ground for striking down the same. He further contended that the reliance placed by Mr. C.U. Singh, learned senior counsel on the counter affidavit of the Central Government is misplaced as once a statute is passed by a legislature then only the Courts may interpret it and determine its constitutional validity. In support of his submissions he placed reliance upon the decisions of this Court in *Sanjeev Coke Manufacturing Company vs. M/s Bharat Coking Coal Ltd. & Anr*[23]. and *NDMC Vs. State of Punjab & Ors*[24]. It has been submitted by Mr. Venugopal that right to do business is a fundamental right conferred by Article 19(1)(g) and a statute cannot be interpreted to confer the same unless it expressly says so. In fact the Central Act is a regulatory mechanism restricting the right to do business of private security agencies by making them subject to certain conditions and does not confer on them any right. Furthermore, it has been submitted

23. (1983) 1 SCC 147.

24. (1997) 7 SCC 339.

A that the High Court in *Tradesvel Case* (supra) has already held that Section 23 is valid and not violative of the Constitution. This decision was also upheld by this Court vide Order dated January 1, 1983. It has also been submitted that the State Act is a beneficial legislation falling under the Directive Principles
B of State Policy and should be upheld as reasonable restriction on the fundamental rights of the appellants under Articles 14 and 19. In support of the same he placed before us the decisions of this Court in *State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors*[25]. and *Pathumma & Ors vs.*
C *State of Kerala & Ors*[26].

31. Mr. Venugopal has also raised the contention that the State Act is not repugnant to the various labour statutes as argued by the appellants as the President gave general assent to the Bill of the State Act under Article 200 on September 24,
D 1981. He has put forth that it is a well settled position that if Presidential assent is given in general terms to a State statute, the State legislation will prevail over a Parliamentary law on matters contained in the Concurrent List. Mr. Venugopal placed reliance on the decisions of this Court in *Rajiv Sarin & Anr.*
E *vs. State of Uttarakhand & Ors.*[27] and *Gram Panchayat vs. Malwinder Singh & Ors*[28]. He further stated that for the purposes of Article 254(2) the Presidential Assent is effective to shield the Maharashtra Act from repugnancy.

F 32. On the ground of repugnancy it has been submitted by Mr. Venugopal that a State Act is repugnant to a Central Act when they are on the same subject and relate to the same entry in the Concurrent List. The same is determined by a series of tests including the determination of the pith and substance of
G the statute claimed to be repugnant, considering the "occupied

25. (2005) 8 SCC 534.

26. (1978) 2 SCC 1.

27. (2011) 8 SCC 708 .

H 28. (1985) 3 SCC 661.

field". Mr. Venugopal Drew our attention to decisions of this Court in *Rajiv Sarin & Anr. vs. State of Uttarakhand & Ors.* (supra), *Offshore Holding Pvt. Ltd vs. Bangalore Development Authority & Ors.*[29], *Girnar Traders vs. State of Maharashtra & Ors.*[30], *Gram Panchayat vs. Malwinder Singh & Ors.* (supra), *State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors.* (supra), *State of Rajasthan vs. Vatan Medical & General Store & Ors.*[31] and *State of Bihar & Ors. vs. Shree Baidyanath Ayurved Bhawan (P.) Ltd. & Ors*[32]. He further submitted that it is clear from the statement of objects and reasons, the preamble, the legislative scheme, the provisions of the Central Act, its scope and its nexus with its object, that it is in pith and substance a law to regulate private security agencies in the interest of national security relatable to Entry 97 and it does not provide for the labour welfare of security guards. This is juxtaposed to the provisions of the State Act which clearly indicate that it is a beneficial social welfare legislation relatable to Entry 24 of List III insofar as it provides for regulation in the interest of labour welfare of private security guards in notified districts in the State of Maharashtra. Mr. Venugopal drew our attention to the comparative table between the provisions of the two statutes submitted by him during the course of proceedings.

33. It has been further submitted by Mr. Venugopal that an incidental encroachment by the State law on a forbidden field does not affect the competence of the legislature to enact the law as held by this Court in *Girnar Traders vs. State of Maharashta & Ors.* (supra) and *K.K. Bhaskaran vs. State*[33]; and that incidental encroachments by a State law into the field covered by the Central law, are an exception even to the

29. (2011) 3 SCC 139.

