ORISSA HIGH COURT

Lokanath Misra

Vs

State of Orissa

M.J.C. Nos. 194 and 195 of 1950

(Ray, C.J. and Narasimham, J.)

03.04.1951

JUDGMENT

Narasimham, J.

1.These are petitions under Article 226 of the Constitution by persons who were plying stage carriage vehicles (buses) for hire along certain routes in Ganjam district and whose permits have been cancelled with effect from 1-1-1951 in consequence of notification No. 35613 S. T. dated 21-9-1950 read with erratum No. 363669 S. T. dated 27-9-1950 issued by the State Govt. under Section 5, Orissa Motor Vehicles (Regulation of Stage Carriage and Public Carrier's Services) Act, 1947 Orissa Act 36 of 1947.

2. Sri Lokanath Misra the petitioner in M.J.C. No. 194 of 1950 is the owner of two buses Nos. O.R.G. 399 and 380. He was granted a permit No. 49/1 for three years from 21-4-1949 to 21-4-1952 for plying O.R.G. 380 over Odogan-Aska route in Ganjam district. He was granted another permit No. 39/1 in respect of O.R.G. 380 for a period of one year expiring on 19-11-1948 over Chirrikipada-Chatrapur route in the same district. But sometime in May 1948 that permit was validated for another vehicle bearing No. O.R.G. 399 and the route was extended to Berhampur and the duration of the permits was also extended to 30-10-1950. After the expiry of that permit in October 1950 he applied for its renewal but renewal was not granted though he was allowed to ply the bus over that route till 31-12-1950.

3. In M.J.C. No. 195 of 1950 the petitioner Sri Jami Biswanath Prusti was granted three permits for paying buses for hire on the routes specified below.

4. These permits were granted by the Regional Transport Authority under the provisions of the Motor Vehicles Act, 1939 (hereinafter referred to as the principal Act) and they would ordinarily have remained valid for the period for which they were issued but for the notification No. 35613 S. T. dated 21-9-1950 issued under Section 5, Orissa Motor Vehicles (Regulation of Stage Carriage and Public Carrier's Services) Act, 1947 (Orissa Act 36 of 1947) (hereinafter referred to as the Subsidiary Act). The main contention of the learned counsel for the petitioners is that the subsidiary Act is ultra vires the Constitution and consequently the notification issued thereunder

is inoperative and cannot have the effect of cancelling the permits validly granted under the principal Act.

5. The principal Act was passed in 1939 and Chap. IV of that Act contains elaborate provisions for the grant of stage carriage permits to various persons authorizing them to ply their buses for hire over certain specified routes and prescribing the procedure to be followed by the Regional Transport authorities in granting or refusing to grant such permits. Two classes of permits were contemplated in that Chapter : firstly, temporary permit which is valid for four months only under Section 62 and secondly, a regular permit which under Section 58 would remain valid for a period of not less than three years and not more than five years as may be directed by the Transport Authority. In granting or refusing to grant regular permits the Transport Authority were required to have regard to certain matters specified in Section 47. They were empowered by Section 58 to regulate the plying of buses by attaching some conditions to the permits, by limiting the number of buses in any route, and by fixing the timings of their arrival and departure. As the principal Act has not been challenged as 'ultra vires' it is unnecessary for the purpose of this case to deal with these provisions at length. It is sufficient to note that Chap. IV of the principal Act aims at regulating the use of motor transport for hire in the interests of the safety and convenience of the public and also for the purpose of developing a co-ordinated system of transport. It did not contain express provisions for granting monopoly either over a specified route or over a specified area of the State or the whole of the State to a particular agency though it authorized the restriction of the number of vehicles. Sometime in 1946 the Govt. of Orissa took up for consideration the formation of a Joint Stock Company (in which the State Govt. and the Union Govt. together would have controlling interests to take over the entire business of running stage carriage and public carrier's services in the State either by stages or at one stage and also to admit some of the owners of the buses as share-holders in the said Company. Some negotiations were carried on with the operators of the motor transport services in the Province and on 17-10-1946 a general letter was issued to all operators (No. 4036-(145) T. dated 17-10-1946) in which it was stated that "as these negotiations are likely to be fruitful Govt. have decided to temporarily suspend the issue of new permits". For the purpose of conferring monopoly on such a Joint Stock Company, legislation for modifying the principal Act was taken up and a Bill was published on 14-5-1947 and eventually passed by the Orissa Legislature as the Motor Vehicles (Regulation of Stage Carriage and Public Carrier's Services) Act, 1947. It was brought into force with effect from 15-2-1948. The preamble of that Act is worth quoting.

> "Whereas it is expedient to modify the provisions of the Motor Vehicles Act, 1939, for the purpose of better regulation of stage carriage and public carrier's services in the Province of Orissa :

And whereas for such purpose it is intended to form a Joint stock Company in which the Central and the Provincial Govts. shall together nave controlling interests for providing in stages or in one stage a more efficient administration of the entire stage carriage and public carrier's services in the Province of Orissa : And whereas it is expedient to authorize the said Company to run stage carriage and public carrier's services in the Province of Orissa, to the exclusion of all other persons in the routes and areas over which it extends its activities and thereby provide for such modification of the said Act :" Section 2 of the Act says that the Act shall be construed as forming part of the Motor Vehicles Act, 1939 but that where there is any repugnancy or

