HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

W.P. No. 8182/2017

M/s Popular Plastic & others .....Petitioners

Versus

State of Madhya Pradesh & others .....Respondents

WITH

W.P. No. 8759/2017

M/s Pankaj Polymers & Another .....Petitioners

Versus

State of Madhya Pradesh & Another .....Respondents

W.P. No. 12394/2017

Manish Bulchandani .....Petitioner

Versus

State of Madhya Pradesh & others .....Respondents

AND

W.P. No. 12399/2017

Nand Kishore Ahuja & Another .....Petitioners

Versus

State of Madhya Pradesh & others .....Respondents

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CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Present:

Shri Naman Nagrath, Senior Advocate with Shri Anvesh Shrivastava, Advocate for the petitioners.

Shri Amit Seth, Government Advocate for the respondents/State.

Shri Ashish Shroti, Advocate for the M.P. Pollution Control Board.

Shri Sanjay K. Aggarwal and Shri Piyush Bhatnagar, Advocates for the Intervener.

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Whether Approved for Reporting: Yes

Law Laid Down:

- ✓ The State Act i.e. the Madhya Pradesh Jaiv Anaashya Apashishta (Niyantran) Sanshodhan Adhiniyam, 2017 dealing with the elimination of plastic waste which has a larger public interest involved is not irreconcilable with the Central Rules i.e. Plastic Wastes Management Rules, 2016, which deals with minimization of plastic waste, as the State Act goes a step further than the Central Law. Therefore, within the State, both the Central Law and the State Law can be read harmoniously.

- ✓ The State was competent to enact the State Act as it is in relation to public health falling in Entry 6 of the List II of Seventh Schedule of the Constitution of India. For the proposed amendment, since the State Act was affecting the Central Rules, the sanction of the President cannot be said to be of no effect as the same was required in terms of proviso to Article 304(b) of the Constitution read with proviso to Article 213(1) of the Constitution of India. Such sanction was the Constitutional requirement and having granted so, the State Act cannot be disputed on the ground that it contravenes any of the provisions of the Central Rules.

- ✓ The Law made by the State will prevail notwithstanding the Central Law as the sanction has been sought from the President not for the reason that the proposed legislation falls in List-III of the Seventh Schedule but for the reason that it affects the freedom of trade and commerce granted under Article 304(b) of the Constitution. Once the President has granted sanction, the State Law will prevail over the Central Law and the Notification dated 24.05.2017 (Annexure P-3) issued under the State Act cannot be said to be illegal or without the Legislative competence.

  Relied - Seven Judge Bench judgment of the Supreme Court reported in **(2017) 3 SCC 1** (**Krishna Kumar Singh and Another v. State of Bihar and others**). The reasoning given in order of the National Green Tribunal Principal Bench New Delhi on 08.08.2013 in Application No.26 of 2013 (THC) (**Goodwill Plastic Industries and another etc. v. Union Territory of Chandigarh and others etc**.) in respect of similar Notification issued by the Chandigarh Administration is also ***Approved***.

- ✓ Once the Central Government, in exercise of the powers conferred by Section 23 of the Central Act has delegated its powers vested in it under Section 5 to the State of Madhya Pradesh, the State Act is a valid piece of legislation in terms of

delegation of the Central Government as well to direct the closure, prohibition or regulation of any industry, operation or process; which would include prohibition to use carry bags. Thus, the State Act cannot be said to be beyond the legislative competence of the State Legislature.

- ✓ Repugnancy or inconsistency between the provisions of Central and State enactments can occur in two situations. The first, in case of a Central and a State Act on any field of entry mentioned in List III of the Seventh Schedule. In such situation, the Central Law will prevail in terms of Article 254(1) and further subject to proviso to Article 254(2). But, in terms of proviso to Article 304(b), the State could legislate on the subjects falling in List II of Seventh Schedule of the Constitution of India with the previous sanction of the President.

Significant Paragraphs: 5, 8, 13 to 16, 18 to 20 & 25 to 38

Reserved on: 30.08.2018

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O R D E R

(Pronounced on this 6th day of September, 2018)

Per: Hemant Gupta, Chief Justice:

The present sets of writ petitions involve common questions of law, therefore, they were heard analogously and are being decided by this common order. However, for the sake of convenience the facts are taken from W.P. No.8182/2017 (M/s Popular Plastic & others v. State of M.P. and others).

2. The challenge in the present petition is to the Notification dated 24.05.2017 (Annexure P-3) issued by the State Government prohibiting the manufacturing, storage, transportation, sale and use of the plastic carry bags in the entire State. By virtue of an amendment in the writ petition, the petitioners have sought the relief to hold that the amendment to Section 3 of Madhya Pradesh Jaiv Anaashya Apashistha (Niyantran) Adhiniyam, 2004 (for short "the State Act") by Ordinance No.1 of 2017 with effect from 22.05.2017 since replaced by the Madhya Pradesh Jaiv Anaashya Apashishta
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(Niyantran) Sanshodhan Adhiniyam, 2017 (M.P. Act No.26 of 2017) published on 26.08.2017 is beyond the legislative competence of State Government in view of Rule 4 (c) and (d) of the Plastic Wastes Management Rules, 2016 (for short "the Central Rules") insofar as the power to prescribe and notify the thickness of plastic carry bags or containers is concerned, therefore, the State Law would give way to the subjects covered by the Central Rules.

3. The challenge is on the ground that the State Amendment is repugnant to the Central Rules published on 18.03.2016, which permits carry bags made of virgin or recycled plastic of not less than 50 microns in thickness as against the total prohibition of carry bags in the State.

4. Before the arguments of the learned counsel for the parties are discussed, the legislative history would be appropriate to be recapitulated.

5. The Environment (Protection) Act, 1986 (for short "the Central Act") was enacted for protection and improvement of human environment and for matters connected therewith, to give effect to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972. Such Act is enacted by the Parliament in terms of Entry 97 of List-I of Seventh Schedule. In terms of Section 25 read with Section 3 of the Central Act, the Central Government initially framed Rules for manufacture and use of recycled plastic carry bags and plastic containers known as the Recycled Plastics Manufacture and Usage Rules, 1999 (for short "the Rules of 1999"). The Rule 4 of such Rules of 1999 prohibited usage of plastic carry bags and plastic containers made of recycled plastics. It provided that no vendor shall use plastic carry bags and plastic containers

made of recycled plastics for storing, carrying, dispensing or packaging of food-stuffs. The Rule 5 of the said Rules permitted the manufacturing of plastic carry bags and plastic containers made of virgin plastics.

