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Court : Allahabad

Decided On : Oct-11-1976

Reported in : (1977)IILLJ429All

Judge : G.C. Mathur, Ag. C.J., ;N.D. Ojha and ;K.C. Agarwal, JJ.

Appellant : Hari Shankar Jain and anr.

Respondent : Executive Engineer, Rural Electrification Division

Judgement :

N.D. Ojha, J.

1. Against the judgment of a learned single Judge of this Court dismissing their writ petition the two appellants preferred the present special appeal. After hearing counsel for the parties a Division Bench on January 6, 1971, referred the following three questions for opinion to a larger Bench:

1. Whether the Industrial Employment (Standing Orders) Act, 1945, applies to the industrial establishments of the State Electricity Board?

2. Whether the standing orders framed for an industrial establishment of an electrical undertaking cease to be operative on the purchase of the undertaking by

the Board or on the framing of regulations under Section 79(e) of the Electricity (Supply) Act 1948?

3. Whether Section 13B of the Industrial Employment (Standing Orders) Act, 1946, applies only to industrial establishments of the Government and also to other industrial establishments?

In pursuance of the aforesaid order the case has been referred to us to answer these three questions. Before dealing with the submissions made by counsel for the parties it would be useful to narrate in a nut-shell the facts and circumstances necessitating the reference.

2. M/s. Seth Ram Gopal and partners were licensees for the distribution of electricity under the Indian Electricity Act, 1910. The two appellants were their employees. Standing Orders were framed and certified for the industrial establishment of M/s. Seth Ram Gopal and Partners under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the Standing Orders Act). No age of superannuation was prescribed in these Standing Orders. The electricity undertaking of M/s. Ram Gopal and Partners was compulsorily purchased by the U.P State Electricity Board under the provisions of the Electricity (Supply) Act, 1948, with effect from the midnight between November 14, and 15, 1964. The applicants were reappointed by the Board along with other employees of M/s. Seth Ram Gopal and Partners on the following conditions:

That they will retire from the service of the Board on attaining the age of 55 years, unless granted extension of by Board;

(ii) Subject to (i) above, they will be governed in matters covered by the schedule to the Standing Orders Act by Standing Orders and in all ether matters by the Rules and Regulations of the Board.

In exercise of the power conferred on it by Section 79(c) of the Electricity (Supply) Act, 1948, the Board framed a regulation fixing the age of superannuation of its employees of the class of the appellants at 58 years. The State Government by a notification dated May 28, 1970, purported to notify this regulation under Section

13B of the Standing Orders Act. The two appellants were thereafter informed by the Board that they would be required to retire on July 2, 1972, and July 7, 1972, respectively on attaining the age of 58 years in accordance with the regulation aforesaid. The appellants thereupon instituted the writ petition giving rise to the present special appeal in this Court challenging the regulation and its notification by the State Government. The case of appellants was that their terms and conditions of service were governed by the Standing Orders framed and certified for the industrial establishment when it was owned by M/s. Seth Ram Gopal and Partners, that these Standing Orders continued to be operative even after the purchase of the said industrial establishment by the Board, that since the Standing Orders contained no provision regarding the age of superannuation, they were entitled to continue in service till they were fit, that the age of superannuation could be prescribed only by a notification of the Standing Orders in accordance with the provisions of the Standing Orders Act and that the regulation framed by the Board under Section 79(c) of the Electricity (Supply) Act, 1948, was ineffective for prescribing the age of superannuation of the appellants. The writ petition was contested by the Board on the ground that the Standing Orders Act and the Standing Orders framed in respect of the industrial establishment when it was owned by M/s. Seth Ram Gopal and Partners were no longer applicable to the employees of the Board inasmuch as (1) the provisions of Section 79(c) of the Electricity (Supply) Act, 1948, conferring power to make regulations regarding the terms and conditions of its employees by the Board were inconsistent with the provisions of the Standing Orders Act and would prevail as they were special provisions relating to one particular employer and were contained in a later enactment. (2) that even if the Standing Orders initially applied to the appellants they were ousted by the regulation when made in 1966, and (3) that by virtue of the notification under Section 13B of the Standing Orders Act the provisions of that Act ceased to apply to the industrial establishments of the Board.

3. The learned single Judge was inter alia of the opinion that there was conflict between the provisions of Section 79(c) of the Electricity (Supply) Act and those of the Standing Orders Act and the former being a special provision and being contained in a later enactment must prevail over the Standing Orders Act and, therefore, the provisions of the Standing Orders Act did not apply to the industrial

establishments of the Board. In taking this view the learned single Judge place reliance on *Bijili Mazdoor Sangh v. U.P. State Electricity Board* : AIR1970 All589 . The judgment in *Bijili Mazdoor Sangh's case* (supra) upheld in Special Appeal No. 1400 of 1969 on February 7, 1970, by V.G. Oak, C.J., and S.N. Singh, J.