inconsistency between any of the provisions of the two Acts, the provisions of the subsidiary Act shall prevail and the principal Act shall be deemed to be modified to that extent. The main provisions (Sections 4 and 5) of the Act conferred power on the Provincial Transport Authority or the Regional Transport Authorities under the principal Act as regards issue, renewal, suspension or transfer of permits (S. 4) and also to cancel by notification any permit granted under the provisions of the principal Act. Section 6 provided for payment of compensation where permits issued prior to 1-10-1946 were cancelled. That date was presumably fixed in the Act because in the general letter of the Govt. (No. 4036 (145) T. dated the 17th October, 1946) all operators of motor transport services were informed of the Govt.s' decision to suspend the issue of the new permits from October, 1946. Apparently the Legislature then thought that no regular permits would be issued after 1-10-1946 and the question providing compensation for permits issued after that date could not arise. The other provisions of the subsidiary Act are of a consequential nature. Though the Act came into force on 15-2-1948 it did not become operative from that date because until the rules were made under Section 10 and the notifications issued either under Section 5 or under Section 4 the permits granted by Transport Authority under the Principal Act would continue to remain valid. As there was some delay in bringing the subsidiary Act into operation, the Transport Authorities continued to issue regular permits valid for three years, under the principal Act, notwithstanding the existence of the subsidiary Act on the statute book. The rules under the subsidiary Act were duly made and published on 23-3-1950 and the notification under Section 5 of that Act was issued (as already stated) on 21-9-1950 and it had the effect of cancelling all permits issued under the principal Act with effect from 1-1-1951. The Govt. then issued another notification on 13-12-1950 (No. 45004-T. S. - 183 S. T. dated 13-12-1950) under Section 4(1), of the subsidiary Act, holding in abeyance the powers conferred on the State Transport Authority and Regional Transport Authorities, Ganjam, Puri and Phulbani.

6. In pursuance of the scheme contemplated in the subsidiary Act a Joint Stock Company known as the Orissa Road Transport Company Ltd. (hereinafter referred to as the company) was formed with an authorised capital of Rs. 35,00,000/-. The State Govt. and the Union Govt. (represented by the B. N. Rly.) held together 51 per cent. of the shares and the rest were thrown open to the general public and several private motor-bus operators who agreed to join the scheme. The company was registered on 30-11-1950 and commenced its operation from 1-1-1951 in certain routes over which it was given monopoly rights. The management of the Company was vested in a Board of Directors whose constitution and powers are fully described in Part VII of the Articles of Association (Regulations 100 to 115). One nominee of the State Govt. and another nominee of the B.N. Ry (on behalf of the Union Govt.) were made permanent nominated Directors and both the Govts. retained control in the selection of the General Manager of the Company. The preamble of the subsidiary Act requires the State Govt. and the Union Govt. to have together 'controlling interest' in the Company. The phrase 'controlling interest' in the Company has got a definite connotation in the Company Law. In '*Inland Revenue Commissioners v. J. Bibbly and Sons. Ltd*[1]*.',* the House of Lords held that :

> "on a true construction, the words 'controlling interest' did not refer to the directors', beneficial interest in the company but to the power of controlling by votes the decisions binding on the company in the shape of resolutions passed at a general meeting." To a similar effect are the observations of Viscount Simon, L.C., in *'Commissioners of Indian Revenue v. F.A. Clerk and Ltd*[2]*.',*

> "But that is to treat the phrase 'controlling interest' as capable of connoting only a proprietary right, that is, an interest in the nature of ownership. The word 'interest' however, as pointed out by Lawrence, J., is a word of wide connotation and I think the conception of 'controlling interest' may well cover the relationship of one company towards another, the requisite majority of whose shares are, as regards their voting power, subject, whether directly or indirectly, to the will and ordering of the first-mentioned company."

These decisions have been followed in a recent decision of the Calcutta High Court in '*The Commissioner of Excess Profits Tax, West Bengal v. Jeewanlal Ltd., Calcutta*[3]*,* while construing the same phrase occurring in Section 2(21), Excess Profits Tax Act. Thus neither the Judicial decisions regarding the construction of the phrase 'controlling interest' nor the provisions in the Articles of Association dealing with the management of the Company support the view put forward by Mr. Mohapatra that the controlling interest of the State and the Union Govt. in the Company is limited to financial interest only. The two Govts. together control the decisions of the Company and consequently the Company though not directly managed by the Govt. is managed by an agency whose decisions are controlled by the Govt.

7. The learned counsel for the petitioners have urged the following three important points while challenging the validity of the subsidiary Act :

> (i) That Act abridged the fundamental right conferred on the petitioners by Sub-clause (g), Clause (1) of Article 19 of the Constitution to carry on their business of plying buses for hire and that the Act is not saved by the exception contained in Clause (6) of that Article;
> (ii) The Act offends Article 14 by discriminating in favor of the Company; and
> (iii) The Act is invalid for contravening Sub-clause (2) of Section 299, Govt. of India Act, 1935 inasmuch as it contains no provision for compensating those persons to whom permits were granted after 1-10-1946.

8. 'Point No. (i) : There can be no doubt that the plying of motor vehicles for hire on public roads is a 'business' and every citizen is entitled under Article 19(1)(g) to carry on such business. There is also no doubt that from the date on which the subsidiary Act comes into operation in any particular area by the issue of notifications under Sections 4 and 5 such a business cannot be carried on by any person other than the
Company to whom alone monopoly rights are granted. The question is whether such law will be saved by Clause (6) of Article 19 which says :

> "nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause....."

Mr. Mohapatra urged that C. (6) of the Article authorized provisions of a regulatory nature and

not of a prohibitory nature and that in any case complete prohibition of this class of business and conferring monopoly rights to the company would amount to unreasonable restriction on the exercise of the fundamental rights and that such restriction was not in the interests of the general public.

