

**HIGH COURT OF MADHYA PRADESH: JABALPUR**  
**(Division Bench)**

**Writ Petition No.13257/2017**

Chhindwara Plus Developers Limited ..... **Petitioner**

- V/s -

Union of India & Others ..... **Respondents**

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**CORAM :**

**Hon'ble Shri Justice Hemant Gupta, Chief Justice**  
**Hon'ble Shri Justice Vijay Kumar Shukla, Judge**

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**Present:**

Shri Anil Khare, Senior Advocate with Shri Satyendra Prasad Dubey and Shri Vinit Singh Parihar, Advocate for the petitioner.

Shri J.K. Jain, Assistant Solicitor General for the respondents/Union of India.

Shri Amit Seth, Government Advocate for respondents/State.

Shri Mrigendra Singh, Senior Advocate with Shri Saurabh Sunder, Advocate for respondents No.5, 6 and 8.

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**Whether Approved for Reporting :** Yes

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**Law Laid Down:** The provisions of Special Economic Zones Act, 2005 will not have overriding effect over the provision of the Electricity Act, 2003 or for that matter the Indian Telegraph Act, 1885, as they are not inconsistent with the provisions of the Special Economic Zones Act, 2005 as none of the provisions of the SEZ Act deal with the erection of transmission lines which is part of the Electricity Act read with Telegraph Act. Therefore, it cannot be said that the provisions of erection of

transmission lines as contained in Electricity Act read with the Telegraph Act are not applicable in respect of the land of the petitioner for which it has been granted letter of approval under the Act.

**Significant Paragraph Nos.:** 9, 10 & 16

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**ORDER (Oral)**  
**(05-09.2017)**

**Per : Hemant Gupta, Chief Justice:**

The challenge in the present writ petition is to the notification dated 11.04.2017 (Annexure-P/20) whereby Power Grid Warora Transmission Ltd. (respondent No.8) was granted an authorization under Section 164 of the Electricity Act, 2003 (for short “the Electricity Act”) for laying of electric lines under the Transmission Scheme “Transmission System Associated with Gadarwara STPS (2x800 MW) of NTPC (Part-A)”.

2. Earlier the petitioner filed a writ petition bearing W.P.No. 801/2017 (Chhindwara Plus Developers Limited vs. Union of India & Ors.) challenging the order dated 30.03.2016 passed by the Collector, Chhindwara permitting the Power Grid Warora Transmission Ltd. to erect 'high-tension electricity poles & lines” subject to compliance of Section 10, 16 and 16(1) of the Indian Telegraph Act, 1885 and Section 42 of the Electric Supply Act, 1948.

3. The said writ petition was dismissed by the learned Single Bench granting liberty to the petitioner to challenge the Authorization

issued under Section 164 of the Electricity Act i.e. Annexure-P/20 before an appropriate Forum. The appeal bearing W.A. No.611/2017 against the said order was dismissed on 01.08.2017.

4. The argument of learned Senior Counsel for the petitioner is that in terms of liberty, the challenge in the present writ petition is to the Authorization granted in favour of Power Grid Warora Transmission Ltd. vide Annexure-P/20 on 11.04.2017. The argument is that Section 51 of the Special Economic Zones Act, 2005 (for short "Act") gives overriding effect to the Act notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of law other than this Act. It is thus contended that the Act in question will have overriding effect over the provisions of the Electricity Act. It is contended that in terms of Section 49 of the Act, the Central Government could notify the applicability of any provision of any other statute to the Act in question or exclude the applicability of provisions of any other statute to Act in question. But since no notification under Section 49 was issued, therefore, the Act in question will have overriding effect over the Electricity Act. In support of the argument, the learned counsel for the petitioner relies upon Supreme Court Judgment reported as **(2000) 4 SCC 406 (Allahabad Bank v. Canara Bank and Another)**. The reliance is placed on the following extract, which read as under:-

“40. Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, section 34. A similar situation arose in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corpn. of Maharashtra Ltd. (1993(2) SCC 144) where there was inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provisions) Act, 1985. The latter contained Section 32 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi, J. that both special statutes contained non-obstante clauses but that the

"1985 Act being a subsequent enactment, the non-obstante clause therein would ordinarily prevail over the non-obstante clause in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 statute is a special one" (SCC p157 para 9).

