Raj Kumar Rai Vs. State

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Court : Sikkim

Decided On : Sep-15-1978

Reported in : 1979CriLJ310

Judge : A.M. Bhattacharjee, J.

Appellant : Raj Kumar Rai

Respondent : State

Judgement :

ORDER

A.M. Bhattacharjee, J.

1. The accused-appellant has been convicted on his own plea of guilty to a charge under Section 25 (1) of the Arms Act, 1959, which has been extended to Sikkim by the President by a notification under the provisions of Oreder (n) of Article 371F of the Constitution of India on 16th May, 1975, and enforced on 1st Aug., 1976. The charge was that the accused on or about 19th Feb.. 1978, had in his possession a revolver and one live cartridge without any licence therefor and the accused has been sentenced to suffer rigorous imprisonment for one year.

2. If the Amu Act, 1959, ii validly operative in Sikkim as a result of its extension to and enforcement in Sikkim under the provisions of Article 371F (n) of the Constitution, then the conviction must be maintained and the appeal must be dismissed as there is and can be no other challenge to the conviction in this case.

3. Under Section 412 of Cr.P.C. 1898, which is still now the law relating to Criminal Procedure in Sikkim, if an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal except as to die extent or legality of the sentence except where the conviction is made by a Magistrate of the Second or the Third Class. But there is no doubt that even though the facts admitted amount to an offence under the provisions of a law, but the law itself is not in force or operation, the so called admission cannot amount to an admission of the commission of an offence or a plea of guilty. The expression 'offence' means, as will appear from Section 8 (38) of the General Clauses Act, 1897, an act or omission made punishable by any law in force; but if the relevant law is not at all in force, then the facts admitted, even if they amount to an offence under the provisions of the said law, would not amount to an admission of the commission of an offence or a plea of guilty in any area where the law is not in force. Therefore, if the Arms Act, 1959, is not validly operative in Sikkim, the admission of guilt in this case shall not amount to any admission or a plea of guilt within the meaning of Section 412 of the Cr.P.C. 1898, to

bar an appeal challenging the legality of the conviction.

I cannot accept the contention that even in such a case the appeal against the legality of the conviction is barred and not maintainable under Section 412, Cr.P.C- and that the accused is to seek his remedy in a revisional or a writ proceeding or a proceeding under Article 227 of the Constitution. If the law whereunder the accused has been convicted is itself not in force or operation then the conviction will amount to a violation of Article 20 of the Constitution whereunder 'no person shall be convicted of any offence except for violation of a law in force' and I believe that even a Court sitting in appeal from a conviction on a plea of guilty cannot remain a silent spectator to such an infraction of the Constitution. If the Arms Act, 1959, is not in force, then the appeal in my view is maintainable even against the legality of the conviction and I need not invoke any othen jurisdiction vested in this Court in disposing of this case.

4. The next question, therefore, on which the appeal entirely depends is whether the Arms Act, 1959, is validly operative in Sikkim after its extension thereto by the President by a notification under Clause (n) of Article 371 -F of the Constitution? The question has arisen because the corresponding Sikkim Law, being the Sikkim Arms Rule, 1962, has not been repealed whether before or simultaneously with or even after the Arms Act, 1959, has been extended to and enforced in Sikkim and on the first day of hearing 1 requested the learned Advocate-General to satisfy me as to whether the validity o the extension of the Amu Act, I960, would be affected because of the non-repealment of the Sikkim Arms Rules, 1962. The Advocate-General contended that the extension and enforcement of Arms Act, 1959 under the provisions of Article 371F (n) of the Constitution would be quote valid in spite of the corresponding Sikkim Law not being repealed and he pointed out that various other Central enactments have been extended to Sikkim under the provisions of Article 371F (n) without having the corresponding Sikkim Laws repealed.

It was then suggested to the Advocate-General that since the determination of the question involved in this appeal would also go a long way to determine the validity of several other Acts which have been similarly extended without repealing the corresponding Sikkim Laws, the State might agree to engage a Counsel in this case for the accused, who was then undefended, so that this important point could be decided by this Court after receiving as much assistance as possible from the learned Counsel on both sides, I am glad that on the advice of the Advocate-General tbe State in this case has provided the accused with a Counsel at State expense and Mr. D. P. Chaudhury has appeared before me in this case on behalf of the accused.