9. The first question for consideration therefore is whether the expression 'restriction' in Clause (6) of Article 19 implies mere regulation and does not include absolute prohibition. It is true that it was held in *'Municipal Corporation of City of Toronto v. Virgo[4]',* that "a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed." But the word used in the Article is 'restriction' and not 'regulation'. That the framers of the Constitution were aware of the distinction between the power to regulate and the power to restrict will be apparent from a scrutiny of Sub-clause (a) of C. (2) of Article 25 where the words 'regulating' and 'restricting' occur in juxtaposition thereby indicating unmistakably that the framers of the constitution intended to convey two different meanings by the two words. It will be noticed that Article 25 occurs in the same Chapter as Article 19 and consequently the expression 'restriction' in Article 19(6) cannot be held to be synonymous with regulation. Restriction may be complete or partial; and where it is complete it would imply absolute prohibition. The dictionary meaning of the word 'restriction' includes 'prohibition' also.

10. The second question for consideration is whether the restrictions permitted by the subsidiary Act are 'reasonable' bearing in mind 'the interests of the general public'. The answer is indeed somewhat difficult because the expressions 'reasonable' and 'the interests of the general public' are both elastic terms and a discussion about the full import of those expressions must necessarily involve a discussion of the political, social, and economic problems of the present day not only in this country but all over the world. It is not my intention to trespass into the field of Politics or Economics and to join in any controversy regarding the relative merits of monopoly versus free competition or state ownership and control of business versus private ownership and management; but a brief discussion of these matters is unavoidable because Article 19 (6) has been made justiciable by the Constitution and consequently the question must finally be solved only by Court of Law. It is true that it is primarily the function of the Legislature to decide what type of control is reasonable in public interests. But the Court has to see that under the guise of imposing reasonable restrictions as permitted by Clause (6) of Article 19, the freedom guaranteed by Sub-clause (g) of Clause (1) of Article 19 is not taken away. I may in this connection quote the following

observations of the Supreme Court in *'Chintamanrao v. State of Madhya Pradesh'[5],*

> "The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19 (1) (g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality."

11. Judged by the aforesaid rule I do not think the provisions of the subsidiary Act go beyond the limits of reasonable restrictions in the interests of the general public permitted by Clause (6) of Article 19. It is not denied that road transport service is a 'public utility service.' In such a service the convenience of the public and their safety must over-ride any consideration of profit to the owners of transport vehicles. From the earliest days of English Common Law it was always recognised that common carriers and other public utility undertakings require drastic State control and that they cannot be left to free competition. A public utility service must, by its very nature, involve some sort of monopoly. Doubtless under the principal Act though monopoly was not granted to a single permit holder, the number of permit holders was limited by the issue of permits and the principal object of the subsidiary Act is to substitute one joint stock Company for several permit-holders throughout the State of Orissa. The controversy as regards the relative merits of free competition and monopoly is an age-old one in Political Economy. But it is agreed by almost all authorities that in respect of public utility services monopoly is distinctly more advantageous to the public than free competition. It is true that monopoly has its own disadvantages but where the monopoly is that of the State or of an agency controlled by the State the evil effects of monopoly almost disappear. On account of its larger financial resources and greater influence and power, the State is in a better position to invest larger sums on comfortable buses, provide more amenities for passengers such as rest-sheds at every place of halt and also keep sufficient number of reserve buses and trained staff for rescue work in the event of any break-down in any route. Moreover where there is private competition (though somewhat restricted) it may not be possible to find any applicant for a permit over an unremunerative route because a private bus-owner is anxious that every part of his service should yield as much profit as possible. But public interest may demand that services should be provided in inaccessible routes even though they may not be remunerative. A big joint stock Company with the resources of the State behind it and under virtual State control would not hesitate to ply buses even over such routes so long as the transport business as a whole yields reasonable return on its investment. Again, in the field of co-ordination of transport agencies the Company possesses a distinct advantage over several private bus owners. If different agencies are engaged in different types of transport services such as railways and motor buses there may be unhealthy competition amongst them and a tendency to create unnecessary duplication of each. On the other hand, one company which controls the entire road transport service of Orissa, in which there is a nominee of the State Govt. and of the B.N. Rly., may be in a better position to negotiate with the Railway and co-ordinate the two services so as to offer the most economical services to the public. As the Bengal Nagpur Railway is the only railway serving the whole of Orissa the distinct advantages for the purpose of co-ordination arising out of the inclusion in the directorate of a representative of the Railway are obvious. The timings of the trains and of the various buses could be so arranged as to cause minimum inconvenience to through passengers and the routes of the buses can also be so arranged as to serve local areas where it may not be practicable to stop through trains and also where it may not pay to establish branch-line railways. The objects of the Company have been fully described in Clause (3) of the Memorandum of Association. I may quote Sub-Clauses (j) and (k) which are undoubtedly in public interests.

> "(j) To facilitate travelling and to provide for tourists and travellers or promote the provision of conveniences of all kinds in the way of through tickets, circular tickets, sleeping cars or berths, reserved places, hotel and lodging accommodation, guides, safe deposits, inquiry bureaus, 'libraries, lavatories, reading rooms, baggage transport and

otherwise.

(k) To amalgamate with any other company having objects similar to those of this Company and in particular with private operators engaged in the business of, or having experience in, running motor transport services and thereby ensure development of road transport on rational lines providing economy, safety and comfort to the travelling public."