4. During the course of arguments in the present special appeal reliance was placed by the learned Counsel for the appellants on a subsequent decision dated March 19, 1971, in *U.P. State Electricity Board Lucknow and Anr. v. City Magistrate, Jhansi and Ors.* Special Appeal No. 686 of 1967. wherein V.G. Oak, C.J. and R.B Misra, J. made an observation that the point decided in *Bijili Mazdoor Sangh's case* (supra) may require further consideration. The Division Bench which has made the present reference was of the view that it did require reconsideration and hence this reference was made.

5. We now proceed to answer the three questions referred to us in seriatim.

6. The contention of the learned Counsel for the appellants in regard to question No. 1 has been that the Standing Orders Act applies to all industrial establishments except those as may be covered by Section 13B or that may have been exempted under Section 14 of the Act. On the other hand it was urged by the learned Counsel for the Board that the said Act was not applicable to an industrial establishment of the State Electricity Board. Having heard counsel for the parties we were of opinion that the submission made by learned Counsel for the appellants in that behalf must prevail. There were industrial establishments in existence from before the Standing Orders Act was passed. However, the terms and conditions of the workmen in such industrial establishments used to be such as the employer in its discretion thought it fit to lay down. They could also be changed at any time at the sweet will of the employer so that the workmen could never be certain in regard to the terms and conditions of their employment. As is apparent from the preamble to the Standing Orders Act the object of the Act was to require employers in industrial establishments to define with a sufficient precision the conditions of employment under them and make the said conditions known to the workmen employed by them. In view of Sub-section

(2) of Section 1 the Act now extends to whole of India and in view of Sub-section

(3) thereof as it stands after its amendment by the Industrial Employment (Standing Orders)(Amendment) Act, 1961, it applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding 12 months. It contains a proviso to the effect that the appropriate Government may after giving not less than two months notice of its intention so to do by notification in the official gazette apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification. Sub-section

(4) contains certain exceptions. It is not necessary to mention them here as they are not applicable to the facts of the instant case. 'Industrial establishment' has been defined under Section 2(e) to mean "(i) an industrial establishment as defined in Clause (ii) of Section 2 of the Payment of Wages Act, 1936, or (ii) a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948, or (iii) a railway as defined in Clause

(4) of Section 2 of the Indian Railways Act, 1890, or (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen' The Payment of Wages Act, 1936, defines 'industrial establishment' in Section 2(ii) and enumerates several establishments therein. Item (g), which is relevant for our purposes, is as follows:

Any establishment in which any work relating to construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on.

'Factory' has been defined in Section 2(m) of the Factories Act, 1948, as follows:

'Factory' means any premises including the precincts thereof-(i) whereon ten or more workers are working, or were working, on any day for the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon 20 or more workers are working or were working on any day of the preceding 12 months, and in any

part of which manufacturing process is being carried on without the aid of power, or is ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1962 (XXXV of 1962), or a railway running shed.

'Manufacturing Process' is defined in the Factories Act in Section 2(k) as follows:

Manufacturing process means any process for (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or other, wise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or (ii) pumping oil, water or sewage; or (iii) generating, transforming or transmitting power; or (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels.

On a pliantiff reading of various definitions referred to above there seems to be no manner of doubt that the Standing Orders Act would apply to the industrial establishments of the State Electricity Board also because all the ingredients of the industrial establishment within the meaning of the Standing Orders Act are present in the industrial establishments of the State Electricity Board. Nothing has been brought by the learned Counsel for the Board with reference to the definition of the industrial establishment in the Standing Orders Act which may take oat an industrial establishment of the State Electricity Board from the operation of the Standing Orders Act, what, however, he has urged is that in view of the Scheme and object of the Electricity (Supply) Act, 1948, it was apparent that the Standing Orders Act was not intended to be applied to an industrial establishment of the State Electricity Board. In this connection our attention was invited by the learned Counsel to various sections of the Electricity (Supply) Act and on their basis it was urged that the State Electricity Board was virtually under the control of the State Government and the same principles could be applied to the employees of (he State Electricity Board which were applicable to a Government servant. According to him the legal position of a Government servant is one of status and not merely contractual and since the standing orders were more or less in the nature of a contract they could not be applied to an employee of tee State Electricity Board.