5. In the Supreme Court case, generally known as the 'Delhi Laws Act case' AIR 1951 SC 332, a similar question arose for the opinion of the Supreme Court under the provisions of Section 7 of the Delhi Laws Act, 1912, Section 2 of the Ajmer Merwara (Extension of Laws) Act, 1947, and Section 2 of the Part C States (Laws) Act, now renamed as the Union Territories (Laws) Act. 1950. For the purpose of my discussion I will only refer to the relevant provisions of Section 2 of the Part C States (Laws) Act, 1950. material portions whereof are hereunder:

The Central Government may by notification in the Official Gazette extend to any Part C State...with such restrictions and modifications as it thinks fit any enactment which is in force in a Part A State at the date of the notification; and provisions may be made in any enactment so extended for the repeal or amendment of any corresponding law...which is for the time being applicable to that Part C State.' Kania,

C. J. and Mahajan, J. held that both the power to extend laws and the power to repeal corresponding laws under the provisions quoted above were ultra vires the Legislature. Fazal Ali, Patanjall Sashtri and Das, JJ., held that both the powers were intra vires and valid. Mukherjea and Rose, JJ., held that 1979 while the power to extend laws was valid and intra vires, the power to repeal corresponding laws was invalid and ultra vires the Legislature being excessive and unauthorised delegation of the essential legislative functions. Therefore, while the power to extend laws was upheld by five out of seven Judges (Fazal Ali, Patanjali Sashtri, Das, Mukherjea and Bose, JJ.) the power to repeal the corresponding laws was declared to be invalid by four out of seven Judges (Kania, C. J. and Mahajan, Mukherjea and Bose, JJ.) In other words, the views of Mukherjea and Bose JJ. became the view of the majority as their view that the power to extend laws was valid was agreed to by Fazal Ali, Patanjali Sashtri, and Das JJ., and their view that the power to repeal corresponding laws was invalid was agreed to by Kania C. J. and Mahajan, J. The majority view in this case appears to be that if the Executive, as a delegate of the Legislature, extends the law of a Part A State to a Part C State, where there is no corresponding law on the matter, then the extension would be intra vires.

But if there is already an existing law in force in a part C State and the Executive extends thereto a law of a Part A State on the subject, the extension would be ultra vires as such extension would result in repealment of the existing corresponding law and repealing being an essential legislative function, delegation of that power, expressly or impliedly, by the Legislature to the Executive, would be an excessive and unwarranted delegation not authorised by our Constitution where-under essential legislative function must always be retained and must never be surrendered by the Legislature. According to this view, therefore, the extension of the Arms Act, 1959, to Sikkim by any non-legislative authority as the delegate of a Legislature would be invalid as that would result in repealment of the corresponding Sikkim Arms Rules, 1962.

6. The question as to the validity of any enactment extended by the Executive in exercise of delegated powers to a new area, without repealing the corresponding law of that area, came up for decision before the Supreme Court in Bhaiyalal v. State of Madhya Pradesh : AIR1962SC981 . In that case, the Central Provinces and Berar Sales Tax Act, 1947 (hereinafter referred to as the Central Province Law), was extended to the new Part C State of Vindhya Pradesh by the Central Government by a Notification on 29th Dec, 1950, in exercise of the power conferred by Section 2 of the said Part C States (Laws) Act, 1950, the validity of the provisions whereof was considered by the Supreme Court in aforesaid Delhi Laws Act case. By the same Notification the corresponding Vindhya Pradesh Sales Tax Ordinance, 1949, (hereinafter referred to as the Vindhya Pradesh Law), was also sought to be repealed and the Central Provinces Law, extended as aforesaid, was thereafter enforced in Vindhya Pradesh with effect from 1st April, 1951. But the purported repeal of the Vindhya Pradesh law failed as it was declared by the Supreme Court by the majority in the Delhi Laws Act case, on 23rd May, 1951, that such a power to repeal corresponding laws by notification under Section 2 of the Part C States (Laws) Act, 1950, was invalid and ultra vires and therefore, the extension of the Central Provinces Law was to be deemed to have been made without repealing the corresponding Vindhya Pradesh Law.

Thereafter, Parliament passed the Part C States (Miscellaneous Laws) Repeal Act, 1951, repealing inter alia the Vindhya Pradesh Law with effect from 29th Dec. 1950,

being the date on which the Central Provinces Law was extended to Vindhya Pradesh and the Vindhya Pradesh Legislative Assembly also passed the Vindhya Pradesh Laws Validiting Act, 1952, declaring inter alia that the Central Provinces Law was to be deemed to be in force in Vindhya Pradesh from the date when it was enforced being 1st April, 1951.