It was however urged that these objects may look ambitious and attractive but nothing has been done till now to implement the same. This criticism, however, is premature. It is hardly three months since the Company began to function in one of the districts of the State of Orissa and it will not be fair to consider the result achieved till now as indicative of the extent to which the Company will serve the interests of the public. The ultimate object of the subsidiary Act is to authorize the Company to take over the entire road transport services of the whole of the State of Orissa and if such an object is realized the immense benefit that will be conferred on the travelling public is apparent. Moreover a big concern like the Company will be in a better position to provide adequate amenities and facilities for the training of its own staff and Sub-Cl. (j) of Clause (3) of the Memorandum distinctly contemplates the establishment of pensions and provident fund benefits for the staff, amenities for the welfare of the employees of the Company and their families. It would be difficult for several small private permit-holders to provide such facilities for their own employees. I am fully aware of the various good reasons that can be urged against Govt. ownership and control of a commercial undertaking. It is likely to be less efficient than private control and public officials are likely to lack initiative and to rely on routine and red-tape. There is also a danger of interference from the party in power. But these defects have been remedied by conferring the ownership and control on a corporate body in which though the Govt. have the controlling interests, the Board of Directors have considerable freedom of action and the business is run not as a Department of the Govt. but on Commercial lines within certain limits. This arrangement gives the public enterprise a semi independent existence and saves it to some extent from political interference. Thus considering the objects of the Company as disclosed in its Memorandum of Association and in the affidavit sworn by the Deputy Secretary, Supply and Transport Department, its financial backing and influence and the advantages that are inherent in a Sate controlled monopoly of such an important public utility service, I have no doubt that the restrictions imposed by the subsidiary Act are reasonable and in the interests of the general public.

12. In considering the reasonableness of the impugned Act one must not over-look the gradual change in the conception of the functions of a Govt. In the nineteenth century when the principle of 'laissez-faire held the field the State contented itself with mere maintenance of law and order and became, as it were, a 'police state' and all other activities were left to free competition. But this idea has now been given up even in the non-Communist States of the world and a State has changed from a 'police State' to a 'welfare State' and directly participates in several activities for the welfare of the public. The framers of the Constitution did not contemplate a purely police State and in Part IV dealing with the directive principles of State policy they have given directions which show unmistakably that they were contemplating a welfare State. In particular I refer to Article 38 and Clauses (b) and (c) of Article 39 which run thus :

"Article 38 : The State shall strive 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."

"Article 39 (b), that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;" For such a welfare State the enacting of the subsidiary Act cannot be said to cause unreasonable restriction on the fundamental rights guaranteed to the citizens.

13. If the nature of the control exercised over public utility services in foreign countries is examined it is found that monopoly by a State controlled agency is the order of the Day. In U.S.S.R., nearly all industries are collectively owned and operated. In U.S.A., many of the public utility services such as water-supply, gas-works, railways, electric power plants are under public ownership (see 'Applied Economies' by R. T. Byc and W. W. Hewett, Chap. V, Edn. 4.) Even in Great Britain where free competition held the field for a long time there is a fair measure of public ownership and control of many services such as wireless broadcasting, generation of electricity and London Transport. (see page 193 of E.A.G. Robinson's 'Monopoly.') The following observations at p. 436 of H.J. Laski's 'Grammer of Politics' are also relevant in this connection.

"There are industries urgently affected by a public character which are monopolistic in their nature. Their operation is essential to the welfare of the community. They have to be operated for use and not for profit. There must be the maximum of continuity in the service they afford. There must be stringent public regulation, not only of the conditions of production, but also of the selling price of the commodity produced; and it may even be necessary to maintain to production of such commodities when there is little prospect - as in research, for instance - of a measurable economic return. In this first category the only possible method of Govt. is the nationalisation of the service involved."

14. The power conferred on the Legislature by Clause (6) of Article 19 of the Constitution is very similar to the 'police power' as understood in the Constitution of the United States. There also some decades ago the prevailing view was that the police power of the State was limited to regulations designed to promote the public health, public morals and the public safety. But with the gradual expansion of governmental activities and control the recent decisions of the Supreme Court of America have gone to the extent of defining police power to include all those regulations designed to promote the public convenience, the general welfare and the general prosperity and extending it to all great public needs. As Justice Wanamaker says :

"The dimensions of the Govt.'s police power are identical with the dimensions of the Govt.'s duty to protect and promote the public welfare. The measure of police power must square with the measure of public necessity. The public need is the polestar of the enactment, interpretation, and application of the law. If there appears in the phrasing of the law and the practical operation of the law a reasonable relation to the public need its comfort, health, safety and protection, then such act is constitutional.....Moreover the

growth of the police power must from time to time conform to the growth of our social, industrial, and commercial life....." (see Cooley's 'Constitutional Limitations', Edn. 8, pp. 1226 to 1227).

15. Mr. Mohapatra however relied on the following passage in 'Corpus Juris', 12, p. 929 :

> "In order that a statute or ordinance may be sustained as an exercise of the police ower, the Courts must be able to see that the enactment has for its object the prevention of some offence or manifest evil or the preservation of the public health, safety, morals or general welfare, that there is some clear, real, and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some plain, appreciable, and appropriate manner tend towards the accomplishing of the object for which the power is exercised." To a similar effects is the following passage in Cooley's 'Constitutional Limitations', Edn. 8, at p. 1231 :
> "A police measure must fairly tend to accomplish the purpose of its enactment, and must not go beyond the reasonable demands of the occasion. But a large discretion is necessarily vested in the legislature to determine not only what the interests of the public require but what measures are necessary for the protection of such interests."

