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impossible to hold in the circumstances described that the Sessions Judge did not impose a substantial sentence, and no adequate reason has been assigned by the learned High Court Judges for considering the sentence manifestly inadequate. In the circumstances, bearing all the considerations of this case in mind, we are of opinion that the appeal (which is limited to the question of sentence) should be allowed and that the sentence imposed by the High Court should be set aside and that of the Sessions Court restored. Ordered accordingly.

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BHIKAJI NARAIN DHAKRAS AND OTHERS
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THE STATE OF MADHYA PRADESH AND ANOTHER.

[S. R. DAS, ACTING C. J., BHAGWATI, VENKATARAMA AYYAR, JAFER IMAM and CHANDRASEKHARA AIYAR JJ.]

Fundamental Rights, Infringement of—Law void for inconsistency —'Void', Meaning of—Removal of inconsistency by amendment of the Constitution, if revivifies the law—Constitution of India as amended by the Constitution (First Amendment) Act, 1951 and the Constitution (Fourth Amendment) Act, 1955, Arts. 13, 19(6), 31(2)—C.P. & Berar Motor Vehicles (Amendment) Act, 1947 (Act III of 1948).

The petitioners who carried on their business as stage carriage operators of Madhya Pradesh for a considerable number of years challenged the constitutional validity of the C.P. & Berar Motor Vehicles (Amendment) Act, 1947 (Act III of 1948) which amended the Motor Vehicles Act, 1939 (Central Act IV of 1939) and conferred extensive powers on the Provincial Government including the power to create a monopoly of the motor transport business in its favour to the exclusion of all motor transport operators. In exercise of the powers conferred by new s. 43(1)(iv) a notification was issued on the 4th of February, 1955, declaring the intention of the Government to take up certain routes. The case of the petitioners was that the passing of the Constitution and the grant of fundamental rights rendered the Act void under Art. 13(1) being inconsistent with the provisions of Arts. 19(1) (g) and 31(2), and reliance was placed on the decision of the Supreme Court in *Shagir Ahmad* v. *The State of U.P. & others.* On behalf of the respondents it was contended that although as a result of the said decision the impugned Act was

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rendered void, the Constitution (First Amendment) Act, 1951, and the Constitution (Fourth Amendment) Act, 1955, had the effect of removing the inconsistency and the Amending Act (III of 1948) became operative again. It was, however, contended on behalf of the petitioners that the impugned Act being void under Art. 13(1) was dead and could not be revivified by any subsequent amendment of the Constitution. It must be re-enacted.

Held that *Shagir Ahmad's case* had no application and the contentions put forward by the respondents were well founded and must be accepted.

That it is well-settled that the word 'void' in Art. 13 means void to the extent of the inconsistency with a fundamental right and the language of the article makes it clear that the entire operation of an inconsistent Act is not wiped out. It applies to past transactions and the rights and liabilities accruing therefrom and continues even after the commencement of the Constitution to apply to non-citizens.

Keshavan Madhava Menon v. *The State of Bombay* [1951] S.C.R. 288, relied on.

The true effect of Art. 13(1) is to render an Act, inconsistent with a fundamental right, inoperative to the extent of the inconsistency. It is overshadowed by the fundamental right and remains dormant but is not dead. With the amendment made in cl. (6) of Art. 19 by the first Amendment Act the provisions of the impugned Act were no longer inconsistent therewith and the result was that the impugned Act began to operate once again from the date of such amendment with this difference that, unlike amended clause (2) of Art. 19 which was expressly made retrospective, no rights and obligations could be founded on the provisions of the impugned Act from the date of the Commencement of the Constitution till the date of the amendment. The notification declaring the intention of the State to take over the bus routes to the exclusion of all other motor transport operators was, therefore, perfectly valid.

Shagir Ahmad v. *The State of U.P. & Others,* [1955] 1 S.C.R. 707 and *Behrom Khurshed Pesikaka* v. *The State of Bombay,* [1955] 1 S.C.R. 613, distinguished and held inapplicable.

American authorities held inapplicable.

Nor can the impugned Act, on a parity of reasoning be held to infringe any longer the fundamental rights of the petitioners under Art. 31(2) in view of the amendment effected therein by the Constitution (Fourth Amendment) Act of 1955 which came into force on the 27th April, 1955, these petitions having been filed thereafter, and the petitioners could not be allowed to challenge the validity of the impugned Act on that ground.

