Rama Shanker Tewari vs State on 10 February, 1954

Equivalent citations: AIR1954ALL121, AIR 1954 ALLAHABAD 562

JUDGMENT

Desai, J.

1. This is an application in revision against conviction under Section 18 of the Indian Press (Emergency Powers) Act (Act No, 23 of 1931). There is no dispute about the facts; the conviction is challenged on the ground that the Act was unconstitutional and became void on the passing of the Constitution. On a search of the applicant's house on 11-6-1950 in execution of a search warrant issued by the District Magistrate of Azamgarh cyclostyled leaflets were recovered. Some leaflets contained the constitution of the United Provinces Khet Majdoor Union, some were entitled "Conspiracy of Great Britain and America to start third world War" and the others contained communist propaganda. The name of the printer was not printed on any of them.

2. Section 15 of the Act lays down that a District Magistrate may by order in writing and subject to such conditions as he may think fit to impose, authorise any person by name to publish a news sheet, or to publish hews sheets from time to time.

A news sheet is defined in Section 2 of the Act to mean any document other than a newspaper containing published news or comments on public news or any matter described in Sub-section (1) of Section 4.

It was admitted before us by Shri S. N. Dwivedi that the documents recovered from the possession of the applicant contained public news or comments on public news and are news sheets as defined in the Act. It is therefore not necessary for us to deal with Section 4(1). "Any news sheet other than a news sheet published by a person authorised under Section 15 to publish it" is an unauthorised news sheet. Section 18 makes anyone who sells, distributes or keeps for sale or distribution any unauthorised news sheets punishable with imprisonment extending to six months or with fine or with both.

It is conceded that nobody was authorised by the District Magistrate to publish the news sheets that were recovered from the applicant's possession. So they were unauthorised news sheets. It is also conceded that the applicant made or kept for distribution or publication the unauthorised news sheets; he was, therefore, liable to be convicted under Section 18 if the Act was validly in force on 11-6-1950. It was contended, however, that it became void under Article 13 of the Constitution as soon, as the Constitution came in force.

3. All laws in force immediately before the commencement of the Constitution, in so far as they are inconsistent with Articles 14 to 35, to the extent of such inconsistency, are void under Article 13.

Under Article 19(1)(a) "all citizens shall have the right to freedom of speech and expression". As the Article stood on 11-6-50 this freedom was subject to the right of the State to make any law relating to libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to Overthrow, the State. The Article was amended on 18-6-1951, that is, after the commission of the alleged offence by the applicant. The effect of the amendment is that the freedom of speech and expression is subject to the right of the State to make any law which imposes "reasonable restrictions" on the exercise of the right "in the interests of the security of the State or public order" etc. It is further laid down in the amendment that no law in force immediately before the commencement of the Constitution which is consistent with Article 19 as amended Shall be deemed to be void or ever to have become void on the ground only that being a law which takes away or abridges the freedom of speech and expression, its operation was not saved by Clause (2) of the Article as originally enacted. In other words, the amendment of Article 19 has been given retrospective effect. Article 14 enjoins upon the state not to deny any person "the equal protection of the laws". Article 20 is to the effect that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence The Indian Press (Emergency Powers) Act was re-pealed by the Press (Objectionable Matters) Act (No. 56 of 1951) and is no longer in force. But the repeal does not affect the conviction of the applicant if it was valid.

4. It was contended on behalf of the applicant that Sections 15 and 18 of the Act were unconstitutional and became void under Article 13, because they abridged the freedom of speech and expression, were not a law relating to any matter which undermines the security of, or tends to overthrow, the State and denied the equal protection of the laws. With reference to the amendment of Article 19 after the commission of the offence (and even the conviction by the Magistrate), it was contended that the restrictions imposed by Sections 15 and 18 upon the freedom of speech and expression were not reasonable and were not imposed in the interest of the security of the State and were therefore not covered by the saving clause. It was further contended that if the sections became void on 26-l-1950 on the passing of the Constitution, and consequently the act done by the applicant on 11-6-1950 was not an offence, the retrospective effect given to the amendment of Article 19 did not have the effect of converting the act into an offence in contravention of the provisions of Article 20. The contention was that if the act when it was done was not an offence the applicant could not possibly be convicted for doing the act.