Judged by these tests also I do not think the subsidiary Act can be said to go beyond the limits laid down in Clause (6) of Article 19. The object of the Act is to secure more efficient administration of transport services through a monopolistic agency controlled by the State and the other provisions of the Act merely modify the relevant provisions of the principal Act so as to enable the State Govt. to cancel all permits granted under the principal Act and confer monopoly rights on the Company. The provisions of the Act therefore tend towards the accomplishment of the object and do not go beyond the reasonable demands of the occasion. It was urged that there is nothing to show that the existing private permit-holders were not running their services with equal efficiency. I have already indicated the distinct advantages to the public that are inherent in the control of the undertaking by a monopolistic Company and how private permit-holders, however rich and influential they may be, will never be able to offer the same facilities to the public.

16. I may also quote the following observations of their Lordships of the Judicial Committee in *'Commonwealth of Australia v. Bank of New South Wales[6]',*

> "....their Lordships do not intend to lay it 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 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...." The last sentence in the aforesaid quotation applies with full force in this case, though their Lordships were dealing with the power to 'regulate' and not with the

power to 'restrict'. I would therefore reject the first contention of the learned Counsel for the petitioners and hold that the subsidiary Act is saved by Clause (6) of Article 19.

17. Point No. (ii) : It was urged that the subsidiary Act was discriminatory in favour of the Company and that it denied to the petitioners equality before law and equal protection of the laws guaranteed by Article 14. This Article has been recently construed by the Supreme Court in '*Charanjit Lal v. Union of India*[7]*'* and I would content myself with quoting the following passage from the judgment of Fazl Ali, J.

> "Professor Willis dealing with this clause sums up the law as prevailing in the United States in regard to it in these words :
> 'Meaning and effect of the guaranty - 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 privileges 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 permits 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, (page 579, 1st Edition of 'Constitutional Law' by Prof. Willis).

Having summed up the law in this way, the same learned author adds :

> "Many different classifications of persons have been upheld as Constitutional. A law applying to one person or one class of persons is Constitutional if there is sufficient basis or reason for it."

There can be no doubt that Article 14 provides one of the most valuable and important guarantees in the Constitution which should not be allowed to be whittled down, and, while accepting the statement of Professor Willis as a correct disposition of the principles underlying this guarantee, I wish to lay particular emphasis on the principle enunciated by him that any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed."

18. In the preceding paragraphs I have shown that the choice of the Company for the grant of monopoly rights was not arbitrary, but that it was reasonable and in the interests of the general public. Hence this point also must fail.

19. Point No. (iii) : The permits granted to the petitioners entitle them to carry on the business of plying buses for hire over certain specified routes for the period of validity of the permits. It is true that under Section 60 of the principal Act, the permits may be cancelled or suspended by the Transport Authority but as such power of cancellation or suspension is not arbitrary but circumscribed by the other conditions specified in that section such permits cannot be said to be revocable at the pleasure of the granting authority. Therefore the permit-holders could reasonably expect to carry on their business for the period of duration of the permits, enter into contracts with other parties and also invest adequate capital. It was urged that the action of the Govt. in cancelling their permits by issuing the notification under Section 5 of the subsidiary Act and conferring monopoly rights over the same business to the Company, amounts, in essence, to the acquisition of the business for a public purpose and that the persons deprived of their business were therefore entitled to compensation. The subsidiary Act was passed prior to the commencement of the Constitution and by virtue of Sub-Cl. (a) of Clause (5) of Article 31, the provisions of Clause (2) of that Article would not apply. But as the subsidiary Act was passed when the Govt. of India Act of 1935 was in force it was urged that Section 299 (2) of that Act would apply and that as the subsidiary Act did not provide for compensation as required by that section it was invalid to that extent. Section 299 (2), Govt. of India Act, 1935 says :

> "Neither the Federal nor a Provincial Legislature shall have power to make any law authorizing the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined."

Sub-S. (5) of that section says that the expression 'undertaking' includes part of an undertaking. The expression 'undertaking' has been held to have the same meaning as the expression 'business' see *'H. C. Gupta v. MacKertich John*[8].' The property of a business may be both tangible and intangible Govt. may not acquire the tangible property of a business but may acquire only its intangible property. In the present case the moveable and immoveable property of the permit-holders have not been acquired but their business of plying buses for hire has been extinguished by cancelling their permits and transferred to a limited Company by granting it monopoly rights. It is the Govt.'s own case that the subsidiary Act was made and the notifications were issued under Section 5 of the Act in the interests of the public. Therefore that action of the Govt. may indirectly amount to the acquisition of the intangible property of the business of the permit-holders for a public purpose. It is, however, unnecessary to finally decide this question in the present case. Even if such a view be taken as correct the whole Act cannot be said to be invalid. Section 6 of that Act makes express provisions for payment of compensation to those holders of permits issued prior to the 1st day of October, 1946. Therefore Section 6 of that Act is sufficient compliance with the provisions of Sub-Section (2) of Section 299 in respect of permits granted prior to 1-10-1946.

20. A question arises as to why the Legislature did not provide compensation for permits issued after 1-10-1946. The letter of the Govt. (No. 4036 (145) T. dated 17-10-1946) says that the Govt. have decided to temporarily suspend all permits. The subsidiary Act came into force on 15-2-1948 but long interval (sic) regular permits have been granted under the principal Act. Those permits may be divided into two classes : (1) Permits granted from 1-10-1946 to 14-2-1948; and (2) Permits granted on and after 15-2-1948. As regards the first of the said two classes of permits their cancellation by virtue of the notifications issued under the subsidiary Act may possibly entitle such permit holders to compensation and the subsidiary Act may be invalid to the extent of its operation against them. An affidavit has been filed on behalf of petitioner Lokanath Misra giving nine instances of permits granted in 1947 by the Regional Transport Authority, Ganjam and valid for three years. All those permits expired during the year 1950 and as none of them was cancelled by the notification issued under Section 5 of the subsidiary Act, any discussion as to how far that Act would be invalid in its operation against those classes of permits will be merely academic. For the same reason it is unnecessary to consider the effect of the subsidiary Act on permit No. 39/1 of petitioner Lokanath Misra as that permit also expired on 30-10-1950 and it is his own case that though he prayed for its renewal, his prayer was not granted. It was, however, urged that if the subsidiary Act is held to be invalid in its operation against these permits, it must be held to be totally invalid.

