Sagir Ahmad And Ors. vs The Govt. Of The State Of Uttar Pradesh ... on 17 November, 1953

Equivalent citations: AIR1954ALL257, AIR 1954 ALLAHABAD 257

JUDGMENT

Mukerji, J.

1. These are 106 connected petitions under Article 226(1) of the Constitution of India. All these petitions raise more or less the same questions for decision -- at any rate the main questions which fall for determination in these cases are the same. These are all petitions by persons who have been operating motor vehicles for gain on the public highways of the State. These petitioners had the necessary "permit" to operate their vehicles under the Motor Vehicles Act of 1939. The Uttar Pradesh Government has, by virtue of powers conferred upon it by the Uttar Pradesh State Road Transport Act, 1950 (U. P. Act No. II of 1951), hereinafter referred to as the impugned Act, in effect stopped some of the petitioners from plying their vehicles on the public highways and instead commenced plying vehicles of its own.

2. All the petitions have more or less Bought common reliefs. The main relief sought is that a writ in the nature of mandamus be issued to opposite parties Nos. 1 and 2, namely, the Government of the State of Uttar Pradesh and the Minister of Transport, Uttar Pradesh, to withdraw the declaration made under Section 3 of the impugned Act and to withdraw certain notifications whereby they have stopped the vehicles of the petitioners and have substituted therefor their own vehicles. There is a specific prayer for a writ of mandamus as against the opposite parties directing them not to ply and operate the State Road Transport Services on any of the routes on which the petitioners ply their vehicles.

3. The main controversy in the case has centred round the State's power to take over motor transport services of the State so as to run these services itself. This controversy has to be viewed in the light of some history. It is common knowledge that in recent years transport of passengers and goods by motor vehicles has grown in this country* greatly. The nature of the country and its needs clearly appear suited to such a growth and consequently these services attracted the attention of private operators as also of the State which has always to bear in mind and keep an eye on the services that fall in the category of public utility services.

4. In 1914 the Indian Legislature passed a Motor Vehicles Act (Act VII of 1914), whereby it imposed certain conditions on individuals who possessed motor vehicles and who wished to use those vehicles on the public highways. In 1939 the Act of 1914 was largely altered. In the statement of objects and reasons of this Act it was stated that the Act of 1914, which had been made to suit the conditions of motor vehicle traffic at an early stage of its development, was no longer adequate to

deal with the conditions which had come into existence on account of the rapid growth of motor transport in the country.

The framers of the 1939 Act visualized that in the interest of safety and public convenience as also for the development of a coordinated system of transport a much closer control was required. It was further visualized that it was necessary to have "power" by which it was possible to effectively regulate motor transport.

Before the Act of 1939 came on to the statute book the Government of India appointed a committee of enquiry in 1933 to. investigate and report on the question of the desirability of co-ordinating road and rail traffic in the country. The committee made its report and its report indicated that it was in the vital interests of the community to have a scheme of co-ordination of road and rail traffic because of the unfair competition that subsisted between, the transport services and because such competition was detrimental to the national interest.

5. Sometime in the year 1948 or so the State of Uttar Pradesh conceived the plan of operating State buses on some of the national highways of the State. The State first came into this service as a competitor with private operators, but later it attempted to acquire a monopoly of some of the route's by taking resort to certain provisions of the Motor Vehicles Act of 1939. There was, therefore, a controversy raised by the private operators whose interests were affected and these operators challenged the power of the State to effect a monopoly in its own favour by resorting to certain powers which had apparently been conferred on the executive authority of the State under the Motor Vehicles Act.

Under the Motor Vehicles Act there was power vested in an authority called the transport authority to grant and regulate permits in respect of public vehicles and the State through this agency regulated private transport in such a manner as to eliminate private operators from some of the routes and thus laying those routes free for operation by State buss's only. After the Constitution came into force, and with it the guarantee to the individual under Article 19(g) of freedom "to practice any profession, or to carry on any occupation, trade or business", the bus owners whose interests were affected moved petitions in this Court under Article 226 of the Constitution for seeking redress against what they thought ' was an unlawful interference by the State of the individual's freedom of trade, One of the questions which was canvassed in these petitions, which were heard by a Full Bench of five Judges and the decision of which case is to be found in -- 'Moti Lal v. Govt. of the State of Uttar Pradesh', AIR 1951 All 257 (A), was, whether or not it was possible for the State to have, in effect, a monopoly of motor transport under the provisions of the Motor Vehicles Act of 1939? The view expressed in that case was that it was not possible under the provisions of the Motor Vehicles and 19 of the Constitution of India, to create a monopoly in favour of the State.

The State Government had at that time stopped issuing "permits" to private operators and had, by virtue of the provisions of Section 42(3) (a) of the Motor Vehicles Act, put on the road transport vehicles of its own without securing permits for them. The Full Bench did not upheld the power of the State in the manner it had been exercised and expressed the view that it could not discriminate

for the purpose of its own benefit and in its own favour and, therefore, the private operators were able to retain their interests in respect of the routes and the permits to which they were entitled under the Motor Vehicles Act.

6. It appears that the State Government was anxious to secure a monopoly in respect of motor vehicle transport and with this object it sought legislative authority from the Uttar Pradesh Legislature. The Uttar Pradesh State Road Transport Act, 1950, (the impugned Act), appears to embody the culmination of that desire of the State Government. From the objects and reasons of the impugned enactment it is clear that the said enactment was brought into being because the Uttar Pradesh Government wished to run. motor transport vehicles exclusively and that it could not do so under the Motor Vehicles Act of 1939 in view of the decision of the Full Bench already referred to. It was stated that it was essential for "public good" that the State transport should continue and the legal difficulties arising from the High Court's decision should be remedied. It was, therefore, in order to remedy the legal difficulties which arose in the way of the State in running transport services that the Uttar Pradesh State Road Act was passed.

7. The petitioners in all these petitions have challenged the validity of the Uttar Pradesh State Road Transport Act, 1950. The challenge to the Act is founded 'inter alia' on the following main grounds :

(a) That the Act is discriminatory.

(b) That the Act is in conflict with the guarantee contained in Article 19(1)(g) of the Constitution.

(c) That by the Act the State has in effect acquired, in any event, an interest of the petitioners in an undertaking without making my provision for. compensation as required by Article 31(2) of the Constitution.

(d) That the Act conflicts against the guarantee of freedom of inter-State and intra-State trade contained in Article 301 of the Constitution.

8. It is necessary at this stage to have a picture, in outline, of the impugned Act. Section 1 of the Act lays down the extent and the date on which it is to come into effect -- it may be stated that the Act came into effect from February 10, 1951. Section 2 contains definitions.

Section 3 confers power on the State Government to run transport services. This was the section which bore the brunt of the attack from the petitioners. The section is in these words:

"Where the State Government is satisfied that it is necessary in the interest of general public and for subserving the common good so to direct, it may, by notification in the official Gazette, declare that the road transport services in general, or any particular class of such service on any route or portion thereof, as may be specified, shall be run and operated by the State Government exclusively, or by the State Government in conjunction with Railway, or partly by the State Government and partly by others in

accordance with the provisions of this Act."

9. Section 4 provides for a scheme of transport services and by Sub-section (2) (g) power is conferred to cancel or modify "the existing permits granted under Chapter IV of the Motor Vehicles Act, 1939". Further, by Sub-clause (i), power is given to curtail routes covered by existing permits or to transfer permits to other route or routes. By Sub-clause (k) power has been given to do "other consequential or incidental matters as may appear necessary or expedient for the purposes of the scheme" -- this was in the nature of an omnibus, residuary power.

10. Section 5 of the Act gives opportunity to persons whose interests were affected by the scheme promulgated under Section 4 to object within thirty days from the publication of the scheme. The State Government or if the State Government so directs, a prescribed authority, was to consider the objections and either confirm, modify or alter the scheme in such terms, of course, as it thought proper.

11. Section 6 provides for alteration or modification in any scheme, A scheme published under Sub-section (3) of Section 5 could, under this Section, be cancelled, altered or modified by the State Government or by the Transport Commissioner with the sanction of the State Government at ally time. By a proviso to this section it was provided that mere increase or decrease in the number of transport services or the change of types of vehicles or seating capacity etc. were not to be deemed to be modifications or alterations in a scheme. Sub-section (2) of Section 6 provided that the procedure laid down in Sections 4 and 5 were to be followed, so far as can be made applicable, in alterations and modifications of a scheme under this section.

12. Section 7 provided for consequences which ensued the publication of a scheme under Section 5. It says that upon the publication of the scheme under Section 5 and so long as that scheme remained in force, the consequences mentioned in that section were to be in effect.

Section 7(1)(a) to (d) provides as fellows :

> (a) "The State Government may, in the case of transport vehicles to be used by the State Government or by the State Government in conjunction with Railway provide for dispensation from observance of the provisions of Chapter IV of the Motor Vehicles Act, 1939, as respects-
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> (i) the necessity of taking but or granting or countersigning permits,
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> (ii) the duration and renewal of permits, (iii) the conditions attached to permits, (iv) the cancellation and suspension of permits,
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> (v) the restrictions on the number of permits, as it may notify in that behalf in the official Gazette;

(b) No person (other than the State Government either singly or in conjunction with Railway) shall except as may be provided under Clause (c) be entitled to a permit under Chapter IV of the Motor Vehicles Act, 1939;

(c) The State Government may specify the number of transport vehicles, if any, for which the permits may be granted or countersigned in favour of persons other than the State Government or the State Government and the Railway conjointly;

(d) The State Government or any officer or authority empowered by it in this behalf may, in the manner prescribed, cancel any permit or direct that any permit or class of permits shall not be renewed or shall not be effective beyond such date as may be specified or reduce and curtail the number of vehicles or route's covered by any permit or alter the conditions attached to any permit or attach any new condition to any permit granted under Chapter IV of the Motor Vehicles Act, 1939";

13. The provisions of clause (e) are not very material, but the provisions of Clause (f), which are in these words, are material:

"(f) The State Government may for purposes of this Act issue directions, as it considers necessary, to the State Transport Authority, Regional Transport Authority or any other authority or officer and such officer or authority shall forthwith give effect to all such orders and directions."

14. Sub-Clause (2) of Section 7 is in these words :

"(2) Nothing in Sub-section (2) of Section 44 of the Motor Vehicles Act, 1939, shall apply to any officer or authority specified in the notification under Clause (e) of Sub-section (1)".

15. It will be clear from the provisions of Section 7, particularly from the provisions quoted above, that very large powers were conferred on the State Government in regard to motor transport Services. It would also appear that the provisions of the Motor Vehicles Act, 1939, particularly the provisions of Chapter IV of that Act, were made ineffective in respect of certain matters. It was argued on behalf of the petitioners that this section gives power to the State Government to discriminate.

16. By Section 10 provision was made for delegation of powers. The section is in these words :

"The State Government may, by notification in the Gazette, delegate to an officer or authority Subordinate to it, any of the powers conferred on it by this Act except those specified in Section 3 and Sub-section (2) of section 5 to be exercised subject to any restrictions and conditions as may be specified in the notification."

17. Section 11 provides for repeals. Subsection (1) of that section says:

> "Where there is any conflict or inconsistency between the provisions of this Act and the provisions of any other law, then the provisions of this Act shall prevail."

Sub-section (2) is in these words :

> "Any order made or deemed to be made under this Act Shall have' effect notwithstanding anything inconsistent therewith contained in any other enactment or any instrument having effect by virtue of such enactment."

It was contended that Sub-section (2) of Section 11 was 'ultra vires' in view of the pronouncement of the Full Bench in the case of -- 'Bhushan Lall v. State', AIR 1952 All 868 (B), inasmuch as the words and the effect of Sub-section (2) of Section 11 were the same as those of Section 6 of the Essential Supplies (Temporary Powers) Act, (Act XIV of 1946).

18. The other important provision of the impugned Act is the provision contained is Section 13 of the Act which in effect validates certain things. It is necessary to quote this section in extenso. It runs as follows :

> "13. Validation.--(1) (a) Every-
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> (1) State Road Transport Service commenced before the appointed date and operating on any route at such date, and
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> (ii) order cancelling or curtailing any permit for transport vehicle, or attaching any new condition or altering, the conditions already attached to any permit for such vehicle, and every order reducing or otherwise fixing the number of transport vehicles to be used on any route or changing the route relating to the permit, and every order refusing to renew any permit previously granted, made on or before the appointed date on account of the State Road Transport Service running and operating or commencing to run and operate on the route to which the permit related, shall be and is hereby made and declared to be valid in law, any provision in the Motor Vehicles Act, 1939, or any other law notwithstanding, and
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> (b) Every route on which the State Road Transport Service was operating on the appointed date and every such service shall for purposes of this Act, be deemed as the case may be to be a route specified in a notification under Section 3, and the service operating under a scheme duly prepared and published under and in accordance with sections 4 and 5, provided that the State Government publishes in the official Gazette within fifteen days of the commencement of this Act a scheme as to the aforesaid road transport service providing as far as may be, for all or any of the matters specified in Sub-section (2) of Section 4 and the scheme so published shall be and be deemed to be the scheme duly confirmed and published under Sub-section (3) of Section 5 and the route to which it relates shall be called a notified route and the provisions of Sections 6 and 7 shall be applicable thereto. (2) Any application for

> granting a permit for a transport vehicle made whether before or after the commencement of this Act in respect of a route, which is or is deemed to be a notified route, Shall notwithstanding anything in the Motor Vehicles Act, 1939, or any judgment, decree or order of a Court, be decided in accordance with the provisions of this Act as if the Act had been in force at all material dates."

Clause (b) of Section 13(1) contains provision of great consequence for it provides for giving a "legal status" to certain routes -- a status which routes were to enjoy under the impugned Act after a notification under Section 3 had been issued and after a scheme had been duly prepared and published under Sections 4 and 5 of the Act. By this clause the existing routes, that is to say, the routes on which the State transport services were operating on the appointed date, were to become routes in accordance with a scheme prepared under the impugned Act and in respect of these the State Government was obviated the necessity of making the necessary declaration under Section 3 and following the procedure laid down in Sections 4 and 5.

A kind of 'fait accompli' was legalized by this provision and further it was made open to the appropriate authority to make alterations and modifications in these routes as provided for by Section 6. Practically all the cases before us were covered by a notification which was issued by the State Government in pursuance of Section 13(1)(b) of the Act.

19. Section 14 of the impugned Act states:

> "Without prejudice to the provisions of Section 7, but notwithstanding anything contained in the Motor Vehicles Act, 1939, it shall be lawful for the Transport Commissioner or an officer appointed in that behalf by the Transport Commissioner to authorize a public carrier or contract carriage owned by the State Government to be used on any or all route's in Uttar Pradesh and the public service vehicle aforesaid may then be so used as if the authorization had been a permit granted under and in accordance with the provisions of the Motor Vehicles Act, 1939."

This Section in effect gives power to the Transport Commissioner or an officer appointed in that behalf by the Transport Commissioner, to authorize the running of any State vehicle on any route notwithstanding anything contained in the Motor Vehicles Act.

20. By Section 15 power was conferred on the State Government to make rules for the purpose of carrying into effect the provisions of the impugned Act. The State Government, consequent upon the power conferred upon it by Section 15, had made certain rules which were duly published in the Uttar Pradesh Gazette on February 3, 1951. By these rules certain terms were defined and among other things provision was made for publication of the scheme, for filing, receiving and hearing of objections and other incidental matters.

21. All the petitions were classified by counsel appearing for the petitioners into two groups, one, which consisted of those petitioners whose route or operational area was curtailed because of action taken under the impugned Act, and the other which consisted of those who were totally stopped

from carrying on any operation on any route. There was also another distinction which was pointed out, namely, the distinction that obtained between those operators who plied "stage carriages" and those who plied "contract carriages". A "contract carriage" has been defined in the Motor Vehicles Act in Section 2(3) as follows:

> " 'contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab not with standing that the passengers may pay separate fares;
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> Explanation.-- 'Contract carriage' does not include a motor vehicle, possession of which has been temporarily transferred in accordance with an express agreement of hire for use as a private vehicle and which is used in accordance with the terms of such agreement";
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> "Stage carriage" has been defined by Section 2(29) of the Act as follows:
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> " 'Stage carriage' means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey";

22. From the aforesaid definitions it would appear that a "stage carriage" is what is popularly known as a "motor bus carrying passengers who wish to be carried along a public highway" while a "contract carriage" is one which carries passengers under a specific contract and over a specific and agreed route and is not a carriage that runs on any particular route catering for passengers wishing to travel along that route. Most of; the petitions that come from the territorial region of Agra relate to cases where the operation of "contract carnages" has been affected by an order of the State Government.

23. The main arguments in these cases on behalf of the petitioners were addressed to us by Sri Gopal Swarup Pathak although several counsel represented the various petitioners. Those counsel who followed Sri Pathak adopted the main arguments addressed to us by Sri Pathak and they only made submissions in regard to those points which required special attention in their respective cases. On behalf of the opposite parties arguments were addressed to us in main by the learned Advocate General although the learned Standing Counsel also addressed us on certain questions.

24. The arguments of Sri Pathak covered a very large field and his arguments bore the impress of a good deal of research and originality. As an introduction to his main arguments Sri Pathak raised the question as to whether or not monopoly as an economic theory was a sound theory. Sri Pathak's contention was that State monopoly was economically unsound, and, as such, could not be conducive to public good.

It was pointed out by Sri Pathak that the experience of some countries which had resorted to State monopolies in regard to certain trades and ventures had been a sad experience and that some of those countries were going back to the old order of things. In my view it is not strictly within our province to pronounce judgment on whether or not monopoly is a sound economic theory. There is no gainsaying the fact that economic theories have undergone vital changes during the last 25 years; at any rate, new concepts and new ideas of social well-being have occupied the minds of thinkers and ideas which a century back would have been rejected at stating have now come to stay.

