STATE OF MADHYA PRADESH AND ANOTHER

v.

LAL BHARGAVENDRA SINGH

October 7, 1965

[A. K. SARKAR, M. HIDAYATULLAH, RAGHUBAR DAYAL, J. R. MUDHOLKAR AND R. S. BACHAWAT, JJ.]

Constitution of India, 1950, *Art.* 372—*Order of former Indian Ruler granting allowance to member of family out of bounty—If "law".*

On 7th March 1948, the Ruler of a former Indian State, out of his bounty and in discharge of his moral obligation, passed an order providing for an allowance to his brother—respondent herein. He directed the Chief Minister of the State to do certain things, and the various parts of the order were sent to the different departments of the State Administration for carrying them out. The order also granted to the respondent a house, conveyance etc. On 18th March 1948, the State along with other States formed the United State of Vindhya Pradesh, the component States losing their soveriegn status. Later, the United State merged in India, and on the promulgation of the Constitution, the State became a Part of the Indian Union. On 24th September, 1951, the President of India, in his executive capacity reduced the amount of allowance. The respondent thereupon filed a suit for a declaration, against the State and Central Governments, that the allowance could not be reduced because it was granted to him by a law passed by the former Ruler, which law was continued in force by the convenant constituting the United State, by certain statutory orders made from time to time and lastly by Art. 372 of the Constitution. The trial court dismissed the suit, but the High Court, on appeal, decreed it.

In the appeal to this Court by the State and Central Governments, the question was whether the order of the former Ruler was a law.

HELD : It was not a law and was not continued in force after the State lost its sovereignty. The order was an executive act of the Ruler and it was competent to the President, in his executive capacity, to reduce the amount. [66 H]

The nature of the order shows it cannot be a law according to notions of modern jurisprudence. It was a mere directive or grant, and even if the money was paid out of the State Exchequer, that fact would not turn the order into a law. [60 C; F]

Narsing Pratap Deo v. *State of Orissa,* A.I.R. 1964 S.C. 1793, referred to.

Promod Chandra Dev v. *State of Orissa,* [1962] Supp. 1 S.C.R. 405, explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 738 of 1963.

Appeal by special leave from the judgment and decree, dated December 16, 1960 of the Madhya Pradesh High Court in First Appeal No. 105 of 1957.

A *B. Sen, M. N. Shroff* and *I. N. Shroff,* for the appellants.

G. S. Pathak and *C. P. Lal,* for respondents 1(a)—1(c).

K. L. Hathi and *R. N. Sachthey,* for respondents No. 2.

The Judgment of the Court was delivered by

B **Sarkar, J.** This appeal arises out of a suit filed on August 10, 1956 by Shri Lal Saheb Bhargavendra Singh, now deceased and represented by his legal representatives, against the Union of India, the State of Vindhya Pradesh, now merged in the State of Madhya Pradesh, and the Collector of Satna, for a declaration that he was entitled to receive an allowance of Rs. 650 per month C from the Union of India. There was another claim but that depended on the declaratory relief claimed and need not, therefore, be referred to further. Shri Lal Saheb was the brother of the Ruler of the former Indian State of Nagod and he contended that the Ruler had by a law passed on March 7, 1948 provided for an allowance for him at the rate of Rs. 650 per month and that that D law was binding on the defendants who had by an executive order illegally altered the amount of the maintenance. It was on this basis that the claim was made. The suit was dismissed by the trial Court but was decreed by the High Court of Madhya Pradesh on appeal by the plaintiff. Hence this appeal.

E Certain events that took place after March 7, 1948 when the allowance was fixed have now to be stated. On March 18, 1948, the Ruler of Nagod along with the Rulers of various neighbouring ruling States formed a new State called the United State of Vindhya Pradesh into which the component States were merged thereby losing their sovereign status. Thereafter the United State merged F in India by an agreement and pursuant thereto the Government of India took over its administration on January 1, 1950. Its territories then became the Indian province of Vindhya Pradesh. The United State ceased to exist. On the promulgation of the Constitution on January 26, 1950 the Province of Vindhya Pradesh became a Part C State of Independent India and later from G November 1, 1956 it was merged with the State of Madhya Pradesh.

By the agreement constituting the United State all laws in force in the constituent States were continued in force and likewise the laws of the United State were by a statutory order continued in H force when it merged in India. Article 372 of the Constitution continued in force all laws which were in force in the territories of India immediately before the commencement of the Constitution.