Semble. It is not clear at all that the impugned Act was in conflict with s. 299 of the Government of India Act, 1935, before the advent of the Constitution.

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ORIGINAL JURISDICTION: Petitions Nos. 189 to 193 of 1955.

Petitions under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

G. S. Pathak, (*Rameshwar Nath* and *Rajinder Narain,* with him) for the petitioners in Petition No. 189 of 1955.

Rameshwar Nath and *Rajinder Narain,* for petitioners in Petition No. 190 of 1955.

Sri Narain Andley and *Rajinder Narain,* for petitioners in Petitions Nos. 191 to 193 of 1955.

T. L. Shevde, Advocate-General of Madhya Pradesh (*I. N. Shroff,* with him), for respondents in all petitions.

1955. September 29. The Judgment of the Court was delivered by

DAS ACTG. C. J.—This judgment will dispose of all the five petitions (Nos. 189 to 193 of 1955) which have been heard together and which raise the same question as to the constitutional validity of the C.P. & Berar Motor Vehicles (Amendment) Act, 1947 (Act III of 1948).

The facts are short and simple. Each of the petitioners has been carrying on business as stage carriage operator for a considerable number of years under permits granted under section 58 of the Motor Vehicles Act, 1939 (Central Act IV of 1939) as amended by the C.P. & Berar Motor Vehicles (Amendment) Act, 1947 (Act III of 1948).

Prior to the amendment section 58 of the Motor Vehicles Act, 1939 was in the following terms:—

"58(1). A permit other than a temporary permit issued under section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit.

Provided that in the case of a permit issued or renewed within two years of the commencement of this Act, the permit shall be effective without renewal

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for such period of less than three years as the Provincial Government may prescribe.

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit:

Provided that, other conditions being equal, an application for renewal shall be given preference over new applications for permits".

It will be noticed that under the section as it originally stood the permit granted thereunder was for a period of not less than 3 years and not more than 5 years and a permit-holder applying for renewal of the permit had, other things being equal, preference over new applicants for permit over the same route and would ordinarily get such renewal.

Very far reaching amendments were introduced by the C. P. & Berar Motor Vehicles (Amendment) Act, 1947 into the Motor Vehicles Act, 1939 in its application to Central Provinces and Berar. By section 3 of the amending Act, item (ii) of sub-section (1) of section 43 of the Central Act was replaced by the following items :

"(ii) fix maximum, minimum or specified fares or freights for stage carriages and public carriers to be applicable throughout the province or within any area or any route within the province, or

(iii) notwithstanding anything contained in section 58 or section 60 cancel any permit granted under the Act in respect of a transport vehicle or class of such permits either generally or in any area specified in the notification :

Provided that no such notification shall be issued before the expiry of a period of three months from the date of a notification declaring its intention to do so:

Provided further that when any such permit has been cancelled, the permit-holder shall be entitled to such compensation as may be provided in the rules; or

(iv) declare that it will engage in the business of road transport service either generally or in any area specified in the notification".

The following sub-section (3) was added after sub-section (2) of section 58 of the Central Act by section 8 of the amending Act, namely :—

"(3) Notwithstanding anything contained in sub-section (1), the Provincial Government may order a Regional Transport Authority or the Provincial Transport Authority to limit the period for which any permit or class of permits is issued to any period less than the minimum specified in the Act".

Section 9 of the amending Act added after section 58 a new section reading as follows :—

"58-A. Notwithstanding anything hereinbefore contained the Provincial Government may by order direct any Regional Transport Authority or the provincial Transport Authority to grant a stage carriage permit to the Provincial Government or any undertaking in which the Provincial Government is financially interested or a permit-holder whose permit has been cancelled under section 43 or any local authority specified in the order".

The result of these amendments was that power was given to the Government (i) to fix fares or freights throughout the Province or for any area or for any route, (ii) to cancel any permit after the expiry of three months from the date of notification declaring its intention to do so and on payment of such compensation as might be provided by the Rules, (iii) to declare its intention to engage in the business of road transport generally or in any area specified in the notification, (iv) to limit the period of the license to a period less than the minimum specified in the Act, and (v) to direct the specified Transport Authority to grant a permit, *inter alia,* to the Government or any undertaking in which Government was financially interested. It may be mentioned here that in the State of Madhya Pradesh there are two motor transport companies known as C. P. Transport Services Ltd., and Provincial Transport Co. Ltd., in which, at the date of these writ petitions, the State of Madhya Pradesh and the Union of India held about 85 per cent. of the share capital. Indeed, since the filing of these petitions the entire undertakings of these

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companies have been purchased by the State of Madhya Pradesh and the latter are now running the services on some routes for which permits had been granted to them.