30. (2011) 3 SCC 1.

31. (2001) 4 SCC 642.

32. (2005) 2 SCC 762.

33. (2011) 3 SCC 793.

A doctrine of occupied field. That only if there is direct and irreconcilable inconsistency between the Central Act and the State Act, the issue of repugnancy can arise as held by this Court in *M. Karunanidhi vs. Union of India & Anr*[34]. and *Vijay Kumar Sharma & Ors. vs. State of Karnataka & Ors.*[35].

B

34. Mr. Venugopal, in furtherance of his argument on the issue of repugnancy, stated that Section 13(1)(j) of the Central Act which requires that licensed private agencies have to comply with the nine Central labour law legislations, does not turn the Central Act into a labour welfare statute or create an C irreconcilable conflict with the State Act as it is merely an incidental and ancillary provision in the Central Act and does not turn it into a labour welfare statute. Similarly, the exemption provision in Section 23 of the State Act does not create a conflict between the two Acts it is purely regulatory in character D for the purpose of ensuring decent labour conditions and a living wage to private security guards; and removing the same would result in great hardship and exploitation of private security guards. Lastly, he concluded by submitting that if different aspects of the same activity are regulated under a Central law E and a State law, it will not render the State law unconstitutional on the ground of being inconsistent with, or repugnant to, the Central law so long as the Central law and the State law operate in different fields and are relatable to different entries in any of the lists in the Seventh Schedule. In support of this F submission learned senior counsel placed reliance on two earlier judgments, being *State of Bihar & Ors. vs. Shree Baidyanath Ayurved Bhawan (P.) Ltd. & Ors* (supra) and *Vijay Kumar Sharma & Ors. vs. State of Karmataka & Ors.* (supra).

G 35. Mr. Venugopal has countered the claim of the appellants that the State cannot create monopoly in it favour on the ground that the creation of a monopoly by a statute including subordinate legislation by a competent legislature is

34. (1979) 3 SCC 431.

H 35. (1990) 2 SCC 562.

not open to challenge under Art.19(1)(g) of the Constitution in view of Article 19(6). Moreover, the State Act does not create an absolute monopoly in favour of the Securities Board in view of the exemption provision in Section 23 of the Maharashtra Act for security guards or classes of security guards employed by private security agencies. He strongly relied on the decision of the High Court in the *Tradesvel Case* (supra) pertaining to the State Act wherein the restrictions imposed by the said Act were held to be reasonable and also submitted the decisions in *H. C. Narayanappa & Ors. vs. State of Mysore & Ors*[36]. and *Khoday Distilleries Ltd & Ors. vs. State of Karnataka & Ors.*[37].

36. It is also the case of Mr. Venugopal that from Section 13(1)(j) of the Central Act, it is clear that the labour statutes mentioned in the schedule to the Act are not incorporated in the Act. Further, neither the issue of both Acts being self-contained codes, nor the issue of legislation by incorporation as opposed to legislation by reference, is relevant inasmuch as both the Central Act and the State Act can co-exist harmoniously without any conflict.

37. Mr. Venugopal closed his arguments with the contention that the State Act has been upheld in numerous challenges over the years on various grounds, including many of the grounds urged in these civil appeals. In light of the same he drew our attention to the decision of the High Court in the *Tradesvel Case* (supra) and the dismissal of the special leave petition challenging the same, the decision of this Court in *Security Guards Board for Greater Bombay and Thane District vs. Security & Personnel Services Pvt. Ltd. & Ors.* (supra), the decision of the High Court in W.P. 1085 of 2002 wherein the High Court upheld the Scheme of 2002, the decision which upheld the 1996 amendments to the State Act being the *Krantikari Suraksha Rakshak Sanghatana vs. State of*

36. AIR 1960 SC 1073.

37. (1995) 1 SCC 574.

A *Maharashtra & Ors.* (supra)[38], which was further upheld by this Court which held that the State Act and the Scheme constituted a complete and self-contained Code in *Krantikari Suraksha Rakshak Sanghatana vs. Bharat Sanchar Nigam Ltd. & Ors.* (supra) and lastly the unchallenged decision of the High Court B in *National Textile Corporation vs. The Secretary, Security Guards Board for Brihan Mumbai and Thane District & Ors.* (WP No.2773/2006 decided on January 12, 2007) wherein it was held that the Central Act regulated the private security agencies so that they do their job within the legal framework C and are accountable to the regulatory mechanism as provided under the Act while the State Act is for the regulation of the employment of the Private Security Guards employed in the factories and establishment in the State of Maharashtra and for making better provisions of their terms and conditions of D employment and welfare through the establishment of the Security Board.