5. It was not disputed that the freedom of speech and expression includes liberty of the press. Amendment 14 of the American Constitution is that no State shall deprive any person of life, liberty or property without due process of law or deny to any person the equal protection of the laws. It has been held in - 'Near v. Minnesota Ex. Rel. Olson' (1930) 283 US 697 (A); - 'Lovell v. Griffin' (1940) 303 US 444 (B) and - 'Burstyn v. Wilson' (1951) 343 US 495 : 96 Law Ed 1098 (C), that liberty of the press and of speech is within the liberty safeguarded by the 14th Amendment. In - 'Schneider v. Irvington' (1939) 84 Law Ed 155 (D), it was stated:

> This court has characterised the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of

> the rights lies at the foundation of free government by free men. It stresses... the importance of preventing the restriction of enjoyment of these liberties" (pages 164-165 of the Lawyers' Edition).
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> "Freedom of the press and freedom of speech are the same, being distinguished only in the form of utterance. The 'liberty of the press' is not confined to newspapers and periodicals, but necessarily embraces pamphlets, leaflets and every sort of publication affording a vehicle of Information and opinion.
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> (16 Corpus Juris Secundum, Constitutional law, paragraph 213)

6. The First Amendment of the American Constitution prohibits the Congress from making any law "abridging the freedom of speech or of the press". - It is supposed to have the same scope as the due process clause of the 14th Amendment, the difference being that it imposes a restriction on the powers of the Congress, while the 14th Amendment imposes a restriction on the powers of the States. The amendments are held not to create any rights or privileges of personal liberty but only to protect those which people already have, by giving them an immunity against governments. It is stated by Willis on Constitutional Law, p. 490 that since freedom from censorship had become a privilege of Englishmen long before our Revolutionary War, it certainly must be held that the First Amendment intended to guarantee at least freedom from censorship.

The guarantee from freedom from censorship, however, does not mean as much as the uninformed might at first think. The limitation is only against legal censorship, that is, censorship which depends upon the power of law. Further the guarantee does not give complete protection against even legal censorship. Willis writes on page 491(17) that there are so many exceptions to the rule of immunity against censorship that not a great deal of the rule is now left. Among the exceptions are the many forms of censorship exercised by courts of equity jurisdiction, and prohibition by legislation of intimidation by speech and writing, publication of indecent matter, Government employees' engaging in political activities & publications dangerous to the conduct of military operations in war time. These exceptions constitute important qualifications of the rule against censorship but outside of them it may be said that the people of United States are guaranteed freedom of speech and of the press immune from censorship.

It is settled that freedom of speech and of the press means something more than immunity from previous restraints. According to Corpus Juris Secundum Vol. 16, "Constitutional Law" paragraph 213, the chief purpose of the constitutional guarantees is to prevent previous restraints or censorship on speech or press, that the guarantees are not intended to constitute an absolute licence to speak and to publish anything that one pleases that they rank no higher than other rights protected by the constitution, that the right is to be enjoyed subject to implied limitations, that is, limitations created by statutes enacted in exercise of the Government's power of taxation or in the legitimate exercise of the police powers, or by the inherent powers of the court to punish for contempt or by the law relating to libel and slander. In - 'Near v. Minnesota' (A) C. J. Hughes stated at p. 713:

It is the chief purpose of the guarantee to prevent previous restraints upon publication.

and pointed out that while in England the executive has no power to impose restraint upon publication though the legislature can impose it, in the United States even the legislature cannot impose it, being prohibited by the Amendments. He referred to the statement in 4 Black's Commentaries pp. 151 and 152 to the effect that the liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and , not in freedom from censor for criminal matter when published.

In that case a State had passed an Act providing for an injunction against publishing or selling newspapers containing obscene malicious or defamatory matter. The Supreme Court held the Act to be unconstitutional as infringing the liberty of the press. In - 'Lovell v. Griffin' (B) an ordinance making it an offence for any one to distribute circulars etc., without permission from the City Manager was held to be unconstitutional. It was pointed out that the ordinance in its broad sweep prohibited distribution of magazines, periodicals etc., was not limited to literature that was obscene or offensive to public morals and struck "at the very foundation of the freedom of the press by subjecting it to licence and censorship".

In the case - 'Burstyn v. Wilson' (C) it was held that a State cannot bah a film on the basis of a censor's certificate that it is sacrilegious. The statute under consideration required denial of licence if a film was sacrilegious. Clark, J. following 'Near's case' (A) observed at page 1106:

The statute involved here does not seek to punish, as a past offence, speech or writing falling within the permissible scope, of subsequent punishment- Such a previous restraint is a form of infringement upon freedom of expression to be especially condemned.

In - 'Schneider's case' (D), it was held that:

To require a censorship through licence which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of constitutional guarantees.

In - 'Samuel saia v. People of the State of New York' (1950) 334 US 553 (E), a municipal ordinance prohibiting the use of amplifying devices, except with the permission of the Commissioner of Police, was held to establish a previous restraint on the right to free speech. In 'Kunz v. New York' (1951) 348 US 290 : 95 Law Ed. 280 (F), C. J. Vinson, following - 'Samuel saia v. People of the State of New York' (E), observed at page 284 of the Lawyer's Edition:

..an ordinance which gives an administrative official discretionary power to control in advance the right of citizens to speak on religious matters on the streets of New York. As such the ordinance is clearly invalid as a prior restraint on the exercise of the First Amendment rights.