Each succeeding State could, of course, alter the laws which were so continued in force in spite of the change of sovereignty, by a law duly made by it. Neither the United State nor the Indian Province or States which successively administered the territories of the State of Nagod had made any law concerning any allowance to be paid to Shri Lal Saheb. The Rajpramukh (the head) of the United State and the President of India had passed orders from time to time fixing his allowance at amounts lower than that at which it had been fixed by the Ruler of Nagod on March 7, 1948. These were, however, executive orders and not laws. They could not reduce the amount of allowance to Shri Lal Saheb fixed by the Ruler of Nagod on March 7, 1948, if he had done so by a law. All this is not in controversy.

The only question in this appeal is whether the order of the Ruler of Nagod of March 7, 1948 was a law. If it was, it is not in dispute that the claim made in the suit must be upheld. The High Court observed that this Court had in various cases ending with the case of *Madhaorao Phalka* v. *State of Madhya Pradesh*(1) held that the line between the legislative, executive and judicial functions of absolute Rulers like the Ruler of Nagod was not at all clear-cut and an attempt to place an order of such a Ruler in one class or the other was of no practical importance. In this view of the judgments of this Court, the High Court said that it was futile to contend that the order of March 7, 1948 was an executive act of the Ruler and had not the force of law. The High Court, therefore, held that the allowance had been fixed by law and decreed the suit.

The question whether an order of a Ruler is law or not arises because an absolute Ruler combined in himself the capacities of the supreme executive, judicial and legislative authorities in the State; any particular action of his might have been in one or other of these capacities. Therefore, it becomes necessary to decide, when the question arises as it has done in the present case, in what capacity the Ruler acted when he made a particular order. At times, the question has presented some difficulty. This Court had to discuss this question in many cases but, with respect, we think the High Court was under a misconception about the effect of the decisions in those cases. It would be unprofitable to discuss these cases for their result may be quoted from the judgment in the recent case of *Narsing Pratap Deo* v. *State of Orissa*(2) : "The true legal position is that whenever a dispute arises as to whether an order passed by an absolute monarch represents a legislative

(1) [1961] 1 S. C. R. 957.

(2) A. I. R. 1964 S. C. 1793, 1798.

A act.....all relevant factors must be considered before the question is answered; the nature of the order, the scope and effect of its provisions, its general setting and context, the method adopted by the Ruler in promulgating legislative as distinguished from executive orders, these and other allied matters will have to be examined before the character of the order is judicially
B determined." It is, therefore, not correct to say, as the High Court did, that this Court has held that every order of the Ruler is a law made by him. The question whether it is so or not, has to be determined in each case independently.

We then proceed to discuss whether the order of the Ruler of
C Nagod was law. The question arises because, as earlier stated, the covenant constituting the United State, certain statutory orders made from time to time and lastly Art. 372 of the Consitution said that the existing laws would be so continued. Now, these are instruments dealing with sovereign States and rights. They are instruments based on legal ideas and notions founded on
D modern jurisprudence. It would, therefore, be legitimate to hold that the word "law" was used in them in a sense acceptable to modern jurisprudence. The contention that the order of March 7, 1947 being a law could be set aside only by a law duly passed by the succeeding States, emphasises this view. A law made by these succeeding States, the last of which is the Union of India, is fully
E a law as understood in modern jurisprudence. A law which is to be set aside by such a law must, therefore, have been contemplated as a law of the same kind. This aspect of the matter has to be kept in mind in approaching the question.

Many tests may be suggested for determining whether a parti-
F cular thing would be considered law in modern jurisprudence. In the decisions of this Court on the point, several of them have been referred to. It may be that they are not all applicable to every case. It may also be that it is not possible to give an exhaustive list of all these tests. None the less however the ques-
G tion is capable of decision in each case.