38. Mr. Anand Grover, learned senior counsel appeared on behalf of the respondent No. 8, being one of the Trade Unions consisting of private security guards. Mr. Grover in his E arguments reiterated the grounds raised by Mr. Venugopal and further contended that the Central Act does not occupy the field of labour welfare of security guards, firstly, because Sections 4, 5, 6 & 7 of the Central Act do not make compliance with labour welfare statues, listed in the Schedule to the Act, a F condition for obtaining a licence under the Act; secondly, as it is clear from the words of Section 13(1)(j) of the Central Act that the applicability of the welfare Acts are at best discretionary and the Controlling Authority "may" cancel a licence on non compliance of the labour welfare Acts; thirdly, the Central Act G contains no proactive and regular checks on compliance with the Central labour laws. It has been further submitted that the main objective of the State Act is labour welfare. In light of the same he drew our attention to Sections 19, 20 and 21 of State Act and referred to Section 3 of the State Act and the Scheme

H 38. 2006 (6) ALL MR 401.

of 2002. He further argued that the State Act proactively monitors the employment conditions of the private security guards in spite of being exempted under Section 23, ensuring their welfare for the exemption to continue and that the State Act has a proper mechanism ensuring that welfare provisions are complied with.

39. Mr. Grover heavily relied on the decision of the Supreme Court of Canada in *Canadian Western Bank vs. Alberta*[39] wherein the Court referred to the *doctrine of co-operative federalism,* to support his contention that the Central Act and State Act apply concurrently as the two Acts do not regulate the same aspects, the Central Act ends at licensing and the State Act begins with labour welfare.

40. Mr. Grover concluded his arguments with the submission that the Scheme of 2002 does not violate Articles 14 and 19 of the Constitution. He stated that the parties did not bring the same challenge before the original court and therefore, cannot raise the ground at this stage. He also drew our attention to specific clauses of the Scheme of 2002 and stated that they are not unconstitutional. Firstly, he put forth the provisions in Clause 13(1)(b) of the Scheme of 2002 and stated that the conditions imposed by the same are in consonance with the State Act enacted to ensure fair conditions of employment and amelioration of security guards. Secondly, he stated that Clause 25(2) is not arbitrary and unreasonable as it ensures fair conditions of employment and its restrictions are in consonance with the Act. Thirdly, it has been contended that Clause 26(4) is in consonance with the Act and the Scheme and that it is an enabling provision to ensure that exemption is granted to security guards to be deployed by the employer agency only at those factories and establishments which are registered with the Boards.

41. Respondent No.9 in the titled appeal (C.A. No. 8814

39. [2007] Canadian S.C.R. 3 .

A of 2011) being Maharashtra Rajya Suraksha Rakshak & General Kamgar Union, a registered Trade Union, also made separate submissions through its counsel along with Bhartiya Suraksha Rakshak Union, which is also a registered Trade Union of security guards and filed an application for B impleadment/intervention in the matter which is registered as I.A. No.7. Their submissions are concerning the alleged exploitation of security guards by the security agencies. It is their case that security agencies in connivance with the principal employers have been making several attempts to C circumvent the welfare provisions of the State Act since the inception of the State law and that the private security agencies could not have made yet another attempt with the principal employers to avoid the reasonable restriction imposed against them on their right to business in connection with security D guards. It has been submitted that the State Act imposes reasonable restrictions against security agencies and that the Board acts as a watchdog ensuring that the exempted guards are availing equally or more favourable terms and conditions of employment, which has been determined by the mechanism of the Board established under the State Act and the agencies E undertook at the time of seeking exemption.

42. Both the Trade Unions being respondent No.9 and the impleaded party, apart from accepting the submissions of Mr. Venugopal and Mr. Grover, have sought that the State Act be F enforced in toto for the welfare of the private security guards in the State of Maharashtra which can only be ensured by the State Act which has sufficient proactive measures for the enforcement of the labour welfare provisions.

