

BOMBAY HIGH COURT

In re Keshav Madhav Menon

Vs.

State (Bombay)

Criminal Appln. No. 229 of 1950

(Chagla, C.J., Bavdekar and Shah, JJ.)

12.04.1950

JUDGMENT

Chagla, C.J.

1. The petitioner is being prosecuted before the learned Chief Presidency Magistrate for having contravened Section 18 (1), Press (Emergency Powers) Act, 1931, and the application of the petitioner is that the prosecution should be quashed inasmuch as Section 18 (1), Press (Emergency Powers) Act, 1931, is void and of no effect as contravening Article 19 of the Constitution.

2. Now, before we consider whether Section 18 (1) contravenes a fundamental right which has been granted to the subject under our Constitution, we have to decide whether we have any jurisdiction at this stage to consider this matter when the case is still pending before the learned Chief Presidency Magistrate. Reliance is placed by the petitioner upon Article 228 of the Constitution, and that article provides :

"If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of the Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and shall deal with it as laid down in that article." and the submission made to us by the Advocate General is that the case pending before the learned Chief Presidency Magistrate does not involve any question as to the interpretation of the Constitution. Turning to Act, 13 (1), it lays down that all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. Now, the offence was alleged to have been committed in this case before the Constitution came into force and the prosecution was also launched by the Government before the Constitution came into

force. Therefore, on the date when the Constitution came into force, the prosecution against the petitioner was pending before a criminal Court, and the question that we have to consider is, assuming that Section 18 of the Press Act is void, whether a proceeding which was pending under that section of the Act prior to the commencement of the Constitution is affected by the section being void as a result of the coming into force of the Constitution. The contention of Mr. Jhaveri is that inasmuch as the Act is declared to be void, being inconsistent with the provisions of Part III of the Constitution, all proceedings which were taken under that Act, all rights which have accrued and of liabilities that have been incurred, must automatically come to an end along with the Act becoming void on the coming into force of the Constitution. On the other hand, the Advocate-General's contention is that Article 13 (1) does not affect either vested rights or liabilities that have been incurred or proceedings that have been taken under a law which was valid prior to the commencement of the Constitution. These are the two rival contentions which we have to consider.

3. Now, when an Act is repealed and ceases to be of any effect, ordinarily the vested rights which have come into existence under the repealed Act and anything done or any proceedings taken come to an end with the repeal of the statute. In order to save vested rights and in order not to affect what was done under an Act, in England Section 38 (2), Interpretation Act, 1889, was enacted which expressly saved the previous operation of the repealed enactment or anything duly done or suffered under it and any legal proceeding which was pending under the Act. Similarly, in India we have Section 6, General Clauses Act, 1897, which is practically identical in terms of the section I have just referred to of the Interpretation Act and that section provides that where this Act or any regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect various vested rights and proceedings which are set out in detail in the various sub-clauses of that section. Turning to Article 367 of the Constitution, that article provides that :

"Unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India."

Therefore, the very narrow question that we have to consider is whether by reason of Section 6, General Clauses Act, which has been in terms made applicable for the purpose of interpretation of this Constitution, the proceeding which was pending under the Press Act prior to the commencement of the Constitution has been saved notwithstanding the fact that the Act itself or a part of it might become void as a result of the enactment of the Constitution.

4. Now, emphasis is placed upon the expression used by the Legislature in Article 13 (1) of the Constitution. The expression used is not that all laws in force in the territory of India

immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be repealed, but the Constituent Assembly has chosen to use the expression that such laws shall be void, and it is argued that by using this expression in its context, viz., in Part III which deals with fundamental rights, the object of the Constituent Assembly was that Section 6 should not apply as far as these particular laws were concerned and all proceedings taken under such laws which might have been pending at the date of the commencement of the Constitution should automatically come to an end. It is argued that the Constituent Assembly was conferring fundamental rights upon the subject and if a particular statute was inconsistent with fundamental rights, it is inconceivable that the Constituent Assembly would countenance the continuance of a prosecution for contravention of a law which has been declared to be void and contrary to the fundamental rights. Put in that form, the argument appears to be very attractive, but we have to consider, looking to Article 13 itself and to the other articles to which I shall presently draw attention, whether the Constituent Assembly contemplated a distinction being made between a repealed statute and a statute which it declared to be void, or, in other words, whether it was in the contemplation of the Constituent Assembly when it declared certain laws to be void under Article 13 (1) that it did not intend that Section 6, General Clauses Act, should apply to such laws. In the first place, we have to consider whether there is any difference in substance between a repealed statute and a statute which is declared void by a Legislature or a Constituent Assembly. It is true, as urged by Mr. Purshottam, that repealing an Act implies a legislative process by which the Legislature applies its mind to specific pieces of legislation and puts an end to their lives. In this very Constitution we have Article 395 where the Constituent Assembly has repealed certain Acts mentioned in that article. It will be noticed that by that legislative process the Constituent Assembly applied its mind to those specific pieces of legislation and put an end to their lives. When we turn to Article 13 (1), it was impossible for the Constituent Assembly to know which laws would be inconsistent with Part III of the Constitution. Therefore it could not specifically repeal certain laws as it did in the case of Article 395. Under those circumstances, all that the Constituent Assembly could do was to declare that any law or any part of the law which is inconsistent with part III of the Constitution would be void. Mr. Purshottam is right that it will be for the Courts of law to determine which law is inconsistent with the Constitution. But in substance and in its effect there is no difference between an Act which is repealed and an Act which is declared void. In both cases the Act ceases to be operative. The law is annulled.