We find it difficult to accept this submission for obvious reasons. Term 'employer' has been defined in Section 2(o) of the Standing Orders Act and according to this definition it means the owner of an industrial establishment to which this Act for the time being applies, and includes-(i) in a factory, any person named under Clause (f) of Sub-section (1) of Section 7 of the Factories Act, 1948, as manager of the factory, (ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department; (iii) in any other industrial establishment, any person responsible to the owner for the supervision and control of the 'industrial establishment'. Likewise the terms 'workman' has been defined in Section 2(1). Under the definition as it stands today 'workman' means 'any person (including an apprentice) employed in any industrial establishment to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy Act, 1957; or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature'. Since the State Electricity Board is the owner of the Industrial establishment in question by virtue of its compulsory purchase it would come within the definition of the term ('employer') Indeed unless there was any other provision to the contrary even the State Government if it happens to be the owner of an industrial establishment it would come within the definition of the word ('employer') Likewise in view of the definition of the terms ('workman') under the Standing Orders Act even persons who were subject to the Army Act, the Air Force Act or the Navy Act or who were employed in the police service or as an officer or other employee of a prison, who are Government servants, would also have fallen within the definition of workman but for the exception contained in Clauses (i) and (ii). Section 13B of the Standing Orders Act also lacks support to our view. But for the said section even those industrial establishments the workmen of which were governed by the

provisions of various rules mentioned in the said section would fall within the sweep of the Standing Orders Act. Indeed before 13B was inserted all such industrial establishments which are referred to in the said section did fall within its sweep. In this view of the matter even if the submission of the learned Counsel for the Board that the State Electricity Board is virtually controlled by the State Government is accepted it cannot be said that on this ground alone the Standing Orders Act would not be applicable to an industrial establishment of the State Electricity Board. No provision either in the Standing Orders Act or in the Electricity (Supply) Act has been brought to our notice which expressly excludes the industrial establishments of the Board from the operation of the Standing Orders Act. Nor does it appear to us that the Parliament in fact ever intended to exclude the industrial establishments of the Board from the operation of the Standing Orders Act for had it so intended it could have done so:-(i) by making a specific provision in this behalf in the Electricity (Supply) Act, 1948; (ii) by making such a provision when new Section 7 was introduced in the Indian Electricity Act, 1910, in the year 1959, providing the consequences of the purchase of electrical undertakings of licences by the Board; and (iii) by making specific provision when a new section being 13B was introduced in the Standing Orders Act in 1956 exempting certain industrial establishments from the operation of the Standing Orders Act. Since the Parliament did not choose to do so on any of the aforesaid three occasions it clearly indicates that it did not have any such intention to exclude the operation of the Standing Orders Act from the industrial establishments of the Electricity Board. We are accordingly of the opinion that the Industrial Employment (Standing Orders) Act, 1948, applies to the industrial establishments of the State Electricity Board question No. 1 must be answered in the affirmative.

7. Coming to question No. 2 it would be seen that it has two parts-(1) dealing with the effect of the purchase of an industrial establishment of an electrical undertaking by the Board, and (2) dealing with the effect of regulations being framed by the Board under Section 79(c) of the Electricity (Supply) Act, 1948. In regard to the first part of question No. 2 it would be seen that Standing Orders framed and certified under the Standing Orders Act apply to an industrial establishment. The Standing Orders are rules relating to matters set out in the

schedule in view of the definition of the term 'Standing Orders' in Section 2(g) of the Standing Orders Act. In the absence of a statutory provision the mere fact that ownership of an industrial establishment has changed hands, the Standing Orders which were applicable to the industrial establishment of its previous owner would not automatically cease to apply merely because the Industrial establishment has been purchased by some one else. They being applicable to the industrial establishment would continue to apply notwithstanding the change of ownership of the industrial establishment. No statutory provision to the contrary has been brought to our notice in the Electricity (Supply) Act. Even Section 7 of the Indian Electricity Act, 1910, which deals with the consequence of purchase of an industrial establishment by the Board contains no such provision. In *The Central Inland Water Transport Corporation Ltd. v. Their Workmen* 1975. II L.L.J. 117 : (1975) 30 F.L.R. 391 : A.I.R. 1975 S.C. 1639, while dealing with Section 16(1) of the Payment of Bonus Act, 1965, it was held that 'establishment' means the whole trading, business or manufacturing apparatus with a separate identifiable existence. This apparatus which is used for carrying on trade, business or undertaking may change hands and pass from one owner to the other, the workers operating this apparatus and working in it may change, new workers may take the place of old or come as additional workers. When the ownership of the establishment, which is nothing but another name for this apparatus is transferred from one person to another* the establishment remains the same. Merely its ownership is changed and it cannot be said to be a new establishment in the hands of the transferees. In our opinion the principle laid down above can be applied even to the facts of the instant case. Simply because the industrial establishment concerned has been purchased by the Board from M/s. Seth Ram Gopal and Partners it cannot be said that a new establishment has come into being. The industrial establishment remains the same.