In support of this argument the well-known rule of severability of the valid and invalid portions of a statute (see (1925) AC 56; (1937) AC 355; (1938) AC 415), was cited. But this argument does not appeal to me. The crucial question is whether it is reasonable to infer that the Legislature would not have passed the Act in its truncated form if it had known that the Act would be inoperative against permits granted from 1-10-46 to 14-2-48. There is no difficulty in answering this question because from the decision of the Govt. dated 17-10-46, the Legislature might have been led to believe that no permits would be granted after 1-10-46 and consequently there could be no question of providing for compensating those permit-holders. It is true that the Govt. modified the said decision and granted permits in the year 1947. But no affidavit has been filed to show that the Orissa Legislature was aware of this change of decision. Therefore, I cannot hold the subsidiary Act to be invalid merely because it may be inoperative against permits granted after 1-10-46, especially when compensation has been provided in Section 6 for permits granted prior to that date.

21. The permits with which this case deals (permit Nos. 49/1, 23/3, 48/2 and 53/2) were all granted after the subsidiary Act came into force on 15-2-1948. The crucial question is whether such permit-holders can claim any property right in a business run on the basis of such permits so as to entitle them to compensation. It is true that those permits were granted under the provisions of the principal Act and if the subsidiary Act had not been brought on the statute book such permit-holders might have a good claim for compensation. But when they obtained the permits they fully knew that the principal Act and the subsidiary Act were both in force in the State and under the provisions of Section 2 of the subsidiary Act that would prevail in the event of any inconsistency or repugnancy between those two Acts. Those permit-holders were aware of the provisions of Sections 4 and 5 of the subsidiary Act under which the Provincial Govt. may at any moment issue the appropriate notification which will have the effect of cancelling their permits, Thus though their permits were not revocable at the pleasure of the Transport Authority, they were revocable at any moment by issuing the appropriate notification under Sections 4 and 5 of the Subsidiary Act. The petitioners cannot reasonably claim that any property right accrued to them by carrying on business on the authority of such precarious permits. The 'interest in a

commercial undertaking,' referred to in Section 299 (2), Govt. of India Act, 1935 refers to an interest which has money value and it cannot refer to the interest of a licensee which is of a precarious nature and terminable at the will of another authority. Therefore the absence of any provision in the subsidiary Act for payment of compensation for the loss of business arising out of cancellation of permits issued after that Act came Into force will not render the Act invalid as contravening Section 299 (2), Govt. of India Act.

22. The same principle has been recognized in several American decisions as will be clear from the following passage from 'Corpus Juris' 12, page 997.

> "Licenses are by their very nature revocable at the will of the licensor. A statute, therefore, which revokes a license previously granted by the legislature, or interferes with rights enjoyed under the license, does not constitute an impairment of a contract within the prohibition of the Constitution. A license authorizing a person to practise a profession, to carry on a particular business, or to make a particular use of property, is not contract, but merely the grant of a privilege which is not protected from revocation or impairment by the contract clause of the Constitution.... The expenditure of money on the faith of the license does not convert it into a contract nor deprive the state of the power to revoke it."

Doubtless the aforesaid passage refers to on tractual obligations but the principles are equally applicable when the question of liability for payment of compensation for compulsory acquisition is under discussion.

23. But though the subsidiary Act cannot be held to be invalid in its operation against the permits granted after the date of its coming into force, such permit-holders can equitably claim compensation for the loss of their business arising out of the sudden cancellation of their permits. It is true that when they obtained those permits they knew that the subsidiary Act was on the statute book; but the action of the Government in (i) announcing as early as 17-10-1946 that they have decided temporarily to suspend the issue of new permits and yet continuing to issue new permits as late as 14-3-1950 (Permit No. 53/2) and (ii) delaying from 15-2-1948 till 1-1-1951 in bringing the subsidiary Act into effective operation by issuing the necessary notifications under Sections 4 and 5, might have given good reasons for the permit-holders to think that their permits were likely to last for the period for which they were granted and that they night invest their capital on their business. When the new permits were granted to them the Govt. did not give them any notice to the effect that the subsidiary Act was likely to come into operation in the immediate future and that the permit-holders must be prepared to face the consequences arising out of the sudden cancellation of their permits on the issue of the notifications under Sections 4 and 5 of the Act. They were, therefore, taken by surprise when the notification under Section 5 was issued on 21-9-1950. Thus though the validity of the Subsidiary Act cannot in any way be impugned the conduct of the Government in delaying matters so long and not giving sufficient notice to the new permit-holders would justify the grant of compensation to them on equitable considerations. As regards the amount of compensation the scale as fixed by the Legislature in Section 6 of the subsidiary Act may be taken as the guide.

24. While therefore rejecting, M.J.C., No. 195 of 1950 I would direct the State of Orissa to pay

compensation to the holders of permits Nos. 23/3, 48/2, and 53/2 in accordance with the scale laid down in Section 6 of the Subsidiary Act after substituting "1-1-1951" for "1-10-1946" wherever it occurs in that section. Similarly in M.J.C., No. 194 of 1950 the permit-holder of No. 49/1 should be given compensation in respect of permit No. 39/1 because that expired on 30-10-50 and no renewal was granted though he applied for the same.