With the passage of time courts have started recognizing Such economic theories as are conducive to social interests. Many of the social interests which would have gone unrecognized sometime back have received recognition recently. It is reasonable to think that as new wants develop in the social order States and the courts will have to recognize new social interests. The impugned legislation has been brought into being, as has already been noticed earlier, to subserve the common good of the people of the State of uttar Pradesh. With the growing idea of having welfare States, controls by the States of activities which formerly remained uncontrolled and remained within the exclusive ambit of individual operation are becoming more and more common. The Directive Principle's of our Constitution clearly indicate that the State has to try "to promote the welfare of the people by

- securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

our Constitution has also guaranteed certain freedoms to the individual citizens of India. It has conferred what are called "fundamental rights" on the citizens and an invasion against these fundamental rights can be protected or guarded by having recourse to courts of law. Even, with all these circumstances to guide us in deciding the larger question that was argued by Sri Pathak, namely, whether State monopoly could ever be in the interests of the people, the question could not appropriately be decided in these petitions.

The narrower question was whether under the circumstances of these cases the State Legislature was competent, in the public interest, to confer the power which it did by the impugned Act on the State Government to create, in effect, a monopoly in respect of motor transport on certain routes. This question, to my mind, calls for a decision from us, inasmuch as what was attempted to be done by the impugned Act was, in effect, affecting the right of freedom guaranteed by Article 19(g) of the Constitution.

25. It was argued that the right to run a motor vehicle on the national highway was a trade or a business and a right to do that trade or business could only be affected by reasonable restrictions as were provided for by Sub-Clause (6) of that Article. It was next argued that what has been done under the impugned Act is not to place a reasonable restriction on the exercise of the right guaranteed by Article 19(1)(g), but to completely destroy the right of trading by the running of motor vehicles on public highways. It was further argued that restriction could never amount to total abolition of the trade unless, of course, it was an obnoxious or an immoral trade.

26. In the Full Bench case in AIR 1951 All 257 (A), an opinion was expressed by a majority of the Judges that the restrictions contemplated by Clause (6) of Article 19 of the Constitution could amount to a total annihilation of the right or a complete restriction thereof. It was also pointed out in that case that nationalization of any industry did not appear to be possible without direct legislation and if there was a legislation to that effect then the legislation had "probably" to be justified under Article 19(6) of the Constitution.

The right to use the public highway for purposes of trade or business was also recognized by this Full Bench though it was pointed out that the right was exercisable subject to such reasonable restrictions and regulations, which at times might even amount to prohibition, as might be necessary to be imposed in the public interest. The question which clearly arises for determination is, what is the right which the petitioners possessed and which has, according to them, been destroyed by the impugned legislation? Was it an unqualified right to run motor vehicles on the public highways unregulated and unrestricted or was it a right to run public vehicles on the national highways under a "permit" granted by the State --a permit that contained restrictions under which the vehicles could be run?

To me it appears that the right which has been affected is not any unrestricted right to use the national highways because there was, after the passing of the Motor Vehicles Act, no such right. Indeed, the Motor Vehicles Act' of 1939 had placed restrictions on the exercise of the right of every person who wished to run a motor vehicle on the public highway. The restrictions placed on the right of the individual to run motor vehicles on the public highways were not affected by the provisions of Article 19(1)(g) of the Constitution inasmuch as Clause (6) of that Article provides that nothing in Sub-Clause (g) of the said clause shall affect the operation of any 'existing law' in so far as it imposes, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the Sub-clause. That the Motor Vehicles Act was an "existing law" within the meaning of this, clause is clear from the definition of that phrase in Article 366(10) of the Constitution.

That the restrictions which the Motor Vehicles Act placed on the individual's right to trade or to do business with the aid or with the instrumentality of motor vehicles could not be, in my view, called unreasonable restrictions. The Full Bench decision referred to earlier also took the same view of the restrictions contained in the Motor Vehicles Act. That being so, what we have to see is, what is the right that remained in the petitioners after the restrictions which had been placed on that right under the Motor Vehicles Act? Was it a right which could be called a right to trade or to do business by plying motor vehicles that remained with the petitioners in a restricted form or was it something that was conceded to them under a permit granted under the Motor Vehicles Act. Was it again a right to trade or to do business or was it only a right to use a motor vehicle on the public highways apart from any element of trade or business attaching to it?

"Permit" has been defined by Section 2(20) of the Motor Vehicles Act in these words :

" 'permit' means the document issued by a Provincial or Regional Transport Authority authorizing the use of a transport vehicle as a contract carriage or stage carriage, or authorizing the owner as a private carrier or public carrier to use such

vehicle."

From the aforesaid definition it will be clear that the permit relates to the 'use' of the vehicle of a particular type and not to the carrying on of a particular trade or business. It may be that by using a particular vehicle in a particular manner a kind of trade or business was furthered or done, but that, to my mind, doe's not mean that the permit was for carrying on that business or that trade. By Section 42 of the Motor Vehicles Act it was made obligatory on all owners of transport vehicles to obtain a permit before they could use a vehicle on the public highway. The use of the vehicle was to be in accordance with the permit granted.

By Section 47 of the Motor Vehicles Act power was conferred on a Regional Transport Authority to decide whether or not to grant a permit for the running of a "state carriage". By Section 50 of the Motor Vehicles Act power was conferred on a Regional Transport Authority to grant or refuse to grant a "contract carriage" permit and by Section 55 of the Act authority was vested to decide whether or not to grant a permit for a "public carrier."

27. From what has been stated above, it would appear that what was restricted or controlled was the use of instruments or things which could further be used in connection with a trade or business; no trade or business, as such, was controlled by the Motor Vehicles Act. The question that may arise is whether, when restriction is placed on the use of instruments or things that may be used for purposes of business by certain persons or class of persons, can it be said that the business itself has been controlled?

The answer to this question is not easy, but on a certain view of the matter it may be possible to say that the controlling of instruments or things or implements of trade does not necessarily mean the control of a trade or even of that particular trade in which or to further which such instruments or implements or things are used or may be found necessary for use. Be the position what it may, even if there has been a restriction placed on an individual's right of trade even then if the restriction is a reasonable restriction and in the public interest then the restriction has to be upheld. It has to be borne in mind that in the operational field of a welfare State there are quite a large number of services which the welfare State is expected to render to the citizens of the State. No element of "trading" enters into consideration while the State renders these services. The element of trading comes into the picture only when such services are offered by individuals or a collection of individuals for purposes of their individual or collective gain. The fact that certain services essential to the community may, if left to individual enterprise, yield profits or gains to the enterprising individual, does not necessarily make such services business undertakings in their essence.

It was argued that anything that was likely to yield monetary gain to any person must be considered as potential fields for business: that may, be so, but that by itself does not enable the individual to claim the right to do anything that may yield him profits for, if such a general proposition were true, then mankind would be open to the most ingenious and calous exploitation by scheming men. It is on this principle, I think, that it is not open to anyone to carry on obnoxious or immoral trades, though such trades may yield phenomenal profits. It is necessary to realize the true import of the guarantee contained in Article 19 of the Constitution. The guarantee,, as I see it, is not that there is

an un-restricted right to do the things enumerated in that Article, but the right is to do the things enumerated subject to reasonable restrictions or such restriction's as are permissible. Where restrictions have been put, restrictions which are not beyond the scope of the restrictions mentioned in the Article, then, in my view, the guarantee operates only in regard to the restricted right and not the general right. As I have stated earlier, the right of the individual to utilize motor, vehicles for purposes of trade was restricted to such an extent under the Motor Vehicles Act as to be almost non-existent, the right was only available when a permit for the exercise of that right was available to the person from the appropriate authority under the Motor Vehicles Act. The impugned Act when. it takes away that right of the individual, if it does so, then, in my view, it is not taking away any right of the individual to carry on any occupation, trade or business.

28. On behalf of the State it was argued that Article 19(6) of the Constitution indicated, as in its amended state, that the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business or industry or service, whether to the exclusion, complete or partial, of the citizens or otherwise, was a permissible restriction on an individual's right of trading. Clause (6) of Article 19 was amended sometimes in 1951 and it came into force on June 18, 1951, while the impugned Act came into force on February 10,. 1951. It was, therefore, argued on behalf of the petitioners that this amendment to Article 19(6) could not affect the present case.

In order to be able to decide whether or not the amended clause could be made applicable in judging the validity of the impugned Act or not one has to decide first whether or not the references to matters contained in Sub-clauses (i) and (ii) of Clause (6) are in the nature of illustrations or did the amendment add substantially to the power which was originally contemplated to be conferred on legislatures in. regard to placing restrictions on individual liberties enumerated in Article 19. That there was a substantial amendment to Clause (6) of Article 19 admits, in my view, of no doubt for originally the words in Clause (6) only provided "in particular" for such matters as related to prescribing professional and technical, qualifications in respect of persons practising a profession or carrying on any occupation, trade or business, while in the amended form it provides "in particular" for permissible restrictions relating to not only professional or technical qualifications but also in regard to the individual's rights being curtailed so that the carrying on by the State or by a corporation, controlled by the State of any trade, business in the State, or service whether to the exclusion, complete or partial, of citizens or otherwise, may be possible.

The nature of the amendment is such that it cannot be said that the matter contained in clause (6) (ii) was put in by way of an illustration only which could appropriately have been an illustration to Clause (6) in its un-amended form. In this view of the matter, it appears to me that it was not possible for the State to rely on the power conferred on it by Clause (6) of Article 19 in its amended form for saying that the impugned legislation was beyond challenge because of what was contained in Clause (6) (ii) of Article 19, since this amendment came after the impugned Act had been placed on the statute book.

29. It is necessary, therefore, to see whether the impugned Act can be justified on the ground that if it affects the right of the individual to carry on an occupation, trade or business then it affects those rights only in so far as it place's "reasonable restrictions" on the exercise of those rights, It was

contended for the petitioners that the creation of a monopoly in favour of the State could never be called a reasonable restriction on the individual's right of trade. On behalf of the State it was contended, however, that reasonable restriction's may amount to total stoppage of the trade or the business. Reliance was placed on the observations of the learned Chief Justice in -- 'Moti Lal v. Govt. of the State of Uttar Pradesh (A)'. The learned Chief Justice Said as follows in, that case:

> "The first is the argument that 'reasonable restriction' cannot mean a total stoppage. I do not think this argument is sound. The words in Article 19 are riot 'regulation' but are 'reasonable restriction' and I do not 'see why, if by reason of the nature of the trade carried onj which might be against public morality or if, for any other reason, ;t is deemed necessary in the general interest, to stop totally any trade or business, it cannot be included in the word 'restriction'".

30. The learned Chief Justice relied on the decision of the Judicial Committee in the case of the -- 'Commonwealth of Australia v. Bank of New South Wales', 1949-2 All ER 755, at p. 772 (C). Mootham and Wanchoo JJ. in the same case observed as follows :

> "We are not prepared to assent to the proposition that the expression 'reasonable restrictions' can never in any circumstances exclude complete prohibition."

31. Their Lordships of the Judicial Committee pointed out at page 772 in the case of the -- 'Commonwealth of Australia v. Bank of New South Wales (C)', as follows:

".....their Lordships do not intend to lay down that in no circumstances cculd the exclusion, of competition so as to create a monopoly either in a State or Commonwealth agency, or in some other body, be justified. Every case must be judged on its own facts and in its own setting of time and circumstance, and it may be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation and that inter-State 'trade, commerce and intercourse thus prohibited and thus monopolized remained absolutely free. Nor can one further aspect of prohibition be ignored. It was urged by the appellants that prohibitory . measures must be permissible, for otherwise lunatics, infants and bankrupts could without restraint embark on inter-State trade and deceased cattle, or noxious drugs could freely be taken across State frontiers. Their Lordships mustj therefore, and what, but for this argument so strenuously urged, they would have thought it unnecessary to add, that regulation of trade may clearly take the form of denying certain activities to persons by age or circumstances unfit to perform them or excluding from passage across the iron-tier of a State creatures or things calculated to injure its citizens. Here, again a question of fact and degree is involved....."

32. On behalf of the petitioners, it was contended that the view expressed in the Full Bench case in regard to the ambit of the restrictions that could be placed, was no - longer good law in view of the decision of the Supreme Court in the case of -- 'Rashid Ahmad v. Municipal Board, Kairana', reported in AIR 1950 SC 163 (D).. Reliance was placed on the following passage appearing at page 165 of the decision :

> "The net result is that the prohibition of this bye-law, in the absence of any provision for issuing license, becomes absolute. Further, bye-law 4 contemplate the grant of a monopoly to a contractor to deal in wholesale transactions at the place fixed as a market. Acting upon that provision, the respondent Beard has granted monopoly to Habib Ahmad and has put it out of its power to grant a license to the petitioner to carry on wholesale business in vegetables either at the fixed market place or at any other place within the municipal limits of Kairana. This certainly is much more than reasonable restrictions on the petitioner as are contemplated by Clause (6) of Article 19."

33. It was argued that since in the opinion of their Lordships of the Supreme Court creation of a monopoly, which was really restricting a right to negation, was more than reasonable restriction, therefore, reasonable restriction could never, in the view expressed by their Lordships of the Supreme Court, amount to total deprivation of the right.

As I read the decision, of their Lordships of the Supreme Court, I do not think that their Lordships laid down as a rule of law or even intended to lay it down as a rule of law, that reasonable restrictions could never amount to total prohibition. Their Lordships were dealing with a particular case and under the circumstances of that particular case they were of the opinion that a total prohibition which created a monopoly in favour of an individual could not be called a reasonable restriction. As was pointed out by their Lordships of the Judicial Committee of the Privy Council in the case of the -- 'Commonwealth of Australia v. Bank of New South Wales (C)', each case has to be judged on its own facts and what may be reasonable restrictions in one case may not be so under the circumstances of another ease.

Whether a restriction is reasonable or not, has to be judged in the setting of time and circumstances. It has also to be viewed in the light of the economic and social needs of the community obtaining at any particular time. It may further have to be judged in certain cases having regard to geographical conditions. According to the statement of objects of the impugned Act suitable and efficient transport services had to be organized for 'subserving the common good of the people of the State' and that common gcod could only be achieved, in the view of the legislature, by taking resort to the methods adumbrated in the impugned Act. The legislature must be deemed to be a good judge of the things that can subserve the common good of the people and the view of the legislature should, therefore, be entitled to great weight by courts when they have to determine whether or not certain restrictions which have been placed on the rights of the individuals are in the interests of the general public.

There is no gainsaying the fact that transport services are essential to the life of a community and that it is conducive to the interests of the general public to have an efficient system of transport services. It was argued on. behalf of the petitioners that the State was in no better position to man and maintain these services than were the petitioners inasmuch as the petitioners had been doing this work for some time. A good deal of criticism was offered by learned counsel appearing for the petitioners against the transport services which were being run by the State for some time, but most of these criticisms, in my view, were more imaginary than real. It may further be stated here that

there was no sufficient material before the Court in these petitions, for it to be able to say that the monopoly which was contemplated in favour of the State in regard to motor transport, services under the impagned Act was not conducive to the common good. The running of motor transport services requires a goad deal of capital and technical knowledge. The resources of a State are always greater than the resources of individual operators and if for nothing else, on this alone it is 'prima facie' more desirable that a service vital to the needs of the community should be operated by the State rather than by individuals. The question of co-ordination "and other similar questions also play a vital role in making such services efficient and for these purposes again, if for nothing else, the State 'stands in a better position than does an individual.

I' may here quote the following passage from the decision of the Supreme Court in -- 'State of Madras v. V. G Row', A. I. R. 1952 EC 196 at page 200 (E):

> "The nature of the right alleged to have been impugned, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of v/hat is reasonable, in all the circumstances, of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable."

Consequently, a monopoly in favour of the State in respect of such services cannot be said to be an unreasonable restriction on the rights of the individuals if the legislature has thought it fit to create one.

34. I would, in view of what I have said above, hold that the impugned Act could not be challenged on the ground that it infringed Article 19(g) of the Constitution.

35. It was next contended on behalf of the petitioners that the impugned legislation was discriminatory and it infringed the provisions of Article 14 of the Constitution.

Article 14 of the Constitution is in these words:

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India",

36. It was argued that there was under the impugned Act no equality before the law or the equal protection of the laws to people who wished to carry on the business of transporting passengers by motor vehicles. It was stated that a monopoly was created in favour of the State in respect of motor

transport services. It was further contended that under Section 3 the State Government was armed with the power to discriminate between one service and another and between one group of persons and another because it was left to the State Government to say whether or not it was going to take over the transport Services in general or to take over any particular class of such service or to take over any route or a portion thereof. It was further pointed out that no principle has been enunciated in the impugned Act on which the State Government was to act while choosing between one set of persons and another.

37. Article 14 of the Constitution is in two parts. The first part reiterates, as has been said, the "basic principles of republicanism" while the second, part guarantees "equal protection" to all citizens in the enjoyment of their rights and liberties without favouritism or discrimination.

There have been a good many decisions of the Supreme Court as to the scope of Article 14 of the Constitution. Reliance was placed by the petitioners in particular, on the case of --'Charanjit Lal Chowdhuri v. The Union of India', A. I. R. 1951 S C 41 (F). In that case Fazl Ali, J. at page 44 quoted the following words of Professor Willis with approval:

> "The guaranty of the equal protection Of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate." It merely requires "that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privilleges conferred and in the liabilities imposed" ..... 'The inhibition of the amendment ..... was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation'. It does not take from the states the power to classify either in the adoption of police laws, or tax laws, or eminent domain laws, but permit to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis".

Mukherjea, J. said this at page 58:

> "The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all pf a certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid".

It may further be pointed out what else Fazl Ali, J. observed:

> "Article 14 of the Constitution lays down as important fundamental right, which should be closely and vigilantly guarded but, in construing it, we should not adopt a doctrinaire approach which might choke all beneficial legislation".