8. However, the transferee of an establishment would not necessarily be a successor-in-interest of the transferor. In *Anakapulla Cooperative Agricultural and Industrial Society Ltd. v. Workmen* (1963) Supp. 1 S.C.R. 730, it was held:

The question as to whether a purchaser of an industrial concern can be held to be a successor-in-interest of the vendor will have to be decided on a consideration of

several relevant facts. Did the purchaser purchase the whole of the business? Was the business purchased a going concern at the time of the sale transaction? Is the business purchased carried on at the same place as before? Is the business carried on without a substantial break in time? Is the business carried on by the purchaser the same or similar to the business in the hands of the vendor? If there has been a break in the continuity of the business, what is the nature of the break and what were the reasons responsible for it? What is the length of the break? Has good-will been purchased? Is the purchase only of some parts and the purchaser having purchased the said parts purchased some other new parts and started a business of his own which is not the same as the old business but is similar to it? These and all other relevant factors have to be borne in mind in deciding the question as to whether the purchaser can be said to be a successor-in-interest of the vendor for the purpose of industrial adjudication.

Most of the tests laid down above would satisfy the requirement of the Board being even the successor-in-interest of M/s. Seth Ram Gopal and Partners. We, however, find it unnecessary to record a categorical finding in this behalf in the instant case inasmuch as we are of opinion that even if the Board may not be the successor-in-interest of M/s. Seth Ram Gopal and Partners it will not make any substantial difference in the legal position. Even if the Board may not be the successor-in-interest of M/s. Seth Ram Gopal and Partners and was as such not bound to retain their employees the existence of the power in the Board to retain or not to retain or to re-employ the employees itself cannot transform the establishment into a new industrial establishment. Some emphasis was laid by the learned Counsel for the Board on (sic) F, 25 FF and some other sections of the Industrial Disputes Act in order to show that the workmen of the undertaking of an ex-licensee are entitled to retrenchment compensation from the ex-licensee unless their services are continued. We are of opinion that even those provisions will not make the establishment a new industrial establishment. For the above reasons we are of opinion that the standing orders in respect of the industrial establishment of M/s. Seth Ram Gopal and Partners would continue to be operative notwithstanding the purchase of the establishment by the Board.

9. It would be interesting to note that in the instant case everybody concerned has understood the implications of the purchase of the establishment of M/s. Seth Ram Gopal and partners by the Board in the manner stated above. After purchasing the said undertaking the Board in place of framing fresh standing orders and getting them certified as it was bound to do, if the Standing Orders of the industrial establishment of M/s. Seth Ram Gopal and Partners ceased to be operative on the purchase of the undertaking by the Board, as has been urged by its counsel, adopted the Standing Orders applicable to the industrial establish, merit of M/s. Seth Ram Gopal and Partners. Annexure A to the writ petition is copy of a letter from the Superintending Engineer of the U.P. State Electricity Board written in reply to a letter dated December 31, 1967, by the Executive Engineer (Hydel), Division, Etah. The subject of this letter is 'Standing Orders'. In this letter it was stated that the Standing Orders as existed on the point are also applicable to be taken over staff of M/s. Seth Ram Gopal and Partners, Etah. The executive Engineer was directed to take action accordingly in the matter. Annexure B to the writ petition is copy of a letter dated September 1, 1966, from the Certifying Officer for Standing Orders and Labour Commissioner, U.P. and is addressed to the General Secretary, U.P. State Electricity Board Employees Union. The subject of this letter is:

Taking over of the staff of M/s. Seth Ram Gopal and Partners, Electricity Suppliers, Etah, by the U.P. State Electricity Board, Lucknow.

The following extract from the said letter is relevant:

Please refer to your letter No. SE/EU/410 dated August 16, 1966, on the above subject.

As there has been no change in the business of the Industrial Establishment known as Ram Gopal and Partners Electricity Suppliers, Etah, the Standing Orders formerly certified for the Industrial Establishment will remain applicable to it under the management of the State Electricity Board.

The State Electricity Board, has, therefore, correctly, applied the provisions of the certified Standing Orders on the staff in the industrial establishments taken over

from Seth Ram Gopal and Partners, Electricity Suppliers, Etah.