Therefore, in view of section 34 of the RDB Act, the said Act overrides the Companies Act to the extent there is anything inconsistent between the Acts. “

5. Before dealing with the arguments raised, it will be necessary to extract Section 51 of the Act which read as under:-

**“51. Act to have overriding effect-** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of law other than this Act.”

6. Shri Mrigendra Singh, learned Senior counsel appearing for respondents No.5, 6 and 8 submits that no notification under Section 4 of the Act has been published and no Development Commissioner has been

appointed under Section 11 of the Act, therefore, the entire claim of petitioner under a Special Economic Zone is not maintainable.

In fact a perusal of the writ petition itself shows that the petitioner is relying upon approval dated 30.03.2007 for setting-up of Special Economic Zone. The petitioner refers to a letter dated 08.12.2016 as a letter of approval for setting up of Special Economic Zone within a period of three years. It only shows that the benefit of the Act would not be applicable to the petitioner till such time it is notified as Special Economic Zone under the Act in question. However, still we have examined the arguments raised as if the petitioner is covered by the Act.

7. The argument of learned Senior Counsel for the petitioner is in respect of inconsistency between the Electricity Act and the Act in question. Admittedly no notification either to apply the provisions of any statute to Special Economic Zone under the Act was issued in terms of Section 49 of the Act or to exclude any other statute in respect of its applicability to a Specific Economic Zone under the Act. Therefore, the only question requires to be examined is whether the provisions of the Electricity Act are inconsistent with any provisions of Act in question. If the provisions are inconsistent, then Act in question will prevail in view of Section 51 of the Act otherwise, the Electricity Act would be applicable to the Special Economic Zones established under the Act in question.

8. Learned counsel for the petitioner was candid to state that none of the provisions of the statute are in any way inconsistent with the provisions of the Electricity Act. The Act does not provide for erection of transmission lines. It is only Electricity Act which provides for erection of transmission lines in terms of Section 164 of the Act. Section 68 of the Electricity Act provides for erection of overhead line with the prior approval of the Appropriate Government. The approval is contemplated under Section 164 of the Electricity Act and it is the said approval which has been granted on 11.04.2017. The relevant extracts from Section 68 and Section 164 of the Electricity Act and Section 10 of the Indian Telegraph Act, 1885 read as under:-

**“68. Overhead lines-** (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply-

- (a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;
- (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
- (c) in such other cases, as may be prescribed.”

**“164. Exercise of powers of Telegraph Authority in certain cases-** The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the

transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

**“10. Power for telegraph authority to place and maintain telegraph lines and posts-** The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property:

Provided that-

- (a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained.
- (b) the Central Government shall not acquire any right other than that of user only to the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and
- (c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
- (d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and when it has exercised those powers in respect of any

property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.”

9. Since the Act in question does not provide for anything similar to Section 68 or 164 of the Electricity Act, therefore, the provisions of Act are not inconsistent with any of the provisions of the Electricity Act. As such, the provisions of the Electricity Act will be applicable with full force in respect of erection of transmission lines.

10. The object of enactment of the Electricity Act is to deal with the issue relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies. Whereas, the Act has been enacted with a view to provide an internationally competitive environment for exports the Government of India had announced a Special Economic Zone Scheme. The objective of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for



promoting export-led growth. Thus, the purpose and object of two statutes is different.