6. Such Rules of 1999 were amended vide Notification published in Gazette of India (Extraordinary) on 17.06.2003. By such amendment, carry bags and containers were separately defined. Rule 3(b) defined "carry bags" to mean plastic bags which have a self-carrying feature whereas Rule 3(d) defines "containers" to mean flexible or rigid containers made of virgin plastics or recycled plastics with or without lid used to store, carry or dispense commodities.

7. The Rules of 1999 were replaced by Plastic Waste (Management and Handling) (Amendment) Rules, 2011 (for short "the Rules of 2011") vide Notification published in Gazette of India (Extraordinary) on 02.07.2011. Such Rules also prohibited manufacturing and use of recycled plastic bags for packaging and handling of food-stuffs. The plastic containers were permitted to be manufactured out of virgin plastics for the purposes of packaging. The "carry bags" were defined to mean bags which are used for carrying articles but excluding those bags which are used for sealing manufactured articles.

8. It is the said Rules of 2011, which were reviewed by the Central Government and substituted on 18.03.2016 by Plastic Waste Management Rules, 2016 (for short "the Central Rules"). Such Rules were framed to implement these Rules more effectively and to give thrust on plastic waste minimization, source segregation, recycling, involving waste pickers, recyclers and waste processors in collection of plastic waste fraction either

from households or any other source of its generation or intermediate material recovery facility and adopt polluter's pay principle for the sustainability of the waste management system.

9. The Section 5 and 23 of the Central Act, which is the source of power to frame Central Rules read as under:-

> **"5**. Power to give directions. - Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.
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> *Explanation.* - For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct -
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> (a) the closure, prohibition or regulation of any industry, operation or process; or
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> (b) stoppage or regulation of the supply of electricity or water or any other service.
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> *** *** ***
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> **23**. Power to delegate. - Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act [except the powers to constitute an authority under sub-section (3) of section 3 and to make rules under section 25] as it may deem necessary or expedient, to any officer, State Government or other authority. "

10. The argument of the learned counsel is based on Rule 4(1)(c) of the Central Rules. Some of the relevant clauses from the Central Rules read as under:-

> **"3**. **Definitions**.- In these rules, unless the context otherwise requires,-
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> **(c)** "**carry bags**" mean bags made from plastic material or compostable plastic material, used for the purpose of carrying or

dispensing commodities which have a self carrying feature but do not include bags that constitute or form an integral part of the packaging in which goods are sealed prior to use.

*** *** ***

(o) "plastic" means material which contains as an essential ingredient a high polymer such as polyethylene terephthalate, high density polyethylene, Vinyl, low density polyethylene, polypropylene, polystyrene resins, multi-materials like acrylonitrile butadiene styrene, polyphenylene oxide, polycarbonate, Polybutylene terephthalate;

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4. **Conditions**.- (1) The manufacture, importer stocking, distribution, sale and use of carry bags, plastic sheets or like, or cover made of plastic sheet and multilayered packaging, shall be subject to the following conditions, namely:-

a) carry bags and plastic packaging shall either be in natural shade which is without any added pigments or made using only those pigments and colourants which are in conformity with Indian Standard : IS 9833:1981 titled as "List of pigments and colourants for use in plastics in contact with foodstuffs, pharmaceuticals and drinking water", as amended from time to time;

b) Carry bags made of recycled plastic or products made of recycled plastic shall not be used for storing, carrying, dispensing or packaging ready to eat or drink food stuff";

c) carry bag made of virgin or recycled plastic, shall not be less than fifty microns in thickness;

*** *** ***"

11. On the other hand, the State of Madhya Pradesh enacted Madhya Pradesh Jaiv Anaashya Apashistha (Niyantran) Adhiniyam, 2004 (for short "the State Act"), which was published in the Madhya Pradesh Gazette (Extraordinary) on 29.12.2004. The Act was to regulate the management and usage of the non-biodegradable products and to prevent throwing or depositing of non-biodegradable garbage in or on public drains, roads and

places open to public view in the State of Madhya Pradesh. The relevant provisions of the State Act read as under:-

> "**3. Prohibition on usages of carry bags**. – No person shall use carry bags or containers made of plastic for storing, carrying, packing and selling the articles for human use or consumption unless the thickness of carry bags made of recycled plastic is not less than 25 microns and in case of virgin plastic is not less than 20 microns.
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> **6. Duty of owners and occupiers to collect and deposit non-biodegradable garbage etc. –** It shall be the duty of the occupiers of all lands and buildings (including the individual occupier of apartments in a building), **–**
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> (i) to collect or cause to be collected from their respective land and buildings all non-biodegradable garbage and to deposit or cause it to be deposited in public receptacles, depots or places provided for temporary deposit or collection of the non-biodegradable garbage by the local authority in the area;
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> (ii) to provide separate receptacles or dustbins, other than those kept and maintained for deposit of biodegradable garbage, of the type and in the manner prescribed by the local authority or its officers, for collection therein of all the non-biodegradable waste from such land and building and to keep such receptacles or dustbins in good condition and repair.
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> **7. Power of local authority for removal of non-biodegradable garbage**. – The local authority may, by notice in writing require the owner or occupier or co-owner or person claiming to be the owner or co-owner of any land or building, which has become a place of unauthorized stacking or deposit of non-biodegradable garbage and is likely to cause a nuisance, to remove or cause to be removed the said garbage stacked or collected and if in its opinion such stacking or collection of non-biodegradable waste is likely to injure the drainage and sewage system or is likely to be dangerous to life and health, it shall forthwith take such steps at the cost of such person as it may think necessary.
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> *** *** ***

> **21**. **Act not in derogation of any other law. –** The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

12. The Section 9 of the State Act imposes penalty of imprisonment in case of any intentional omission in contravention of any of the provisions of the Act, Rules, Notification or orders issued. It is Section 3 of the State Act, which was substituted by Madhya Pradesh Ordinance No.1 of 2017 published in Madhya Pradesh Gazette (Extraordinary) dated 22.05.2017 (Annexure P-2). The said Ordinance was promulgated after previous sanction of the President as required by proviso to clause (1) of Article 213 read with proviso to Article 304(b) of the Constitution of India. In Section 2 of the Principal Act, after clause (i), clause "(ia)" has been added whereas Section 3 has been substituted. The amendment carried out on 22.05.2017 reads as under:-

> "3. In Section 2 of the principal Act, after clause (i), the following clause shall be inserted, namely:–
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> **(ia)** "plastic carry bags" means bags made from any plastic material used for the purpose of carrying or dispensing commodities, but do not include bags that constitute or from an integral part of the packaging in which goods are sealed prior to use:
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> Provided that the bag which is used for packaging shall be treated as plastic carry bag, if it is re-cycled;"
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> 4. For Section 3 of the principal Act, the following Section shall be substituted, namely:-
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> "**3**. The State Government may, if it consider necessary so to do in the public interest, notify the thickness of plastic carry bags or containers, for the production, storage, transportation, sale and use thereof, or by a notification, completely ban the production, storage, transportation, sale and use of plastic carry bags in the entire State or any part of the State".