10. It is thus clear that the Board, the Employees Union and the Certifying Officer has all accepted the Standing Orders applicable to the Industrial establishment of M/s. Seth Ram Gopal and Partners to be applicable to the industrial establishment of the State Electricity Board. Indeed in practice these Standing Orders have been treated as Standing Orders binding on the Board and everyone concerned has so far been acting accordingly.

11. We will now consider the effect of regulations being framed under Section 79(c) of the Electricity (Supply) Act, 1948. Before doing so it will be useful to keep in mind certain provisions of the Standing Orders Act. Under Section 3 of the Act the employer has to submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in his industrial establishment within the period prescribed. Provision has to be made in such draft Standing Orders for every matter set out in the Schedule. The employer is also required to comply with some other requirements mentioned in Section 3. The Schedule contains the matters to be provided for in the Standing Orders wider this Act. They are:

1. Classification of workmen, e g., whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, paydays and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and

workmen arising there, from.

8. Termination of employment, and the notice thereof to be given by employer and workmen.

9. Suspension of dismissal for misconduct, and acts are omissions which constitute misconduct.

10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.

11. Any other matter which may be prescribed.

Age of superannuation was not to be provided in the standing orders. Section 15 of the Standing Orders Act confers power on the appropriate Government to make rule. The appropriate Government in the instant case in view of the definition of the said term contained in Section 2(b) of this Act would be the State Government of Uttar Pradesh. The State Government by Notification No. 125(LL)/XXXVI-B-181 (LL)-57 dated November 67, 1959 introduced item No. 11(C) in the Schedule to the Standing Orders Act which reads as follows:

Age of superannuation or retirements, rate of pension or any other facility which the employers may like to extend or may be agreed upon between the parties.

It is because of introduction of item No. 11(c) in the Schedule by the State Government that the necessity to provide for the age of superannuation in the standing orders arose and it is on the basis of this item that it was urged by counsel for the appellants that the regulation framed by the Board under Section 79(c) would not be operative unless the procedure prescribed by the standing orders Act for getting the provision in regard to superannuation being introduced in the standing orders was followed. On the other hand it has been urged by learned Counsel for the Board that the power of the Board to make regulations under Section 79(c) of the Electricity (Supply) Act is a sovereign legislative power delegated to it and the regulation framed in the exercise of the said power could not be subjected to the procedure prescribed by the Standing Orders Act. According to learned Counsel the regulations framed by the Board have the force

of law and became statutory terms and conditions of employment. It was further urged that the procedure of framing standing orders and getting them certified under the Standing Orders Act was repugnant to the power of the Board to frame regulations governing service conditions unilaterally under Section 79(c) of the Electricity (Supply) Act and since the Electricity (Supply) Act was a special and later Act the provisions of the Standing Orders Act which was a general and earlier Act, the Standing Orders Act must yield to the Electricity (Supply) Act. In *Hukam Chand v. Union of India* : [1973]1SCR896 , pointing out the distinction between the sovereign legislative power and subordinate legislation it was held:

The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority and that Court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled (See *Orissa on Statute Law*, page 297 Sixth Edition).

12. The distinction between the sovereign legislative power and subordinate legislation is thus apparent. Even though the State Electricity Board may be 'State' within the meaning of Article 12 of the Constitution, as was urged by its counsel, it would not have that sovereign legislative power which wither the Parliament or the State Legislature is possessed of. The power of the Board to frame regulations is essentially a delegated power and must be exercised within the limits of the delegation. The crucial question which arises for consideration is what are the limitations, if any, upon the power of the Board to frame regulations under Section 79(c) of the Electricity (Supply) Act. Before dealing with this aspect of the matter it would be useful to have in view the necessary rules of statutory construction in regard to two provisions which are said to be repugnant to each other. Before repugnancy can be attributed between two statutes it should be established that the provision of the one is in direct conflict with that of the other and that it is not possible to reconcile them. If they are not in direct conflict with each other no

question of repugnancy would arise. Even if there may be some apparent conflict in certain aspects an effort should be made to harmonise them. In *Venkataramana Cevaru v. State of Mysore* : [1958]1SCR895 , it was held that the rule of construction is well, settled that when there are in an enactment two provisions which cannot reconcile with each other they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction. In *Babulal Bauramal v. Nandram Shivram* : [1959]1SCR367 , it was held that if it is possible to avoid a conflict between two provisions in an enactment on a proper construction thereof than it is the duty of a Court to so construe them that they are in harmony with each other.