As against these authorities, there is - 'Mutual Film Corporation v. Industrial Commission of Ohio' (1914) 236 U.S. 230 : 59 Law Ed. 552 (G), which upheld a State Act providing that the censors were to pass only such films as are of a moral, educational or entertaining & harmless character and making it an offence for any one to exhibit films without the censor's approval, it was held that the creation of a censor to examine and censor a film and to approve only such films as are of a moral ...character does not infringe the freedom of speech and publication. But McKenna, said on page 559:

Freedom of opinion and its expression, whether by speech, writing, or printing. They are too certain to need discussion... .Nor can there be any doubt of their breadth, nor that their Underlying safeguard is...'that opinion is free, and that conduct alone is amenable to law'.

He based his decision on his view that guarantees of free opinion and speech cannot be extended to multitudinous shows which are advertised on bill boards and motion pictures cannot be brought "into practical and legal similitude to a free press and liberty of opinion" (p. 559), and that "the exhibition of moving pictures is a business, pure & simple". So even that case is no authority for the view that prior restraint or censorship is not an infringement of the freedom of speech and the press. The view that expression by means of motion pictures is not included within the free speech & free press guarantee of the Amendments was expressly overruled in the case of 'Burstyn' (C).

7. Sections 15 and 18 of the Act under consideration provide for the obtaining of a permit by every person who wants to publish any news sheet and for punishment for making, selling, distributing and keeping for sale, distribution etc., any unauthorised news sheet. This is prior restraint or censorship on the publication of news sheets and amounts to an infringement of the freedom of speech and expression guaranteed under Article 19(1)(a). The provisions would, therefore, be valid after 26-1-1950, only if they are covered by the saving clause in Article 19(2). I am considering for the present Article 19(2) as it was originally enacted.

The only exception to the freedom of speech and expression is a law made by a State relating to certain specified matters. The only matter that is relevant to the enquiry before us is matter "which undermines the security of, or tends to overthrow, the State". If the impugned provisions of Section 15 can be said to be a law relating to such a matter, they would be saved. Originally the Act was enacted to provide against the publication of matter inciting to, or encouraging, murder or violence.

The preamble of the Act was amended by the Criminal Law Amendment Act (No. 23 of 1932) and now the object of the Act is stated to be "to provide for the better control of the press". Thus the express object of the Act has nothing to do with the security of the State. Of course, security of the State would be one of the objects to be achieved by the Act, but it would be only one of the objects and there would be several other objects to be achieved by the Act. The law that is saved by Article 19(2) is one that relates exclusively, or at least principally, to any of the matters specified therein. The very object behind specifying the matters is that the law must deal exclusively or principally with, those matters. Had the framers of the Constitution intended to save any general law which did not specifically deal with any of the matters, they would not have specified the matters. The impugned Act cannot possibly be said to relate to any matter which undermines the security of, or tends to overthrow, the State. Nor is keeping a press or publishing newspapers and periodicals such a matter. Even if it be said that the object behind the impugned provisions was to control matters which may undermine the security of, or tend to overthrow, the State, they cannot be said to relate to such matters. They do not relate any more to matters which undermine the security of, or tend to overthrow, the State than to matters which offend against decency or morality or to libel, slander and contempt of court, or as a matter of fact to any other matter which can be spoken or expressed.

The Act provides for demanding security from persons keeping printing presses or publishing newspapers, for the forfeiture of the security if the printing press is used for printing, or the newspaper contains, any words inciting to any cognisable offence involving violence or seducing any soldier, sailor etc., from the armed forces or bringing into hatred or contempt the Government established by law or promoting feelings of enmity or hatred between different classes of the subjects or prejudicing the recruiting of persons to serve in the forces or encouraging or Inciting anyone to Interfere with the administration of law or with maintenance of law and order, for keeping press or publishing newspaper without making deposit, for authorising persons to publish news sheets, for punishing Selling, distributing or keeping for sale, distribution etc., unauthorised news sheets, for declaring certain publications as forfeited and for authorising customs and postal officers to detain packages containing newspapers or other documents of objectionable nature.