13. In terms of the amended Section 3, the State Government published a Notification on 24.05.2017 (Annexure P-3) prohibiting manufacture, storage, transportation, sale and use of the plastic carry bags from the date of publication of the Notification in the Gazette. The said Notification dated 24.05.2017, which is in Hindi, on being translated into English, reads as under:-

> "In exercise of the powers conferred by Section 3 of the Madhya Pradesh Jaiv Anaashya Apashishta (Niyantran) Adhiniyam, 2004 (No.20 of 2004), the State Government hereby, puts a complete ban on the manufacturing, storage, transportation, sale and use of the plastic carry bags in the entire State of Madhya Pradesh from the date of publication of this Notification in the Gazette of Madhya Pradesh."

14. The argument of the learned senior counsel for the petitioners is that the State Act is not enacted in pursuance to any of the entries in List-III of the Seventh Schedule of the Constitution of India. The State Act is enacted in exercise of the powers conferred under Entry 6 of List II of the Seventh Schedule; therefore, the said amendment is in contravention of the Central Rules. Thus, it is the Central Rules which will prevail and not the State Act. In this context, the learned counsel for the petitioners has placed reliance on the decisions of the Supreme Court reported as **(2004) 10 SCC 201** (**State of W.B. etc. v. Kesoram Industries Ltd. and others, etc**.); **(2008) 13 SCC 5** (**State of Maharashtra v. Bharat Shanti Lal Shah and others**) and **(2017) 2 SCC 585** (**UCO Bank and another v. Dipak Debbarma and others**).

15. It is also contended by the learned senior counsel for the petitioners that receipt of the Presidential sanction to promulgate the Ordinance is of no effect; as such sanction is relevant for a legislation in respect of an entry which falls in List-III, of Seventh Schedule of the Constitution and not in

respect of the legislative fields contained in List-II of the Seventh Schedule. The reliance has been placed upon the Supreme Court judgment reported as **(2002) 8 SCC 182** (**Kaiser-I-Hind Pvt. Ltd. and another v. National Textile Corpn. (Maharashtra North) Ltd. and others**).

16. On the other hand, the State in its reply has referred to a Notification issued by the Central Government on 10.02.1988 (Annexure R-7) in terms of Section 5 and 23 of the Central Act to contend that State of Madhya Pradesh has been delegated powers vested in the Central Government under the Central Act. It is contended that the State Act, as amended, is in terms of the delegation of the powers vested in the Central Government. The Notification dated 10.02.1988 reads as under:-

> "NOTIFICATION
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> S. O. 152(E) - In exercise of the powers conferred by section 23 of the Environment (Protection) Act, 1986 the Central Government hereby delegates the powers vested in it under section 5 of the Act to the State Government of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Mizoram, Orissa, Rajasthan, Sikkim and Tamil Nadu subject to the condition that the Central Government may revoke such delegation of powers in respect of all or any one or more of the State Government or may itself invoke the provisions of section 5 of the Act, if in the opinion of the Central Government such a course of action is necessary in public interest.
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> [No.1(3 8)/86-P L]
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> T.N. SESHAN, Secy. "

17. Shri Seth has further relied upon an order passed by the Supreme Court on 15.07.2016 (Annexure R-1) in Writ Petition (Civil) No.154/2012 (**Karuna Society for Animals & Nature and others vs. Union of India and others**), wherein a writ petition was filed to prohibit use, sale and

disposal of plastics in all Municipalities and Municipal Corporations in the country. The Court issued that the following directions:-

> "…After hearing the learned counsel for the parties and perusing the prayers made in the petition and the material evidence produced for our perusal, it is evident that the situation is very alarming but it is not for this Court to monitor the functioning of concerned authorities & local authorities to see that the areas of the local self government are not polluted. Accordingly, we direct the Union of India and the State Governments to consider the prayers in the petitions and take all necessary steps in the matter in accordance with law by constituting committees consisting of competent persons who have got sufficient knowledge on the subject matter. The Central Government may also set up an appropriate monitoring mechanism in the matter. In our considered view the respective regional Natural Green Tribunal benches can monitor and regulate the cases by passing / giving orders or directions to all the concerned statutory authorities and local self governments in the country for discharge of their constitutional and statutory duties.
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> With the aforesaid directions & observations, the prayers extracted above are allowed to the above extent and the Writ Petitions are disposed of."

18. Shri Seth, learned counsel for the respondents-State has also relied upon an order dated 15.10.2014 passed by the National Green Tribunal, Central Zonal Bench, Bhopal in **M.A. No.586/2014,** in O.A. No.04/2013 **(Sandeep Lahariya v. State of M.P. and others**) dealing with non-compliance of Plastic Waste (Management & Handling) Rules, 2011 in general and to prohibit manufacture, sale, distribution, storage and use of plastic carry bags as well as their proper disposal so as to ensure that no pollution is caused. The Tribunal directed as under:-

> "……By the Misc. Application No.586/2014 State of M.P. has submitted that a proposal, pursuant to our order dtd. 30.09.2014 and even before that for imposing total ban, has been drafted by the

concerned Ministry and it is pending approval before the Minister concerned and as such it has been prayed that time may be extended for a period of 3 months for compliance of orders dtd. 30.09.2014. Having considered the matter, we are inclined to accept the limited request of the State of M.P. for notifying orders imposing of total ban on manufacture, sale, distribution, use etc. of poly carry bags within the State of M.P. and this is supported by the concern raised even before the Lok Sabha by the Hon'ble Members and the assurance given by the Govt. of India in this behalf in August, 2012 itself. The State of M.P. accordingly must take into account the views expressed by the Members of Parliament and the adverse environmental impact which the poly carry bags are creating not only in the urban areas but also even in the rural areas and the inability of the local authorities like Municipalities and Panchayats to deal with the aforesaid problem as a result of large scale use, sale, manufacture and distribution etc. of poly carry bags. Misc. Application No. 586/2014 is accordingly allowed but the time is granted only upto 30.10.2014. The prayer for extension of time for 3 months is refused as the matter is pending for consideration before the State since 2012 when it was referred and brought to it's notice by the MoEF, Govt. of India based on the concern raised in the Lok Sabha by the Hon'ble Members.