7. The position, therefore, was that as in view of the majority opinion .in Delhi Laws Act case AIR 1951 SC 332 the corresponding Vindhya Pradesh law could not have been taken as repealed by the Notification whereby the Central Provinces Law was extended, the Central Provinces Law was to be deemed to have been extended to Vindhya Pradesh when the corresponding Vindhya Pradesh law was very much in force, even though it was subsequently repealed by a legislation with retrospective effect from the date when the Central Provinces Law was extended. In considering the question whether such an extension of a new law without repealment of the corresponding existing law was valid, it was observed by a unanimous Bench of five Judges in Bhaiyalal's case (at page 987) as hereunder :

The extended law did not depend on the repeal of the earlier law for its validity. It would have been operative, even if the ear-lier law was not repealed; but the earlier Taw was in fact repealed from 29th Dec, 1950, and no question of conflict between the new and old laws arose.

(Emphasis Supplied)

8. This decision, therefore, appears to be an authority for the proposition that a law extended by the Executive in exercise of the power conferred on it by the Legislature would not depend for its validity on the repeal of the corresponding law existing and operating in the area to which the law has been extended and to that extent this decision appears to have laid down something contrary to or inconsistent with what was declared by the majority of four Judges in the Delhi Laws Act case AIR 1951 SC 332. According to the ratio of this Bhaiyalal's case : AIR1962SC981 therefore, the extension of the Arms Act, 1959, to Sikkim, even by an Executive authority as a delegate of the Legislature, would have been valid without any repealment of the corresponding Sikkim law, being the Sikkim Arms Rule, 1962.

9. It is not necessary for me in this ease to say that as the decision in Bhaiyalal's case is the unanimous decision of a Bench of five Judges and is a later one, I should be governed by the ratio of the said decision and not by the majority view of the four Judges in Delhi Laws Act case. It is also not necessary for me to ascertain as to what extent the authority of the Delhi Laws Act case has been shaken or otherwise affected by observations of Patanjali Sashtri, C. J. (who was also one of the Judges in the Delhi Laws Act case) in Kathi Raning v. State of Saurashtra : 1952CriLJ805 to the effect that:

while undoubtedly certain definite conclusions were reached, by the majority of the Judges who took part in the decision in re-gard to the constitutionality of certain specific enactments, the reasoning in each case was different, and it is difficult to say that any particular principle has been laid down by the majority which can be of assistance in the determination of other cases' or by the observations of Shelat, J. in B. Shamarao v. Union Territory of Pondicherry : [1967]2SCR650 to the effect that:in view of the intense divergence of opinion except for their conclusion partially to uphold the validity of the said laws, it is difficult to deduce any general principle

which on the principle of stare decisis can be taken as binding for future cases.

10. As I shall presently show, even according to the view, which is generally accepted as the majority view in the said Delhi Laws Act case, the extension of the Arms Act, 1959 to Sikkim under the provisions of Article 371F (n) of the Constitution, without any express re- pealment of the corresponding existing law in Sikkim, being the Sikkim Anns Rules, 1962, would not be invalid or ineffective, I would quote the provisions of Article 371F (n) here-d

371F - Notwithstanding anything in this Constitution.

(n) the President may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of notification.

11. As already noted, the majority view in the Delhi Laws Act case AIR 1951 SC 332 appears to be that Legislature can delegate to the Executive or any other non-legislative authority the power to extend laws to any area where such laws are not operating, But if the delegated authority extends a law to such a new area when there is already corresponding law existing and in force in that area, the extended law would bring in repeal, though implied, of such existing corresponding law. But the power to repeal being essentially a legislative function, the Executive or any non-legislative authority cannot be delegated or clothed with such a power to of feet repeal of existing laws by extending a new set of laws and delegation of such power to a non-legislative body would be ultra vires the provisions of the Constitution where-under the Legislature cannot delegate the essential Legislative functions Eke the power to repeal laws.

Applying these principles to the case at hand, the following position will emerge, namely :

(1) delegation of power to extend any law in force in any State in India to Sikkim by a non-legislative body would be valid and intra vires even according to the majority view to the Delhi Laws Act case;

(2) the extension of any such law on a subject on which there is already a corresponding law in Sikkim would result in repealment of such existing law;

(3) as such repealment will amount to a repealment by a non-legislative body, conferment of such a power, whether express or implied, by the Legislature would be ultra vires the provisions of the Constitution whereunder essential legislative power, like the power t repeal, must be retained and must not be surrendered by the Legislature.