Section 4 is the only section which describes objectionable matters. I have given a summary of them above. It may be said that some of those matters undermine the security of, or tend to overthrow the State but the provisions relating to the objectionable matters come in for application only when the security furnished by a keeper of a printing press or a publisher of a newspaper is to be forfeited or when a Customs or Postal official has to decide whether to detain a package. So far as the demanding of the security itself is concerned, the demand has nothing to do with the objectionable matters; the security can be demanded from any keeper of a printing press or publisher. Any document which contains the objectionable matters is a news sheet, but any other document containing public news or comments on public news also is a news sheet. Therefore, the impugned provisions in Sections 15 and 18 are not confined to documents containing only the objectionable matters, but govern all news sheets regardless of their contents. Merely because they apply to all news sheets including those containing matters which undermine the security of or tend to overthrow, the State, it cannot be said that they relate to matters undermining the security etc. They can be said to relate only to news sheets containing only particular matters.

7a. The learned Advocate General contended that the word "law" in Article 19(2) means the entire enactment and not a particular provision of it that is impugned. He contended that in order to decide whether an existing law is covered by the saving clause or not, the court must take into consideration the entire enactment and not only a particular provision of it in isolation. He pointed out that an enactment may contain some sections which are only incidental, auxiliary or collateral to or support, others which form the principal feature of the enactment and contended that it could not have been intended by the framers of the Constitution that they should be considered in isolation and that their constitutionality should be Judged by deciding whether they themselves relate to any of the specified matters or not, He particularly referred to a provision common in many enactments conferring power upon an authority to make rules to carry out the purposes of the enactment; if that provision is considered in isolation, certainly it cannot be found to relate to any of the specified matters even though the principal provisions of the enactment do relate to them.

There is considerable force in the contention of the learned Advocate General, but it may not be necessary or even possible in every case to consider all the provisions of an enactment together. If an enactment relates to only one matter that! can be done, but if it relates to several distinct matters, then some provisions cannot be considered along with others. The Act under consideration deals with several distinct matters; it deals with printing presses, with publication of newspapers and with publication of news sheets. In such a case, it is not possible to take the Act as a whole and to find whether the whole of it is constitutional or not. It is possible that some parts of it are constitutional, being saved by Article 19(2), but others are not. The provisions relating to printing presses or to publication of newspapers may be found to be a law relating to matters which undermine the security etc., but it does not follow that the provisions relating to news sheets also are such a law. All provisions relating to news sheets may be considered together, but there is no Justification for considering along with them the other provisions of the Act.

I may point out that the provisions relating to news sheets contained in Sections 15 to 18 form a separate part of the Act under the heading "Nefarious news sheets and newspapers". They have no concern with any of the other provisions of the Act except that containing definitions. Article 13(1) does contemplate the judging of the constitutionality of Ian enactment in parts. An existing law does not become wholly void under it because it is inconsistent with the provisions of part III of the Constitution. If there is inconsistency, the law is void only to the extent of such inconsistency; the other law remains in tact. If an enactment in its entirety were to be found to relate, or not to relate, to any of the matters specified in Article 19(2), the whole of it would be void or no part of it, and there would have arisen no question of its being void only to the extent of inconsistency.

Numerous instances can be quoted in which only particular provisions of enactments have been struck down as unconstitutional. In the Act under consideration itself the provisions of Section 4 have been held to be unconstitutional as infringing the freedom of speech and expression; See - 'Srinivasa Bhat v. State of Madras' AIR 1951 Mad 70 (H), 'In the matter of the Bharati Press' AIR 1951 Pat 12 (SB) (I) and - 'Chander Deo v. State of Bihar' AIR 1951 Pat 75 (SB) (J), Therefore, the constitutionality of the impugned provisions does not depend on the constitutionality of the other provisions. They would be constitutional only if they are a law relating to any of the matters specified in Article 19(2).

8. In - 'Romesh Thappat v. State of Madras' AIR 1950 SC 124 (K), Patanjali Shastri, J. (as he then was) on p. 129 expressed the court's opinion as follows:

> Unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under Clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that Section 9(1-A) (of the Madras Maintenance of Public Order Act, 1949) which authorises imposition of restriction for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorised restrictions under Clause (2) and is therefore void and unconstitutional.

The same reasoning would apply in the present case to make Sections 15 and 18 void and unconstitutional. In - 'Basudeva v. Rex' AIR 1949 All 513 (L), Basudeva was detained under Section 3(1) of the IT, P. Prevention of Blackmarketing Act, 1948, and the question arose whether the Act was not ultra vires the state Legislature. It was contended on "behalf of Basudeva that the Act was not covered by items 1 and 29 of list II of the Government of India Act because it was not with respect to preventive detention for maintenance of public order or to production, supply and distribution of goods. A Full Bench of this Court held that the Act was ultra vires because the words "for reasons connected with" must mean a real and genuine connection and not a fanciful or highly problematical connection. The decision was upheld by the Federal Court in - 'Rex v. Basudeva' AIR 1950 PC 67 (M) Patanjali Shastri, J. observed at page 69:

> The connection contemplated must...be real and proximate, not far fetched or problematical.