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We would accordingly grant one more opportunity, to the States Govt. of M.P. & Chhattisgarh to consider the issue in the light of the reminder issued by the MoEF, Govt. of India to all the Chief Secretaries on 15.07.2014 enclosing the earlier letter of Oct, 2012 and impose the ban by the end of this month.

Since the States have failed to carry out the necessary directions issued in our judgment dtd. 11.11.2013 the State of C.G. & M.P. are given one more opportunity in the interest of justice to take action by 30.10.2014 for issuing necessary orders for imposition of total ban on the manufacture, sale, distribution, use etc. of poly carry bags as defined under the Rules of 2011 and the ban should be made effective preferably from 1st January, 2015."

19. Shri Seth also relies upon an order passed by the National Green Tribunal Principal Bench New Delhi on 08.08.2013 in Application No.26 of 2013 (THC) (**Goodwill Plastic Industries and another etc. v. Union**

Territory of Chandigarh and others etc.) in respect of similar Notification issued by the Chandigarh Administration on 30.07.2008 prohibiting polythene/plastic carry bags for supply of goods in polythene/plastic carry bags.

20. It is, thereafter, the State proposed to amend Sections 2 and 3 of the State Act forwarding the proposed draft legislation for the previous sanction of the President in view of proviso to Article 304(b) of the Constitution of India on 12.04.2017 (Annexure R-3). On the basis of such request for previous sanction, the President vide order dated 29.04.2017 (Annexure R-6) was pleased to approve the promulgation of the Madhya Pradesh Jaiv Anaashya Apashistha (Niyantran) Sanshodhan Adhiniyam, 2017. The Presidential order reads as under:-

"No.13/01/2017-Judl &PP
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
(Judicial and Political Pensions Section)
*****

4th Floor, NDCC-II Building,
Jai Singh Road, New Delhi – 1
Dated the 29th April, 2017

ORDER

In pursuance of the proviso to clause (1) of article 213 of the Constitution of India, the President approves the promulgation of "the Madhya Pradesh Jaiv Anaashya Apashishta (Niyantran) Sanshodhan Adhyasdesh, 2017" by the Governor of Madhya Pradesh.

By order and in the name of the President of India.

Sd/-
(D.P. Tripathy)
Director (Judicial)
Telefax No.011-23438131

21. Shri Seth, learned counsel for the respondents-State relies upon a seven Judge Bench judgment reported as **(2017) 3 SCC 1** (**Krishna Kumar Singh and Another v. State of Bihar and others**) in support of an argument that having granted sanction by the President, the State Act will prevail over the Central Rules.

22. Before we deal with the arguments advanced by learned counsel for the parties, it is relevant to take note of some of the provisions of the Constitution of India, which read as under:-

> **"213. Power of Governor to promulgate Ordinances during recess of Legislature**. - (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:
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> Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if-
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> (a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or
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> (b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or
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> (c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.
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> **245. Extent of laws made by Parliament and by the Legislatures of States -** (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and

the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

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246. Subject-matter of laws made by Parliament and by the Legislatures of States. - (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List.

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253. Legislation for giving effect to international agreements. - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States. - (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the

existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

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304. Restrictions on trade, commerce and intercourse among States.- Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law -

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

23. We do not find any merit in the argument of Shri Nagrath, learned senior counsel for the petitioners. The Central Act has been enacted to give effect to the international agreement, therefore, the Parliament is competent to legislate on the subject in terms of Entry 97 of List-I of Seventh Schedule

of the Constitution of India. But, a State Law falling within their legislative competence, can be enacted as provided in the Constitution.

24. The first judgment referred to by the learned counsel for the petitioners is a Constitutional Bench judgment rendered in the case of **Kesoram Industries Ltd. (supra**) wherein the Supreme Court was considering the levy of cess on coal bearing land in exercise of powers conferred on the State legislature under Entries 23, 49, 50 and 66 of List-II of the Seventh Schedule. The State has also levied cess on tree plantation. The Supreme Court referred to earlier three Judge Bench judgment in the case of *Hoechst Pharmaceuticals Ltd. v. State of Bihar (1983) 4 SCC 45,* wherein, it was held as under:-

> **31** ……..
>
> (1) The various entries in the three Lists are not "powers" of legislation but "fields" of legislation. The Constitution effects a complete separation of the taxing power of the Union and of the States under Article 246. *There is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the Union and the States.*
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> (2) In spite of the fields of legislation having been demarcated, the question of repugnancy between law made by Parliament and a law made by the State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the State law will be ultra vires and shall have to give way to the Union law.
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> *(3) Taxation is considered to be a distinct matter for purposes of legislative competence.* There is a distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. *The power to tax cannot be deduced from a general legislative entry as an ancillary power*.

(4) The entries in the lists being merely topics or fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The words and expressions employed in drafting the entries must be given the widest possible interpretation. This is because, to quote V. Ramaswami, J., the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere simplex enumeratio of broad categories. *A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary matters.*

(5) Where the legislative competence of a Legislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in Lists I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three Lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other Legislature is of no consequence. The Court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the Legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

(6) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance is to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the Legislature which enacted it, an incidental encroaching in the field assigned to another Legislature is to be ignored. While reading the three Lists, List I has priority over Lists III and II, and List III has priority over List II. However, still, the *predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II though it may incidentally affect any item in List I.*

(emphasis supplied)

25. After discussing the various judgments, the Court held that the primary object and the essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences, for determining the character of the levy. The Court held as under:-

> **"*In a nutshell***
>
> **129.** The relevant principles culled out from the preceding discussion are summarised as under:-
>
> (1) In the scheme of the lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.
>
> *** *** ***
>
> (5) The entries in List I and List II must be so construed as to avoid any conflict. If there is no conflict, an occasion for deriving assistance from non obstante clause "subject to" does not arise. If there is conflict, the correct approach is to find an answer to three questions step by step as under:
>
> One - Is it still possible to effect reconciliation between two entries so as to avoid conflict and overlapping?
>
> Two - In which entry the impugned legislation falls by finding out the pith and substance of the legislation?
>
> and
>
> Three - Having determined the field of legislation wherein the impugned legislation falls by applying the doctrine of pith and substance, can an incidental trenching upon another field of legislation be ignored?
>
> *** *** ***
>
> (8) The primary object and the essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences, for determining the character of the levy. A levy essentially in the nature of a tax and within the power of State Legislature cannot be annulled as unconstitutional merely because it may have an affect on the price of the commodity. A State legislation, which makes provisions for levying a cess, whether by way of tax to augment the revenue resources of the State or by way of fee to render services as *quid pro quo* but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of "regulation and control"