12. Therefore, if the delegation made under Article 371F (n) was made by Parliament in exercise of its ordinary legislative power, the delegation of power to extend laws relat- ing to matters in respect of which there were corresponding existing laws would have been ultra vires the power of Parliament according to the majority view of the Delhi Laws Act ease AIR 1951 SC 332 as such delegation carries with it the implied power to effect re-pealment of the corresponding existing laws and such a power cannot be delegated by Parliament to any other authority in exercise of its ordinary legislative power. But it must be noted that here the delegation under Article

371F (n) has been made by Parliament in exercise of its constituent power and there again the delegation has been explicitly made, as will appear from the opening words of Article 371F (n) qualifying all the clauses, 'Notwithstanding anything in this Constitution.' The main reasoning of the majority view that such a delegation of the power to extend laws which carries with it the power, express or implied, to repeal the existing corresponding laws is ultra vires the power of the Legislature under the Constitution of India, must lose its basis, when the delegation has been made by the Constitution itself and that too 'notwithstanding anything in this Constitution.

Even if the power to repeal the corresponding existing laws which was expressly given in Section 2 of the Part C States (Laws) Act, 1950 and which was declared to be invalid by the Majority view in the Delhi Laws Act case, such a power would have been valid and operative and would not have been liable to be struck down on the grounds mentioned in Delhi Laws Act case. It may be that as a result of conferment of such wide powers, namely, the power to extend new laws carrying with it the power to overthrow and repeal all existing corresponding laws, the President, acting under Article 371 F (n), would be able to act as a new or parallel Legislature. But as pointed out by Bose, J., in the Delhi Laws Act case AIR 1951 SC 332 at p. 440 Para 385, our Parliament, though otherwise fettered by the provisions of the Constitution, is omnipotent when it exercises constituent power, and, therefore, creation of such a parallel Legislature in the President by the Constitution itself by its Article 371F (n) is perfectly permissible and not unconstitutional. There can obviously be no attack on the Constitution itself or any provision thereof, as being unconstitutional.

13. It is not disputed that any law extended under Article 371F (n) would virtually repeal or overthrow any corresponding Sikkim law on the subject, if such repealment or overthrowing is necessary to make the extension effective and operative. The extension having been authorised by die provisions of the Con- situation and 'notwithstanding anything in this Constitution', everything necessary for the effective operation of such extended law must necessarily be implied. In Mithan Lal v. State of Delhi : [1959]1SCR445 , Venkata-ratna Aiyar, J. speaking for the unanimous Court and considering the analogous provisions of Section 2 of the Part C States (Laws) Act, 1950, authorising the Central Government to extend by notifications enactment in force in Part A States to Part C States, observed (at page 685) that 'when a notification is issued by the appropriate Government extending the law of a Part A State to a Part C State, the law so extended derives its force from Section 2 of the Part C States (Laws) Act enacted by Parliament' and that 'the result of a notification issued under that section is that the provisions of the law which is extended become incorporated by reference in the Act itself.

(Underlining mine).

If that is the position in law, then we will have to regard all enactments extended to Sikkim under Article 371F (n) to have been incorporated in the said Article 371F (n) of the Constitution which will, therefore, have over riding effect over all other Acts which are required to be overridden or overthrown. Even if the extension of the Arms Act, 1959, was under the authority of an ordinary Parliamentary Act and not a Constitution Act with a sweeping non obstante clause as in Article 371F, the Arms Act, so extended, would have derived its authority from the Act of Parliament and would have been deemed to have been incorporated by reference in that Parliamentary Act and would have overthrown the corresponding Sikkim Arms Rules, 1962. 'Arms, fire-arms, ammunition an explosive' are Items mentioned in the Union

list in the Seventh Schedule of the Constitution and Parliament's power to legislate thereon is exclusive and Supreme.

It has been observed by the Supreme Court in State of Orissa v. M. A. Tulloch and Co. : [1964]4SCR461 that 'if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field and enactments of the other legislature, whether passed before or after, would be overborne on the ground of repugnance' and that such repugnance or 'inconsistency is demonstrated not by a detailed comparison of the provisions of the two statutes but by the mere existence of the two pieces of legislation.' Therefore after the field relating to 'Arms' etc. is covered by a Parliamentary legislation, extended wider the authority of Parliament of the Constitution, the corresponding Sikkim Law, being Sikkim Arms Rules, 1962 must be deemed to be overborne or overthrown.