The words that came in for interpretation there were, "for reasons connected with", whereas the words under interpretation in the instant case are "law relating to". The principle laid down by the Federal Court, however, is applicable in the instant case; the relation must be real and proximate and not far fetched or problematical.

The relation must be reasonable as pointed out by the Supreme Court in - 'Chintaman Rao v. Madhya Pradesh' AIR 1951 SC 118 (N). The State of Madhya Pradesh enacted Regulation of Manufacture of Biris Act, 64 of 1948, empowering District Magistrates to prohibit manufacture of biris during agricultural season in particular villages. The Act abridged the right conferred by Article 19(1)(g) to practise any profession or to carry on any occupation, trade or business. Article 19(6) excepted from the operation of Article 19(1)(g) any law imposing "in the interests of the general public" reasonable restrictions on the exercise of the right. The Supreme Court held that the restrictions imposed by the Act could not be said to be "in the interests of general public" because there was no reasonable relation between them and the general public. It may be that certain prohibition of manufacture of biris was in the interests of the general public;

still the Act as a whole was held to be not in the interests of general public.

Requiring every person to obtain a permit for making or publishing or selling news sheets may to certain cases prevent the undermining of the security etc., but on that ground requiring every person to obtain a permit cannot be said to relate to a matter which undermines the security etc. The mere fact that objectionable as well as harmless news sheets were controlled by Sections 15 and 18 does not mean that they were enacted with the object of preventing the undermining of the security of the State etc. As a matter of fact, the court is not concerned with the object behind an enactment; it is simply concerned with what matters it relates to. The object of an enactment is different from the matters to which it relates. So even if the object behind the impugned Act was to safeguard against the undermining of the security of the state etc., It might relate to matters which cannot be described as matters which undermine the security etc. Whatever might have been the object behind the Act, the matters to which it relates were printing and publishing of newspapers and news sheets and keeping printing presses.

It may be that better control of the press was essential for controlling acts which undermine the security of the State but that did not mean that the Act related to such matters. The fact that the legislature could not control objectionable news sheets unless it also controlled harmless ones did not change the nature of the matters to which it related. It might have been absurd to say that Section 15 should have required a permit for the publishing of news sheets which had a tendency to undermine the security etc., of the State (because no permit could possibly be granted for the publication of such news sheets) but the fact remains that the Act dealt with the publication of news sheets regardless of their contents. A law relating to publication of news sheets is not covered by the saving clause. I am, therefore, of the opinion that the impugned provisions of the Act were not a law relating to any matter which undermines the security of, or tends to overthrow, the State.

9. The effect of the above finding Is that the impugned sections become void on 26-1-1950. On 11-6-1950 there was no law, which required a permit for publication of news sheets or which punished' keeping for sale or distribution or publication any news sheet published without a permit. It Is no* known when the news sheets recovered from the applicant's possession were published. If there were published before 26-1-1950, they required a permit for their publication. If no permit was obtained, they became unauthorised news sheets prior to 26-1-1950. Though Section 15 became void on 26-1-1950, the news sheets remained unauthorised news sheets. The passing of the Constitution made only Section 15 void; it did not have the effect of undoing anything that had been done under it. But as 8. 18 also became void along with Section 15. the possession of the unauthorised news sheets was not an offence after 26-1-1950 and the applicant could not be punished. If the news sheets were published after 26-1-1950, then they did not even become unauthorised news sheets and even if Section 18 remained in force, the applicant committed no offence. The result was that the act committed by the applicant on 11-6-1950 was not an offence.

10. Before I come to the question of the effect of the amendment of Article 19, I would deal with the question whether that amendment has the retrospective effect which the learned Advocate-General wants to be given to it. I have found that on 11-6-1950 the applicant did not violate any Jaw in force by keeping the news sheets in his possession. Under Article 20, he cannot be convicted. The bar on his conviction is absolute. There is no way of getting over it. If the impugned provisions could be said to impose "reasonable restrictions" on the exercise of the right conferred by Article 19(1)(a) An the interests of the security of the State, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, defamation or incitement to an offence, the amendment of the Constitution expressly laid down that they will not be deemed to be void, or even to have become void.

In other words, the amendment of the Constitution prevented the operation of Article 13 and retained the provisions as a valid law. Actually the provisions had become void and remained void up to 17-6-1951, but since 18-6-1951 they became valid with retrospective effect. The result is that though they were void between 26-1-50 and 18-6-1951, whenever the question of their validity arises after 18-6-1951, they will be deemed to have been always valid. The applicant was convicted on 23-2-1951 on which date the provisions were actually , void. Therefore, apart from the question of Article 20, the Magistrate could not convict the applicant on 23-2-1951 and the conviction was Illegal.