The order of the Ruler of Nagod which is said to be a law, is addressed to the Chief Minister of the State and directs him to do certain things. It starts by reciting that Shri Lal Saheb's financial position was deplorable and the Ruler felt it to be his duty to see that Shri Lal Saheb did not experience difficulties in
H his advancing years and as no permanent arrangement had been made for him till then, the ruler was making the order. Then follows the operative part of the order which is in these terms :

"Hence, I order that (the Kothi) (in which he is at present residing) be given to Shri Lal Saheb for generation to generation and an allowance of Rs. 650 (Rupees six hundred and fifty), per month be granted, in addition to the same a tonga and a horse be given, the expenses for which shall be borne by himself and Rs. 5,000 (Rupees five thousand), be granted to him so that he may be able to make improvements in agriculture and satisfy his debts (partly)." A B

We think it quite impossible that this order was a law. First, it is a direction to the Chief Minister. It is an order by which the Ruler required the Chief Minister to do certain things. It has not been shown to us that a direction to an officer to be carried out by him, has ever been held to be a law or can be such. It cannot be so according to notions of modern jurisprudence. Then we find that a copy of the order was sent under the direction of the Revenue Minister to Shri Lal Saheb and various parts of it, to the different departments of the Nagod Administration respectively concerned with them, obviously with the object that they might be carried out. This would indicate that even the Administration was not treating it as law for it would be difficult to imagine different parts of a law being communicated to different branches of the Administration. Further, it appears that the Revenue Minister directed the Accounts Officer to make a report regarding the provision to be made for the sum of Rs. 5,000 mentioned in the order. This is not how a law is carried out. C D E

The order was also an instrument granting something to Shri Lal Saheb. Under it a kothi (house), a tonga (carriage) and horse and Rs. 5,000 in a lump were to be made available to Shri Lal Saheb. In regard to these the order was only a grant; it gave him these things. A grant is, of course, not a law. That would follow from the decisions of this Court in *Narsing Pratap Deo's* case(1) and *State of Gujarat* v. *Vora Fiddali*(2). Now if the rest of the order was a grant, it would be strange that one part of it only, namely, the part providing for the monthly allowance only, was a law. Obviously this was also intended to be a grant; the fact that the order provided for future payments cannot make it a law. The context is overwhelmingly against the view that it was a law. F G

Again, the recitals in the order put it beyond doubt that the Ruler was only discharging what he considered his moral obligation. After referring to Shri Lal Saheb's deplorable financial H

(1) A.I.R. 1964 S. C. 1793. (2) [1964] 6 S. C. R. 461.

A position, he said, "I take it to be my duty to see that Shri Lal should not experience difficulties in his old days". The Ruler was, therefore, providing for something out of his bounty and in discharge of his moral obligation. A law is never made for these reasons.

B It was said that the money was to be paid out of the State Exchequer. There is nothing to show, however, that it was so or that in Nagod the private funds of the Ruler were separate from the State Exchequer. But assume that the payment was to come from the State Exchequer. That cannot turn a directive or a grant into a law.

C

Our attention was drawn to the decision of this Court in *Promod Chandra Dev* v. *The State of Orissa*(1) where a grant of an allowance was held to be law. That case is clearly distinguishable. There the nature and condition of allowances to be granted to persons entitled to them from the State had been laid down in D Order 31 of the Rules, Regulations and Privileges of Khanjadars and Khorposhdars. It was held that "those rules, regulations of Talcher etc. (1937)" were the laws of the State and that the grants made by the Ruler in accordance with those laws became the absolute property of the grantee. What had happened there was that earlier lands had been granted to a certain Khorposhdar E (maintenance holder) under Order 31 aforesaid and subsequently these were commuted into payments of monthly amounts. It was in those circumstances that it was held that the maintenance was payable under a law. No such circumstances exist in the present case.

F We should before concluding state that the Ruler of Nagod who made the order of March 7, 1948 himself gave evidence stating that he had passed the order "under his legislative powers". This statement obviously does not conclude the matter. It was not relied upon in any of the Courts below. The internal evidence to which we have earlier referred shows that the order was not a G legislative act.

For all these reasons we have come to the conclusion that the order of the Ruler of Nagod of March 7, 1948 was not a law. It was not continued in force after the State of Nagod lost its sovereignty in the circumstances earlier mentioned. The order H was an executive act of the Ruler providing for certain allowance to Shri Lal Saheb. It was, therefore, competent to the President

(1) [1962] Supp. 1 S. C. R. 405

acting in his executive capacity to reduce it to a sum of Rs. 530 per month as he did by his order of September 24, 1951 which was challenged in the suit. A

In the result, we hold that the appeal must be allowed and we direct accordingly. There will be no order as to costs.

Appeal allowed.