> belonging to the Central Government by reason of the incidence of levy being permissible to be passed on to the buyer or consumer, and thereby affecting the price of the commodity or goods. Entry 23 in List II speaks of regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union Entries 52 and 54 of List I are both qualified by the expression "declared by Parliament by law to be expedient in the public interest". A reading in *juxtaposition* shows that the declaration by Parliament must be for the "control of industries" in Entry 52 and "for regulation of mines or for mineral development" in Entry 54. Such control, regulation or development must be "expedient in the public interest". Legislation by the Union in the field covered by Entries 52 and 54 would not like a magic touch or a taboo denude the entire field forming subject-matter of declaration to the State Legislatures. Denial to the State would extend only to the extent of the declaration so made by Parliament. In spite of declaration made by reference to Entry 52 or 54, the State would be free to act in the field left out from the declaration. The legislative power to tax by reference to Entries in List II is plenary unless the entry itself makes the field "subject to" any other entry or abstracts the field by any limitations imposable and permissible. A tax or fee levied by the State with the object of augmenting its finances and in reasonable limits does not *ipso facto* trench upon regulation, development or control of the subject. It is different if the tax or fee sought to be levied, by the State can itself be called regulatory, the primary purpose whereof is to regulate or control and augmentation of revenue or rendering service is only secondary or incidental."

26. In **Bharat Shanti Lal Shah**'s case (**supra**), the issue for consideration before the Supreme Court was the Constitutional validity of Maharashtra Control of Organised Crime Act, 1999 on the ground that State legislation did not have legislative competence to enact such a law and that such law is unreasonable and is violative of provisions of Article 14 of the Constitution. The Supreme Court allowed the appeal and upheld the Constitutional validity of the Act in question *inter alia* holding to the following effect:

"43. One of the proven methods of examining the legislative competence of an enactment is by the application of doctrine of pith and substance. This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the respective legislature under the constitutional scheme. The said doctrine has come to be established in India and is recognized in various pronouncements of this Court as also of the High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the court has to look to the substance of the State Act and on such analysis and examination, if it is found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on topics in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the topics in the Union List.

*** *** ***

46. Though it is true that the State Legislature would not have power to legislate upon any of the matters enumerated in the Union List but as per the doctrine of pith and substance there could not be any dispute with regard to the fact that if it could be shown that the area and subject of the legislation is also covered within the purview of the entry of the State List and the Concurrent List, in that event incidental encroachment to an entry in the Union List will not make a law invalid and such an incidental encroachment will not make the legislation ultra vires the Constitution.

*** *** ***

48. Article 254 of the Constitution succinctly deals with the law relating to inconsistency between the laws made by the Parliament and the State Legislature. The question of repugnancy under Article 254 will arise when a law made by Parliament and a law made by State Legislature occupies the same field with respect to one of the matters enumerated in Concurrent List and there is a direct conflict in two laws. In other words,

> the question of repugnancy arises only in connection with subjects enumerated in Concurrent List. In such situation the provisions enacted by Parliament and the State Legislature cannot unitedly stand and the State law will have to make way for the Union Law. Once it is proved and established that the State law is repugnant to the Union law, the State law would become void but only to the extent of repugnancy. At the same time it is to be noted that mere possibility of repugnancy will not make a State law invalid, for repugnancy has to exist in fact and it must be shown clearly and sufficiently that State law is repugnant to Union law.
>
> *** *** ***
>
> **55**. We are of the considered opinion that source of power to legislate the aforesaid Act can be derived by the State from the aforesaid entries of the State List and the Concurrent List and while enacting the aforesaid State Act the assent of the President was also taken. Therefore, the Act cannot be said to be beyond the legislative competence of the State Legislature. The content of the said Act might have encroached upon the scope of Entry 31 of List I but the same is only an incidental encroachment. As the main purpose of the Act is within the parameter of Entries 1 and 2 of the State Legislature we find no reason to hold that the provisions of Sections 13 to 16 are constitutionally invalid because of legislative competence."

27. In **Dipak Debbarma's** case (**supra**), the Supreme Court was examining the Notification dated 22.06.2012 issued by the appellant Bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The said notification was said to be in contravention of Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960. The Court examined as to which a dominant legislation is having regard to the area of encroachment. The relevant extracts from the said decision are reproduced as under:-

> **"6**. Repugnancy or inconsistency between the provisions of Central and State enactments can occur in two situations. The first, in case of a Central and a State Act on any field of entry mentioned in List III of the

Seventh Schedule (Concurrent List). To such a situation of repugnancy or inconsistency, the provisions of Article 254 of the Constitution would apply. If there is such an inconsistency, Article 254(1) makes it very clear that the Central Law will prevail subject, however, to the provisions of Article 254(2) and further subject to proviso to Article 254(2). The above position would be clear from the opinion rendered by a three Judges Bench of this Court in *M/s Hoechst Pharmaceuticals Ltd. and Ors. vs. State of Bihar and Ors*. (1983) 4 SCC 45.

*** *** ***

8. The above view has been reiterated in *State of W.B. vs. Kesoram Industries Ltd. and Ors*.[(2004) 10 SCC 201]. There are several other pronouncements of this Court on the aforesaid issue. The same, however, would not require any mention as any such reference would be only a multiplication of discussions on what appears to be a settled issue. In the present case, however, the question before this Court is not one of repugnancy between a Central and a State law relatable to an Entry in List III (Concurrent List). No further attention to the above aspect of the matter would, therefore, be required.

9. The second situation of repugnancy or inconsistency as in the present case is between to a subsequent Central law (Act of 2002) covered by Entry 45 of List I and an earlier State law (Tripura Act of 1960) relatable to Entries 18 and 45 of List II. How such a situation is to be resolved and answered and which legislation would have primacy is the moot question that arises for consideration in the present appeals.

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15. In the present case the conflict between the Central and the State Act is on account of an apparent overstepping by the provisions of the State Act dealing with land reform into an area of banking covered by the Central Act. The test, therefore, would be to find out as to which is the dominant legislation having regard the area of encroachment.