13. We are of opinion that the principle laid down in the aforesaid cases would also apply if the conflict is not between two provisions of the same Act but between the provisions of two different Acts, Chapter IX of Maxwell on the Interpretation of Statutes, 12th Edition, deals with construction to avoid collision with other provisions. The following principles have inter alia been enunciated in the said Chapter:

One way in which repugnancy can be avoided is by regarding two apparently conflicting provisions as dealing with distinct matters or situations (p. 187).

Collision may also be avoided by holding that one section, which is *ex jacie* in conflict with another, merely provides for an exception from the general rule contained in that other (p. 188).

A later statute may repeal an earlier one either expressly or by implication. But repeal by implication is not favoured by the Courts. 'Forasmuch', said Coke, 'as Acts of Parliaments are established with gravity, wisdom and universal consent of the whole realm, for the advancement of the Commonwealth, they ought not by any constrained construction out of the general and ambiguous words of a subsequent Act. to be abrogated.' If, therefore, earlier and later statutes can reasonably be construed in such a way that both can be given effect to, this must be done. If, as with all modern statutes, the later Act contains a list of earlier enactments which it expressly repeals, an omission of a particular statute from the list will be a strong indication of an intention not to repeal that

statute, and when the latter Act is worded in surely affirmative language, without any negative expressed or implied, it becomes even less likely that it was intended to repeal the earlier law. (p. 191).

14. Having given our anxious consideration to the respective submissions made by the counsel on this point we are of opinion that firstly there is no direct conflict in the provisions of the Standing Orders Act and those of Section 79(c) of the Electricity (Supply) Act. It would be seen that Section 79 of the Electricity (Supply) Act, which deals with the power of the Board to make regulations contains Sub-clause (a) to (k) Except Clause (c) no other sub-clause of Section 79 deals with any matter which may fall within the Schedule of the Standing Orders Act. Clause (c) reads:

The duties of officers and servants of the Board and their salaries, allowances and other conditions of service.

Even under Sub-clause (c) there may be such regulations framed by the Board which may not fall within any of the categories of the Schedule to the Standing Orders Act for instance regulations framed in respect of such persons who even though employees of the Board are not workmen within the meaning of the Standing Orders Act. Even on the view that the provisions of the Standing Orders Act and those of Section 79(c) of the Electricity (Supply) Act are not repugnant the question of getting the regulations framed by the Board under Section 79(c) certified by the Certifying Officer under the Standing Orders Act after going through the procedure prescribed thereunder would arise only if they deal with such matters which come under the Schedule to the Standing Orders Act. The necessity of getting the regulations certified under the Standing Orders Act would not arise if they are not in respect of one of those matters as are contained in the Schedule to the Standing Orders Act. Section 79 has a proviso which reads:

Provided that regulations under Clauses (a) and (d) shall be made only with the previous approval of the State Government and regulations under Clauses (h) and (i) shall be made with the concurrence of the Authority.

It would thus be seen that even the proviso to Section 79 places restrictions on the power of the Board delegated to it under Section 79. Had there been a farther proviso to the effect that such of the regulations framed under Clause (c) which deal with the matters falling in the Schedule to the Standing Orders Act shall have to be got certified in accordance with the procedure contained in the Standing Orders Act, it could not have been argued that the said proviso was illegal. In that event in view of the express restrictions placed on its powers the Board would not have been in a position to frame a regulation which dealt with any of the matters falling under the Schedule to the Standing Orders Act without complying with the provisions of the said Act. The question which arises for consideration is whether the absence of any express provision in this behalf nukes the Standing Orders Act inapplicable 'to the regulations framed under Section 79(c) even though they may be in respect of matters covered by the Schedule to the Standing Orders Act. In our opinion it would not be so. Section 79(c) of the Electricity (Supply) Act and the Standing Orders Act deal with distinct matters and situations. Section 79(c) confers power on the Board to frame regulations. This section thus constitutes the source of power. It does not, however, specifically prescribe the procedure to be followed for framing the regulations. The procedure in this behalf stands prescribed in the Standing Orders Act so far as such matters are concerned which are covered by the Schedule to the said Act. Since the necessary procedure stood already prescribed by the Standing Orders Act and since the provisions of the said Act were not being made expressly inapplicable in regard to the regulations framed by the Board under Section 79(c) it can reasonably be attributed to the Parliament that it intended that the procedure prescribed by the Standing Orders Act should be read as a proviso to the power of the Board to frame regulation under Section 79(c) in respect of matters covered by the Schedule to the Standing Orders Act. The procedure prescribed by the Standing Orders Act would serve as an exception to the procedure which the Board may follow in framing a regulation under Section 79(c) if such regulation happens to be in respect of a matter falling under the Schedule to the Standing Orders Act. Such an interpretation would also be in consonance with the principle of harmonious construction of the statutes. Since subordinate legislation is essentially distinct from the sovereign legislative power as already pointed out above and since restrictions and limitations can

always be placed on the powers of the authority which is conferred with the power of delegated legislation, it cannot be said that the construction put by us would in any way be repugnant to any established principle of statutory construction.