A cursory perusal of the new provisions introduced by the amending Act will show that very extensive powers were conferred on the Provincial Government and the latter were authorised, in exercise of these powers, not only to regulate or control the fares or freights but also to take up the entire motor transport business in the province and run it in competition with and even to the exclusion of all motor transport operators. It was in exercise of the powers under the newly added sub-section (3) or section 58 that the period of the permit was limited to four months at a time. It was in exercise of powers conferred on it by the new section 43(1) (iv) that the Notification hereinafter mentioned declaring the intention of the Government to take up certain routes was issued. It is obvious that these extensive powers were given to the Provincial Government to carry out and implement the policy of nationalisation of the road transport business adopted by the Government. At the date of the passing of the amending Act (III of 1948) there was no such thing as fundamental rights of the citizens and it was well within the legislative competency of the Provincial Legislature to enact that law. It has been conceded that the amending Act was, at the date of its passing, a perfectly valid piece of legislation.

Then came our Constitution on the 26th January 1950. Part III of the Constitution is headed "Fundamental Rights" and consists of articles 12 to 35. By article 19(1) the Constitution guarantees to all citizens the right to freedom under seven heads. Although in article 19(1) all these rights are expressed in unqualified language, none of them, however, is absolute, for each them is cut down or limited by whichever of the several clauses (2) to (6) of that article is applicable to the particular right. Thus the right to practise any profession or to carry on any occupation, trade or business conferred by article 19(1) (g) was

controlled by clause (6) which, prior to its amendment to which reference will presently be made, ran as follows :—

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business".

The fundamental rights conferred by articles 14 to 35 are protected by the provisions of article 13 the relevant portions of which are as follows:—

"13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void".

The amending Act (III of 1948) was, at the commencement of the Constitution, an existing law. The new provisions introduced by the Act authorised the Provincial Government to exclude all private motor transport operators from the field of transport business. *Prima facie,* therefore, it was an infraction of the provisions of article 19(1) (g) of the Constitution and would be void under article 13(1), unless this invasion by the Provincial Legislature of the fundamental right could be justified under the provisions of clause (6) of article 19 on the ground that it imposed reasonable restrictions on the exercise of the right under article 19(1) (g) in the interests of the general

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public. In *Shagir Ahmad* v. *The State of U.P. & Others*(1) it was held by this Court that if the word "restriction" was taken and read in the sense of limitation and not extinction then clearly the law there under review which, like the amending Act now before us, sanctioned the imposition of total prohibition on the right to carry on the business of a motor transport operator could not be justified under article 19(6). It was further held in that case that if the word "restriction" in clause (6) of article 19 of the Constitution, as in other clauses of that article, were to be taken in certain circumstances to include prohibition as well, even then, having regard to the nature of the trade which was perfectly innocuous and to the number of persons who depended upon business of this kind for their livelihood, the impugned law could not be justified as reasonable. In this view of the matter, there is no escape from the conclusion that the amending Act, in so far as it was inconsistent with article 19(1) (g) read with clause (6) of that article, became, under article 13(1), void "to the extent of such inconsistency" and if there were nothing else in the case the matter would have been completely covered by the decision of this Court in that case.

On the 18th June 1951, however, was passed the Constitution (First Amendment) Act, 1951. By section 3(1) of that Act for clause (2) of article 19 a new sub-clause was substituted which was expressly made retrospective. Clause (6) of article 19 was also amended. That clause, so amended, now reads as follows:—

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(1) [1955] 1 S. C. R. 707.

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise".