16. The provisions of the 2002 Act enable the bank to take possession of any property where a security interest has been created in its favour. Specifically, Section 13 of the 2002 Act enables the bank to take possession of and sell such property to any person to realise its dues. The purchaser of such property acquires a clear title to the property sold, subject to compliance with the requirements prescribed.

> **17**. Section 187 of the Tripura Act, 1960, on the other hand, prohibits the bank from transferring the property which has been mortgaged by a member of a Scheduled Tribe to any person other than a member of a Scheduled Tribe. This is a clear restriction on what is permitted by the 2002 Act for the realisation of amounts due to the bank.
>
> **18**. The 2002 Act is relatable to the entry of banking which is included in List I of the Seventh Schedule. Sale of mortgaged property by a bank is an inseparable and integral part of the business of banking. The object of the State Act, as already noted, is an attempt to consolidate the land revenue law in the State and also to provide measures of agrarian reforms. The field of encroachment made by the State Legislature is in the area of banking. So long there did not exist any parallel Central Act dealing with sale of secured assets and referable to Entry 45 of List I, the State Act, including Section 187, operated validly. However, the moment Parliament stepped in by enacting such a law traceable to Entry 45 and dealing exclusively with activities relating to sale of secured assets, the State law, to the extent that it is inconsistent with the 2002 Act, must give way. The dominant legislation being the Parliamentary legislation, the provisions of the Tripura Act 1960, pro tanto, (Section 187) would be invalid. It is the provisions of the 2002 Act, which do not contain any embargo on the category of persons to whom mortgaged property, can be sold by the bank for realisation of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act, 1960."

28. A reading of the said judgments would show that the source of power to legislate by the State flows from either the entries in the State List or the Concurrent List. The State Act was enacted after the sanction of the President was taken. The State was competent to enact the State Act in view of the fact that it is in relation to public health falling in Entry 6 of the List II of Seventh Schedule but since the amendment proposed has the effect of imposition of restriction on the freedom of trade, commerce or intercourse, as is guaranteed under Article 304(b) of the Constitution of India, the State has sought previous sanction of the President to promulgate the Ordinance.

Such permission was necessitated in view of Article 213 of the Constitution of India, which prohibits the Governor to promulgate any Ordinance if a Bill containing the same provisions under the Constitution requires the previous sanction of the President for the introduction thereof into the Legislature or the Governor has to reserve a Bill containing the same provisions for the consideration of the President or an Act of the Legislature of the State containing the same provisions would under the Constitution have been invalid unless, having been reserved for the consideration of the President. Therefore, since the State Act was affecting the Central Rules, the sanction was granted by the President to promulgate the Ordinance which was later on promulgated as Ordinance No.1 of 2017. The sanction of the President cannot be said to be of no effect as the same was required in terms of proviso to Article 304(b) of the Constitution read with proviso to Article 213(1) of the Constitution of India. Such sanction was the constitutional requirement and having granted so, the State Act cannot be disputed on the ground that it contravenes any of the provisions of the Central Rules.

29. In addition to the previous sanction of the President, the Central Government has delegated its powers under Section 23 of the Central Act to certain State Governments including the State of Madhya Pradesh. Section 5 of the Central Act authorises Central Government to issue direction for the closure, prohibition or regulation of any industry, operation or process. Once the Central Government has delegated its powers as is conferred on it under Section 5, the State Act is a valid piece of legislation in terms of delegation of the Central Government as well to direct the closure, prohibition or regulation of any industry, operation or process; which would include

prohibition to use carry bags. Therefore, the State Act cannot be said to be beyond the legislative competence of the State Legislature.

30. Still further, repugnancy or inconsistency between the provisions of Central and State enactments can occur in two situations. The first, in case of a Central and a State Act on any field of entry mentioned in List III of the Seventh Schedule. To such a situation of repugnancy or inconsistency, the provisions of Article 254 of the Constitution would apply. In such situation the Central Law will prevail in terms of Article 254(1) and further subject to proviso to Article 254(2). But, in terms of proviso to Article 304(b), the State could legislate on the subjects falling in List II of Seventh Schedule of the Constitution with the previous sanction of the President.

31. The Central Rules permit carry bags made of virgin or recycled plastics of not less than 50 microns in thickness, but, the State Act has prohibited the manufacture, sale, transportation and use of plastic bags of less than 50 microns in view of the delegation by the Central Government and in terms of the previous sanction of the President. The State Act is a step for elimination of use of plastic bags whereas the Central Rules permit plastic carry bags made of virgin or recycled plastics of not less than 50 microns in thickness as a process to minimize the use of plastic bags. Therefore, the State Act is not in contravention of the Central Rules but puts more stringent conditions than what is permissible under the Central Rules to eliminate the use of plastic bags which has a larger public interest involved.

32. Similar issue has been examined by the Principal Bench of National Green Tribunal in **Goodwill Plastic Industries** (**supra**) in respect of a

Notification issued by the Chandigarh Administration on 30.07.2008. The relevant excerpts from the order in Goodwill Plastic Industries's case are reproduced as under:-

> **"19**. The other contention raised before us is with regard to the notification of 30th July, 2008 being repugnant to the notified Rules of 2011. While referring to Article 254 of the Constitution, it is contended that the notification of 30th July, 2008 is in conflict with the Rules of 2011 framed by the Central Government. It is contended that the notification of 30th July, 2008 has been notified in furtherance to the delegated legislative powers, the same being repugnant to the Central law and hence the Central law would prevail and thus, the notification issued by the UT Administration of Chandigarh would be void.
>
> **20**. Article 254 of the Constitution comes into play only when the law framed by the State legislature is repugnant to any law made by the Parliament which the Parliament is competent to enact or to any provision of an existing law with respect to any of the matters enumerated in the Concurrent List, then unless the State law is saved in terms of Article 254(2), the law made by the State shall, to the extent of repugnancy, be void. List III of the Seventh Schedule to the Constitution specifies the fields falling under the Concurrent List. It does not contain any entry with regard to environment though by way of the 42nd Amendment Act, which came into effect from 3rd January, 1977, 'Forests' and 'Protection of wild animals and birds' were added under Entries No.17A and 17B respectively. The Concurrent List does not contain any residuary power of the Parliament. Similarly, List I (Union List) of the Seventh Schedule also does not contain any specific entry in relation to environment. However, there is the residuary power in terms of Entry 97 of the said List which empowers the Union Parliament to enact laws on any other matter not enumerated in List II or List III including any tax not mentioned in either of these Lists. List II (State List) also does not contain any specific entry in relation to environment but for Entry 6 of the said List which deals with public health and sanitation; hospitals and dispensaries. It may be useful to notice here that in terms of Article 243W of the Constitution relating to powers, authority and responsibilities of Municipalities, etc. under Entry 6 of the 12th Schedule to the Constitution, subjects of public health, sanitation, conservancy and solid waste management are specified. Article 243W of

the Constitution deals with the powers, authority and responsibilities of municipalities and subject to the provisions of the Constitution, the legislature of a State, may by law, endow the municipalities with such powers and authority as may be necessary to enable them to perform the functions and responsibilities in relation to the matters specified in the 12th Schedule.