G 43. Having heard the arguments of all the parties and after perusing the materials placed before us during the course of hearing, we find that the primary issue in the present matter is whether the State Act is repugnant to the Central Act. The learned senior counsels appearing for both the parties submitted a plethora of cases in this regard, however we will H limit ourselves only to the pertinent cases.

44. Article 246 of the Constitution does not provide for the competence of Parliament or the State Legislatures as commonly perceived but merely provides for their respective fields. Article 246 only empowers the Parliament to legislate on the entries mentioned in List-I and List-III of the Seventh Schedule and that in case of a conflict between a State Law and a Parliamentary Law under the entries mentioned in List-III, the Parliamentary law will prevail. It does not follow that the Parliament has a blanket power to legislate on entries mentioned in List-II as well. Thus, the argument of the appellants that the Parliament has supreme right to legislate over any area as per Article 246(1) is misplaced. Furthermore, this Court in *Welfare Association, A.R.P., Maharashtra & Anr. vs. Ranjit P. Gohil & Ors*[40]. also held that:

> "The fountain source of legislative power exercised by Parliament or the State Legislatures is not Schedule 7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three lists in the Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power."

45. It has become a well-established principle that there is a presumption towards the constitutionality of a statute and the courts should proceed to construe a statute with a view to uphold its constitutionality. (See: *State of Andhra Pradesh vs. K. Purushottam Reddy & Ors.*[41], *State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors.* (supra), (paras 20 and 70, *State of MP vs. Rakesh Kohli & Anr.*[42])

46. In light of the above, we will answer the question of repugnancy of the State Act with respect to the Central Act. The question of repugnancy arises only in connection with the

40. (2003) 9 SCC 358.

41. (2003) 9 SCC 564.

42. (2012) 6 SCC 312.

A subjects enumerated in the Concurrent List (List –III), on which both the Union and the State Legislatures have concurrent powers to legislate on the same subject i.e. when a Stale Law and Central Law pertain to the same entry in the Concurrent List. Article 254(1) provides that if a State law relating to a B concurrent subject is 'repugnant' to a Union law then irrespective of the Union law being enacted prior to or later in time, the Union law will prevail over the State law. Thus, prior to determining whether there is any repugnancy or not, it has to be determined that the State Act and the Central Act both relate C to the same entry in List-III and there is a 'direct' and irreconcilable' conflict between the two. i.e. both the provisions cannot stand together.

47. Article 254 of the Constitution is only applicable when the State Law is in its 'pith and substance' a law relating to an D entry of the Concurrent List on which the Parliament has legislated. It has been well established that to determine the validity of a statute with reference to the entries in the various lists,, it is necessary to examine the pith and substance of the Act and to find out if the matter comes within an entry in List-III. E The Court while examining the pith and substance of a statute must examine the whole enactment, its objects, scope and effect of its provision. Only if it is found that the two enactments cover the same matter substantially and that there is a direct and irreconcilable conflict between the two, the issue of F repugnancy arises. (See: *State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors.* (supra), *Offshore Holding Pvt. Ltd. vs. Bangalore Development Authority & Ors.* (supra), *State of West Bengal vs. Kesoram Industries & Ors.*[43]).

G 48. The Preamble of the Central Act reads as under:

"An Act to provide for the regulation of private security agencies and for matters connected therewith or incidental thereto."

H 43. (2004) 10 SCC 201.

On the other hand the Preamble of the State Act reads as under:

> "An Act for regulating the employment of Private Security Guards employed in factories and establishment in the State of Maharashtra and for making better provisions for their terms and conditions of employment and welfare, through the establishment of a Board therefore, and for matters connected therewith."

As per this Court's decision in *In re Special Reference No. 1 of 2000*[44] every attempt should be made to reconcile a conflict between two statutes by harmonious construction of the provisions contained in the conflicting statutes. However, in the present matter from a bare reading of the above extracts it is evident that the Central Act only regulates the business of private security agencies and connected and incidental matters thereto. Thus, Section 13(1)(j) of the Central Act which requires compliance with the Central Labour laws as a condition to ensure the validity of the licence obtained under the Act is a provision incidental to the purpose of the Act. The statement of object of the State Act clearly indicates that the State Act seeks to regulate the employment of Private Security Guards employed in factories and establishment in the State of Maharashtra and seeks to ensure better terms and conditions of employment of such guards through the establishment of a Board.