The applicant's appeal was dismissed by the Sessions Judge on 11-6-1951; even on that date the provisions were actually void and the conviction could not be maintained by the Sessions Judge. He ought to have set aside the conviction. There is nothing in the language of the amendment of the Constitution to suggest that the conviction illegally recorded by the Magistrate and by the Sessions Judge became valid. The amendment Only kept the provisions alive, but did not convert illegal conviction into legal conviction or an innocent act into an offence. The amendment was made in the face of the provisions of Article 20; yet it did not save the operation of Article 20. Therefore, Article 20 remained in full force and must be given effect to. "Law in force" in that Article means "law actually in force and not law deemed be in force by retrospective operation". In - Shiv Bahadur Singh v. State of Vindhya Pradesh' AIR 1953 SC 394 (O), Jagannadha Das, J. stated at page 398:

> Law in force' referred to therein must be taken to relate not to a law deemed to be in force and thus brought into force but the law factually in operation at the time or what may be called the then existing law. Otherwise, it is clear that the whole purpose of Article 20 would be completely defeated in its application...Every such 'ex post facto' law can be made retrospective as it must be, if it is to regulate acts committed before the actual passing of the Act, and it can well be urged that by such retrospective operation it becomes the law in force at the time of the commencement of the Act.
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> That law was laid down before the amendment of the Constitution and it may be said that the Supreme Court did not deal with retrospective operation being given to a provision of the Constitution itself. It may be urged that previously the Constitution did not recognise law "deemed" to be In force and that when under the amendment it

recognised law "deemed" to be in force, there has been a change in the circumstances in which the Supreme Court laid down the above law. Though, there is considerable force in these arguments, I do not think that language of the amendment warrants the conclusion that the law that is prevented with retrospective effect from being void by the amendment is "law in force" within the meaning of Article 20. There is nothing in the amendment to suggest that Article 20 was not to apply or that a person can be convicted for violating an Act that had actually become void but is now deemed not to have become void. It is a well known principle that no greater retrospective effect should be given to an Act than is warranted by its language, Had the amendment laid down that a person who had violated the Act after 26-1-50 can be convicted on that Act being deemed not to have become void, then and then only was it possible to convict the applicant. The impugned provisions may be deemed to have always remained in force but that would be for all purposes except that of convicting persons. It is not possible to interpret the words "law in force" in Article 20 to include the law deemed to be in force by a provision of the Constitution itself or to ignore the provisions of Article 20 and to convict a person for an act which was not an offence when it was done. The amendment of the Constitution did not create new offences. The only effect of the retrospective operation given to it was that the laws that had become void did not require to be re-enacted. Unless the amendment was given retrospective effect and thereby laws were prevented from having become void at all, it would have become necessary for the legislatures to re-enact those laws after the amendment of the Constitution.

11. There is really no conflict between the provisions of Article 20 & the amendment of the Constitution & there is no necessity of deciding which provision should prevail over the other. Both the provisions can be given effect to simultaneously; they can be harmonised by saying that Article 20 does not make an enactment invalid but simply prohibits conviction while the amendment makes an enactment valid but does not expressly lay down that a person can be convicted for violation of a law that had actually become void under Article 13 but is deemed under the amendment not to-have become void.

This matter has come before us in revision and we have to consider it from the point of view of the Magistrate who tried the case. On the date on which he convicted the applicant the impugned provisions had become void and had not been deemed not to have become void. He had, therefore, no option but to acquit him. That was also the situation before the learned Sessions Judge. Even if the Magistrate illegally convicted the applicant, he should have set aside the conviction. What we have to see is whether the order passed by him was legal or not. Had the matter come before us prior to 18-6-51, there would have been no difficulty and we would nave set aside the conviction as soon as we found that the impugned provisions had become void on 26-1-50. The accident that it came before us after 18-6-1951 does not make any difference to the order that we ought to pass. In the absence of there having come into existence a law declaring that the applicant's conviction was valid, I think we are bound to do What the courts below ought to have done, namely to acquit the applicant. Even if the Magistrate had passed the judgment after 18-6-1951, he would have been bound to acquit the applicant; When he passed it before 18-6-1951, he was all the more bound to

acquit him.