38. Fazl Ali, J. also approved the following passage from Professor Willis' book on Constitional Law :

> "There is no rule for determining when classification for the police power is reasonable. It is a matter for judicial determination, but in determining the question of reasonableness the Courts must find some economic, political or other social interest to be secured, and some relation of the classification to the objects sought to be accomplished. In doing this the Courts may consider matters of common knowledge, matters Of common report, the history of the times, and to sustain it they will assume every state of facts which can be conceived of as existing at the time of legislation. The fact that only one person or one object or one business or one locality is affected is not proof of denial of the equal protection of the laws. For such proof it must be shown that there is no reasonable basis for the classification" (Willis Constitutional Law, 1st Edition page 580).
>
> In the same case Mukherjea, J. pointed out as follows:
>
> It must be conceded that the Legislature has a wide discretion in determining the subject matter of its laws. It is an accepted doctrine of the American Courts and which seems to me to be well founded on principle, that the presumption is in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a transgression of constitutional principles."

39. He then relied on the following passage from the decision of the Supreme Court of America in -- Middleton v. Texas Power and Light Co.', (1919) 249 US 152 at page 157 (G):

> "It must be presumed that a Legislature understands and correctly appreciates the needs of its own people, that its laws arc directed to problems made manifest by experience and that its discriminations are based upon adequate grounds."

40. I consider it appropriate at this stage to draw attention to another passage in the decision of Fazl Ali J. in the case of -- 'State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (H), at page 84, where his Lordship said as follows :

> "The first criticism which is by no means an unsubstantial one, may possibly be met by relying on the decision of this Court in --'In re Delhi Laws Act, 1912, etc', AIR 1951 SC 332 (I), but the second criticism cannot be so easily met, since an Act which gives uncontrolled authority to discriminate cannot but be hit by Article 14 and it will be no answer simply to say that the legislature having more or less the unlimited power to

> delegate has merely exercised that power. Curiously enough, what I regard as the weakest point of the Act (viz., its being drafted in such general terms) is said to be its main strength and merit, but I really cannot see how the generality of language which gives unlimited authority to discriminate can save the Act."

Fazl Ali J. further pointed out as follows :

> "It should be noted that there is no reference to intention in Article 14 and the gravemen of that Article is equality of treatment. In my opinion, it will be dangerous to introduce a subjective test when the Article itself lays down a clear and objective test."

In the same case Mahajan J. observed as follows :

> "By the process of classification the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons."

Mahajan J. further observed :

> "Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily,"

41. It was further pointed out by that learned Judge as follows :

> "The mere fact of classification is not sufficient to relieve a statute from the reach of, the equality clause of Article 14. To get out of its reach it must appear that not only a classification has been made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection."

42. In the case of -- 'Kathi Raning Rawat v. The State of Saurashtra', AIR 1952 SC 123 (J), Chief Justice Patanjali Sastri pointed out that:

> "All legislative differentiation is not necessarily discriminatory. Discrimination involves an element of unfavourable bias, and it is in that sense that the expression has to be understood in the context. Equal protection claims under Article 14 are examined with the presumption that the State action is reasonable and justified. Though differing procedures might involve disparity in treatment of persons tried under them, such disparity is not in itself sufficient to outweigh this presumption and

> establish discrimination unless the degree of disparity goes beyond what the reason for its existence demands, e.g., when it amounts to a denial of a fair and impartial trial."

In that case Fazl Ali J. made the following, observation:

> "..... a distinction should be drawn between 'discrimination without reason' and 'discrimination with reason'. The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances which govern one set of persons or objects may not necessarily be the Same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances."

43. The learned Judge further pointed out that "the clear recital of a definite objective in the earlier Ordinance and in the impugned Ordinance as amended furnishes a tangible and rational basis of classification and the Ordinance and the notification did not, therefore, violate Article 14."

44. Mukherjea J. pointed out in that case that where , "the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups, of persons, the statute itself cannot be condemned as a piece of discriminatory legislation."

45. I wish now to refer to the latest case of the Supreme Court of -- 'Kedar Nath v. State of West Bengal', reported in AIR 1953 SC 404 (K). In this case it was pointed out that:

> "Equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation."

It was also pointed out in this case that it was for a court to find out whether, having regard to the underlying purposes of the Act, as disclosed by its title, preamble and provisions, the classification resorted to was or was not unreasonable.

46. I have quoted extensively from the decisions of the Supreme Court in order to glean out the important principles which have to be borne in mind in applying the provisions of Article 14 of the Constitution to the facts and circumstances of any particular case. It will be clear from the observations quoted earlier by me that wherever there is a proper classification, viz., a classification which bears a reasonable and just resemblance to the subject-matter of the legislation then it cannot be contended that the legislation was in the teeth of the guarantee contained in Article 14. In determining whether the classification bears a proper resemblance to the subject-matter of the legislation courts have got to look to the objects which were sought to be achieved by the legislation. It is permissible for a court to take into account the title, the preamble, as also the framework of the

legislation, to determine the true scope and nature of it. In determining the purpose of the legislation and further in determining whether the provisions contained in the legislation are likely to achieve the objects with which the legislation was forged courts must lean in favour of the view that the objects are likely to be achieved since the legislature was of that view as was pointed out by the Supreme Court of America in -- 'Middleton v. Texas Power and Light Co. (G)':

> "It must be presumed that the legislature understands and correctly appreciates the needs of its own people and its laws are directed to problems made manifest by experience and that its discrimination are based upon adequate grounds." The above opinion of the Supreme Court of America was, as I have already pointed out, approved by Mukherjea J. in the case of --'Charanjit Lal Chowdhuri (F)'. To me, therefore, it appears that we must accept that the impugned legislation was for the good of the people of the State. Indeed, the preamble of the impugned Act is in these words : "Whereas it is expedient in the interests of the general public and for the promotion of suitable and efficient road transport to provide for State road transport services in Uttar Pradesh."

Transport services have always been recognized as public utility services and it cannot be contended, in my view, that any effort to better such services or to make such services more efficient would not be in interests of the general public or would not be conducive to public good. I may here point out that even the Parliament of India was of the opinion that control of road transport was necessary for the common good. When I say this I have in mind the Road Transport Corporation Act (Act LXIV of 1950). By this Act the Union legislature gave power to monopolize motor road transport by constituting a Road Transport Corporation. The Union Legislature has recently also nationalized "air" transport services of the country. The railway transport system of the country had for some time been operated largely by the State on a basis which was certainly in the nature of a monopoly. From all this it appears to me that the creation of monopolies in respect of those matters which appropriately fall under the head of "public utility services" cannot be assailed on the ground of either placing unreasonable restrictions on the individual's right of trade or on the ground that such legislation is discriminatory legislation. The amendment that has been made in Clause (6) of Article 19 also is indicative of the view which our Constitution took of such monopolies.

47. It was strenuously contended by Sri Pathak that there would be an apparent conflict between the principle underlying Clause (6) (ii) of Article 19 and the principle enunciated in Article 14 of the Constitution if we were to give Clause (6). (ii) the meaning which the words of that Sub-clause bear on their face. I have not been able to see any force in this contention of Sri Pathak. I believe I would be right when I say that no court can presume or lightly accept the contention that there are apparent or any real conflicts and inconsistencies between different parts of the same Constitution. Courts have always leaned against seeing contradictions or inconsistencies even in respect of legislative measures of much lesser sanctity than the Constitution of a country. I have myself tried hard to See any inconsistency where inconsistency was visible to Sri Pathak, but I must confess that I have been unable to see any such inconsistency.

Sri Pathak, at one stage of his arguments, however, conceded that there may be certain special trades or businesses in respect of which if the principle underlying Clause (6) (ii) of Article 19 was applied there may be no violation of the principle enunciated in Article 14 of the Constitution; to my mind once this concession was made by Sri Pathak then the whole basis of his argument in regard to there being an inconsistency between those two provisions was gone.

48. All reasonable classifications which have a proper and just resemblance to the subject-matter of the legislation cannot be hit by the guarantee contained in Article 14 has to be conceded on the statement of the law already indicated by me earlier. Therefore, the only question that arises for determination in this connection is whether the classification visualised or indicated in Clause (6) (ii) of Article 19 is a reasonable classification. Having in mind the scope of the legislation which necessarily would fall within the scope of Sub- Clause (ii) of Clause (6) it appears to me that the classification indicated must be held, at least after the amendment became effective, to be a reasonable classification in relation to the field of legislation which is indicated in that sub-clause. The idea of the State coming into the field of trade and commerce was not for the first time visualised by the Constitution makers when they put in Clause (6) (ii) in Article 19 of the Constitution but it was visualised by them when the Constitution was for the first time framed: we find this to be so because of the provisions contained in Article 289(2) of the Constitution which says this:

> "(2). Nothing in Clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such an extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith."

Clause (3) of Article 289 also enacts that certain trades or businesses may lawfully be found to be incidental to the ordinary functions of Government.

49. We must now see whether in the impugned Act there is or is not a reasonable classification having a proper relation to the Subject-matter of the legislation. Classification to my mind is almost inherent in the concept of a monopoly. Therefore, the only question that arises for determination is whether this classification is reasonable or not. That the classification in the impugned Act bears a reasonable resemblance to the subject-matter of the legislation can, in my view, not be seriously disputed for the whole object with which the impugned legislation had been passed is to provide a State road transport service which would be a suitable and an efficient road transport service and which would subserve the common good of the people of the State. Under the provisions of Section 3 of the impugned Act three possible classifications have been indicated:

(i) The State:

(ii) The State in conjunction with the rail-way:

(iii) The State in conjunction with others: It cannot be said that these are not classes into which the subject-matter of the legislation, viz., legislation for organising road transport services could appropriately fall.

Transport services, as I have already pointed out, are public utility services and the considerations which can and would normally guide the State in running these services cannot be expected normally to guide private operators or a combination of them, for in their case the "profit motive" must always be the overriding consideration, while in the case of a State operating these services the "profit motive" can seldom be the primary objective. Therefore, by classifying the State in a separate class from the others it cannot be said that there has been an unreasonable classification. In order to determine whether a particular classification is proper or improper one has also to bear in mind the prevailing national sentiments and the prevailing economic theories so that a classification which may not have been judged proper in the 18th century may be judged as eminently just, proper and reasonable in the 20th century. I believe that the question whether a classification is reasonable and proper or not must be judged more on common sense than on legal subtleties. In my opinion, therefore, there was a reasonable classification bearing a proper and just resemblance to the Subject-matter of the legislation under the impugned Act.

50. It was further contended on behalf of the petitioners that under Section 3 of the impugned Act unrestricted power was conferred on the State Government to discriminate between one set of operators and another. It was Said that it was left to the objective discretion of the State Government to determine which operators were to be joined with the State and which were to be left out; it was also said that it was left to the objective determination of the State Government to take over or not to take over any particular route or class of service.

Mahajan J. as I have already pointed out earlier, had observed in the case of the --'State of West Bengal v. Anwar Ali Sarkar (H)', that by the process of classification the State has the power of determining who should be regarded as a class in relation to a law enacted on a particular subject. That learned Judge further pointed out that this power in some degree was likely to produce some inequality but if the law dealt with the liberties of a number of well defined classes then the law was not open to the charge of denial of equal protection on the ground that it had no application to other persons.

"Equal protection claims under Article 14 always are examined with the presumption that the State action is reasonable and just" this was so stated by Chief Justice Patanjali Sastri in the case of Kathi Raning Ravat (J), a case to which I have already made reference. Unless it can be shown that the discrimination that has been resorted to or the power to discriminate has been given without reason it cannot be said that there is unequal treatment. As was pointed out by Fazl Ali J. in the aforementioned case : "The whole doctrine of classification is based on this distinction and on the well known fact that the circumstances which govern' one set of persons or objects may not necessarily be the same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of

circumstances."

51. It cannot be contended reasonably that the State Government would "without reason" discriminate or that there is in Section 3 of the impugned Act a power to discriminate 'without reason' given to the State Government. The State Government cannot arbitrarily associate individuals with itself in running the transport services or arbitrarily exclude individual's from association with itself; it can only associate or leave out persons in the interests of the general public or for subserving the common good. The legislative policy in regard to the matter is clear and definite and in the words of Mukherjea J. it is only "the effective method of carrying out that policy that a discretion has been vested by the statute on the State Government to make selective application of the law to certain classes or groups of persons." I do not, therefore, consider that Section 3 of the impugned Act confers on the State Government a power which could be utilized by them arbitrarily for making discrimination. I, therefore, hold that Section 3 of the impugned Act is not ultra vires.

52. I may here point out that reliance was placed by the petitioners on the Full Bench decision of -- 'Moti Lal v. Uttar Pradesh Govt. (A)' to contend that where an Act conferred power on the State whereby it could discriminate against persons in its own favour then such a power was hit by the guarantee contained in Article 14. The argument before the Full Bench was that Section 42(3) (a) of the Motor Vehicles Act was 'ultra vires' inasmuch as it conferred power on the State to discriminate between individuals and itself. The provisions of Section 42(3) (a) are in these words :

> "Sub-section (1) shall not apply (a) to any transport vehicle owned by or on behalf of the Central Government or a Provincial Government other than a vehicle used in connection with the business of an Indian State Railway."

The learned Chief Justice refrained from expressing any opinion whether or not Section 42(3) (a) was void by reason of the provisions of Article 14 of the Constitution, Mootham and Wanchoo JJ, held that this provision, so far as it purported to exempt from the application of Sub-section (1) of that Section transport vehicles owned by or on behalf of the State Government was in conflict with Article 14 of the Constitution. They went further to say that it appeared to them that when the State engaged in business or commerce such as was carried on by private individuals or corporations then the State must subject itself to the same obligations as are imposed on others and must place itself in the same portion as private individuals or corporations except in the matter of taxation. They expressed the view that the State could not engage in business or commerce denying equality before the Jaw or equal protection of the laws to other persons as against itself.

The reason behind this view appears to me to have been that under Section 42(3) (a) there was a clear discrimination between the State and the individuals in the same field of activity and there was no classification of the State in one group and the individuals in the other group. The differentiation was made between persons falling in the same group,. between persons who equally constituted a group qua that trade. The position under the impugned Act. is different. The State and the individuals have not been discriminated upon. while being in the same group nor any power for discrimination has been given while the State and the individuals remain and act under one group

or in the same group. Sapru J. also took a similar view of Section 42 (3) (a). and so did Agarwala J.

But, as I have pointed out above, there was a clear distinction between the power conferred on the State under Section 42(3)(a) of the Motor Vehicles Act and the power conferred by Section 3 of the impugned Act. I may here point out what was stated by Agarwala J. in paragraph 96 of the Full* Bench decision in order to show the real import of the decision in regard to Section 42(3)(a). Agarwala J. said this :

> "It is true that the vehicles of the State used for a purpose other than that of carrying, passengers or goods on hire fell under a distinct category and can by law be treated separately and if Section 42(3)(a) had been, confined to such vehicles of the State, there could have been no objection to its validity. But since the impugned clause is not restricted in it's operation to such vehicles of the State and is applicable to vehicles which, are used by the State for the purposes of carrying on motor transport business for profit in competition with private individuals, the clause must be held to be bad."

If I may say with respect, Agarwala J. has clearly brought out the distinction that obtains when there is a classification and differentiation between different classes and when there is no classification but there is differentiation without classification. The argument which was available to the petitioners against the validity of Section 42 (3) (a) of the Motor Vehicles Act is not, to my mind, available to them in respect of Section 3 Of the impugned Act.

53. From what I have stated above, I am of the opinion that the impugned legislation is, not hit by the provisions of Article 14 of the Constitution.

54. Before I take up the other major points argued on behalf of the petitioners I should like to dispose of another argument which was raised on behalf of the petitioners and which. related to the validity or otherwise of Section 11(2) of the impugned Act. That provision is in the following words:

> "(2). Any order made or deemed to be made under this Act shall have effect "notwithstanding anything inconsistent therewith contained in any other enactment or any instrument having effect by virtue of such enactment."

It was contended that this provision was 'ultra vires' in view of the Full Bench decision in AIR 1952 All 866 (B), where it was held that Section 6 of the Essential Supplies (Temporary Powers) Act, XXIV of 1946 was 'ultra vires' the Indian Legislature.

Section 6 of the aforementioned Act was in these words :

> "Any order made under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having:

effect by virtue of any enactment other than this Act."

It will, therefore, be observed that the wordings of Section 6 of the Essential Supplies (Temporary Powers) Act and the words of Section 11(2) of the impugned Act are practically the same, at any rate the effect of those words is exactly the same. The Full Bench held that Section 6 must be held to be invalid in view of the majority decision of the Supreme Court in the Delhi Laws Act case (I). This is what the Full Bench said in respect of this matter :

> "The Advocate General contended that the terms of the proviso to Section 2 of Part C States (Laws) Act, 1950 are distinguishable from the provisions of Section 6. We do not think that there is any essential difference between the two.' Whereas the proviso to Section 2, Part C States (Laws) Act, 1950 authorised the Central Government to make express provision for the repeal of an existing law, Section 6 of the Essential Supplies Act authorises the Central Government to achieve the same object impliedly by passing an order or making a rule or regulation in conflict with an existing law. There is no difference in principle between an' "express repeal" and an "implied repeal"."

I must, therefore, hold that the provisions of Section 11(2) of the impugned Act are "ultra vires" the State Legislature on the same reasons which impelled the Full Bench, in --'Bhushan Lal's case (B), to come to the conclusion that Section 6 of the Essential Supplies (Temporary Powers) Act was 'ultra vires' the Indian. Legislature.

55-56. The next contention raised on behalf of the petitioners was that by the impugned Act the petitioners had not only been deprived of their property, but further that property in the shape of an interest in a 'commercial undertaking' had been taken possession of or acquired, ostensibly, for public purposes by the State without making any provision for compensation for the property taken possession of or acquired and, therefore, such a legislation was bad in view of the provisions of Article 31(2) of the Constitution.

57. I must at the outset state that the decision of this question has caused us considerable anxiety. The entire field of the controversy in respect of this matter was covered by counsel on both sides with great ability and thoroughness.

58. The first question that one has to determine in this connection is whether the right which the petitioners claimed was property or "interest in a commercial undertaking" within the meaning of Article 31(2) of the Constitution. The other question that arises is whether there was any acquisition of such an interest by the State under the impugned Act.