14. I must, however, point out that Mr. D- P. Chaudhury, the learned Counsel appearing for the accused, has not disputed the proposition that extension of the Arms Act, 1959, would result in virtual repealment of the corresponding Arms Rules, 1962, and Mr. Chair dhury has rather built up his argument on & the basis that the Sikkim law shall stand repealed by and after the extension of the Central law under Article 371F (n). Mr. Chaudhury has developed his argument on the basis of his interpretation of the provisions of the three clauses d Article 371F, being Clause. (k), (1) and (n), which are reproduced below for the facility of discussion:

371F Notwithstanding anything in this Constitution,-

(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority;

(l) for the purpose of facilitating the application of any such law as is referred to in Clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modification so made, and any such adaptation or modification shall not be questioned in any Court of law;

(n) the President may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of the notification.

15. Under the provisions of Clause (k), all laws in force in Sikkim immediately before its incorporation in the Union of India shall continue in force until amended or repealed by a competent Legislature or other competent authority. As early as in 1836 it was decided by the Privy Council in a case from India, being Mayor of Lyons v. East India Co. ((1836) 1 Moo Ind App 175 at pp. 270-271) (PC) mat on change of sovereignty over an inhabited territory, the law of that territory continue, 'until the Crown or the Legislature change it' Our Supreme Court has also accepted this principle and relying on the said Privy Council case has held in Rao Shiv Bhadur Singh v. State of Vindhya Pradesh : 1954CriLJ1480 that on change of sovereignty over an inhabited territory, the pre-existing laws continue to be in force until duly altered.'

In Pramode Chandra Deb v. State of Orissa : AIR1962SC1288 the Supreme Court has referred to (at p. 1300) the presumption 'that the pre-existing laws of the newly acquired territory continue.

Therefore, even without the aid of the provisions of Clause (k), the pre-existing laws of Sikkim, like the Sikkim Arms Rules, 1962, would have continued until amended or repealed and that is why similar provisions in Section 292 of the Government of India Act, 1933 were commented upon by Gwyer, C. J. in the Federal Court decision in United Provinces v. Atiqua Begum AIR 1941 FC 16 at 24 as ''a safeguard usually inserted by draftsmen in similar circumstances.' The fact that 'Arms', etc., are Central subjects under List I of the Seventh Schedule of the Constitution will not in any way affect the continued validity and operation of the Sikkim law. It| should be noted that though the provisions of Article 372 (1) have provided the continuation of pre-Constitution Indian laws expressly 'subject to the other provisions of this Constitution' it has now been well settled that the aforesaid expression does not render the preexisting laws liable to be tested in the light of the distribution of the legislative powers effected by the Seventh Schedule of the Constitution.

But it should be noted that though preexisting Sikkim laws would have continued| even without the aid of any provisions as con' tained in Clause (k), they would have continued subject to the other provisions of the Constitution and as such all those laws as were' in any way inconsistent with or violative of any of the provisions of the Constitution would have automatically become void in the absence of such sweeping protection as has been provided by the aforesaid non obstante clause in the opening words of the Article 371F, which qualifies all the clauses of the Article including Clause (k). If the provisions of Clause (k) of Article 371-F, read with the non obstante clause as aforesaid, are compared and contrasted with the provisions of Article 372 (1) of the Constitution, it will be clear that though both provide for continued operation of the earlier laws, yet under Article 372 (1), pre-Constitution laws have been allowed to operate only so far (as) they are consistent with the provisions of the Constitution and that so far as they are not so consistent, they have ceased to operate, while under Article 371 (k) of the Constitution, the earlier Sikkim laws have been guaranteed continued operation even though they or some of them are violently inconsistent with or are shockingly violative of the provisions of the Constitution, until they are amended or repealed by a competent Legislature or other competent authority.

16. Clause (1) provides for the adaptation and modification of Sikkim laws for the purpose of facilitating their application and for the purpose of bringing them into accord with the provisions of the Constitution and provides for amendment and even for repeal of any such law for effecting such modification or adaptation.