21. Keeping in view the importance of the environment, it includes air, water, soil, forests, even plants, human beings, microorganisms, other living creatures, etc. The fields that cover such legislation would be Entry 97 appearing in List I of the Seventh Schedule. All the relevant laws in relation to environment i.e. air, water, noise and environmental protection, have been enacted by the Union Parliament. As per the law stated by a Constitution Bench of the Supreme Court in the case of *Rajiv Sarin and Another v. State of Uttarakhand and Others* [(2011) 8 SCC 708], the Court stated as under:

> "34. It is by now a well-established rule of interpretation that the entries in the list being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not a narrow or pedantic approach. It held that each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it. In those decisions it was also reiterated that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature.
>
> 35. As and when there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it would also be necessary for the courts to examine the true nature and character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme."

22. Further, it is also a settled rule of law that courts would normally lean in favour of validity of an Act. It would attempt to harmonise two

conflicting laws in preference to declaring a law void on account of repugnancy. Of course, where all the ingredients of repugnancy are satisfied *stricto sensu* and there is no other alternative open to the court but to declare that repugnant portion of the law void or invalid, then alone the court may exercise such discretion. This brings us to analyse what are the essentials of a law being declared void on account of repugnance under the Constitution. The Supreme Court of India, in the case of *Rajiv Sarin v. State of Uttarakhand* (supra), while referring to the judgment of the Court in the case of *M. Karunanidhi* v. Union of India [(1979) 3 SCC 431] spelt out the conditions which are required to be satisfied before an Act could fall on the ground of repugnancy within the rigours of Article 254 of the Constitution. The Court held as under:

> "45. For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a "repugnancy" between a Central and State Act; and secondly, the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intention of the both legislation and whether such dominant intentions of both the legislation are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject.
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> 46. Repugnancy in the context of Article 254 of the Constitution is understood as requiring the fulfillment of a "Triple test" reiterated by the Constitutional Bench in *M. Karunanidhi v. Union of India* (1979) 3 SCC 431 @ page 443-444, which reads as follows:
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> > "24. It is well settled that the presumption is always in 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 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.

3. That the inconsistency between the provisions of the two Acts is of such 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 other."

40. In other words, the two legislations must cover the same field. This has to be examined by a reference to the doctrine of pith and substance."

23. If we apply the doctrine of pith and substance to the present case, it is evident that firstly the two notifications, viz. the notification issued by UT Chandigarh dated 30th July, 2008 and the Rules of 2011 do not cover exactly the same field and also their substance and spirit is quite distinct and different. Not only this, the very object to be achieved under these two notifications is discernible from the very basis on which such notifications have been issued. The notification of 30th July, 2008 just deals with the banning of manufacture, storage, sale and use of plastic carry bags in the interest of the environment while the Rules of 2011 are general in their nature and permit the carrying on of a business of manufacturing, storing and selling of various plastic and polythene items and the conditions which are required to be satisfied before commencement and continuation of such business. We are unable to see any conflict or inconsistency between the two notifications, much less a clear and direct inconsistency between the two. As already indicated, these two notifications are operating in different fields with different objects and implications.

24. Even, for the sake of argument, we assume that there is some inconsistency between the two notifications, then it further has to be satisfied that the inconsistency is absolutely irreconcilable and it is impossible to obey one without disobeying the other. None of these ingredients are satisfied in the present case. They can safely be harmonised and construed together and in fact permitted to operate in their respective fields without causing any conflict or contradiction. One

> regulates the conduct of the business which has to be performed in a licensed manner within the limitations imposed by the regulations while the other is a preventive or prohibitory direction in the interest of the environment and the public at large. One deals with the private business interest while the other with larger public interest. The Rules of 2011 can continue to operate for manufacture, sale and usage of other plastic/polythene items except for polythene carry bags banned under the notification of 30th July, 2008."

33. The Central Rules were enacted to give thrust on plastic waste minimization, source segregation, recycling, involving waste pickers, recyclers and waste processors in collection of plastic waste fraction either from households or any other source of its generation or intermediate material recovery facility and adopt polluter's pay principle for the sustainability of the waste management system whereas, the State Act goes a step ahead and *instead of minimization of plastic waste*, intends to achieve *plastic waste elimination*. Therefore, the State Law is not irreconcilable with the Central law as the State Act goes a step further than the Central law, which deals with minimization of plastic waste, whereas the State Act deals with elimination of plastic waste. May be; the Central Government, considering the conditions prevailing in the country has taken steps for minimization of plastic waste but if the State takes steps to eliminate the plastic waste, such Act cannot be said to be irreconcilable to the Central law. Therefore, within the State, both the Central law and the State law can be read harmoniously, as the State law is a step forward than what has been prohibited by the Central Law. Therefore, approving the reasoning of the National Green Tribunal in **Goodwill Plastic Industries** (**supra**), we find that the State law is not contrary to the Central Law.

34. We also approve the reasoning recorded by the National Green Tribunal in its order in **Goodwill Plastic Industries** (**supra**) that the Notification prohibiting use of plastic bags and Rules of 2011 which has since been replaced by the Central Rules do not cover exactly the same field. The substance and spirit is quite distinct and different of the two provisions of Law. The State Act prohibits manufacturing, storage, sale and use of plastic carry bags in the interest of environment whereas the Central Rules permit to carry on the business of manufacturing, storing and selling of various plastic and polythene items. Therefore, the Notification published under the State Act prohibits manufacturing, storage, sale, transportation and use of polythene bags whereas the Central Rules regulate the manufacturing, storage and selling of plastic bags. Thus, the scope of the two provisions is different and that there is no inconsistency between the two statutes. Still further, the Central Rules permit carry bags of 50 microns or more and the Notification under the State Act prohibits the carry bags is reconcilable. The manufacturer is required to obtain permission to manufacture plastic bags in terms of the Central Rules whereas the State Act prohibits the manufacture, transportation, storage, use and sale of the plastic bags in the State. The State Law is to achieve the larger public interest in the interest of environment for the benefit of the public at large whereas the Central Rules deal with the business interest of the manufacturer of the plastic bags and between the two, the larger public interest is required to be preferred.