59. It was contended by Sri Pathak that the right to ply motor vehicles for gain was in any effect an interest in a commercial undertaking -- Sri Pathak's contention also was that it was "property" within the meaning of Article 31(1) and (2) of the Constitution as well. If it was property then there is no doubt that under the impugned Act the petitioners have been, deprived of that property although such deprivation has been by the authority of the law. The right to compensation under our

Constitution does not arise on mere deprivation. The right to compensation arises only when after deprivation there has been a vesting in the State of that property or there has been deprivation by acquisition. The argument on behalf of the State made by the learned Advocate General was that the right, which has been affected, of the petitioners under the impugned Act, was not strictly speaking either "property" or an interest in a business undertaking. He further contended that even if it was so then there had been no 'acquisition' by the State of such a right of the petitioners under the impugned Act.

60. I shall first concern myself with finding the real nature of the right which the impugned legislation affects or, according to the submissions of the learned counsel for the petitioners, "takes away."

In the case of 'G. Veerappa Pillai v Raman and Raman Ltd.', AIR 1952 SC 192 (L), their Lordships of the Supreme Court held that under the Motor Vehicles Act new rights and liabilities were created and an elaborate procedure was prescribed for their regulation. It was pointed out that no one was entitled to a permit as of right even if he satisfied all the prescribed conditions. The grant of a permit was entirely within the discretion of the transport authorities which were administrative bodies exercising quasi-judicial functions in the matter of the grant of permits. The contention on behalf of the petitioners was that the permits which the petitioners had were "properties", for the petitioners were able to earn money as a consequence of having those permits. It was alternatively contended that even if the possession of the permits was not property even then it was certainly an interest in an undertaking.

Reliance was placed on certain decisions, namely, on the decisions in -- 'Tan Bug Taim v. Collector' of. Bombay', AIR 1946 Bom 216 (M), and -- 'H. C Gupta v. Mackertich John', AIR 1946 Cal 140 (N), but in my view, none of these two decisions was of assistance to the petitioners in supporting their contention. Reliance was placed on the well known case of the -- 'Minister of State for the Army v. Dalziel', 68 Comm-W LR 261 (O), particularly, on the following observation of Rich J. at page 286:

> "In such circumstances, he may well say: 'You take my house, when you do take the prop that doth sustain my house; you take my life, When you do take the means whereby I live' ".

It was contended on the above quoted observation of Rich J. that the permit which enabled the petitioners to earn their livelihood must be deemed to be their property and that when that permit was taken away from them their property was taken away. I do not think that there is any substance in this contention. Reliance was next placed on the following passage from Willis' Constitutional Law at page 821 :

> "Ownership relates to rights, powers, privileges, and immunities concerning either land or chattels. Property is not the thing, but it is these rights, powers, privileges and immunities which a person has as against all others with reference to these objects of ownership."

61. It must be noticed that a privilege or an immunity or a right in order to be property must be available against all others. The right under the permit which the petitioners had was not a right available against all others.

62. On behalf of the State a passage from Nicol's Eminent Domain, Volume II, page 109, was quoted to support the contention that even an established business or a goodwill had never been held, by itself, to be property in the constitutional sense. It was also pointed out that a mere loss of prospective profits by itself never gave, a right td compensation. In my view this must be so, for a right to compensation in respect of a business could only arise when the business was directly taken over, i.e. when its plants etc. were taken over.

The learned Advocate-General contended that the business of running buses for carrying goods or passengers may be an interest in an undertaking, but it was pointed out by the learned Advocate-General that interest had not been acquired by the State, that interest bad only been restricted by the impugned Act. It was pointed out that the common law right of the individual to use the public highway had already been restricted under the Motor Vehicles Act when such highway was to be used by plying motor vehicles. Therefore the impugned Act only further restricted that right--may be to the extent of making it nugatory. There may have been under the impugned Act a deprivation but there has been, as has been pointed out, no acquisition by the State It would be instructive to notice the meaning of the word "acquire" -- "acquire" means to gain a thing: a person is said to acquire a thing when that thing gets vested in the acquirer. In the case before us there is nothing which gets vested in the alleged acquirer although there is restriction of a similar thing in another.

62a. It is necessary at this stage to refer to Article 31 of the Constitution which guarantee's certain rights in respect of property. The material part of Article 31 is in these words :

> "31(1). No person shall be deprived of his property save by authority of law.
>
> (2). No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixed the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

It is not material for our purposes, to quote the other provisions of this Article. From the . above it will be clear that mere "deprivation" does not confer any right to compensation on 'the person so deprived. The right to compensation only arises when there is an acquisition : by the State of the thing of which an individual is deprived. In order to judge whether there is a right to compensation or not the property acquired must be traceable to the earlier owner who has been deprived of it before any question of compensation can, under our Constitution, arise. The right to get compensation under American Constitution is on a 1954 AIL/35 & 36 slightly different looting, for

the words in the American Constitution are these:

> "Nor shall any person be deprived of .....
>
> property, without due process of law".

In America there is no separate provision for acquisition after deprivation as there is in our Constitution. Consequently when American courts went on to hold that deprivation was acquisition or some such thing, the principle of those cases, to my mind, could not be available for application to the constitutional position arising in India under our Constitution.

63. The petitioners were running buses on certain routes under a permit granted to them by an appropriate authority: the running of these buses has now been stopped by the State under the powers conferred by the impugned Act. The State has itself started running services on those routes. It is on this state of facts that it was contended on behalf of the petitioners that the State has first deprived the petitioners of their property and has thereafter acquired that property itself. It must be borne in mind in this connection that under the Motor Vehicles Act everyone who could obtain the necessary permit was entitled to run buses or motor vehicles on such routes as were permitted. The State could, and as a matter of fact did, run motor bus services on many of the routes on which private operators operated their services.

The question is whether by depriving the private operators of their right to run buses on certain routes and by deciding to run those routes itself the State acquired the right which was of the petitioners. To me it appears that it could not be said that there was by the State any acquisition of the right which was formerly of the petitioners, whether such right was "property" or an interest in a commercial or industrial undertaking. The vehicles which were being operated by the private operators have not been acquired by the State, nor has any other tangible property which was used by the petitioners for their business been acquired. What has been done is that the petitioners have been prohibited from operating their buses on certain routes. This right of the petitioners has in no way been vested in the State inasmuch as, the State always had an equal right with the petitioners to run their buses on those routes. It was argued that the moment a monopoly in this matter was created in favour of the State the same moment, notion-ally at any rate, certain rights of the individual operators vested in, or was acquired by the State. I do not consider this to be so, for if this were so, then every individual who had a potential right to apply for a permit and get it, could say that his right also has been acquired by the State and as such he was entitled to compensation. The right to claim compensation is not founded on any such notional or far-fetched conceptions. The right to compensation is available when there has been in substance and in reality an acquisition.

64. Reliance was placed on a passage in Cooley's Constitutional Limitations, 8th Edition, Volume II, page 1158, for contending that "any injury" to the property of an individual which deprives the owner of the ordinary use of it is equivalent to taking and entitled him to compensation. As I have already stated the principle on which compensation was adjudged or awardable under the American law would not be the principle on which compensation was awardable in India because of the fundamental difference that obtained between the guarantee conferred on the American citizen and

the guarantee conferred on the Indian citizen. Many other case's and authorities were cited to us to the same effect and I do not consider it necessary either to refer to those decisions or to discuss them for the principle of those decisions has no application in India,

65. In order to see the substance of the matter, a few illustrations may be instructive. Under the Motor Vehicles Act, it was open to the appropriate authority to grant as many permits as the issuing authority considered proper in respect of any particular route so that when more people were put as competitors on a route then there was in a sense a "taking" of some of that man's right who was earlier on that route. But then such "taking" could never give rise to any claim for compensation. If that was so, then I do not see how there could be a right to compensation when the same right to earn profits has been affected in a larger measure,

66. Destructions of businesses often entail greater hardships than the taking of tangible property, but for such destruction the Constitution makes no provision for any compensation. The petitioners' right was the common law right to use the 'public highways' in a particular manner under a permit -- that right could not be any right in property or an interest in an undertaking within the meaning of Article 31 of the Constitution. I have already pointed out that mere 'deprivation' is not enough justification for claiming compensation under our Constitution and in these case's there was no 'acquisition' of that of which the petitioners were deprived, by the State.

67. I would further like to point out that I have already held that what was done by the impugned Act was to place reasonable restriction on the rights of the petitioners and there was no "taking" of any property of the petitioners. When once it is found that the restriction imposed is reasonable and there is no actual "taking" then no question of compensation can arise.

68. I must, therefore, hold that the impugned Act is riot 'ultra vires' inasmuch as it makes no provision for compensation, for, in my view, there was no occasion to make any provision for any compensation payable to the petitioners.

69. Learned counsel 'for the petitioners next raised another argument based on what may be called the guarantee contained in Article 301 of the Constitution. It was contended that by the impugned legislation the State Government has placed restrictions on the freedom of inter-State and intra-State trade, commerce and intercourse. The argument was that by prohibiting the petitioners from plying their trade, which consisted in carrying passengers from one part of the State to another as also carrying passengers from one State to the other, the freedom of trade guarantee by Article 301 had been vitally affected.

70. Article 301 of the Constitution is in these words:

> "Subject to other provisions of this Part trade, commerce and intercourse throughout the territory of India shall be free."

71. It is appropriate to point out that by Article 304 it is competent for the Legislature of a State to impose such reasonable restrictions on the freedom of trade, commerce or intercourse as may be

required in the public interest. There," however, is a proviso which, has to be borne in mind in connection with the exercise of the power conferred on the State Legislature to which reference is just being made. The proviso says that no Bill or amendment for the purposes mentioned above shall be introduced or moved in the Legislature of a State without the previous sanction of the President. The guarantee contained in Article,; 301, therefore, is not an unqualified guarantee.' Article 19(1)(g) of the Constitution gives, protection to an individual to the extent that he can practice any profession, or carry on any occupation, trade or business. Article 301 more or less is complementary to this general provision contained in Article 19(1)(g) inasmuch as Article 301 gives a kind of territorial protection to trade, commerce and intercourse, a protection which incidentally enures to the benefit of those who engage in trade, business and commerce or carry on intercourse of the type visualised under this Article. The protection, which Article 301 contemplates is what may be termed, in the word's of Agarwala J. in the Full Bench case of Moti Lal (A), "trade in motion" so that the restriction has to be, when it is being judged, restriction on the flow of goods as such, and not in the flow of goods through the agency or medium of any particular individual or group of individuals. I should like to quote here the following observations of the learned Chief Justice in Moti Lal's case (A):

> "The correct interpretation seems to be that Article 19 lays down the rights of the citizen, while Article 301 deals with how the-trade, commerce and intercourse is to be carried on between one place and another, whether the two places are situated in two States or are inside the same State."

72. Considerable reliance was placed by Sri Pathak on the decision in 1949-2 All ER 755 (C). On the strength of this decision of the Privy Council it was contended by Sri Pathak that if their Lordships were of the opinion that the business of banking, which consisted of the creation and transfer of credit, the making of loans, the purchase and disposal of investments and other kindred transactions, could be included in the activities described as trade, commerce and intercourse and if by monopolizing such trade, commerce and intercourse Article 92 of the Australian Constitution was violated then obviously Article 301 of our Constitution, had been violated by the impugned legislation.

The argument looks attractive on the face of it, but, in my judgment, it is not sound. Argument's based on analogy have always an element of deception present in them and it is necessary, therefore, to pierce the veneer of such an argument and test it in the light of the facts and circumstances of the two allegedly analogous matters. The Privy Council itself pointed out that "Every case must be judged on its own facts and in its own setting of time and circumstance ....." The conception of 'freedom of trade, commerce and intercourse in a community regulated by law presupposes some degree of restriction upon the individual, i and their Lordships observed that two general propositions arose out of this conception :

> "(1) that regulation of trade, commerce and intercourse among the States was compatible with its absolute freedom, and (2) that Section 92 of the Constitution (the Australian Constitution which was more or less similar to Article 301 of our Constitution) was violated . only when a legislative or executive act operated to

> restrict such trade, commerce or intercourse directly and immediately as distinct from creating some indirect or consequential impediment which might fairly be regarded as remote."

Their Lordships further pointed, out that whether the impugned legislation directly and immediately affected trade, commerce and intercourse or it, affected these matters in some indirect or consequential way remotely, could only be decided by the Court. In the words of their Lordships of the Privy Council "the test is clear; does the Act, not remotely or incidentally but directly, restrict the inter-State business of banking?" Their Lordships further pointed out that some difficulty may arise in applying the test of whether a restriction is direct or one that is too remote, yet it was stated by their Lordships that the distinction was a real one.

From the observations of their Lordships of the Privy Council it is clear to me that in order, to determine whether there has been an infringement of Article 301 of the Constitution or not, the "pith and substance" of the enactment must be seen. As was pointed out by their Lordships, these words raise in convenient form an appropriate question in cases where the real issue is whether an enactment works some interference on the trade, commerce and intercourse directly or indirectly. Attempt was made in this case to advance the argument on behalf of the petitioners by giving the matter a higher degree of definition than it admitted.

73. Sri Pathak relied on the observations of Dixon J. in the case of -- 'O. Gilpin Ltd. v. Commr for Road Transport and Tramways (New South Wales)', 52 Comm-W LR 189 (P) -- the observations on which reliance was placed are to be found at page 211 of the decision. The words of Dixon J. on which reliance was placed were these :

> "Nor can I share the view that the protection is against none but direct interference with inter-State trade, commerce and intercourse."

Dixon J., however, himself said this also :

> "I do agree that it prevents only burdens or restrictions which apply to conduct or action as trade, commerce or intercourse, or because of its inter-State character."

But whatever may have been the view of Dixon J. the view 'that must prevail with us is the view expressed by their Lordships of the Privy Council -- a view to which I have already made reference.

I may at this stage refer to an Australian case, namely, that of -- 'Duncan v. Vizzard', reported in 53 Comm-W LR 493 (Q). In this case one of the points that arose for decision was whether the New South Wales State Transport (Co-ordination) Act, 1931, was valid in view of the provisions of Section' 92 of the Australian Constitution? It was held by the majority of Judges forming that Bench that The New South Wales State Transport (Co-ordination) Act, 1931, did' not directly or even indirectly affect the freedom of inter-State trade. I do not see why if the New South Wales State Transport (Co-ordination) Act was not 'ultra vires' in view of the provisions of Section 92 of the Australian Constitution, the impugned Act could be held invalid in view of Article 301 of our

Constitution.

74. In view of what I have stated above, I am of the opinion that the impugned legislation is not hit by the provisions of Article 301 of the Constitution.

75. It was next contended that Section 7 of the impugned Act was 'ultra vires' because it authorised executive officers of the State to set aside or supersede the provisions of the Motor Vehicles Act. As I read Section 7 of the impugned Act, I do not see any such power being conferred on executive officers of the State. The Section gives a right to the executive authority to make certain orders in respect of specified matters; by this section the executive authority has not been vested with the power to either cancel or modify any previous legislation. I do not, therefore, think Section 7 of the impugned Act to be 'ultra vires.'

76. A good deal of argument was made by counsel for the petitioners in respect of the validity of certain notifications issued under the impugned Act as also, in regard, to the effect of the alleged non-compliance with certain provisions of the Act in regard to the framing of the "schemes" under the impugned Act. In order to appreciate the argument advanced on behalf of the petitioners, it is necessary to reiterate some of the facts. The State buses were running on most of the routes on which the petitioners' buses were also running and consequently after the passing of the impugned Act the State Government made a notification as provided for by Section 13(1)(b) of that Act. I have already quoted this part of the section in an earlier portion of this judgment and I do not think it necessary to quote it again except saying that a notification was published by the State Government in the State Gazette dated February 12, 1951. This notification indicated the position as it obtained in respect of transport services. After the notification the routes on which the services were running became, what may be called in the words of the impugned Act, "notified routes". Under the impugned Act these routes were to be deemed to have been routes notified under Section 3 of the Act. Under the provisions of Section 13(1) (b) of the impugned Act it was not necessary in respect of these routes to make any notification under Section 3, but it appears that a notification was published purporting to be under Section 3 in respect of "stage carriages" in the State Gazette on June 23. 1951, in English, and on July 4, 1951, in Hindi. This subsequent notification was, to my mind, absolutely redundant, but be that as it may, objections were invited to the scheme thus notified and it was mentioned that the Governor of the State was to consider the objections.

It appears that all the petitioners, except D. N. Agarwala, whose petition is numbered 597 of 1952, preferred objections. These objections were heard by a Deputy Secretary of the Transport Department and a final scheme was published under Sub-section (3) of Section 5 on September 27, 1952, in the State Gazette. The scheme which applied to "contract carriages" was, however, published in the Gazette dated December 20, 1952. There appears to be a conflict between the Hindi notification and the English notification inasmuch as the Hindi notification refers to "stage carriages" while the English notification mentions "state carriages." Actually the aforementioned notification published a scheme for the running of "contract carriages". It may be mentioned that all routes of Agra region in respect of which objections were filed were concerned with "contract carriages."

77. Another notification appears to have been published in the U. P. Gazette dated December 20, 1952, Notification No. 3736-TP/ XXX-50T(3)-50, which refers to a Notification dated February 12, 1951, in pursuance of the provisions of Sections 4 and 5 read with subsection (2) of Section 6 of the impugned Act. The Notification said :

> " ..... the Governor is pleased to publish the Scheme hereto annexed in respect of the State carriage services to be operated by the State Government on routes mentioned therein for the information of all persons likely to be affected thereby ....."

It further said that notice was given thereby that the proposed scheme was likely to become final on or after February 20, 1953. Objections or suggestions were invited from persons likely to be affected by the scheme for consideration of "the Governor."

It appears that objections were filed by most of the petitioners before us. Under sub-section (2) of Section 5 of the impugned Act objections had to be invited and the State Government, or if the State Government so directed, a "prescribed authority", was to consider those objections and thereafter either confirm, modify or alter the scheme. These objections, as already mentined were heard by a Deputy Secretary in the Transport Department.