25. The petitions are dismissed subject to the aforesaid modifications and each of the petitioners is directed to pay five gold mohurs as costs to the State of Orissa inasmuch as they have lost the case on the main question of Law.

Ray, C. J.

26. I have carefully considered the judgment proposed by my learned brother. The question involved is not free from difficulty. The Constitutionality of the Act, The Orissa Motor Vehicles (Regulation of State Carriage and Public Carrier's Services) Act, 1947, (hereinafter called the Impugned Act) has been impugned in relation to its adverse consequences on fundamental rights guaranteed to the citizens under the Indian Constitution. The object of the Act has been characterized as an extravagant measure beyond the ambit of such reasonableness of interference with the said right as are sanctioned by the Constitution.

27. I am in entire concurrence with my learned brother, that the measures prescribed in the Act read, and construe, with the principal Act. (The Motor Vehicles Act, 1939) seem to provide the only feasible remedy against the evils aimed at Provision of ample and adequate transport facilities for carriage of passengers and goods is one of the many fundamental responsibilities of the State. It is one of so many other inevitable welfare provisions for which the State exists and machinery is set up. Since after the Indian Motor Vehicles Act, 1914, the then Govt. had been feeling the pressure of the conditions brought about by the rapid growth of motor transport in the country. The pinch of the problem was felt all the keener after the conclusion of the World War No. 1. It was realized that, in the interest of the safety and convenience of the public, development of coordination in the system of transport was not feasible without much wider powers for lis control and regulation. The Government of India invited Messrs. Mitchell and Kirkness to carry out enquiries into the matter evolve a system of coordination of roads and railways transports. They made an enquiry into the problems involved, and in their report emphasized upon the importance of very early action. The self-same Govt. convened the Road-rail Conference in the same year. The Conference passed a resolution, inter alia, re-commending "control of public service and goods motor transport." The first Transport Advisory Council made definite recommendations to the same effect in January 1935. By way of giving effect to that, a Bill was introduced in August, 1936 proposing certain amendments to the Indian Motor Vehicles Act, 1914 on certain points. The Bill was circulated for public opinion before its adoption for the purpose of enactment in the Legislature. Before such further action could be taken on it, the reports of the Motor Vehicles Insurance Committee and of the Wedgewood Committee influenced the Govt.'s views so as to drop the proposed partial measure and present a more comprehensive Bill. Thereafter, the Bill that in the end became the Motor Vehicles Act, 1939, was proceeded with. The said Bill incorporated the main recommendations of both the aforesaid Committees, and was the outcome of consultations with the Provincial Govts. and the third Transport Advisory Council which deliberated over the matter on the eve of its introduction.

28. From the provisions of the Act, introduced into the Statute Book, under the circumstances aforesaid, it will be clear that they were hardly enough to achieve the object of a full co-ordination of roadways and railways. The system of railways in this country occupies but a very minor portion of the transport system that can be comprehended as adequate to the country's economy. The only alternative left to the State is to take more powers and exercise much closer control on the road-motor-traffic so as to evolve a system of interconnected and inter-twined co-ordination between them and the railway transports. Such a co-ordination is not feasible except with the close cooperation of the Union and concerned States. It has been very strenousuly argued that such a result could be achieved, without depriving ordinary citizens of the right of carrying stage carriage and public carrier's services as a profession, by hemning in, by various laws and rules, their various relevant activities in this direction. It must be presumed in favour of the Legislature that in introducing changes by the present legislation, by must have had made available to themselves after all such possible enquiries as, it appears, have, in fact been made by expert committees, in this regard, the best of all the alternative modes of achievement. The Legislature is the final authority of facts, though by the Constitution the Court is vested with the power of examining the law in relation to the reasonableness of the restrictions imposed by it upon a citizen's fundamental right of occupation. The standard of reasonableness must vary according as to the circumstances relating to occupation of various kinds. The occupation of negotiating motor vehicular traffic, both for the stage carriage and public carrier's service, is not, in every sense, a fundamental right of occupation open to a citizen. The inevitable consequences of carrying such an occupation, by any citizen, involve interference, on his part, with various other fundamental rights of his fellow citizens, individually and collectively, including the ownership of the public highways, rights thereto, the life, safety and convenience of the public, etc., and the very 'sanctioned extent' of reasonableness of the restrictions has to be calculated with reference thereto. I am, therefore, in enure agreement with my learned brother's conclusion that the Act does not impose anything beyond reasonable restrictions upon the fundamental right of occupation of the petitioners.

29. There has, no doubt, been created some difficulty, by the executive action, in the purported pursuance of the Act. I shall expose this difficulty presently. The scope and object of the impugned Act is to authorize a Joint Stock Company in which the Central and the Provincial Govts. shall together have controlling interests to run stage carriage of all other persons in order to provide in several stages or in one stage a more efficient administration thereof. In order to carry out this object of the Act, several provisions incorporated therein were inserted as amendments modifying the principal Act. This amendment has substantially the effect not of repealing but, in its operation modifying such provisions of the principal Act as become inconsistent with or repugnant thereto. The inconsistency or repugnancy, in any particular case, may take its complexion from the facts and circumstances inherent therein. None of the provisions are deemed as ipso facto repugnant. They could stand side by side till repugnancy or inconsistency results from their respective applications to particular cases. Realizing it to the fullest possible extent, the legislature introduced provisions enacted in Section 6 of the Act by way of making short shrifts of the consequences of such repugnancy and inconsistency as might arise in carrying out its intendment. In view of the continuance of exercise of powers of the pre-existing Provincial Transport or Regional Transport Authorities, till some time very near before the Act takes effect, incumbency of regular permits, other than temporary ones, at the time the modifying Act comes into operation, was inevitable. Such permits under the amending Act could be nullified by the operation of its provisions, Section 4 or 5 or both. It was implicit in Section 6