35. We do not find any merit in the argument that the assent of the President will not give overriding effect to a State law, as the State law which falls in List-III of the Seventh Schedule alone can have overriding

effect in view of the assent of the President. In **Kaiser-I-Hind**'s case (**supra**), the question examined was as to whether the "assent" given by the President under Article 254(2) of the Constitution of India with regard to the repugnancy of the State legislation and the earlier law made by the Parliament or the existing law could only be qua the "assent" sought by the State with regard to repugnancy of the laws mentioned in the submissions made to the President for his consideration before grant of assent or what it prevail qua other laws for which no assent was sought. The contention was, once the President grants the "assent" to the State legislation, the State law would prevail on the said subject and such "assent" would be deemed to be an assent qua all earlier enactment made by Parliament on the subject. The Court held that assent of the President is limited to the proposal made by the State Government. The State legislation will prevail only qua the law for which repugnancy was pointed out and assent of the President was sought for. The proposal for the State is *sine qua non* for consideration and assent. The argument in the aforesaid case was in respect of the State law falling within the Concurrent List. The Court held as under:-

> "**12.** For the purpose of the present case, Clause (2) requires interpretation, which on the analysis provides that where a law:--
>
> (a) made by the legislature of a State;
>
> (b) with respect to one of the matters enumerated in the Concurrent List;
>
> (c) contains any provision repugnant to the provisions of an earlier law made by the Parliament or existing law with respect to that matter; then, the law so made by the legislature of the State shall-- (1) if it has been 'reserved for consideration of the President'; and (2) has received 'his assent';
>
> would prevail in that State.

13. Hence, it can be stated that for the State law to prevail, following requirements must be satisfied--

(1) law made by the legislature of a State should be with respect to one of the matters enumerated in the Concurrent List;

(2) it contains any provision repugnant to the provision of an earlier law made by the Parliament or an existing law with respect to that matter;

(3) the law so made by the Legislature of the State has been reserved for the consideration of the President; and

(4) it has received 'his assent'.

14. In view of aforesaid requirements, before obtaining the assent of the President, the State Government has to point out that the law made by the State legislature is in respect of one of the matters enumerated in the Concurrent List by mentioning entry/entries of the Concurrent List and that it contains provision or provisions repugnant to the law made by the Parliament or existing law. Further, the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by the Parliament and the necessity of having such a law, in the facts and circumstances of the matter, which is repugnant to a law enacted by the Parliament prevailing in a State. The word “consideration” would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by the Parliament, the President may grant assent. This aspect is further reaffirmed by use of the word "assent" in Clause (2) which implies knowledge of the President to the repugnancy between the State law and the earlier law made by the Parliament on the same subject-matter and the reasons for grant of such assent. The word "assent" would mean in the context as an expressed agreement of mind to what is proposed by the State.”

36. We do not find that the finding recorded in **Kaiser-I-Hind**’s judgment (**supra**), in any way supports the argument raised by the learned counsel for the petitioners. It was a case arising out of a State Act falling within List III of Seventh Schedule. But it does not say that the Presidential

sanction will be ineffective even in respect of State Law falling within List II of the Seventh Schedule.

37. The proviso to Article 304(b) of the Constitution of India limits a legislature of a State to introduce a Bill, which imposes restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in public interest without the previous sanction of the President. The State has sought to enact an Ordinance in respect of a matter which falls within proviso to Article 304(b) of the Constitution; therefore, the sanction of the President was necessitated in terms of Article 213(1) proviso (a) contemplating the previous sanction of the President for the introduction of a Bill required under this Constitution that is proviso to Article 304(b). The State has forwarded the draft legislation, which is same as the Ordinance promulgated, along with its communication dated 12.04.2017 (Annexure R-3). The sanction was granted by the President on 29.04.2017 (Annexure R-6). Therefore, the law made by the State will prevail notwithstanding the Central Law as the sanction has been sought from the President not for the reason that the proposed legislation falls in List-III of the Seventh Schedule but for the reason that it affects the freedom of trade and commerce granted under Article 304(b) of the Constitution. Once the President has granted sanction, the State law will prevail over the Central law. Reference may be made to the Seven Judge Bench judgment in **Krishna Kumar Singh**'s case (**supra**) wherein the Court has held as under:-

> "**38**. Article 213(1) also specifies the circumstances in which the Governor cannot promulgate an Ordinance without the instructions of the President. The three situations where the instructions of the President are required are:

(i) Where a Bill containing the same provisions requires the previous sanction of the President, for its introduction into the legislature;

(ii) Where a Bill containing the same provisions would be deemed necessary by the Governor for being reserved for consideration of the President; and

(iii) Where a law enacted by the State Legislature containing the same provisions would require the assent of the President, failing which it would be invalid.

The first of the above conditions arises in a situation such as the proviso to Article 304(b) of the Constitution. Under Article 304(b), the legislature of a State is permitted to impose reasonable restrictions in the public interest on the freedom of trade, commerce or intercourse with or within that State (notwithstanding anything in Articles 301 or 303). The proviso requires the previous sanction of the President before a Bill or amendment for the purposes of clause (b) can be introduced in the State Legislature. An illustration of the second requirement [Point (ii) above] is provided by Article 200 of the Constitution under which the Governor is required to reserve for consideration of the President any Bill which in his opinion would, if it were to become a law, derogate from the powers of the High Court so as to endanger the position which it is designed to fill by the Constitution. Situations where the assent of the President is required [Point (iii) above] are illustrated by Article 254 where a law made by the State Legislature on a matter enumerated in the Concurrent List (of the Seventh Schedule) is repugnant to a law made by Parliament. The State law will prevail only if and to the extent to which it has received the assent of the President. These three situations make it abundantly clear that while exercising the power to promulgate an Ordinance, the Governor is not liberated from the limitations to which the law making power of the State legislature is subject."

38. Since the amendment in Section 3 of the State Act carried out by the State on 22.05.2017 has preceded with the sanction of the President in terms of proviso to Article 304(b) read with proviso to clause (1) of Article 213 of the Constitution of India, therefore, the Notification dated 24.05.2017

(Annexure P-3) issued under the State Act cannot be said to be illegal or without the Legislative competence.

39. In view of the above, we do not find any merit in the present petitions. The same are **dismissed**. All interlocutory applications and application for intervention is also dismissed in view of the findings recorded here-in-above.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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