It was contended on behalf of the petitioners that the Notification having stated that it was the Governor _who was to consider the objections, the consideration of the objections by a Deputy Secretary of Government was illegal and without jurisdiction. Rule 6 of the rules framed under the impugned Act says this :

> "HEARING OF OBJECTIONS: the Transport Commissioner in consultation with the State Government shall then fix a date and the place for hearing of the objections and inform the objector of the date and the place so fixed by registered post."

Section 5(2), as has been noticed already, makes it incumbent for the State Government or a "prescribed authority" to consider the objections. It is important to note that under Section 10 of the impugned Act it was not possible for the State Government to delegate the powers conferred on it by Section 5(2) of that Act.

Section 10 is in these words :

> "The State Government may, by notification in the Gazette, delegate to an officer or authority subordinate to it, any of the powers conferred on it by this Act except those specified in Section 3 and Sub-section (2) of Section 5 to be exercised subject to any restrictions and conditions as may be specified in the notification."

> "Prescribed authority" has not been defined by the impugned Act. The rules framed under the impugned Act have also not indicated who is to be deemed to be a "prescribed authority"

within the meaning of that Act. No notification was placed before us to show that the State Government had directed that any person or officer was to be deemed to be the "prescribed authority" within the meaning of the impugned Act.

It was, therefore, clear that objections had to be considered by the State Government only. The notification which said that the Governor was to consider the objections also indicates that there was no "prescribed authority" which was to consider these objections. The question which was raised was whether under these circumstances a consideration of the, matter by a Deputy Secretary of Government was proper consideration.

On behalf of the State it was argued that under Article 154(1) of the Constitution the executive power of the State is vested in the Governor and was to be exercised by him either directly or through officers subordinate to him. Therefore the notification stating that the Governor was to consider the objections meant that the State Government was to consider them.

A further question was raised, namely, whether the consideration of objections could properly fall under the exercise of "executive power of the State." To me it appears that the power that the State Government could exercise under the provisions of Section 5(2) of the impugned Act could properly be called the exercise of executive power -- it certainly was not the exercise of a judicial power of the State even though the nature of the power was 'quasi' judicial. The brunt of the attack of counsel for the petitioners fell on the right of the Deputy Secretary to consider such matters. It was contended that permitting consideration of these objections by the Deputy Secretary was in effect a delegation of the power to the Deputy Secretary and there being no power of delegation possible under the provisions of Section 10 of the impugned Act the consideration of the objections by the Deputy Secretary was 'ultra vires' and if that was so then there was no consideration of the objections and no finality, therefore, could attach to the schemes which have been given effect to.

The question that has to be considered, therefore, first, is whether there was a "consideration." of the objections by the Deputy Secretary -- this question arises because it was contended on behalf of the State that the Deputy Secretary merely "heard" the objections and after hearing them advised the Governor who must be deemed to have really considered them. We have noticed that under rule 6 of the rules framed under the impugned Act the Transport Commissioner has been given the power to fix a date and place for the hearing of the objections in consultation with the State Government. The impugned Act, however, does not in so many words make provision for the hearing of objections. It only provides for a "consideration" of the objections. It must be admitted that it is one of the principles of natural justice that if a man has a right to prefer objections to something then he ought to have also a right to be heard in support of his objections unless, of course, it is made clear by law that there is to be no right of hearing but the right to object is confined to a right to make written objections. Under rule 5 of the rules framed under the impugned Act any person wishing to file objections under Section 5 was to do so in the form of a memorandum in duplicate setting forth concisely the grounds of objections to the scheme. Sub-rule (2) of rule 5 states :

> "The objection shall be addressed to the Transport Commissioner, Uttar Pradesh, and shall be accompanied by a court-fee stamp of Re. 1/-".

78. We have also noticed that under the rules, provision is made for giving the objector an opportunity to be heard in support of his objections. The argument of counsel for the petitioners was that in view of the provisions referred to above, it was for the State Government or the Governor to invite objections to the schemes, to hear them and to decide them. It was contended that on the language of rule 6 the objections should have been heard, if not by the Governor, by the Transport Commissioner and that a Deputy Secretary in the Transport Department could have absolutely no authority to hear them.

It was pointed out that under the Constitution provision had been made for the conduct of business of the Government of a State and that the Governor could by rules make provision for the more convenient transaction of the business of the State. It was further pointed out that no rules had been placed before the Court by which the Governor had made any provision for the conduct of this particular business of the State. The rules which had been framed, though not under the Constitution, for the conduct of this business of the State were the rules framed under the impugned Act and under those rules, it was contended, the objections should have been heard by the Transport Commissioner.

> "Transport Commissioner" has been defined by Section 2(g) of the impugned Act as follows: " 'Transport Commissioner' means the Transport Commissioner of Uttar Pradesh appointed by the State Government and includes any other officer who may be authorized by the State Government to perform the functions of the Transport Commissioner under this Act."

It was admitted on behalf of the petitioners that the State Government had appointed a "Transport Commissioner" for the State as contemplated by Section 8 of the impugned Act. What, however, was disputed was that the State Government had authorized any other officer to perform the functions of the Transport Commissioner under this Act. On behalf of the State nothing was shown to controvert this assertion made on behalf of the petitioners.

That being so. I must accept that the State Government had not appointed any other officer to perform the functions of the Transport Commissioner save the Transport Commissioner himself. If, therefore, under the rules framed under the impugned Act there was power only in the Transport Commissioner to consider the objections then the consideration of the objections by the Deputy Secretary was unjustified. To me it appears that under Section 5(2) objections had to be considered either by the State Government or if the State Government so directed, by the "prescribed authority." We have also noticed that there could be no delegation of this power, that is to say, the State Government could not, nor could the "prescribed authority" if there was any, under Section 5(2) delegate power to anybody else to consider the objection -- this is so because of the provisions of Section 10 of the impugned Act. In my opinion the State Government had by the rules framed by it under tbe impugned Act constituted the Transport Commissioner "the prescribed authority" under the provisions of Section 5(2) and, therefore, it was either for the State Government itself or

for the Transport Commissioner to hear those objections.

79. On behalf of the State it was contended that the notification which was issued in this connection stated that the Governor was to consider the objections. The consideration by the Governor of the objections meant the consideration of the objections by the State Government inasmuch as all actions which had to be taken on behalf of the State Government had to be in the name of the Governor. It was further contended that under the provisions of the impugned Act there was no question of giving anyone a hearing in regard to the objections, but since the rules, by implication, provided for a hearing of the objections the hearing was before a Deputy Secretary of Government who must be deemed to have acted as a subordinate officer of the Governor acting which was possible constitutionally.

As I see the position I see it to be either that under Section 5(2) of the impugned Act the State Government itself was to consider the objections or the State Government was to direct their consideration by a "prescribed authority". The notification stating that the Governor was to consider the objections indicated that it was the State Government which was to consider them. The hearing of the objections by the Deputy Secretary must, therefore, be deemed to have been a hearing by the Governor through an officer subordinate to him. The ultimate notification that was published after the objections had been entertained and heard stated that "the Governor is pleased to order the publication of the scheme hereto annexed which has been confirmed under Sub-section (2) of Section 5 of the said Act." This indicates that a consideration was given by the Governor to the objections as provided for by Section 5(2) -- the notification having been published in accordance with Section 5(3) of the impugned Act. There was no allegation on behalf of the petitioners that the matters which were submitted orally by them before the Deputy Secretary were not brought to the notice of the Governor before he made the final orders in respect of these matters. I must assume that the Deputy Secretary, in the normal course of his official business, apprised the Governor of what was submitted on behalf of the petitioners before him and further I must assume that the Governor gave due consideration to those matters before he came to his decision. Accordingly I do not think that there was any real substance in the contention raised on behalf of the petitioners in regard to this matter.

80. I, therefore, hold that the schemes finally published were not open to challenge on the ground that the petitioners had either no opportunity of raising objections or that the objections had been decided by an improper authority or that the procedure followed in I deciding those matters was an illegal procedure.

81. It was contended by Sri Bhargava on behalf of some of the petitioners that some of them did not know the date on which their objections were to be heard. It was, however, conceded that notice of the first hearing was given to these petitioners and all that happened was that the hearing could not take place on that date for want of time or some such reason and, therefore, it was adjourned to some other date and that the petitioners could not know the adjourned date of hearing. On the material's before me, I am not satisfied that the petitioners could not have known the adjourned date of hearing if they had taken proper care and proper steps to know of it. That being so, I do not think that any legitimate grievance can be made by the petitioners on that score.

82. The next contention was that a notice of the schemes framed had, under rule 3 of the rules made under the impugned Act, to be published in the Gazette as also in a local newspaper, but such a notice it was said, was not published in a local newspaper and, therefore, the schemes could not be given effect to. I do not consider that there is much substance in this contention, first, because the publication of the notice was not of the essence of the matter, and secondly because everyone admittedly had knowledge of the schemes and the absence of the publication of such notice did not in any manner prejudice anybody.

83. As 1 have already noticed there were certain contradictions or inconsistencies between the notification which issued in English and the notification that issued in Hindi, but these contradictions or inconsistencies do not affect the substance of the matter. By Article 348(1)(b)(iii) of the Constitution it has been provided that "all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State shall be in the English language."

In view of this provision of the Constitution the notification appearing in English must prevail over the notification appearing in Hindi. I cannot, however, help saying that people concerned with making these notifications should have taken greater care in having them published in Hindi. To me it appears that it is of importance that in the matter of issuing and publishing notifications which are now issued in Hindi, and it may be noted that it is only that Hindi version of the Gazette that is available to the general public, great care should be taken.

84. The last point that was argued on behalf of the petitioners was that even if the impugned Act authorized the cancellation of permits which had been granted by the officers of this State in respect of motor vehicles which were being operated under those permits, that Act could not have extra-territorial application, and no permits which had been granted to some of the petitioners by authorities outside this State could be cancelled under the said Act. This argument was based on the fact that there were certain petitioners who operated their buses within the "State on permits which had been granted to them by the Regional Transport Authority of Delhi. Whether or not there could be power to cancel such permits, the impugned Act could certainly give power to the State Government not to let anyone operate his bus within the territory of the State irrespective of the fact whether he was operating his bus on a permit obtained from an authority within the State or because of a permit granted to him by an authority outside the State. Under the impugned Act no power has been conferred on the State Government to operate extra-territorially and no such action has been taken, as I see it, by the State Government under that Act. That being so, I do not consider this argument of the petitioners to be right.

85. In the result I am of the opinion that all these writ petitions must fail and should be dismissed. The costs incurred by the parties should be borne by them because, even though, I have held that the impugned Act is not 'ultra vires' except in respect of Section 11(2). I am of the opinion that the petitioners have suffered great loss and that their loss is not merely temporary but is permanent.

Chaturvedi, J.

86. These are 106 writ petitions filed on behalf of certain persons who have been carrying on the business of transport of persons and goods for hire, on various routes situate in the State of Uttar Pradesh. The opposite parties arrayed in these writ petitions are the State of Uttar Pradesh, the Transport Commissioner, the Regional Transport Authorities and the Hon'ble Minister for Transport, Lucknow.

87. As is well known, transport business has been carried on in this State through motor vehicles by private persons. Subsequently it appears that the Government also thought of running its own motor vehicles for hire. It is not necessary to go into the history of the matter earlier than 1939, in which year the Central Government passed the Motor Vehicles Act, (Act No. IV of 1939). Section 42 (3) of this Act exempts transport vehicles owned by or on behalf of the Central or the Provincial Government from the necessity of obtaining a permit, unless the vehicles were used in connection with the business of an Indian State Railway.

As far as the private vehicles were concerned, the owners were under an obligation to obtain permits before they could run their vehicles on a public thoroughfare. Sometime in 1947 after the corning into force of the popular Government, the Government thought of running its own buses for the carriage of passengers and goods. Notices were issued under the Motor Vehicles Act mentioned above, which had the effect of excluding from certain routes all private transport vehicles which were used for hire, and the business of motor transport was to remain exclusively in the hands of the State Government of U. P. With that object in view, a number of permits issued to the private operators were cancelled, and certain other operators were refused the permits which they would otherwise have been entitled to. This was about the time when the Constitution of India came into force, and a number of writ petitions were filed in this Court in the year 1950 challenging this action of the State Government.

These petitions were referred for decision to a Full Bench of five Judges and the petitions were disposed of by the Full Bench 'A. I. R. 1951 All 257 (A)'. Four judgments were delivered by the learned Judges constituting the Full Bench, and one of the decisions of the Full Bench was that the Government could not nationalise any trade or business by executive orders. That could, if at all, be done only by an Act of the Legislature. The Full Bench decided certain other matters also, but reference will be made to them later in the course of this judgment as and when the occasion arises. As a result of this decision, the transport authority was directed by this Court to consider the applications for permits filed by the private operators according to the provisions of the Motor Vehicles Act, and without in any way being influenced by the fact that the State Government wanted to run its own motor transport on certain routes in the State.

88. The State Government appears to have accepted the correctness of the legal position as laid down in the above case; but being of the opinion that the motor transport service in the State should be nationalised gradually, they moved a Bill in the State Legislature for the purpose. The Bill was ultimately passed in 1950 and is known as U. P. State Road Transport Acts 1950, (Act No. II of 1951), and it will foe hereafter referred to as the impugned Act.

In accordance with the provisions of this Act, certain schemes were framed by the State Government, notices of which were published in the State Gazette and objections were invited. The 'Objections were heard and some of the scheme's have been finalised, but one or two of them have not yet reached that stage. The private operators of motor buses have filed the above petitions, and the main prayers contained in the petitions are that writs in the nature of mandamus or other directions or orders be issued against the opposite parties directing them to refrain from enforcing the different schemes, and from interfering with the petitioners' business of transport; and also to issue writs of certiorari quashing certain notification issued by the State Government and the Regional Transport authorities.

89. These petitions may be conveniently divided into two groups -- (1) petitions dealing with stage carriages, and (2) petitions dealing with contract carriages. Stage carriages are those which are adapted to carry more than six persons excluding the driver, and which carry passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey; whereas contract carriages are those which carry passengers for hire under a contract for the use of the vehicle as a whole from one point to another without stopping to pick up or sit down along the line of route passengers not included in the contract.

They include motor cabs notwithstanding that the passengers may pay separate fares. It is not necessary to specify separately the petitions which fall under one group or the other, 'because the decision of the petitions does not turn on any position peculiar to the carriages falling under one or the other group. The points that have been raised are common to both the types of carriages, excepting in one smaller matter of detail which will be considered in due course.

90. Before proceeding to specify the points argued on behalf of the parties, I propose to summarise the relevant provisions of the impugned Act.

The preamble to the Act is also important and it is in the following words :

> "whereas it is expedient in the interest of the general public and for the promotion of suitable and efficient road transport to provide for State Road Transport Services in Uttar Pradesh;"

Section 2 of the Act defines certain words used in the Act, and the most important Section is Section 3. It provides that where the State Government is satisfied that it is necessary in the interest of general public and for Subserving the common good so to direct, it may declare that the road transport services in general, or any particular class of such service on any route or portion thereof, shall be run and operated by the State Government exclusively, or by the State Government in conjunction with Railway, or partly by the State Government and partly by others.

This section authorises the State Government to declare that road transport services on any route shall be operated exclusively by the State Government or in conjunction with others. The State Govt. has been given a right to nationalise the motor transport services on any particular route or routes, if satisfied that it is necessary to do so in the interest of general public and the common good of the

people.

91. Section 4 provides for the publication of the scheme framed in pursuance of the above declaration and also for the matters that may be provided in the scheme. Section 5 authorises any person, whose interests may be affected, to file objections before the Transport Commissioner within 30 days of the publication of the scheme, and the State Government or the prescribed authority, after considering the objections, may either confirm, modify or alter the scheme. This final scheme so confirmed, modified or altered shall then be published in the Gazette.

92. Section 6 deals with the alteration or modification of the scheme made final under Section 5, and the procedure provided by Sections 4 and 5 is to be followed in altering or modifying the scheme finalised under Section 5. Section 7 narrates the consequences that are to follow the publication of the scheme made final under Section 5.

The consequences are far reaching, and the State Government is authorised to renew or cancel any permits or to restrict their number, and no person other than the State Government would be entitled to a permit under Chapter IV of the Motor Vehicles Act of 1939. It is at the option of the State Government to permit certain other vehicles also to ply on the roads at its own discretion.

93. Section 8 provides for the appointment of a Transport Commissioner, and Section 9 for the appointment of Advisory Committees. Section 10 authorises the State Government to delegate to an officer or authority, subordinate to it, any of the powers conferred on it by this Act, except those specified in Section 3 and Sub-section (2) of Section 5.

94. Section 11 provides that, in case of any conflict or any inconsistency between the provisions of the impugned Act and the provisions of-any other law, the provisions of the impugned Act are to prevail; and any order made or deemed to be made under the impugned Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment. Section 12 provides for the punishment of persons plying public service vehicles in contravention of the provisions of Clause (c) of Section 7.

95. Section 13(1) (a) validates State Road Transport Service commenced before the appointed date and also every order cancelling or curtailing any permit or attaching any condition or reducing the number of transport vehicles to be used on any route notwithstanding the fact that it may not have been in accordance with the provisions of the Motor Vehicles Act of 1939.

Section 13(1) (b) is again important and it provides that every route on which the State Road Transport Service is operating on the appointed date shall be deemed to be a route specified in a notification under Section 3, and the service operating on the route is to be deemed to be operating under a scheme duly prepared in accordance with the provisions of Sections 4 and 5 on condition that the State Government publishes in the official Gazette within 15 days of the commencement of the Act a scheme as to the Road Transport Service.

The scheme so published was to be taken to be duly confirmed and published under subsection (3) of Section 5, and the route to which it related was to be called a notified route, and the provisions of Sections 6 and 7 were to be applicable to it. Sub-section (2) of this section provides that all applications for the grant of permits shall be dealt with in accordance with the provisions of the impugned Act notwithstanding anything in the Motor Vehicles Act or any judgment, decree or order of the Court.