50. It is evident from the above that the subject matters of the two Acts are substantially different and the conflict in the operation of the two Acts is incidental. Furthermore, after comparing the provisions of both the Acts, that both the Acts operate in different fields and that there is only incidental connection between the two regarding the regulation of private security agencies, wherein Section 23 of the State Act exempts private security guards for the operation of business of private

---

44. (2004) 4 SCC 489.

A security agencies after ensuring that such exempted guards enjoy benefits, either equal or better than those provided by the State Act. Therefore, the High Court has correctly held that:

> "25. It is clear that this group of petitions have been filed after the enactment of the Central Act to claim that in view B of the enactment of the Central Act, the State Act has lost its efficacy in relation to the security agencies. Perusal of the preamble of the State Act shows; that the purpose; for which that Act has been enacted is - regulating the employment of security guards employed in factory and C establishment in the State of Maharashtra and for making better provisions for their terms and conditions of employment and welfare through the establishment of a board there for. It is thus clear that the State Act is a labour Legislation enacted by the State Legislature for making D better provisions for the terms and conditions of employment of the private security guards and their welfare. The Legislation, therefore, is referable to Entry 24 in List III (Concurrent List) in the Seventh Schedule of the Constitution of India. The entry reads as under:
>
> E
>
> "24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits."
>
> F
>
> We have, thus, no doubt, in our mind that the State Act is a Labour Legislation, which the State Government is competent to enact because of Entry 24 found in List III of Seventh Schedule of Constitution. So far as the Central Act is concerned, its preamble shows that the Act has been G enacted by the Parliament - for the regulation of the Private Security Agencies and for matters connected therewith and incidental thereto. The subject matter of the State Act is private security guards who may be engaged by the principal employer either through the Board or through the H security agencies. The subject matter of the Central

Legislation is not the private security guards, but private security agencies. Thus, the subject of two Legislations is different. Perusal of the Central Act shows that it makes an endeavour to regulate the establishment and working of private security agencies. Section 4 lays down that no person shall carry on and commence the business of security agency unless he holds a licence issued under this Act. Section 5 of the Central Act lays down as to who are eligible for licence. From the scheme of the Central Act, it is thus clear that it regulates the business of private security agencies by making it obligatory on them to secure licence under the Central Act before commencing their business. The provisions found in the Central Act dealing with the eligibility of the security guards are incidental to the subject of legislation namely business of private security agency. The condition of service and welfare of the security guards is not the subject matter of Legislation in the Central Act. In list I or List III of the Seventh Schedule there does not appear to be any entry in relation to the regulation of business of security agency. Therefore, the Central Legislation may be relatable to residuary Entry 97 In List I. Perusal of the provisions of the State Act shows that it does not make any attempt to regulate the business of private security agency."

51. The other test to determine the issue of repugnancy is the "doctrine of occupied field" which stipulates that even where the Central Act is not exhaustive, repugnancy may arise if it occupies the same field as the State Act. The question of repugnancy arises only when the law made by the Parliament and the State Legislature occupy the same field. (See: *Deep Chand vs. State of Uttar Pradesh & Ors.* (supra), , *Hoechst Pharamaceuticals Ltd & Ors. vs. State of Bihar & Ors.* (supra)). Furthermore this Court in *M. Karunanidhi vs. Union of India & Anr.* (supra) held that:

"*24.* It is well settled that the presumption is always in

A favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the
B following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.
C

3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the
D other"

The above was also upheld by this Court in the case of *Government of Andhra Pradesh & Anr. vs. J.B. Educational Society & Anr.* (supra).

E 52. In the present case, after perusing the two Acts in entirety, we find that two statutes occupy different fields as stated earlier. The Central Act aims to regulate the business of private security agencies and Section 13(1)(j) of the Central Act which reads as under, does not turn the Central Act into a
F labour welfare statute as the same is an incidental provision.

"13. Cancellation and suspension of licence.-(1) The Controlling Authority may cancel any licence on any one or more of the following grounds, namely:-

G ....