5. Now, turning to Section 6, General Clauses Act, it applies to cases where any Act repeals any other Act. The repeal need not necessarily be by the legislative process on which Mr. Purshottam is relying. Section 6 is not confined to cases where the Legislature expressly repeals a named legislation. Section 6 must apply even to those cases where the effect of a subsequent legislation is to make an earlier legislation of no effect, and therefore when we turn to Article 13 it is a subsequent piece of legislation undoubtedly of high import being a part of our Constitution which by its operation puts an end to certain laws which were in existence and which ceased to be in operation from a particular date. I fail to understand why Section 6 should only be

applicable to a case where the Legislature uses the expression "repeal" and not to a case where the Legislature uses the expression "void," if in substance the effect of using these two expressions is exactly the same. Mr. Dharap has urged that we must read Article 13 (1) as invalidating the laws referred to in that sub-clause from their very inception and from the time when they were enacted. It is impossible to accept that contention because in terms Article 13 (1) provides that these laws although valid when they were enacted and valid up to the date of the commencement of the Constitution, become void when the Constitution comes into force by reason of the inconsistency with the fundamental rights laid down in Part III.

6. It is clear that no particular efficacy attaches to the expression "void" used in Article 13 (1), when one looks at another article in which the same expression has been used, and that article is 254. That deals with the inconsistency that there may be between laws made by Parliament and the laws made by the Legislature of the States, and it declares that to the extent that there is such an inconsistency the laws made by the Legislature of the State shall be void. Therefore any argument based upon the fact that the expression "void" used in the particular context of Part III should be given a special meaning loses much of its force when one finds the same expression used by the Constituent Assembly in Article 254 which has nothing to do with any fundamental right. It is instructive to note also that in Article 251 which again deals with inconsistency between the laws made by Parliament and the laws made by the Legislature of the States, the expression used by the Constituent Assembly is "inoperative" and not "void." Therefore the Constituent Assembly has used different expressions in different parts of the Constitution to indicate that a particular law has ceased to have any effect and is no longer in operation. There is no reason why we should apply Section 6, General Clauses Act, only to Article 395 where the expression "repealed" is used and not to other articles where different expressions are used, although in substance the meaning and the connotation of this expression is the same.

7. Our attention has also been drawn by the Advocate-General to Article 372. Looking to Articles 395, 13 and 372, the scheme seems to be that the Constituent Assembly has repealed the old Constitution Act and under Article 372 it has continued in force all the laws which were in force before the commencement of the Constitution subject to their being altered or repealed by a competent Legislature or other competent authority. But this is subject to Article 13 which makes an exception in the case of those laws which are inconsistent with the provisions of Part III, and sub clause (2) of Article 372 gives the power to the President for the purpose of bringing the provisions of any law in force into accord with the provisions of the Constitution and to make adaptations and modifications. It is difficult to believe that the Constituent Assembly contemplated that with regard to the laws which it was declared to be void under Article 13 all vested rights and all proceedings taken should be disturbed or affected by particular laws ceasing to be in force as a result of any inconsistency which the fundamental rights guarantee to the subject.

8. We are, therefore, of the opinion that Section 6, General Clauses Act, applies to those laws

which have become void as a result of their being inconsistent with the provisions of Part III of the Constitution, and inasmuch as the proceeding before the Chief Presidency Magistrate which has been challenged by this petition was already taken before the Constitution came into force, that proceeding cannot be affected by the result of Section 18(1) being declared to be void under Article 13(1) of the Constitution.

9. The result is that the petition fails and must be dismissed. Certificate under Article 132 (1).
Petition dismissed.