12. In view of the above finding it may not be necessary to decide whether the impugned provisions are covered by the amendment in Article 19(2), but since the matter was argued at length before us, I think it proper to deal with it. It may be said that the restrictions imposed by the impugned provisions are in the interests of the security of the State etc. But the important question is whether they are reasonable. In my opinion, they are not, in the first place Section 15 confers absolute discretion to the District Magistrate to grant [or refuse permit to anyone. There is absolutely nothing to guide him in his discretion. Not only are any standards laid down but also one cannot imagine any. It is not possible for us to say that when a person applies to a District Magistrate for a permit to publish a newspaper, he should grant it if certain circumstances exist and should refuse it if certain other circumstances exist. The provisions of Section 15 remind one of the following observation of Clark, J, in Burstyn's case (C):

> The censor is set adrift upon a boundless sea and a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxes (P 1107).
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> The District Magistrate is in exactly the same position as the censor in 'Burstyn's' case (C). Even when a Statute authorises refusal of licence if the authority is of the opinion that the film is of such a character as to be prejudicial to the best interests of the citizens, it can be struck down, as was done in - 'Gelling v. State of Texas' (1951) 343 US 060 (P). In - 'Thakur Baghubar Singh v. Court of Wards Ajmer' AIR 1953 SO 373 (Q), the Act provided that a landlord habitually infringing tenant's rights would be deemed to be disqualified within the meaning of a regulation and this was held to be not a reasonable restriction, one of the reasons given being that the ground was indefinite. Secondly the granting or refusal of permit is left to the subjective determination of the District Magistrate. That was another reason given in the above case.
>
> Then the District Magistrate was not required to give any reasons for his order and no judicial review was provided against It. Howsoever arbitrarily or unreasonably he acted, a person aggrieved by his act had absolutely no remedy. Though Section 15 referred only to permitting persons to publish news sheets, it certainly contemplated permitting some and not permitting others. It certainly did not contemplate that every person should be permitted (though different condition might be imposed upon different applicants). It was open to the District Magistrate to refuse permit to any applicant. Therefore, there was scope for a provision calling upon the District Magistrate to give reasons for refusing permit to any applicant. Absence of review, judicial or otherwise, of executive discretion is undoubtedly not an exceptional : feature of a statute and a restriction may not be said to be unreasonable solely because no provision is made for review. But the absence of a provision for review is certainly a factor to be taken into consideration in deciding whether a restriction is reasonable or not.

I do not agree with the learned Advocate-General that the District Magistrate was bound to grant permit to everybody, that whatever discretion he had was only in selecting conditions to be imposed upon the applicants and that the discretion left with District Magistrate was so small that the legislature did not think fit to provide for a review of his order. The Act was permanent and not enacted to meet an emergency. It is immaterial if its title included the words "emergency powers", or if it was repealed in 1951. When it was enacted it was to remain in force for an indefinite period. Section 15 gave vast powers to the District Magistrate to impose any conditions he liked. The restriction imposed under it was of a preventive nature and not punitive. Making it an offence for anyone to say or write something would also be a restriction on his freedom of speech and expression, but there is a difference between such a restriction which is of a punitive nature and a restriction as in the instant case, which is of a preventive nature. If a person in exercise of his right of speech and expression says or writes something which harms others, let him be punished but there is no justification for requiring everybody to obtain a permit in advance for saying or writing anything. The restriction imposed in the instant case is too wide; it is not limited to objectionable news sheets only.

As I said above, it might have been meaningless for the legislature to lay down that no person can publish an objectionable news sheet without a permit but that would not make it reasonable to require every person wanting to publish a news sheet to obtain a permit. In the case of - 'Near (A)', the Statute was struck down because it did not aim at redress of individual wrong; but was directed also against publication of wholesome matter and its object was not punishment but putting the publisher under an effective censorship. In - '95 Law Ed 1196', there is an observation to the effect that "as regards freedom from censorship the scope of the constitutional protection is greater than as regards freedom from punishment". See also the observation of Clark, J. in - 'Burstyn's case (C)' quoted earlier.

In - 'Lovell's case (B)' it was pointed out that the impugned Act was not limited to literature that was obscene or offensive to public morals. In ' Chintaman Rao's case (N)', the Act was held to be drastic in scope and it was observed that if the restrictions are too wide and include reasonable and unreasonable restrictions or if there is the possibility of its being applied for non-sanctioned purposes, it is void. The Supreme Court on 11-1-54 declared the provision of Clause 4(3) at the U. P. Coal control Order void, as composing an unreasonable restriction upon the freedom of trade on similar grounds. The Act held to be unconstitutional in - 'Sala's case (E)' did not lay down any standards to guide the discretion of the chief of the police and was not narrowed down to regulate hours or places of use of amplifying devices or the decibels to which they must be adjusted.