15. Considerable arguments were addressed by the learned Counsel on either side on the question as to which of the two acts, viz., the standing Orders Act and the Electricity (Supply) Act, was special and which one was general so that the general may yield to the special enactment, but in the view which we have taken it is not necessary to go into that question. If the Board deriving its source of power from Section 79(c) frames regulations in respect of matters contained in the Schedule to the Standing Orders Act and gets them certified by following the procedure of the said Act no occasion of any repugnancy or conflict would arise. It would arise only if the board chooses to create it by ignoring the limitations placed on its power by the Standing Orders Act and insisting on framing regulations unilaterally even in respect of the matters covered by the Schedule to the Standing Orders Act.

16. In our opinion, therefore, the standing orders framed for an industrial establishment by an electrical undertaking do not cease to be operative on the purchase of the undertaking by the Board or on framing of the regulations under Section 79(c) of the Electricity (Supply) Act, 1948, and question No. 2 must be answered accordingly.

17. In respect of question No. 3 it was contended by learned Counsel for the appellants that Section 13B of the Standing Orders Act applied only to industrial establishments of the Government and to no other. On the other hand it has been urged by learned Counsel for the Board that it applies even to industrial establishments of State Electricity Board. Before proceeding to examine the merits of these contentions it will be relevant to recall the genesis of the amendments introduced in the Standing Orders Act by the industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act 36 of 1956). Section 4 of the Standing Orders Act, before its amendment by Act 36 of 1956 aforesaid, was as follows:

4. Conditions for certification of standing orders.-Standing orders shall be certifiable under this Act if-

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act.

and it shall not be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Accordingly the Certifying Officer or the appellate authority was not competent to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders. By Section 32 of Act 36 of 1956 the words ('shall be the function') were substituted for the words ('shall not be the function'). In view of this amendment it became the duty of the Certifying Officer or the appellate authority to adjudicate upon the, fairness or reasonableness of the provisions of the Standing Orders. It appears that there were industrial establishments even before Act 36 of 1966 was passed in which the workmen employed were Government servants, may be on deputation or otherwise. At that stage the only requirement of the employer was to submit the Certifying Officer the draft standing orders and such draft could be as was considered proper by the employer. Even on an objection led by the workmen it was not open to the Certifying Officer or the appellate authority to adjudicate upon the fairness or reasonableness of the terms and conditions included in the draft standing orders. As such the employer did not stand the risk of the terms and conditions framed by it being altered by the Certifying Officer or the appellate authority. When the words ('shall be the function") were substituted for the words ('shall not be the function') in Section 4 of the Standing Orders Act by Act 36 of 1956 it was felt that difficulty may arise in regard to such workmen who were Government servants and consequently by the same Section 32 of Act 36 of 1956 Section 13B was simultaneously inserted in the Standing Orders Act. Section 13B reads.

13B. Act not to apply to certain industrial establishments:- Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persona to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Service (Temporary Service)

Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service. (Classification, Control and Appeal). Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

A perusal of the list of the rules contained in Section 13B leaves no doubt that these are only such rules which apply to the members of either civil services of defence services or railway services all or whom are Government servants. It is with this historical background that the respective submissions made by counsel for the parties have to be considered. While answering question No. 1 we have already held that the Standing Orders Act subject to the various exceptions contained under the said Act would apply even to industrial establishments either owned by the Government or under the control of any department of the Government, In our opinion Section 13B was inserted in the Standing Orders Act with the only purpose to exclude such industrial establishments from the operation of the Act the workmen employed wherein were persons to whom the various service rules enumerated in the said section apply.