17. Relying on the provisions of Clause, (k) and (1), Mr. Chaudhury has urged that the anxiety of the Constitution to continue and maintain all existing Sikkim laws is irresistibly demonstrated by the user of the sweeping non obstante clause in the opening words of Article 371F and the Constitution has provided for repeal of such laws only in two ways, namely, either by a competent Legislature or other competent authority under Clause (k) or by way of adaptation by the President under Clause (1) and repealment in no other way is contemplated by the Constitution. Mr. Chaudhury has submitted that the majority view in Delhi Laws Act case AIR 1951 SC 332 would uphold the power of the President to extend laws to Sikkim under Clause (n), but that is entirely irrelevant because the power here is given by the Constitution itself and is,

therefore, beyond any challenge in Courts. But Mr. Chaudhury has contended that since extension of any law under Clause (n) to Sikkim on a subject on which there is already a corresponding pre-existing law will result in virtual repealment of the Sikkim law and since a repeal of an existing Sikkim law is to be done either under Clause (k) or under Clause (1) by some express legislative process and a repeal is not contemplated under Clause (n), it should be held that extension of such a law. that, is, a law over a subject in respect of which there is already a pre-existing Sikkim law, is beyond the provisions of Clause (n).

As I understand, Mr. Chaudhury virtually relies on the principle contained in the maxim 'expressum facit cessare taciturn' or the maxim 'expressio unius est exclusio alterius' and the well-known rule emphasised by the Privy Council in Nazir Ahmed v. King Emperor AIR 1936 PC 253 (2) at 257 to the effect that express mention of some power in one case shall imply the absence of such power in other case and 'where a power is given to do a cer tain thing in a certain way, the thing must be done in that way or not at all' and Mr. Chaudhury accordingly contends that the power to repeal existing Sikkim laws having been expressly mentioned in Clause. (k) and (1), such a power must be deemed to be absent under Clause (n) and, therefore, no repeal is contemplated and can be effected by any action taken under Clause (n) in extending laws. But since extension of laws on subjects over which there are existing corresponding laws would result in virtual repealment of those existing laws, it should be held that extension of such laws is not contemplated by the provisions of this Clause (n).

18. This argument, though ingenuous and attractive is, in my view, not sound and I have not been able to persuade myself to agree that the expression 'enactment' in Clause (n), which, in my view, is absolute and unqualified, should be so construed as to limit it to only to such enactments which relate to matters in respect of which there are no corresponding laws in Sikkim and I am afraid that such a construction of Cl-(n) would amount to rewriting the provisions of the clause and reading words which are not there. In Mithan Lai v. State of Delhi : [1959]1SCR445 the Supreme Court, in construing the expression 'enactment' in a similar context in Section 2 of the Part C States (Laws) Act, 1950, held (at page 686) that the expression 'enactment which is in force' means any statute in force, I do not say that the Supreme Court in that Mithan Lai's case was considering this question now before me; but at any rate, I am of opinion that there could not be any justification for con-struing the expression 'enactment' in Clause (n) in any narrow or limited way and the expression must mean any enactment which is in] force in a State in India on the date of notification under Clause (n).

19. The argument of Mr. Chaudhury fails to take notice of the fact that such implied repealment of corresponding Sikkim laws, as would be brought about by extension of enactments under Clause (n) over the same subjects, would also be covered by the expression 'repealed' in Clause (k). There can be no doubt that the expression 'repealed' in Cl (k) does not necessarily mean repealed by express legislation but also includes implied repeal or repeal by implication. Reference In this connection may be made to the Special Bench decision of Punjab High Court m Ambala Ex-Servteemen Transport Co-operative Society v. State of Punjab . The case of repeal by implication of the corresponding Sikkim law, which would admittedly and undisputedly take effect as a result of extension of another law on the same subject under Clause (n), would also come within the expression 'repealed' in Clause (n) and that being so, the repeal will have to be regarded as quite valid and in order even according to the

contention of Mr. Chaudhury according to which the power to repeal is to be found only in Clause. (k) and (1) and not in Clause (n).

20. My conclusion, therefore, is that the Arms Act, 1959, has been validly extended to Sikkim even though the corresponding Sik-kim law, being the Sikkim Arms Rules, 1962, has not been repealed at any time before such extension and enforcement. My conclusion further is that the Sikkim Arms Rules, 1962, have automatically stood overborne or overthrown and impliedly repealed by the extension and enforcement of the Arms Act. 1959, under Clause (n) of Article 371-F of the Constitution.

21. The appeal accordingly fails and is, therefore, dismissed.