11. In **Municipal Corporation of Delhi v. Shiv Shanker (1971) 1 SCC 442**, the Supreme Court held that if the objects of two statutory provisions are different and language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. In the present case, we do not find that even apparent conflict, the object and purpose of two Acts is different. The relevant extract from the aforesaid judgment read as under:-

“5. ... It is only when a consistent body of law cannot be maintained without abrogation of the previous law that the plea of implied repeal should be sustained. To determine if a later statutory provision repeals by implication an earlier one it is accordingly necessary to closely scrutinise and consider the true meaning and effect both of the earlier and the later statute. Until this is done it cannot be satisfactorily ascertained if any fatal inconsistency exists between them. The meaning, scope and effect of the two statutes, as discovered on scrutiny, determines the legislative intent as to whether the earlier law shall cease or shall only be supplemented. If the objects of the two statutory provisions are different and the language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes in pari materia although in apparent conflict, should also, so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject-matter, that the former, being the later expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict. The same rule of irreconcilable repugnancy controls implied

repeal of a general by a special statute. The subsequent provision treating a phase of the same general subject-matter in a more minute way may be intended to imply repeal pro tanto of the repugnant general provision with which it cannot reasonably co-exist. When there is no inconsistency between the general and the special statute the later may well be construed as supplementary.”

12. A three Judge Bench in a judgment reported as **AIR 1986 SC 1043 (Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.)** held that an implied repeal of an earlier law can be inferred only where there is enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law, that is, where the two laws – the earlier law and the later cannot stand together. The relevant extract reads as under:-

“20. ... An implied repeal of an earlier law can be inferred only where there is the enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law, that is, where the two laws—the earlier law and the later law—cannot stand together. This is a logical necessity because the two inconsistent laws cannot both be valid without contravening the principle of contradiction. The later laws abrogate earlier contrary laws. This principle is, however, subject to the condition that the later law must be effective. If the later law is not capable of taking the place of the earlier law and for some reason cannot be implemented, the earlier law would continue to operate. To such a case the rule of implied repeal is not attracted because the application of the rule of implied repeal may result in a vacuum which the law-making authority may not have intended. Now, what does Appendix II contain? It contains a list of subjects and marks assigned to each of them. But who tells us what that list of subjects means? It is only in the presence of Rule 11 one can understand the

meaning and purpose of Appendix II. In the absence of an amendment re-enacting Rule 11 in the 1947 Rules, it is difficult to hold by the application of the doctrine of implied repeal that the 1950 Rules have ceased to be applicable to the ministerial establishments of the subordinate civil courts. The High Court overlooked this aspect of the case and proceeded to hold that on the mere reintroduction of the new Appendix II into the 1947 Rules, the examinations could be held in accordance with the said Appendix. We do not agree with this view of the High Court.”

13. In another judgment reported as **Engineering Kamgar Union v. Electro Steels Castings Ltd. (2004) 6 SCC 36**, the Supreme Court laid down the parameters as to when the question of repugnancy between the two enactments contain inconsistent and irreconcilable provisions. The Court held as under:-

“23. In *M. Karunanidhi [(1979) 3 SCC 431]* the fact of the matter was completely different. Therein the scheme of the two Acts was not in conflict with each other. This Court referred to Howard, Colin: *Australian Federal Constitutional Law*, 2nd Edn., *Hume v. Palmer [(1926) 38 CLR 441 (Aus)]*, *Zaverbhai Amaldas (AIR 1954 SC 752)*, *Tika Ramji (AIR 1956 SC 676)*, *Deep Chand (AIR 1959 SC 648)* and *State of Orissa v. M.A. Tulloch & Co. (AIR 1964 SC 1284)*, opining: (SCC pp. 448-49, para 35)

“35. 1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same

field without coming into collision with each other, no repugnancy results....”