Section 15(2)(b) of Criminal Law Amendment Act (No. 14 of 1908) was declared by the Supreme Court to be unconstitutional because there was no provision for testing, in factual legal respects the grounds of imposition of the restriction and it was a

> permanent Act; see the - 'State of Madras v. V. G. Rao' AIR 1952 SC 196 (R). One or two of the reasons given above may not be conclusive but when all are taken into consideration there should be no hesitation in, saying that the restrictions imposed by the impugned provisions were unreasonable. Therefore, the amendment in Article 19(2) did not help and did not save the Act from becoming void under Article 13.

13. The provisions also contravened Article 14. They divided the public into two classes, one of persons who could publish news sheets without being liable to be punished and the other or others who could not publish news sheets without such liability. Section 15 itself brought into existence these two classes by directing District Magistrates to permit some persons to publish news sheets. There was nothing to guide the District Magisrates in putting persons in one class or the other. He could put any person in either class according to his caprice. The consequence was that some persons became liable to be punished for doing an act for which others were not liable. There was thus a denial of the equal protection of laws brought into existence by Section 15 itself.

It was conceded by the learned Advocate-General that a District Magistrate was not obliged to permit every one to publish a news sheet, but contended that mere refusal or mere contingency of refusal to permit a person did not amount to an inequality. He argued that no discretion vested in the District Magistrate to discriminate between one person and another or between one news Sheet and another news sheet. The language of Section 15 does not support this contention. It allowed a District Magistrate to discriminate between two persons similarly circumstanced or between two news sheets having the same contents and to permit one person to publish news sheets and not the other or to permit the publication of one pews sheet and not the other. There was absolutely nothing in Section 15 to prevent his doing so.

It cannot be said that the discrimination resulted from an act of the District Magistrate; if discrimination resulted, it resulted not because of any fault on the part of the District Magistrate but because the section itself permitted it. Had standards been laid down for his guidance and had he been required to grant a permit in certain circumstances or to refuse it in certain other circumstances, the legislature would have done all within its power to prevent discrimination and if still discrimination resulted, it would have been attributed not to the legislation but to an erroneous act of the District Magistrate. In - 'Yick Wo v. Hopkins' (1885) 30 Law Ed 220 (S), Matthews, J. observed with reference to ordinances vesting to a board of supervisors a discretion of granting or withdrawing their assent to the use of wooden buildings:

> They seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places but as to persons. So that, if an applicant for such consent, being in every way a competent and qualifled person, and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of mandamus to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold

> their- assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint....
>
> XXX X It does not prescribe a rule and conditions for the regulation of the use of property for laundry purposes, to which all similarly situated may conform. It allows without restriction the use for such purposes of buildings of brick or stone; but, as to wooden buildings, constituting nearly all those in previous use, it divides the owners or occupiers into two classes, not having respect to their personal character and. qualifications for the business, nor the situation and nature and adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from whom that consent is withheld, at their mere will and pleasure." (page 225 of the Lawyers' Edition).

14. In - 'the State of West Bengal v. Anwar Ali' AIR 1952 SC 75 (T), it was stated that it is not necessary that the legislature should have an intention to deny the equal protection of the law, that if this denial results from or arises on the express terms of the statute itself, it is void and that if a selection is left to absolute and unfettered discretion of the executive government with nothing to guide or control its action, it is arbitrary selection.

'Snowden v. Hughes' (1943) 88 Law Ed 497 (U) and - 'Queenside Hills Realty Co. v. Saxl' (1945) 328 US 80 (V) relied upon by the learned Advocate-General are distinguishable. In the former case, it was observed that the unlawful administration by State officers of a State statute, fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection, unless there is shown to be present in it an element of intention or purposeful discrimination.

Here the provision itself was not fair on its face and if discrimination resulted it was not because of unlawful administration by the District Magistrate. All that was decided in the latter case is that lack of equal protection is found in the actual existence of an invidious discrimination, not in the mere possibility that there will be like or similar cases which will be treated more leniently.

The discrimination made by the impugned provisions actually existed when they were enacted. The amendment of the Constitution has no effect on a statute if it infringed the equal protection clause.

15. I hold that Sections 15 and 18 of the Act became void on 26-1-1950 as infringing provisions of Articles 19(1)(a) and 14 and not being saved by the provisions in Article 19(2), either before or after the amendment, that the applicant committed no offence by having in his possession the news sheets on 11-6-1950 and that, even if the impugned provisions were valid by virtue of the amendment to Article 19, the applicant could not be convicted for doing the act before the Article was amended. He ought therefore to be acquitted.

Beg, J.

16. I agree.

BY THE COURT:

17. The application is allowed, the applicant's conviction and sentence are set aside, and he is acquitted.

(Certified under Article 132(1) that the case involved a substantial question of law as to the interpretation of the constitution.)