96. Section 14 authorises the Transport Commissioner or any officer appointed by him to permit a carriage owned by the State Government to be used on any or all the routes in Uttar Pradesh, that is, any such carriage to be used as a contract carriage. Section 15 authorises the State Government to make rules for the purposes of carrying into effect the provisions of the Act, and the State Government in accordance with the provisions of the section has made certain rules which have been duly published in the Gazette.

97. The main arguments in the case have been advanced on behalf of the petitioners by Mr. Gopal Swarup Pathak and Mr. V. D. Bhargava, who appear in the majority of these petitions. The other counsel have mainly adopted the arguments of Messrs. Pathak and Bhargava. Mr. Chhail Behari Lal, however, brought to our notice one important point which we shall consider while dealing with the objection under Article 19(1)(g) of the Constitution. The case on behalf of the opposite parties was argued by the learned Advocate-General and the Standing Counsel for the State of Uttar Pra-desh.

98. The main arguments advanced by the learned counsel for the petitioners may be classified under the following heads :

> (1) that the impugned Act is bad as it contravenes the provisions of Article 14 of the Constitution inasmuch as it discriminates between the State on the one hand and the citizen on the other; and also, inasmuch as it permits discrimination by the State Government or its officers between one motor transport operator and another;
>
> (2) that the impugned Act is bad as it purports to interfere with the fundamental rights granted to the petitioners by Article 19(1)(g) of the Constitution to carry on their business, of motor transport;
>
> (3) that the impugned Act contravenes the provisions of Article 31(2) of the Constitution inasmuch as it provides for acquisition by the-State of the business of transporting goods and; passengers carried on by the petitioners without the payment of any compensation, and without there being any public purpose behind this acquisition; and (4) that the impugned Act is bad as it contravenes the provisions of Article 301 of the Constitution which directs that all inter-State-trade and also intra-State trade shall be free.

99. These are the four main grounds on which the validity of the impugned Act itself has been challenged. But apart from the challenge to the constitutionality of the Act, certain other objections have been taken to the legality of the wordings and the publication of certain notifications under

Sections 3, 4, 5 and 6 of the impugned Act. Objections have also been taken to the effect that the objections preferred by the petitioners under Section 5 of the Act were not considered by proper authorities and no decision was actually given on those objections. I shall consider these objections in detail after dealing with the main objections concerning the constitutionality or otherwise of the impugned Act.

100. The first objection based on Article 14 of the Constitution in effect is that the State has denied to the petitioners equality before the law. It is argued that the State is as much, a person when it enters into a trade or business as any private citizen, and the impugned? Act purports to provide for a monopoly being: created in favour of the State in the matter of motor road transport to the exclusion of the petitioners, who have been carrying on the transport trade from before.

The objections under this head are twofold-- (1) that the State and the citizen stand on the same footing, and if a monopoly cannot be created in favour of an individual, it cannot be created in favour of the State either; and (2) that the Act makes it possible for the State Government and its officers to discriminate-between one citizen and another, inasmuch as the permits granted to the petitioners can be cancelled at the sweetwill of the officers concerned, who may cancel the permit of one operator and maintain that of another.

101. The contention of the learned counsel for the petitioners under head (1) is that it has been laid down in the Full Bench case of Moti Lal (A), already referred to, that the State, when it carries on business is as much a person as a private individual, and Article 14' of the Constitution prohibits preferential treatment being accorded to the State in the matter of trade.

102. In my opinion, this contention is only partially correct. What was challenged before the Full Bench was the validity of Section 42(3) of the Motor Vehicles Act, which provides for certain exceptions in the matter of obtaining permits as laid down in Sub-section (1). Subsection (1) of that Section prohibited every owner of a transport vehicle from using or permitting the use of the vehicle in any place, except in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport authority.

Sub-section (3), Clause (a), however, made an exception in favour of transport vehicles owned by or on behalf of the Central or the Provincial Government other than a vehicle used in connection with the business of an Indian State Railway. It is this provision the validity of which was challenged on the ground of improper discrimination in favour of vehicles owned by the Government. The Hon'ble the Chief Justice did not consider it necessary to decide the question whether the provisions of Section 42(3) (a) of the Motor Vehicles Act became void by reason of the provisions of Article 14 of the Constitution; but the other four learned Judges held that, when the State engaged itself in business or commerce, such as was carried on by private individuals, it must subject itself to the same obligations as were imposed upon the private individuals, and that the State must place itself in the same position as an individual when it is carrying on a trade along with them on a competitive basis.

103. Section 42 of the Motor Vehicles Act made it compulsory for private operators to obtain permits; but an exception was made in favour of the State, and the Full Bench held that as the State was competing with private individuals in the matter of trade, an exception in favour of the State vehicles from the operation of Section 42(1) was a discriminatory piece of legislation, and it therefore became void after coming into force of the Constitution.

104. As regards the monopoly in trade, the Full Bench held that it was not legal to effect monopoly in any trade in favour of the State by executive orders, in the absence of any legislation permitting the State to monopolise or nationalise the trade. It further held that there was no provision in the Motor Vehicles Act, which could authorise any State Government to nationalise the trade, nor was there any legislation elsewhere to authorise such nationalisation.

It was, therefore, held that an attempt by the State Government to nationalise transport trade by executive orders was illegal; but at the same time, they made it quite clear that they were not deciding the question that, if a legislation was passed authorising the nationalisation of any trade, such a legislation would be valid or not.

105. In the present case, we have to decide the question left open by the Full Bench, namely, whether such a legislation is a valid piece of legislation. This brings me to the question whether the U. P. State Road Transport Act contains any classification, and whether that classification can be said to be a reasonable one. Section 3 of the impugned Act leaves it to the discretion of the State Government to run its own services exclusively on a particular route or a portion thereof, or to run them in conjunction with the Railway, or in conjunction with other persons.

In either of these three cases it is left to the discretion of the State Government to decide in the manner it considers to be in the interest of the general public and for subserving the common good. The decision to run the services exclusively or in conjunction with the others is to be a decision of the State Government and of nobody else. The State or the State Government has thus been put in a separate class by itself, and the private operators in the other class.

This classification, in my opinion, is quite a reasonable and valid classification based, as it is, on a reasonable and just relation to the subject of transport trade. Transport service is a public utility service, and the considerations, which are expected to guide a State in running: such a service, are widely different from the considerations which are expected to guide a private citizen in the matter of such a trade. Private operators would be more interested in their own profits from the business, rather than in providing the comforts and amenities to the travelling public or in maintaining a proper and well paid staff.

A State, on the other hand, is not likely to Subordinate the considerations of the amenities and comforts of the travelling public to the consideration of profit earning. In the present state of the development of the society, the nationalisation of public utility services has been resorted to by many countries. In England in the years 1946 to 1948 the Bank of England was nationalised and so also the coal industry,, transport services, supply of 'electricity and supply of gas. Recently the conservative Government has denationalised the coal industry, but the transport services are

running still as nationalised services.

106. In the Union of India itself the Parliament passed the Road Transport Corporation Act, Act 64 of 1950, permitting nationalisation of motor road transports, and it provided for the constitution of a Road Transport Corporation. The Air Companies Act, Act 27 of 1953, has nationalised air services. Monopoly of the State, therefore, in the matter of transport services appears to be generally recognised, as a desirable object to be achieved. It cannot, therefore, be Said that putting the State in a separate class in the matter of transport trade-is not a reasonable classification. I further find that Article 19(1)(g), (6) was amended by the Constitution First Amendment Act of 1951, and the effect of the amendment is that an exclusive right to trade by a State or by a Corporation owned or controlled by a State, even to the total exclusion of others, is considered as a reasonable restriction to the fundamental right of a citizen to carry on trade granted by Article 19(1)(g).

I do not mean to say that every Act of nationalisation of a trade has been considered to be a reasonable restriction. But what I do think is that the Constitution itself has considered it legal, under certain circumstances for a State to nationalise a trade or business. The Union Government already enjoys monopoly in the matter of Railway, post, telegraph and telephone services, and it would be going too far to say that, in the circumstances prevailing these days, these monopolies are rendered invalid by the provisions of Article 14 of the Constitution.

Section 18 of the Indian Railways Act, section 4 of the Indian Post Offices Act, and section 4 of the Indian Telegraph Act virtually confer a monopoly on the Union or the State Governments in the matter of these services. These facts clearly prove that, in the matter at least of public utility services, the State Government or the Union Government has been put in a different class, and, in our opinion, such a classification is clearly valid and permissible. The impugned Act has put the State itself in a class different from that of a private operator, and the classification is perfectly justified. The objection of the learned counsel, therefore, on this point does not appear to have any force and we find ourselves unable to accept it.

107. The second objection under Article 14, as stated above, was that the provisions of the impugned Act make it possible for the State Government or its officers to discriminate between one operator and another. They may cancel the permits of some and maintain those of the others. They may decide to notify any route that they like and not notify another. It is contended that the Legislature itself should shave laid down the principles on which a selection of the routes or of the individual operators was to be made, and the whole thing should not have been left to the subjective determination of the officers; of the State Government.

I find myself unable to agree with this contention either. The only principle that could be made applicable to the selection of the routes or the number of the operators would be the rule of administrative convenience. It would depend on the number of buses and other carriages that the State is able to put into service and also the employment of the necessary staff for running the services, as also the suitability of a particular route to be taken first and the others afterwards. These matters are all matters of detail, which have to be left to the officers responsible for working the scheme under the supervision of the State Government, and no hard and fast rule could possibly

have been laid down by the Legislature itself which could govern the cases of all the different routes and the individual operators.

108. Great reliance was placed by the learned counsel for the petitioners on the case in AIR 1952 SC 75 (H). In this case the West Bengal Special Courts Act (X of 1950) provided a procedure for the trial by the Special Courts, which, was substantially different from that laid down for the trial of offences generally under the Code of Criminal Procedure.

It was left to the discretion of the State Government to have one case of the same kind tried by the Special Court and another by the regular court. It was held by their Lordships that a rule of procedure comes as much within the purview of Article 14 of the Constitution as any rule of substantive law, and that it was not necessary for the applicant to prove that the Legislature had the intention to discriminate against him, if the discrimination was a necessary consequence of the Act. Section 5(1) of the said Act was held to have vested the State Government with unrestricted discretion to direct any cases or class of cases to be tried by the Special Court.

This was a case where it was possible to lay down the guiding principles providing for a particular type of case to be tried by the Special Courts and another class by the ordinary criminal courts. But no Such guiding principles could be laid down in the present Act where the decision was to be with respect to the particular routes or the particular private carriages which were to be permitted to run.

109. In my opinion, the case is actually governed by the decision of their Lordships of the Supreme Court in recent case in AIR 1953 SC 404 (K). In this case the validity of the West Bengal Criminal Law Amendment (Special Courts) Act, (XXI of 1949), was challenged. Section 4 of that Act authorised the Provincial Government to allot cases for trial to a Special Judge from time to time and to withdraw any case already referred to the Special Judge.

After considering -- 'Anwar All Sarkar's case (H)', and the case in AIR 1952 SC 123 (J), their Lordships came to the conclusion that the case of Kedar Nath (K), was governed by the Saurashtra case where certain provisions of the State Public Safety (Third Amendment) Ordinance, (LXVI of 1949), were held to be valid. After considering these and other cases in detail, their Lordships were pleased to observe as follows :

> "There may be endless variations from case to case in the facts and circumstances attending the commission of the same type of offence, and in many of those cases there may be nothing that justifies or calls for the application of the provisions of the Special Act. For example, Sections 414 and 417, Penal Code are among the offences included in the Schedule to the Act, but they are triable in a summary way under Section 260, Criminal Procedure Code, where the value of the property concerned does not exceed, fifty rupees. It would indeed be odd if the Government were to be compelled to allot such trivial cases to a Special Court to be tried as a warrant case with an appeal to the High Court in case of conviction. The gravity of the particular crime, the advantage to be derived by the State by recoupment of its loss, and other like considerations may have to be weighed before allotting a case to the Special

> Court which is required to impose a compensatory sentence of fine on every offender tried and convicted by it. It seems reasonable, if misuse of the special machinery provided for the more effective punishment of certain classes of offenders is to be avoided, that some competent authority should be invested with the power to make a selection of the cases which should be dealt with under the special Act."

110. These observations, in my opinion, cover the present case, as there may be endless variations in the circumstances, which should determine as to which route was to be taken over first and which permits of individual operators were to be cancelled first and which allowed to stand for the time being. I have no reason to doubt that officers of the State Government would fairly and properly look into the matter and after taking everything into consideration, make their selections with respect to the routes as well as the individual operators.

It has not been Shown to us that, in the schemes that have been framed so far, the officers are in any way acting improperly in selecting the routes or the individual operators. These questions have to be decided on a consideration of numerous facts and circumstances, and it is obviously right and proper that the decision be left to the officers concerned. This objection of the learned counsel also therefore, fails.

111. The objection under Article 19 of the Constitution is that the impugned Act infringes the rights of the petitioners conferred upon them by Articles 19(1)(f) and (g). It is, however, conceded that if Sub-clause (g) applies, then Sub-clause (f) would have no application.

and the main contention on behalf of the petitioners has been that it is the right to practise and carry on the transport trade, which has been improperly taken away Sub-clause (f) really does not apply to the case, as no restriction has been placed on the petitioners acquiring, holding or disposing of any property. The motor vehicles belonging to the petitioners have not been acquired, nor the stations constructed on some of the routes by the petitioners for the convenience of the passengers.

No part of their undertaking or property has been acquired, and the only right they have been deprived of is the right to carry on their trade of transporting goods and passengers. Sub-clause (f) has, therefore, no application to the case, and Sub-clause (g) is the only clause which requires consideration. Sub- Clause (g) confers a right on all the citizens to practise any profession, or to carry on any occupation, trade or business. This right is, however, subject to the provisions of Article 19(6). Clause (6) lays down that nothing contained in Sub-clause (g) shall 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 Sub-clause. This is the general restriction on the right, and it has been mentioned that, in particular, nothing in the said sub-clauses shall prevent the State from making any law prescribing or empowering any authority to prescribe the professional or technical qualifications ' for practising any profession or carrying on occupation, trade or business.

Clause (6) stood as above till the 18th of June, 1951, when the latter portion of the clause was substituted by the following words "nothing in the said sub-clause shall affect the operation at any existing law in so far as it relates to, or prevent the State from making any law relating to,--

(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."

112. If this amendment were applicable to the present case, the point that the impugned Act contravenes the provisions of Article 19(1)(g) would not have been even arguable. But it appears that the amendment is not really applicable to this case, as pointed out by Mr. Chhail Behari Lal, advocate for some of the petitioners. The amendment has been made applicable to all "existing law" and also to all law made in future after the amendment of the Constitution. The impugned Act, however, came into force on the 10th of February, 1951, before the Constitution First Amendment Act of 1951 came into force. The question therefore, is whether it can be said to be an "existing law".

"Existing law" has been denned in Article 366(1) of the Constitution as any law passed or made before the commencement of this Constitution. "Existing law", therefore, has to be confined to legislation which was passed or made before the 26th of January 1950, and it cannot be said to include an enactment passed by the State Legislature after that date. The impugn-

ed Act, therefore, was neither "existing law" nor law made after the amendment of the Constitution. Its validity, therefore, has to be determined on the law, as it stood before the Constitution First Amendment Act of 1951. I have, therefore, to see whether the impugned Act contravenes the provisions of Article 19(1)(g) read with (6) as it originally stood.

113. It was argued that Article 19 of the Constitution does not confer on the citizen any new rights, but only guarantees the already existing right's under the general law. But this question is really of no importance, because whether the Article preserves the old existing rights or confers new ones, there can be no doubt that every citizen, after the Constitution, in any case, has the right to practise any profession or to carry on any occupation, trade or business, subject to the right of the State of making any law imposing reasonable restrictions on the citizens' rights in the interests of the general public. Attention has, therefore, to be confined to these provisions of the Constitution, as it would serve no useful purpose to embark upon an enquiry as to what the rights of the citizens were before the Constitution, and whether the same rights have been preserved or new ones have been conferred.

114. I have, therefore, to see whether a State Legislature is authorised to pass a law nationalising a trade under Clause (6), as it originally stood. According to this clause. State could impose reasonable restrictions in the interest of the general public, and it has been held that reasonable restrictions may even amount to the complete stoppage of any particular trade under certain circumstances.

This was the decision of all the five Judges in the Full Bench case in AIR 1951 All 257 (A). It cannot be doubted that in the case of obnoxious trade the State can properly and validly put a complete prohibition against it in the interest of the general public, for example nobody can doubt that the State has a right to stop the trade of selling publicly obscene, literature or libellous matter. Transport trade cannot be said to be an obnoxious trade. But certainly it is a trade in which the public using the thoroughfares is particularly interested; and, in the interest of the general public itself, many more restrictions can be imposed on trades of this kind than on other trades. It was conceded that the Provisions about transport business on public thoroughfares being under a permit and according to the conditions of it, was a reasonable restriction.

The State can also admittedly restrict the number of transport vehicles intended to be run for hire on the public thoroughfares. In this case the State has gone even beyond that, and has purported to nationalise the entire transport trade carried on by means of motor vehicles resulting in the total stoppage of the trade by private operators. In my opinion, even this total stoppage of trade on public places and thoroughfares cannot always be said to be an unreasonable restriction.

115. In 1949-2 All ER 755 at p. 772 (C), their Lordships of the Judicial Committee observed as follows : "..... their Lordships do not intend to lay down that in no circumstances could the exclusion of competition so as to create a monopoly either in State or Commonwealth agency or in some other body, be justified. Every case must be judged on its own, facts and in its own setting of time and circumstances, and it may be that in regard to some economic ..... activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation, and that inter-State "trade, commerce and intercourse" thus prohibited and thus monopolised remained absolutely free".