14. In another judgment reported as **Kishorebhai Khamanchand Goyal v. State of Gujarat and Another, (2003) 12 SCC 274**, the Supreme Court held that there is presumption against repeal by implication. The said rule is based upon the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter. It was held as under:-

“6. There is a presumption against repeal by implication, and the reason of this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation. [See: *Municipal Council, Palai v. T.J. Joseph (AIR 1963 Sc 1561)*, *Northern India Caterers (P) Ltd. v. State of Punjab (AIR 1967 SC 1581)*, *Municipal Corpn. of Delhi v. Shiv Shanker [(1971) 1 SCC 442]* and *Ratan Lal Adukia v. Union of India [(1989) 3 SCC 537]*. When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle of *expressio unius (personae vel rei) est exclusio alterius*. (The express intention of one person or thing is the exclusion of another), as illuminatingly stated in *Garnett v. Bradley [(1878) 3 AC 944]*. The continuance of existing legislation, in the absence of an express provision of repeal being presumed, the burden to show that there has been repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that the two cannot stand

together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred. (See: *A.G. v. Moore* [(1878) 3 Ex D 276], *Ratan Lal case* [(1989) 3 SCC 537] and *R.S. Raghunath v. State of Karnataka* [(1992) 1 SCC 335].)”

7. The necessary questions to be asked are:

(1) Whether there is direct conflict between the two provisions.

(2) Whether the legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law.

(3) Whether the two laws occupy the same field.

(See: *Pt. Rishikesh v. Salma Begum* [(1995) 4 SCC 718] and *A.B. Krishna v. State of Karnataka* [(1998) 3 SCC 495].)

8. The doctrine of implied repeal is based on the theory that the legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine it does no more than give effect to the intention of the legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of construction and comparison of the two statutes. The court leans against implying a repeal, “unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together”. (See *Craies on Statute Law*, 7th Edn., p. 366, with reference to *Berrey, Re* (1936 Ch 274).) To determine whether a later statute repeals by implication an earlier, it is necessary to scrutinise the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. The areas of operation of the Act and the Establishments Act in question are different with wholly different aims and objects.

They operate in their respective fields and there is no impediment to their existence side by side. (See *State of M.P. v. Kedia Leather and Liquor Ltd. [(2003) 7 SCC 389]*)

9. It is to be noted that there is no direct conflict between any of the provisions of the two statutes. The determinative test as noted above is whether the enactments are sharply conflicting or are inconsistent and/or repugnant. In the instance case it is not so. The operation of the Act is not restricted in its area of operation by what is provided in the Establishments Act and vice versa. Absence of some provisions in another Act does not amount to conflicting provision or inconsistent provision amounting to repugnancy of such provision.”

15. In a recent judgment reported as **(2015) 17 SCC 65 (Lal Shah Baba Durgah Trust v. Magnum Developers and Others)**, the Supreme Court held as under:-

“30. The implied repeal of an earlier law can be inferred only where there is enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law and the two laws cannot stand together. If the later law is not capable of taking the place of the earlier law, and for some reason cannot be implemented, the earlier law would continue to operate. To such a case, the rule of implied repeal may result in a vacuum which the law-making authority may not have intended.

32. There is a presumption against repeal by implication. The reason for the presumption is that the legislature while enacting a law has complete knowledge of the existing laws on the subject-matter and, therefore, when it is not providing a repealing provision, it gives out an intention not to repeal the existing legislation. If by any fair interpretation, both the statutes can stand together, there will be no implied repeal and the court should lean

against the implied repeal. Hence, if the two statutes by any fair course of reason are capable of being reconciled, that may not be done and both the statutes be allowed to stand.”

16. In view of the above, we find that none of the provisions of the Electricity Act or for that matter the Telegraph Act can be said to be inconsistent with the provisions of the Act in question as none of the provisions of the Act deal with the erection of transmission lines which is part of Electricity Act read with Telegraph Act. Therefore, it cannot be said that the provisions of erection of transmission lines as contained in Electricity Act read with the Telegraph Act are not applicable in respect of the land of the petitioner for which it has been granted letter of approval under the Act.

17. In view of the aforesaid, we do not find any merit in the present writ petition. The same is **dismissed**.

**(HEMANT GUPTA)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**