18. It was strenuously urged by learned Counsel for the Boat d that the clause 'or any other rules or regulations that may be notified in this behalf by the appropriate government in the official gazette, apply' were of wide amplitude and would include regulations framed by the Board under Section 79(c) of the Electricity (Supply) Act. In *Western India Match Co. v. Workmen* 1973 II L.L.J. (sic) : A.I.R. 1973 S.C. 265, dealing with the background in which the Standing Orders Act was passed and the importance of its provisions it was held:

In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employers and the workmen. Such a bargain they, took it for granted would secure fair terms and conditions of employment to the work, men. This law they venerated as natural law. They had an abiding faith in the unity of this law. But the experience of the working of this law over a long period has belied their faith. Later generation discovered that the workmen did not possess adequate bargaining strength to secure fair terms and conditions of

service. When the workmen also made this discovery they organised themselves in trade unions and insisted at collective bargaining with the employers. The advent of Trade Union and collective bargaining created new problems of maintaining industrial peace and production for the society. It was, therefore, considered that the society has also an interest in the settlement of the problems of employment of industrial labour. While formerly there were two parties at the negotiating table, the employer and the workmen, it is now thought that there should also be present a third party, the State as representing the interest of the society. By Section 4 the Officer Certifying the standing orders is directed to adjudicate upon the fairness or reasonableness of the provisions of the standing orders. The Certifying Officer is the statutory representative of the society. It seems to us that while judging the fairness or reasonableness of any standing orders the Certifying Officer should construe and weigh the social interest for the claims of the employers and social interest in the demand of the workmen.

19. The legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not mere agreement by the parties See *Roshan v. Union of India* (1950-67) 2 S.C.L.J. 912 : A.I.R. 1967 S.C. 1839. In our opinion the purpose of inserting Section 13B in the Standing Orders Act by Act 36 of 1956 was to place such industrial establishments whose workmen were Government servants and to whom various rules mentioned in Section 13B applied on one footing and all other industrial establishments on the other. The industrial establishments whose workmen were governed by various service rules applying to Government servants and thereby enjoyed the privilege and status of a Government servant were treated as a separate class. The Parliament was, however, keen to ensure fair and reasonable service conditions for workmen of other industrial establishments also. This was achieved by amending Section 4 of the Standing Orders Act as indicated above. The procedure prescribed by Parliament for having certified standing orders was apparently aimed at to curb and control the plenitude of power of the employers which but for them could tend to be arbitrary in the matter of laying down the service conditions of their workmen. In our opinion it would be little short of chimerical to suggest that in inserting Section 13B in the Standing Orders Act the intention of the Parliament was to

create a class of workmen who were to get neither the benefit of rules applicable to Government servants nor of certified standing orders under the Standing Orders Act laying down fair and reasonable service conditions but were to be victims of the whims and caprices of their employers. This could achieve anything but industrial peace.

20. One thing more. And it is about the magnitude of the disastrous result which the acceptance of the submission made by learned Counsel for the Board is likely to bring forth, if it is pursued to its logical conclusion. Nothing has been brought to our notice which may place any fetters on the power of the appropriate Government to notify under Section 13B a rule framed even by a private individual, firm or company if the clause 'or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official gazette' is construed to include any rule which the appropriate Government may in its discretion choose to notify under the said section. In that event the workmen of no industrial establishment irrespective of the fact whether it is owned by a private individual, firm or company would be in a position to have fair and reasonable conditions of service in respect of their employment. The only thing which an employer need do is to unilaterally frame such rules governing the service conditions of his workmen as are to his liking and get them notified under Section 13B of the Standing Orders Act. Neither any principle of statutory construction nor any authority permits such an interpretation being put on Section 13B.

21. In our opinion the clause referred to above has to be read subject to the rule of *ejusdem generis*. The true scope of the rule of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the general words which follow see *Thakur Amar Singhjee v. State of Rajasthan* : 1955 CriLJ196 . Although the doctrine of *ejusdem generis* is to be applied with caution, where in an Act of Parliament there are strong reasons (a) from the history and circumstances connected with its passing, (b) from the structure of the Act itself, to indicate the real meaning of the Legislature, the doctrine of *ejusdem generis* is one which not only can, but ought to, be applied, see *Attorney General v. Brown* [1920] 1 K.B. 773. In view of the

history and the circumstances connected with the insertion of Section 13B in the Standing Orders Act we are of opinion that the rule of ejusdem generis is applicable and the clause aforesaid would include only such rules which are of the same nature as specified therein. If construed in that light Section 13B of the Standing Orders Act would apply only to industrial establishments of the Government and not to other establishments.

22. In view of the foregoing discussions our answer to the three questions referred to us is as follows:

1. The Industrial Employment (Standing Orders) Act, 1946 applies to the industrial establishments of the State Electricity Board.

2. The standing orders framed in an industrial establishment by an electrical undertaking do not cease to be operative on the purchase of the undertaking by the Board or on framing of the regulations under Section 79(c) of the Electricity (Supply) Act, 1948.

3. Section 13B of the Industrial Employment (Standing Orders) Act, 1946, applies only to the industrial establishments of the Government and to no other establishments.

23. Our opinion along with the record of the special appeal may now be placed before the Bench concerned.