In the Full Bench case of this Court, referred to above, Mootham and Wanchoo, JJ. observed as follows:

> "We may point out that in India certain public utility services are already the Subject of State monopoly, for example, Railways, Posts, Telegraphs, and Telephones. It would, in our opinion, probably be going too far to say that in the circumstances of today, section 18 of the Indian Railways Act, Section 4 of the Indian Post Offices Act, and section 4 of the Indian Telegraphs Act are invalid because they prohibit, or tend to prohibit the carrying on certain occupations, trades or businesses by citizens. We consider that reasonable restrictions in the interest of the general public may in certain circumstances, as pointed out by their Lordships of the Judicial Committee, mean complete prohibition, and it will be for the Courts to Judge whether in a particular case complete prohibition amounts to more than a reasonable restriction in the interest of the general public".

116. As stated by the learned Judges mentioned above, the State is already enjoying monopoly in the matter of running the Railway, Post Offices and Telegraph Offices, and the transport trade by motor vehicles is of a similar kind. It is common knowledge that transport vehicles by private operators, before the State also started running its vehicles, were run in a very unsatisfactory manner, and used

to cause a lot of inconvenience to the travelling public. After the State also entered into competition, the services have been substantially improved on certain routes in the western and the hill districts,' and if taking an over all view of the entire position, the Legislature has come to the conclusion that all the motor transport trade should be nationalised, there is no reason to hold that this action of the State is in any way unreasonable. The members of the Legislature are the best persons who are in a position to know what is actually in the interest of the general public, and great value has to be attached to their opinion in a matter of this kind. Nationalisation of any trade effected before the Constitution came into force, and similar nationalisation effected after the amendment of Clause (6) of Article 19 will generally be upheld as a reasonable restriction, in view of the amendment of the Constitution, and. I see no reason to hold that the same could not be the result if the legislation was passed after the 26th January, 1950 and before the 18th January, 1951.

The intention of the Constitution makers is quite clear, though there has been an oversight in using the exact words. Still if nationalisation were prohibited by the Constitution, as it stood before the amendment, I would have been compelled to hold that the impugned Act is void. But in view of what I have stated above, I am of the opinion that nationalisation in the matter of public utility services was permissible even according to the constitution as it stood before the amendment.

117. The learned counsel for the petitioners referred to a decision of their Lordships of the Supreme Court reported in -- 'A. I. R. 1950 SC 163 (D)', In this case Rashid Ahmad used to carry on the wholesale business in vegitables and fruits at Kairana in a rented shop in a part of the town. On the 19th April, 1949 the Municipal Board of Kairana passed certain bye-laws providing that wholesale business in vegetables shall be carried on only in the Municipal Market, & the person authorised by the Municipal Board shall be the only person who could carry on such business.

The result of the bye-laws was that Abdul Rashid could not carry on the business in his own shop, and the contract for the business was given by the Municipal Board to a third person. Abdul Rashid applied for permission to carry on the trade, but his application was rejected, and subsequently a notice was issued to him to stop the business in his shop. The result of the bye-laws was that the prohibition against Rashid Ahmad from carrying on his trade was an absolute prohibition, and the bye-laws further contemplated the granting of a monopoly to any contractor they liked. Monopoly was actually granted to a person by the name of Habib Ahmad and Abdul Rashid could not carry on his trade. On these facts their Lordships held, "This certainly is much more than reasonable restrictions on the petitioner as are contemplated by Clause (6) of Article 19. This being the position the bye-laws would be void under Article 31(1) of the Constitution."

The argument of the learned counsel is that this observation of their Lordships means that all monopolies in the matter of trade are prohibited by the Constitution as they amount to more than reasonable restrictions on the right to carry on the trade. I do not think that such a far-reaching conclusion is deducible from this case. There are two clear distinctions between this case and the present case. In the first place, the monopoly in Rashid Ahmad's case was not effected in favour of the State, & secondly, the monopoly was not in the matter of any public utility service. The trade of selling vegetables can be carried on at a private place and the restrictions that can be put on a trade, which can be carried on only in public places, are bound to be much more Strict than those imposed

on trades carried on in private places.

Further, the considerations which apply to a monopoly in favour of a State are quite different from considerations which apply to a monopoly in favour of an individual. The amendment in the Constitution may have been effected in order to make the position clear, and, in my opinion, the decision in 'Rashid Ahmad's case (D)', does not govern the present case.

118. The next case cited was the case of -- 'Chintaman Rao v. State of Madhya Pradesh, A. I. R. 1951 SC 118 (R). In this case it was laid down by their Lordships that Section 4 of C. P. and Berar Regulation of Manufacture of Biris (Agricultural Purposes) Act, (Act 64 of 1948), was ultra vires inasmuch as it imposed total prohibition of carrying on the business of the manufacture of Biris during the agricultural season arbitrarily, and it interfered with private business. It consequently could not be said to impose reasonable restrictions on the fundamental rights conferred by Article 19(1)(g) of the Constitution. Their Lordships held that the phrase "reasonable restrictions" con templates that the limitation imposed on a per son in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public.

The word "reasonable" implies intelligent are and deliberation, and the legislation was held to fall outside the ambit of the expression, inasmuch as it arbitrarily and excessively invaded the right of the citizen to trade. Ac cording to their Lordships a proper balance between freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19 should be struck. While discussing the point later on, their Lordships observed as follows:

> "The effect of the provisions of the Act, however, has no relation to the object in view, but it is so drastic in scope that it goes much in excess of that object. Not only are the provisions of the Statute in excess of the requirements of the case but the language employed prohibits a manufacturer of Biris from employing any person in his business no matter wherever that person may be residing."

Such prohibitions were on their very face held to be of an arbitrary nature bearing no relation whatsoever to the object which the legislation sought to achieve. On these facts the legislation was held to be void, but the remarks do not apply to the present case.

It cannot be said in the case under consideration that the provision's of the Act have no reasonable relation to the object in view, or that they go in excess of that object. The preamble to the impugned Act is in the following words:

> "Whereas it is expedient in the interest of the general public and for the promotion of suitable and efficient road transport to provide for State Road Transport Services in Uttar Pradesh."

Section 3 of the Act authorises the State Government to notify the scheme if satisfied that it is necessary in the interest of the general public and for subserving the common good. The principles, therefore, laid down by their Lordships of the Supreme Court in that case have no application to this

case.

119. The next case cited by the learned counsel is also a Supreme Court case reported in -- 'Raghubir Singh v. Court of Wards', AIR 1953 SC 373 (S). The State of Ajmer passed Act No. 42 of 1950, and Section 112 of that Act provided that if a landlord habitually infringed the rights of a tenant under the Act, he was deemed to be landlord disqualified to manage his own property, and the property should be liable to be taken under the superintendence of the Court of Wards. The determination of the question as to whether a landlord had habitually infringed the rights of his tenant or tenants was left to the subjective determination of the Court of Wards.

It was argued that the provisions of Section 112 amounted to reasonable restrictions on the exercise of the right conferred by Article 19(1)(f) of the Constitution and these restrictions were in the interest of the general public. Their Lordships repelled the argument on the ground that the provisions of the section were penal in nature and were intended by way of punishment by a landlord, and an enactment, which prescribed a punishment or penalty for bad behaviour, could not possibly be regarded as a restriction on fundamental rights, as punishment could not be a restriction. It was further observed that when a law deprived a person of possession of his property for an indefinite period based merely on the subjective determination of an executive officer, such a law could on no construction be called reasonable.

This was not a case under Article 19(1)(g), but was a case under Sub-clause (f), and it was held to be not a reasonable restriction to deprive a person of the possession of his property for an indefinite period of time as the subjective determination of an executive officer. That case has no bearing on the question under consideration.

120. Reference was also made by the learned counsel to the case of the Madras High Court reported in -- 'C. S. S. Motor Service v. State of Madras', AIR 1953 Mad 279 (T). That was a case where the provisions of Section 47 of the Motor Vehicles Act were challenged and Clause (e) of Section 47 was held to be invalid on the ground that the provision was not' in the interest of the general public but of the permit holder.

Their Lordships further held that, where a legislation which interfered with fundamental rights was sought to be sustained as falling within the scope of Article 19(6), the question whether it was reasonable and made in the interest of the public was one open to judicial review, I respectfully agree with this observation of the learned Judges, but, after a consideration of all the facts and circumstances of the case as well as the cases cited at the Bar, I have come to the conclusion that the creation of a State monopoly in the matter of a motor transport trade or the nationalisation of such a trade in the interest of the general public is a reasonable restriction on the rights of the citizen guaranteed under Article 19(1)(g) of the Constitution.

121. The next point argued by the learned counsel was that the effect of this legislation was the acquisition or taking possession of the property of the petitioners and as no compensation was provided for that, and as there was no public purpose behind it, the legislation is rendered void, as it contravened the provisions of Article 31(2) of the Constitution. In my opinion, the Article has no

application to this case, because this is not a case of acquisition at all, but a case of restricting the right to trade under Clause (6) of Article 19. To a case actually falling under Article 31(2) of the Constitution, the provisions of Article 19 can have no application; and similarly to a case falling within the ambit of Article 19, the provisions of Article 31(2) have no application.

Article 19(6) permits the imposition of reasonable restrictions on the rights conferred by Article 19(1)(g), and I have already held that the present Act came within the scope of Clause (6) of Article 19, and the restrictions imposed by the Act were reasonable. This being a case of restrictions only, it cannot fall under Article 31(2) which is concerned with acquisitions of property. I shall consider in some detail later on the question whether the impugned Act purports to acquire any property. For the present I only mean to say that the argument, that Article 19(f) and Article 31(2) are both inconsistent with the Act, is to some extent itself inconsistent.

122. On this part of the case, the learned counsel has argued that his right to ply motor vehicles on the route or routes in question was his property, and the same is being acquired or is being taken possession of by the State without providing for any compensation and without there being any public purpose behind the acquisition. It is clear from the Act itself that there is no provision for payment of any compensation, and if the case is really covered by Article 31(2), then the impugned Act must be held to be void, because it does not provide for the payment of any compensation. The further question, as to whether the acquisition was for public purpose or not need not, therefore, be considered at all.

123. For application of Article 31(2) it must be shown that the petitioners owned some property, moveable or immoveable, which has been taken possession of or acquired by the State. I have, therefore, to see whether the petitioners have been deprived of any property and whether the same property has been acquired or taken possession of by the State of Uttar Pradesh. It was argued by the learned counsel for the petitioners that they had a right to carry on the business or trade of transporting passengers and goods by means of motor vehicles on the routes in question, and that right of theirs was property. The State may not have taken over the transport vehicles or other property belonging to the operators, but the operators have been deprived of this right to carry on the transport trade, and the first question for consideration is whether this right to trade can be said to be property. Property may be moveable or immoveable and the Article applies to both, but the right must come within the definition of "property", whether it be corporeal or incorporeal, moveable or immoveable.

The right to use public thoroughfares always existed in the citizen, and the Full Bench of this Court in Moti Lal's case (A), has further held that this right extended to using the thoroughfares for carrying on passengers and goods for gain. Restrictions on this right have been placed from time to time and the Act now in force, which deals with this subject, is the Motor Vehicles Act of 1939. Section 42 of this Act says that no person shall have a right to ply his motor vehicle for hire on a public thoroughfare except under and in accordance with the terms of the permit granted to him under the succeeding provisions of the Act.

The Act, therefore, substantially curtails the right of the citizen to carry on motor transport business on the public thoroughfares. Still it cannot be Said that that right has been completely wiped out by the Act, Permits are granted on certain conditions, and on a consideration of certain matters enumerated in the Act. But if those conditions are fulfilled and other considerations do not stand in the way, a citizen would have a right to run his motor vehicle on the thoroughfare for earning profits. The right, therefore, of the citizen to carry on transport business by motor vehicles on the public thoroughfare still subsists, though to a very limited extent. There are some observations made by the learned- Judges in Moti Lal's case (A) pointing to this conclusion, and with great respect, I agree with the law laid down there, I am, therefore, prepared to hold that the right of the petitioners to carry on transport trade through their motor vehicles under the terms and conditions of the permit was there when the impugned Act was passed.

124. The next question is whether this right can be said to be property. The learned counsel for the petitioners cited some cases in support of his contention that this right was property. In AIR 1946 Bom 216 (M), it was held that the word "property" would 'prima facie' cover a business and its goodwill. There is no question of any goodwill in the present case, and the case cited above does not appear to be very helpful.

125. The next case cited is that Of AIR 1946 Cal 140 (N). In this case it was held that the word "undertaking" used in Rule 81 of the Defence of India Rules, and Section 299(2), Government of India Act, was synonymous with the word 'business' and that the business of carrying on the hotel came within the meaning of the word "undertaking" in the above provisions. I quite agree that the word "undertaking" would include a business and the business by itself would be included in the word "property". But what is being taken away in the present case is a right to run on a thoroughfare which cannot be called an undertaking. This case, therefore, is also not of any help.

126. The case of 68 Comm-W LR 261 (O), was a case where under Regulation 54 of the National Security (General) Regulations, the Commonwealth took for an indefinite period exclusive possession of certain property, and it was held that this taking possession of amounted to an acquisition of property. Dalziel had taken land from the Bank upon a weekly tenancy and carried upon that land the business of parking motor cars. The Minister for the Army took possession of this land for defence purposes. It was held that this taking over amounted to an acquisition, as the word was not restricted to any particular type of interest or to any particular type of property, but it extended to the acquisition of any interest in any property.

The land remained the property of the Bank and Dalziel continued to be its tenant, but the possession of the land was taken over by the Minister, and this taking over was for an indefinite period of time. The right to possession of the land was held to be property which had been acquired and Dalziel was held to be entitled to just compensation. In this case also the acquisition was of possession of land and' it was clearly, therefore, property. But in the-present case there is no right in any property that has been taken away, but it is only the general right of every citizen to use a thoroughfare that has been affected.

127. In 1949-2 All ER 755 (C), it was held that the business of banking which consisted of the creation and transfer of credit, the making of loans, the purchase and disposal of investments and other similar transactions, was-included among those activities described as "trade, commerce, and intercourse". There can be no doubt that the business of banking, is trade, but that question is not the question that I have to determine in this case. What I have to determine is whether the common law right of the citizen to ply his buses for hire on a public road is property or not, and this case also does not help in the determination of that question.

128. Willis in his Constitutional Law at page 821 says, "Ownership relates to rights, powers, privileges, and immunities concerning either land or chattels. Property is not the thing, but it is these rights, powers, privileges, and immunities which a person has as against all others with reference to these objects of ownership."

This definition suggests that a right, power, privilege or immunity may be property if a person enjoys them against all others. But it does not mean that the common law right of a citizen to a public thoroughfare is his property.

129. Nichols on Eminent Domain, Vol. II, page 109, under the heading "Goodwill and business" says :

> "An established business or what is called "goodwill" has "never been held to be by itself property in the constitutional sense. When a piece of real estate upon which an established business is carried on is taken for the public use, it often happens that the proprietor of the business is unable to secure an equally available site in the neighbourhood, and by the interruption of his business and the removal of his store to a considerable distance away he may lose the greater part of his customers and never be able to regain his standing in the business community. If he is the owner of the land taken the jury may partly compensate him by giving him a liberal award for the land, but if he is a mere tenant, especially if there is an eminent domain clause in his lease, he may not receive a dollar."

He then goes on to say that a business is less tangible in nature and more uncertain in its vicissitudes than the rights which the constitution undertakes absolutely to protect. The destruction of a business may entail much greater hardship than the taking over of the property for which the constitution makes compensation necessary, but the diminution of the value of the business is considered a vaguer injury than the taking or appropriation with which the constitution deals.

The position would be the same when the business is destroyed by taking the land on which it was carried on. The impugned Act only destroys the right to carry passengers and goods for hire on the notified routes and it cannot be said that the petitioners had any right or title in the land, nor have they by the impugned Act been prohibited from carrying on their business elsewhere. As far as the impugned Act goes, in my opinion, therefore, it cannot be said that the petitioners have been deprived of any property in the constitutional sense by being prohibited from plying their buses on the particular route or routes.

130. The right of the petitioners was the same right which every citizen has for using the highway, but it cannot be said that every citizen has property in the highway because he has a right to carry on the business of transport on the highway. The petitioner's right was different from that of the general public only in So much that they possessed permits for using the highways but the right to use the routes cannot, in my opinion, be said to be the property of the petitioners. These permits were liable to be cancelled for specified reasons, but the discretion given to the transport authorities is so wide that it is difficult to say that the right acquired by the permit can be classified as property.

I am further of the opinion that it would not be correct to say that the right granted by the permit to use the highway was an interest in any property or undertaking. The undertaking, consisted of the buses, the passenger stations and other property belonging to the petitioners but it cannot be said to include the common law right of the petitioners to use the highways. What has been, taken away is the right to use these highways and that right could not be said to be any interest in that undertaking. I am consequently of the opinion that, though the petitioners have been deprived of a limited right evidenced by the permit, they have not been deprived of any property in the sense that the word is used in Article 31(2) of the Constitution.

131. Whatever doubt there might be on the point, there can, however, be no doubt, in my opinion, on the next question as to whether the State has acquired or taken possession of this very right of the petitioners. The State,. according to the Full Bench decision in Moti Lal's case (A), is a person entitled to carry or any trade it likes as much as any private citizen of India. It also has a right to run its own motor vehicles on the public thoroughfares, and when it confines the right to itself, it does not acquire the right of the citizen to use the highway for profits, but exercises its own right exclusively with the result that the citizen is deprived of his right. But it cannot be said that the State has acquired his right to run the buses because, as stated above, the State has an undoubted right in itself to run its own motor transports on public thoroughfares.

Article 289(2) contemplates the Government of a State carrying on a trade or business, and if a State carries on such an activity on a public thoroughfare, it is carrying it on, in the exercise of its own right and not because it has acquired or taken possession, of somebody else's right. The right of the petitioners comes only to this that they could run, a particular vehicle on a, particular route for a limited period of time, and the right to run, that vehicle has not been acquired by the State, though the petitioners have been deprived of it. It is a case of deprivation and not of acquisition of any right.