It will be noticed that clause (6), as amended, was not made retrospective as the amended clause (2) had been made. The contention of the respondents before us is that although the amending Act, on the authority of our decision in *Shagir Ahmad's case* (*supra*), became on and from the 26th January, 1950 void as against the citizens to the extent of its inconsistency with the provisions of article 19(1) (g), nevertheless, after the 18th June 1951 when clause (6) was amended by the Constitution (First Amendment) Act, 1951 the amending Act ceased to be inconsistent with the fundamental right guaranteed by article 19(1)(g) read with the amended clause (6) of that article, because that clause, as it now stands, permits the creation by law of State monopoly in respect, *inter alia,* of motor transport business and it became operative again even as against the citizens. The petitioners, on the other hand, contend that the law having become void for unconstitutionality was dead and could not be vitalised by a subsequent amendment of the Constitution removing the constitutional objection, unless it was re-enacted, and reference is made to Prof. Cooley's work on Constitutional Limitations, Vol. I, p. 384 Note referred to in our judgment in *Shagir Ahmad's case* (*supra*) and to similar other authorities. The question thus raised by the respondents, however, was not raised by the learned Advocate-General in that case, although the notification was published by the U. P. Government on the 25th March 1953 and the proposed scheme was published on the 7th April, 1953, *i.e.,* long after the Constitution (First Amendment) Act, 1951 had been passed. This question was not considered by this Court in *Shagir Ahmad's case,* for it was there conceded (see p. 720 of the report) that the validity of the U. P. Act which, in this res-

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pect, was similar to the C. P. & Berar Act now under consideration, was not to be decided by applying the provisions of the amended clause (6). Nor was this problem raised before or considered by this Court in *Behram Khurshed Pesikaka* v. *The State of Bombay*(1). We, therefore, conceive it to be open to us to go into the new question that has now been mooted before us and to consider what effect the amended clause (6) has on the impugned Act. This involves a question of construction of article 13 of the Constitution.

The meaning to be given to the word "void" in article 13 is no longer *res integra,* for the matter stands concluded by the majority decision of this Court in *Keshavan Madhava Menon* v. *The State of Bombay*(2). We have to apply the *ratio decidendi* in that case to the facts of the present case. The impugned Act was an existing law at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by article 19(1) (g) restrictions which could not be justified as reasonable under clause (6) as it then stood and consequently under article 13(1) that existing law became void "to the extent of such inconsistency". As explained in *Keshavan Madhava Menon's case* (*supra*) the law became void not *in toto* or for all purposes or for all times or for all persons but only "to the extent of such inconsistency", that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens. It did not become void independently of the existence of the rights guaranteed by Part III. In other words, on and after the commencement of the Constitution the existing law, as a result of its becoming inconsistent with the provisions of article 19(1) (g) read with clause (6) as it then stood, could not be permitted to stand in the way of the exercise of that fundamental right. Article 13(1) by reason of its language cannot be read as having obliterated the entire operation of the inconsistent law or having wiped it out altogether from

(1) [1955] 1 S. C. R. 613.
(2) [1951] S. C. R. 228.

the statute book. Such law existed for all past transactions and for enforcement of rights and liabilities accrued before the date of the Constitution, as was held in *Keshavan Madhava Menon's case.* The law continued in force, even after the commencement of the Constitution, with respect to persons who were not citizens and could not claim the fundamental right. In short, article 13(1) had the effect of nullifying or rendering the existing law which had become inconsistent with article 19(1) (g) read with clause (6) as it then stood ineffectual, nugatory and devoid of any legal force or binding effect only with respect to the exercise of the fundamental right on and after the date of the commencement of the Constitution. Therefore, between the 26th January 1950 and the 18th June 1951 the impugned Act could not stand in the way of the exercise of the fundamental right of a citizen under article 19 (1) (g). The true position is that the impugned law became, as it were, eclipsed, for the time being, by the fudamental right. The effect of the Constitution (First Amendment) Act, 1951 was to remove the shadow and to make the impugned Act free from all blemish or infirmity. If that were not so, then it is not intelligible what "existing law" could have been sought to be saved from the operation of article 19(1) (g) by the amended clause (6) in so far as it sanctioned the creation of State monopoly, for *ex hypothesi,* all existing laws creating such monopoly had already become void at the date of the commencement of the Constitution in view of clause (6) as it then stood. The American authorities refer only to post-Constitution laws which were inconsistent with the provisions of the Constitution. Such laws never came to life but were still born as it were. The American authorities, therefore, cannot fully apply to pre-Constitution laws which were perfectly valid before the Constitution. But apart from this distinction between pre-Constitution and post-Constitution laws on which, however, we need not rest our decision, it must be held that these American authorities can have no application to our Constitution. All laws, existing of future, which are inconsistent