(j) that the licence holder has violated the provisions of the Acts given in the Schedule which may be modified by the Central Government, by notification in the Official Gazette;

H

..." A

Thus, we accept the arguments of Mr. Venugopal with regard to the same. The State Act is in contrast to the Central Act as it contains express provisions pertaining to labour welfare and contains mechanism to ensure that the same are complied with. Furthermore, the State Act also imposes penal liability if the said provisions are not complied with. The High Court decision in the *Tradesvel Case* (supra), challenge to which was dismissed by this Court, also held the State Act to be a welfare legislation. Therefore, we are of the opinion that the two statutes occupy distinct fields. B C

53. The appellants have also challenged the State Act to be violative of Articles 14 and 19 of the Constitution. However, we find that the same does not hold good as the restrictions imposed by the State Act are reasonable restrictions envisioned by the Constitution and that they protect the rights and ensure the welfare of private security guards engaged by private security agencies by means of Section 23 and relevant provisions of the Scheme of 2002. Furthermore, the High Court in the *Tradesvel Case* (supra) while answering the same question and considering the situation of the private security guards held the State Act is not to be in violation of Articles 14 and 19 or any other Fundamental Rights contained in the Constitution. Therefore, we accept the arguments put forth by Mr. Venugopal in this regard. D E F

54. The other impediment which tried to be pointed out by the learned senior counsel appearing on behalf of the appellant in respect of Section 23 of the State Act that it compels all the security guards employed by the agencies and deployed with various principal employers to seek exemption is totally misconceived because it would bring about total stoppage of the agency's business. After analyzing Section 23 of the said Act, it appears to us that exemption can be granted to a class or classes of Security Guards, employed by agencies and deployed with the principal employer and who are in the G H

A enjoyment of benefits which are on the whole not less favourable to such security Guards than the benefits provided for or under this Act or any Scheme made thereunder. We have noticed that the High Court has duly taken care of that and considered the said scheme and pointed out that to seek the benefit of
B exemption under Section 23, three conditions are necessary. Firstly, the class or classes of Security Guards should be employed by the agency or agent. Secondly, those Guards must be deployed by the concerned agency in a factory or establishment or in any class or classes of factories or
C establishments and thirdly, in the opinion of the State Government, all such Security Guards or such class or classes of Security Guards at the time of seeking exemption are in the enjoyment of benefits which are on the whole not less favourable to such Security Guards than the benefits provided by or under this Act or any Scheme made thereunder. Now, since after the
D enactment of the State Act, the principal employer was prohibited from taking private Security Guards from Security Agencies, the exemption could be asked only in respect of private Security Guards who satisfied the aforementioned three conditions. Thus, it was only a one time exercise for seeking
E exemption for private Security Guards who were employed by the agency and deployed by that agency in factory or establishment. That exercise could be repeated as and when the provisions of the Security Guards Act are made applicable to different areas of the State on different dates as provided
F under Sub-section (3) of Section 1 of the Security Guards Act.

55. The discussion which we have in the preceding paragraphs are reasons to come to the conclusion, and we hold that there is no repugnancy between the State Act and the
G Central Act in the given facts. We have also found that the Central Act does not occupy the field of labour welfare and thereby there cannot be any conflict between the State Act and the Central Act. The question of applicability of the Central Act and the State Act, in our opinion, apply concurrently and we
H accept the submission of Mr. Grover to that extent relying upon

the decisions cited before us (See: *Vijay Kumar Sharma & Ors. vs. State of Karnataka & Ors.* (supra), *State of Uttar Pradesh & Anr. vs. Synthetics and Chemicals Ltd. & Anr*[45].] and *State of Bihar & Ors. vs. Shree Baidyanath Ayurved Bhawan (P.) Ltd. & Ors.* (supra). Furthermore, we have also noticed that the State Act duly received the assent of the President. We have further noticed that Clause 28(1) of the Scheme of 2002 provides that every registered principal employer may either engage a security guard registered with the Board or private employer agency or directly and the said clause is nothing but declaratory of the object of the Act and the Scheme. Therefore, it cannot stand in the way of performing the business by the private security agencies.

56. For the reasons stated hereinabove, we do not find any merit in these appeals. Hence, the appeals are dismissed. Consequently, the contempt petitions are also disposed of accordingly. There will be no order as to costs.

Bibhuti Bhushan Bose

Appeals dismissed & Contempt Petition disposed of.

45. (1991) 4 SCC 139.