132. For the reasons given above, I have-come to the conclusion that the case is not covered by Article 31(2) of the Constitution at all, and the objection on this ground also fails. I may also mention that in the Full Bench case of Moti Lal (A) also the State had tried to monopolise the trade, but no argument was made that the action amounted to acquisition. and, therefore, compensation should be paid by the State for attempting to nationalise the motor transport trade. It is not necessary to discuss the American cases on this point because in America compensation has to be paid even for taking away rights, though the State may not have acquired or itself taken possession of them.

133. I now come to the question whether the impugned Act purports to contravene the provisions of Article 301 of the Constitution and.

is, therefore, void. Article 301 runs as follows :

> "Subject to the other provisions of this Part, trade commerce and intercourse throughout the territory of India shall be free."

It has been argued that this Article not only safegiards the right of the citizen to inter-state trade, but it safeguards the rights also to intra-State trade, but the impugned Act prohibits the petitioners from carrying on both inter-State and intra-State trade.

I am unable to accept this argument because, in my opinion, what the Article safeguards is the carrying on of the trade as distinguished from the right of any individual to carry it on.

Article 19(1)(g) and Article 301 have been framed in order to secure two different objects. Article 19(1)(g) refers to the individual rights and Article 301 refers to trade as a whole and not to the right of any individual. What Article 301 prohibits is interference with trade as such, though it sometimes happens that the number of individuals restricted may indicate that what was meant to prohibit was the trade itself, though prohibition was purported to be imposed against individuals only. But where ample provision is made for carrying on the trade and the trade would continue to flow as before, the fact that certain individuals have 'been prohibited from taking part in it would not, in any way, go to contravene the provisions of Article 301.

Article 301 safeguards the right of a community to see that the trade between the different parts of India is not hampered in any manner. I do not think that the provision's of Arts. 19 (1) (g) and 301 overlap and are both meant to safeguard the rights of the individual trader, as has been contended for by the learned counsel for the petitioners.

134. Great reliance was placed by the learned counsel bn the case in 1949-2 All ER 755 (C), which is a decision by their Lordships of the Privy Council in an appeal from Australia. Their Lordships were interested in interpreting the provisions of Article 92 of the Australian Constitution which provides, "On the imposition of uniform duties of cus-toms, trade, commerce, and intercourse among the States, whether by means of an internal carriage or ocean navigation, shall be absolutely free."

'The Commonwealth of Australia had passed a law; nationalising the banking trade and the validity of this Act was challenged on the ground that it contravened the provisions of Article 92 of the Constitution. Their Lordships "held that the business of banking was included among the activities described as "trade, commerce and intercourse", and as these were to be absolutely free, an Act which prohibited the business from being carried on between one State and another was a bad piece of legislation.

Their Lordships relied on previous case decided by them, namely. -- 'James v. The Commonwealth of Australia', 1936 AC 578 (U). In this case James was prohibited from taking his dried fruit to

another State and their Lordships had held that such a restriction interfered with the freedom of trade and commerce. They emphasised the fact that the word "intercourse" was joint with trade and commerce, and if intercourse between the States is protected, the freedom of one individual citizen from one State to cross over the frontier into another State must also be protected. In case, the Australian Constitution had also separately dealt with the rights of the individual citizen to trade and also the right to inter-State trade itself, the case would have been applicable to our Constitution as well. But the distinction is that in our Constitution the rights of the individual have been separately provided for, and this Article has been placed in a different part of the Constitution altogether.

If the individual citizen had no other right, it could have been said that Article 301 protects the individual's right as well as the flow of the trade itself. But that is not the position. Having exhaustively dealt with the individual's right earlier, it cannot be said that the same rights were again purported to be safeguarded by this Article. This Privy Council case, therefore, is distinguishable on the ground mentioned above.

135. The same question was previously raised before the Full Bench in Moti Lal's case (A), and while dealing with this part of the case, the Hon'ble Chief Justice observed, "The correct interpretation seems to be that - Article 19 lays down the rights of the citizen, while Article 301 deals with how the trade, commerce and intercourse is to be carried on between one place and another, whether the two places are situated in two States or are inside the same State."

136. Besides, the interpretation put on Article 301 by the learned Counsel for the petitioners would make the Article clearly inconsistent with Article 19(6) of the Constitution as it stands after the amendment made in 1951. Such an interpretation is to be avoided if it is possible to do so, Article 304(b) does not apply to this case because the previous consent of the President was not obtained before the Bill was introduced in the Legislature. Subsequent consent was admittedly obtained, taut that would not affect the matter, as under the proviso to Article 304(b), previous consent of the President is essential.

137. For the reasons given above, I find myself unable to accept the contention of the learned counsel for the petitioners on this point either.

138. It was next argued that Sections 7 and 11(2) of the impugned Act are bad pieces of legislation, because they authorise the executive officers of the State to set aside or supersede the provisions of the Motor Vehicles Act.

As far as Section 7 of the impugned Act is concerned, the objection has no force because the Legislature itself has modified certain provisions of the Indian Motor Vehicles Act, and has also specified the matters concerning which the State Government is authorised to pass certain orders. The State Government or its officers have, in no way, been authorised to cancel or modify the previous legislation on the subject and the required modifications have been effected by the Legislature itself in S. 7 of the Act. The position, however, with respect to Section 11(2) is somewhat different. Section 11 (2) is in the following words :

> "Any order made or deemed to be made under this Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or any instrument having effect by virtue of such enactment.
>
> Numerous kind of orders can be passed by the State Government and its officers under different provisions of the impugned Act and this Sub-section provides that those orders shall have effect notwithstanding any provisions of any other enactment. This virtually amounts to giving a power to the State Government and its officers to repeal other enactments on the subject and such a power should not have been conferred on the Government or its officers.
>
> The question is really concluded by a decision of a Full Bench of this Court in AIR 1952 All 866 (B). In this case the validity of sections 3, 4 and 6 of the Essential Supplies (Temporary Powers) Act of 1946 was challenged. The Full Bench held that Sections 3 and 4 were valid, but declared section 6 as ultra vires the 'Legislature. The relevant portion of Section 6 of the Essential Supplies Act is word for word the same as the provisions of Section 11(2) of the impugned Act, and the Full Bench held that section to be ultra vires the Legislature because it amounted to an abdication of legislative function in favour of the Government and its officers. This Full Bench case fully covers the question, and I am bound to hold that the provisions of Section 11(2)' are ultra vires the Legislature of Uttar Pradesh. But this finding does not affect the result of these writ petitions in any manner.

139. The next point that was urged was with respect to the invalidity of certain notifications issued under the impugned Act, and the alleged non-compliance with certain provisions of the Act in the actual framing of the schemes under the impugned Act. A number of objections were raised, and I will now proceed to consider those objections after giving the necessary facts.

It is admitted by the parties that on all the routes concerning which schemes have been framed under the impugned Act, State Transport Services as well as private buses were running when the Act was passed, and no new route has been notified on which State buses also had not been running. All the cases, therefore, are governed by the provisions of Section 13 (1) (b) of the impugned Act. This sub-section says :

> "Every route on which the State Road Transport Service was operating on the appointed date and every such service shall for purposes of this Act, be deemed, as the case may be, to be a route specified in a notification under section 3, and the service operating under a scheme duly prepared and published under and in accordance with sections 4 and 5, provided that the State Government publishes in the Official Gazette within fifteen days of the commencement of this Act a scheme as to the aforesaid road transport service providing as far as may be, for all or any of the matters specified in sub-section (2) of section 4 and the scheme so published shall be and be deemed to be the scheme duly confirmed and published under subsection (3) of section 5 and the route to which it relates shall be called a notified route and the

provisions of sections 6 and 7 shall be applicable thereto."

A notification was published by the State Government under Section 13(1) (b) in the U. P. Gazette dated the 12th February, 1951 giving the routes and the State Transport Services operating on those routes on the date immediately preceding the commencement of the impugned Act. This notification only mentioned the situation as it existed on that date, and that Situation, as it then prevailed, was the scheme which was notified under Section 13 (1) (b). All these routes therefore, have to be deemed to be the routes specified in a notification under Section 3 and the services have to be taken to be operating under a scheme duly prepared and published under and in accordance with provisions of sections 4 and 5 of the impugned Act.

The position, as disclosed in this notification, should be deemed to be the scheme duly confirmed and published under Sub-section (3) of section 5, and all these routes shall be taken to be notified routes, and the provisions of sections 6 and 7 of the Act are to apply to this scheme. Section 6 of the Act provides for the alteration or modification of a scheme, and lays down that the procedure mentioned in Sections 4 and 5 of the Act shall, so far as can be made applicable, be followed in altering or modifying a scheme as if the alteration or modification were a separate scheme. Another notification however, purporting to be under Section 3, was published with respect to stage carriages in the U. P. Gazette on the 23rd June, 1951 in English and on the 4th July, 1951 in Hindi.

The Hindi notification, according to a previous notification, was to be published on the 20th June, 1951, but it was actually published on the 4th of July, and the English notification of the scheme dated the 20th June, 1951 was published on the 23rd June, 1951. Objections were invited to the scheme thus notified, and it was mentioned that the Governor of U. P. would consider the objections. All the present petitioners filed their objections excepting one D.N. Agarwala, who is the petitioner in Writ Case No. 597 of 1952. The objections were heard by a Deputy Secretary, and the final scheme was published under Sub-section (3) of section 5 on the 27th of September 1952 in the U. P. Gazette. The scheme with respect to the contract carriages was dated the 16th of December, 1952 and was published in the U. P. Gazette dated the 20th December, 1952.

The Hindi notification says that it is with respect to the stage carriages, though the English notification says that it is with respect to State carriages. But the scheme actually is and purports to be a scheme for the running of contract carriages. This scheme was made final and published under Sub-section (3) of section 5 in the Government Gazette dated the 21st March, 1953.

140. There was another scheme with respect to a different route concerning which Writ Cases Nos. 397, 504 and 505 of 1953 have been filed, and it was published on the 11th of April, 1953. Objections to this scheme were invited, but the final scheme under Sub-section (3) of section 5 has not yet been published, because meanwhile these writ petitions had been filed and the State Government appears to have stayed its hands.

141. It has been argued that the notification published on the 16th June, 1951 under Section 3 of the Act was not a proper notification as required by the provisions of that section. The relevant portion of the notification is as follows :

> "The Governor of Uttar Pradesh is pleased to declare that the stage carriages services on the routes mentioned below should be run and operated exclusively by the State Government."

The scheme itself was published in the U P Gazette dated the 23rd June, 1951. Section 3 of the Act provides that a notification has to be issued where the State Government is satisfied that it is necessary in the interest of general public and for subserving the common good and then it may declare that the Road Transport services shall be run exclusively by the State Government or in conjunction with others. The objection is that this notification does not say that the State Government is satisfied that it is necessary in the interest of general public and for subserving the common good to run these services exclusively.

But this objection cannot be upheld for two reasons-- (1) that it was not only unnecessary to issue the notification under Section 3 at all, but the notification under Section 13 (b) having been issued, this notification under section 3 could not legally be issued. Section 3 covers cases of the routes newly proposed to be taken over, and Section 13(b) refers to those routes on which State carriages were already operating when the Act came into force. A notification under Section 13(b) having been issued, the notification under Section 3 should be deemed to have already been issued, and any modification of the scheme could be undertaken under Section 6 of the Act.

A notification actually issued under Section 3 with respect to these routes was not only unnecessary but also illegal. As such, it does not matter what the language of the notification was. Secondly, the notification expressly purports to be under Section 3 of the Act, and it can be presumed that when the Governor agreed to issue the notification, he must have been satisfied that the requirements of Section 3 of the Act have been fulfilled so far as the notification was concerned. The Act does not say that the satisfaction of the State Government should also appear in the notification itself and in view of the specific mention of the section it can be presumed that the State Government was satisfied that it was necessary in the interest of the general public and for subserving the common good to notify the routes.

For both the above reasons, I think that this objection has no force. The subsequent scheme should be taken to be the modification of the previous scheme published under Section 13(b), and this modification could be made under Section 6 of the Act without in any way resorting to the provisions of Section 3. As a matter of fact, there is no provision in the Act for the cancellation of the scheme published under Section 13(b) and the only provision is for modification of that scheme and it is contained in Section 6.

142. The next objection was that in the scheme, as originally published, objections were invited and it was given out that the Governor will hear the objections on the appointed date, but instead of the Governor hearing the objections, the objections were actually heard by a Deputy Secretary to Government. This objection too appears to have no force, because under Section 5(2) it is the State Government or the prescribed authority which has to consider the objections and either confirm, modify or alter the scheme. A Deputy Secretary of the Department actually heard the objections. Under Article 154(1), the executive power of the State vests in the Governor and is exercised by him

either directly or through officers subordinate to him in accordance with the Constitution. Article 166(1) of the Constitution provides that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

The reason why the Governor was mentioned, in the notification as the person who would hear the objections appear to be that the officer concerned thought that, as an executive action was to be expressed to be taken in the name of the Governor, it should be mentioned that it is the Governor who would hear the objections. Nobody could have been under any misapprehension that it would be the Governor himself who would hear the objections. The Governor in such matters always acts through the officers subordinate to him, and, in the present case, there was nothing wrong in a Deputy Secretary of the Department hearing the objections, even though it was expressed in the notification that this executive action of the Government would be taken by the Governor.

143. It was next argued that the final scheme published under Sub-section (3) cf Section 5 does not say that the objections have been considered by the State Government, and it is, therefore, not known whether any such consideration was actually given, nor have any reasons been given for the decision arrived at on the objections. It is admitted in this case that a Deputy Secretary to Government actually heard the objections in support of their objections and it was after this that the final scheme, as ultimately passed, was notified in the Gazette under Sub-section (3) of Section 5. It thus becomes obvious that decisions were taken and the objections must have been considered because the final decision as notified is the decision of the State Government.

As a matter of fact, it appears that the proposed scheme, as originally published, has actually been modified and this fact unmistakably shows that the objections had been considered. The State Government was not bound to supply the reasons to the petitioners for the decisions arrived at after hearing the objections. The decisions actually arrived at are embodied in the final scheme and the facts given above clearly show that the objections of the petitioners were considered by the State Government which finally published the scheme. The State Government is also authorised to act through its Secretaries, and even if it be assumed that the Deputy Secretaries' recommendations were accepted by the State Government, it cannot be said that there was any illegality in this procedure.

It was also argued in this connection that there is some inconsistency between the provisions of Section 5(2) and Section 10 of the Act. Section 5(2) says that the State Government or if the State Government so directs, the prescribed authority shall after having considered the objections either confirm, modify or alter the scheme. Section 10 says that the State Government cannot delegate to an officer or authority subordinate to it the powers conferred upon the Government by the provisions of subsection (2) of Section 5. It was urged that under the provisions of Section 10, the State Government could not delegate its powers to any officer to consider the objections and then either confirm, or modify the scheme, whereas the provisions of Section 5(2) confer those powers on the prescribed authority also.

The prescribed authority mean's the authority appointed by the rules made under this Act, and that authority has been given an independent power in Section 5(2) to consider the objections. If there

were such an authority, it would not be a delegation of powers by the State Government under Section 10 at all But the right of the prescribed authority to consider the objections is an independent right granted by Section 5(2). Thus there appears to be no real inconsistency between the provisions of sections 5(2) and 10 of the Act. An officer of the State Government can be authorised by the rules framed by the State Government to consider the objections, but the State Government cannot by a notification in the Gazette delegate its powers under this Sub-section to any officer.

144. It was also argued in connection with notification under Section 3 that the same should have been published according to rule 3 in a local newspaper, but the notification was not actually published in any such paper. I have already held that the notification under Section 3 was not only an unnecessary but also an illegal notification. Therefore it can make no difference whether the said notification was published in a local newspaper or not.

145. In respect to contract carriages, the objection was that the notification itself purported to be concerning stage carriages, and, therefore, we must take it that there was no notification under Section 3 of the Act with respect to contract carriages at all. I have already held that a notice under Section 3 was not required, nor could it legally be issued; but the objection, even as it stands, has no force because the English notification said that it was with respect to the State carriages, and it was only the Hindi notification which said that it was with respect to stage carriages. Article 348(1 Kb)(iii) of the Constitution provides that all orders, rules, regulations and bye-laws issued under any law made by the Legislature of a State shall be in the English language.

Preference, therefore, has to be given to the English version of the notification, and the English version was quite correct. There appears to have been a clerical mistake as far as the Hindi version was concerned. But even this mistake in the Hindi version could not have misled anybody because the entire scheme published, which accompanied the notification, was with respect of contract carriages, and the scheme itself said that it was with respect to contract carriages. The notification and the scheme were published together and a- reference to the scheme must have shown to everybody that it was with respect to contract carriages. This objection is also without any force.

146. A reference was made to some cases which laid down that the notifications issued by the State Governments should be read, as they stand, and that they must be strictly construed. I respectfully accept the principle laid down in these cases, but they do not apply to the present case, and I do not consider it necessary to discuss those cases.

147. The last point argued was that this Act authorises the cancellation of permits granted by the officers of other States, namely, the State of Delhi, and to this extent the Act is ultra vires the U. P. Legislature. This objection also is without substance, because the Act authorises the cancellation of those permits in so far as they authorise the operators to run their buses in the State of Uttar Pradesh, and the Stats Legislature could very well say that so far the permits granted by the officers of the other States are concerned, they will have no validity as far as the territory included in the State of U. P. is concerned, and the outside permits would to that extent become ineffective.

148. In the result I am of the opinion that all these writ petitions should be dismissed, but the parties should be ordered 'to bear their own costs because the petitioners are likely to suffer serious losses after the coming into force of the schemes prepared under the Act.

By The Court

149. For the reasons given by us in our separate judgment we dismiss these petitions,. but direct that the parties do bear their own costs of these petitions.

150. We further certify that these cases involve Substantial questions of law as to the interpretation of the Constitution within the meaning of Article 132(1).