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with the provisions of Part III of our Constitution are, by the express provision of article 13, rendered void "to the extent of such inconsistency". Such laws were not dead for all purposes. They existed for the purposes of pre-Constitution rights and liabilities and they remained operative, even after the Constitution, as against non-citizens. It is only as against the citizens that they remained in a dormant or moribund condition. In our judgment, after the amendment of clause (6) of article 19 on the 18th June 1951, the impugned Act ceased to be unconstitutional and became revivified and enforceable against citizens as well as against non-citizens. It is true that as the amended clause (6) was not made retrospective the impugned Act could have no operation as against citizens between the 26th January 1950 and the 18th June 1951 and no rights and obligations could be founded on the provisions of the impugned Act during the said period whereas the amended clause (2) by reason of its being expressly made retrospective had effect even during that period. But after the amendment of clause (6) the impugned Act immediately became fully operative even as against the citizens. The notification declaring the intention of the State to take over the bus routes to the exclusion of all other motor transport operators was published on the 4th February 1955 when it was perfectly constitutional for the State to do so. In our judgment the contentions put forward by the respondents as to the effect of the Constitution (First Amendment) Act, 1951 are well-founded and the objections urged against them by the petitioners are untenable and must be negatived.

The petitioners then contend that assuming that the impugned Act cannot be questioned on the ground of infringement of their fundamental right under article 19(1) (g) read with clause (6) of that article, there has been another infraction of their fundamental right in that they have been deprived of their property, namely, the right to ply motor vehicles for gain which is an interest in a commercial undertaking and, therefore, the impugned Act does conflict with the provisions of article 31(2) of the Constitution and

again they rely on our decision in *Shagir Ahmad's case*. Here, too, if there were nothing else in the case this contention may have been unanswerable. But unfortunately for the petitioners there is the Constitution (Fourth Amendment) Act, 1955 which came into force on the 27th April, 1955. By section 2 of that Act article 31 of the Constitution was amended and for clause (2) of that article the following clauses were substituted:—

"(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property".

Article 31-A of the Constitution was also amended. There can be no question that the amended provisions, if they apply, save the impugned law, for it does not provide for the transfer of the ownership or right to possession of any property and cannot, therefore, be deemed to provide for the compulsory acquisition or requisitioning of any property. But the petitioners contend, as they did with regard to the Constitution (First Amendment) Act, 1951, that these amendments which came into force on the 27th April 1955 are not retrospective and can have no application to the present case. It is quite true that the impugned Act became inconsistent with article 31 as soon as the Constitution came into force on the 26th January 1950 as held by this Court in *Shagir Ahmad's case* (*supra*) and continued to be so inconsistent right

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up to the 27th April 1955 and, therefore, under article 13(1) became void "to the extent of such inconsistency". Nevertheless, that inconsistency was removed on and from the 27th April 1955 by the Constitution (Fourth Amendment) Act, 1955. The present writ petitions were filed on the 27th May 1955, exactly a month after the Constitution (Fourth Amendment) Act, 1955 came into force, and, on a parity of reasoning hereinbefore mentioned, the petitioners cannot be permitted to challenge the constitutionality of the impugned Act on and from the 27th April 1955 and this objection also cannot prevail.

Learned counsel for the petitioners sought to raise the question as to the invalidity of the impugned Act even before the advent of the Constitution. Prior to the Constitution, when there were no fundamental rights, section 299 of the Government of India Act, 1935 which corresponds to article 31 had been construed by the Federal Court in *Rao Bahadur Kunwar Lal Singh* v. *The Central Provinces and Berar* (1) and in other cases referred to in *Rajah of Bobbili* v. *The State of Madras*(2) and it was held by the Federal Court that the word "acquisition" occurring in section 299 had the limited meaning of actual transference of ownership and not the wide meaning of deprivation of any kind that has been given by this Court in *Subodh Gopal Bose's case* (3) to that word acquisition appearing in article 31(2) in the light of the other provisions of the Constitution. It is, therefore, not clear at all that the impugned Act was in conflict with section 299 of the Government of India Act, 1935. Besides, this objection was not taken or even hinted at in the petitions and cannot be permitted to be raised at this stage.

The result, therefore, is that these petitions must be dismissed. In the circumstances of this case we make no order as to costs.

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(1) [1944] F. C. R. 284.
(2) [1952] 1 M. L. J. 174, 193-194.
(3) [1954] S. C. R. 587.

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