of the Impugned Act that cancellation of such permits, and authorization of the Joint Stock Company to extend its activities on the routes on which the outgoing permit-holders were carrying on stage carriage and public carrier's services amounted to taking over business-undertaking either in whole or in part, as the case may be, of the said permit-holders, and that, in that event, they were held constitutionally entitled to receive compensation on principles specified therein. As pointed out, by my learned brother, as soon as proposals were matured for introducing a Bill on the subject, it was clear to the Govt. that to prevent further confiscation of acquired rights, it was required of the then operating Provincial Transport Authority or Regional Transport Authorities that they should not continue granting permits, other than temporary permits, under Section 58 of the principal Act. Such a permit, ordinarily during the period for which it enures, constituted a business-right in the permit-holder subject to its being cancelled by the grantors or their appellate authorities on certain specified mis-conducts or defaults. Naturally, such business rights when taken over have to be compensated.

30. The law examined, in this aspect of its operation, does not run counter to the constitution that was then prevailing. There is provision for payment of such compensation to the holders of permits prior to the year 1946. As has been pointed out by Narasimham, J., the concerned executive authorities, however, have either by their mistaken action or their inaction brought into existence a number of permits already specified in my learned brother's judgment, some before the impugned Act came into operation and some after, which considered, in the terms of their grant, can hardly be discriminated from permits, in respect of either a stage carriage or a public carrier's services, issued, transferred or renewed by the Provincial Transport Authority or any of the Regional Transport Authorities, prior to the specified date, that is, 1-10-1946. My learned brother has made a distinction between them and those that were granted after 15-2-1948, the day, when the impugned Act was notified as coming into force. The point of distinction is that in the latter cases, the permit-holders must have known that notwithstanding the guarantee given to them by the permit-issuing authorities either Provincial or Regional, their permits were liable to be cancelled at any moment by the Provincial Govt. under Section 5 of the impugned Act and that in so cancelling, the said Govt. were not bound to follow the provisions of Section 60 of the principal Act - the only charter of rights of the permit-holders. The question arises, could the Provincial Govt. except for authorizing the statutory company, if any, to undertake the transport services cancel the permits? I am, however, inclined to hold (i) that the Act according to its tenor does not profess nor is intent upon taking over the business of others without duly compensating them and (ii) that according to the 1st paragraph of the preamble, it was avowed that the modification of the principal Act would be effected not so much by the Act coming into force but by authorization of the Joint Stock Company referred to therein to extend its activities in specified routes or all of them to the exclusion of others. Under the circumstances, every permit-holder would be justified in investing his capital in an undertaking chartered to them by responsible authorities of the State for a fixed term in the hope that the Joint Stock Company may not be authorized by the State to abruptly take over their business before termination of their permits by casual efflux of time. It may be envisaged that the executive Govt. of the State should have more wisely and equitably preferred to suspend or abrogate the powers of the Provincial or Regional Transport Authorities either partially or wholly within the meaning of Section 4 of the Act, contemporaneously, with its promulgation into effect. Such a measure could have obviated the curious position that the petitioners are now confronted with. They were, in normal course of events, entitled to hope that the statutory system could be extended stage by stage in routes one after another without causing any detriment to the acquired rights. It can however, at the same

time, be contended logically' against those of the petitioners who secured their permits after 1-2-1948 that notwithstanding what they did or did not do in observing the conditions of the permits they could at any moment be ousted without any rhyme or reason by the Provincial Govt. If they have been given any understanding by the Provincial or Regional Transport Authorities by way of any indemnity against such abrupt measures as have been adopted by the 'Provincial Govt.' they may by all means fall back upon that. But there is no provision in the impugned Act prescribing for payment of any compensation for the consequential taking over of their present undertakings. At any rate, the present analysis gives rise to the question if the impugned Act is unconstitutional inasmuch as it authorizes acquisition for public purposes of private undertakings without any provision for compensation. As I have already said the Act must be understood since its commencement to have discontinued at least in theory, grant of such permits as cannot be cancelled by the Provincial Govt. by notification independent of the provisions of Section 60 of the principal Act, and irrespective of the terms, conditions under which it is granted or the authority by which it is granted. The permits of the petitioners taken subsequent to the commencement of the Act is subject to this theory though I have no doubt that in practice, they have been thoroughly misled by the Provincial or Regional Transport Authorities. Under these circumstances, it is difficult to hold that the impugned Act, as such, suffers from any constitutional deficiency. But there is no escape for the transport authorities from the consequences of their unauthorized actions. I would, therefore, hold that the holders of such permits as have been cancelled by the Provincial Government in accordance with Section 5 of the Act must be compensated against the consequential injuries of unauthorized executive actions and direction shall issue accordingly. In consideration of what I have said above, I agree with the order proposed by my learned brother for the amount of compensation.
Petitions dismissed.

Cases Referred.

[1](1945) 1 All ER, 667
[2](1949) 29 Tax Cas 49 at p. 67
[3]55 CWN 237
[4]1896 AC 88 at p. 93
[5]1950 SCJ 571
[6](1949) 2 All ER 755 at p. 772
[7] AIR (38) 1951 SC 41
[8] AIR (33) 1946 Cal 140 at p. 151