Supreme Court of India
The State Of Bihar vs Rani Sonabati Kumari on 20 September, 1960
Equivalent citations: 1961 AIR 221, 1961 SCR (1) 728
Author: N R Ayyangar
Bench: Das, S.K., Kapur, J.L., Subbarao, K., Hidayatullah, M., Ayyangar, N. Rajagopala

PETITIONER:
THE STATE OF BIHAR

Vs.

RESPONDENT:
RANI SONABATI KUMARI

DATE OF JUDGMENT:
20/09/1960

BENCH:
AYYANGAR, N. RAJAGOPALA
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AYYANGAR, N. RAJAGOPALA
DAS, S.K.
KAPUR, J.L.
SUBBARAO, K.
HIDAYATULLAH, M.

CITATION:
1961 AIR 221 1961 SCR (1) 728
CITATOR INFO :
R 1963 SC1241 (85)
RF 1964 SC 669 (14)
MV 1967 SC 997 (47,59)
R 1974 SC 555 (78)

ACT:
Temporary injunction-Disobedience by State of order issued against it-Proceeding in contempt, against the State-Maintainablity-Code of Civil Procedure, 1908 (Act V of 1908), 0. 39, r. 2(3)-Constitution of India, Art. 300.

HEADNOTE:
The respondent sued the State of Bihar for a declaration that the Bihar Land Reforms Act, 1950, was ultra vires, void and unconstitutional and for a permanent injunction restraining the State and its officers or agents from issuing any notification thereunder in respect of her estate or taking possession thereof and on a petition filed along with the plaint obtained an order of temporary injunction against the State in terms of her prayer, pending the hearing of the suit. More than a year thereafter, the State

made an application under 0. 39, r. 4 of the Code for a discharge of the order of temporary injunction on the ground that the impugned Act had in another case been declarer valid by the Supreme Court. Before that application could, however, be heard, the State of Bihar, on May 19, 1952 issued a notification under s. 3(1) of the Act, authenticated by the Additional Secretary to the Government, declaring that, amongst others, the respondent's estate had vested in the State of Bihar under the provisions of the Act. Thereupon the respondent moved the trial Court for taking action against the State under 0. 39, r. 2(3) of the Code. The contention on behalf of the State was that in view of Art. 31-B of the Constitution the issue of the notification was lawful and could not constitute contempt of Court. The Subordinate judge held that this was no defence to the application by the respondent and directed attachment of the appellant's property to the value of Rs. 5,000 and the High Court on appeal affirmed that decision.

Held, that the courts below took the correct view of the matter and that the appeal must be dismissed.

The procedure laid down by 0. 39, r. 2(3) of the Code of Civil Procedure is remedial and essentially one for the enforcement or execution of an order of temporary injunction passed under 0. 39, r. 2(1) and is available against the State although the provision for detention may not apply to it. It is wrong to say that it is either contrary to Art. 300 of the Constitution or hit by the rule that no action lies against the State in tort or for a wrong-doing entailing punishment or compensation.

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Pat. 529 and Tarafatullah v. S. N. Maitra, A.I.R. 1952 Cal. gig, distinguished.

There is also no basis for the contention that the State is not expressly or by necessary implication mentioned in 0. 39, r. 2(3). The word 'person' used by it, properly construed, includes the defendant against whom the order of injunction is primarily issued as also the defendant's agents, servants and workmen. Since the court's power to issue an order of temporary injunction against the State under 0. 39, r. 2(1) cannot be in doubt, disobedience of such an order when issued necessarily attracts 0. 39, r. 2(3) of the Code.

Director of Rationing & Distribution v. Corporation of Calcutta, [1961] 1 S.C.R. 158, held inapplicable.

Held, further, that when once an order is passed which the Court has jurisdiction to pass, it is the duty of the State no less than any private party to obey it so long as it stands, and the conduct of the State Government in the instant case in issuing the notification at a time when its application for vacating the injunction was still pending and the attitude taken up by it after the application under

0. 39, r. 2(3) was made and persisted in till the end must be disapproved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 83 of 1956. Appeal from the judgment and order dated June 30, 1954, of the Patna High Court in Appeal from Original Order No. 255 of 1952.

Lal Narayan Sinha and S. P. Varma, for the appellant. A. V. Viswanatha Sastri, B. K. Saran, D. P. Singh and K. L. Mehta, for the respondent.

1960. September 20. The Judgment of the Court was delivered by AYYANGAR J.-The State of Bihar is the appellant in this appeal which comes before us on a certificate granted by the High Court of Patna under Art. 133(1) (c) of the Constitution.

The principal point of law raised for decision in the appeal is whether a State is liable to be proceeded against under 0. 39, r. 2(3) of the Code of Civil Procedure, when it wilfully disobeys-an order of temporary injunction passed of nomine against it.

There is little controversy regarding the facts, but they have to be set out to appreciate some of the matters debated before US.

The Bihar Land Reforms Act, 1950 (which we shall refer to as the Act), which provided for the transference to the 'State of the interests of proprietors and ,tenure-holders in estates within the State, received the assent of the President on September 11, 1950, and was published in the Bihar Gazette on September 25, 1950. Thereupon Rani Sonabati Kumari, the respondent, who was the proprietress of the Ghatwali Estate of Handwa situated within the State, instituted against the State of Bihar, in the Court of the Subordinate Judge, Dumka, on the 20th November, 1950, Title Suit 40 of 1950, inter alia for a declaration that the Act was ultra vires of the Bihar Legislature and was therefore " illegal, void, unconstitutional and inoperative " and that the defendant had " no right to issue any notification under the said Act or to take possession or otherwise meddle or interfere with the management of the estate in suit " and for a permanent injunction " restraining the defendant, its officers, servants, employees and agents from issuing any notification under the provisions of the Bihar Land Reforms Act, in respect of the plaintiff's estate " and also " from taking possession of the said estate and from meddling or interfering in any way with the management thereof ". Along with the plaint, the respondent filed a petition for a temporary injunction in which the prayer ran: " It is therefore prayed that a temporary injunction be issued against the defendant, its officers, employees, servants or agents restraining them from issuing any notification with regard to the plaintiff's estate under the Bihar Land Reforms Act, 1950 (Act XXX of 1950) and from meddling or interfering with the possession of the plaintiff to the properties in suit, till the disposal of this suit ". The Court issued an ex parte ad interim injunction presumably in terms of the prayer in the petition, and directed notice of the petition to be served on the State of Bihar who filed their counter-affidavit on December 9, 1950, opposing the grant of any interim injunction and praying that the petition be

dismissed with costs. The petition was heard in the presence of both the parties on March 19, 1951, and the Subordinate Judge made the ad interim injunction absolute and the order went on to add " and it is ordered that the defendant shall not issue any notification for taking over possession of the suit properties under the Land Reforms Act and shall not interfere with or disturb in any manner the plaintiffs possession over these properties under any of the provision of the aforesaid Act until this suit is finally disposed of by this Court ". The order was appealable under 0. 43, r. (1) (r) of the Code, but the State preferred no appeal and so it became final.

On May 17, 1952, an application was filed by the State for vacating the order, on the ground that the validity of the Act had been upheld by this Court in another case involving the same points and that thereafter the plaintiff had no prima facie case to sustain the injunction. Before however this application invoking the powers of the Court under 0. 39, r. 4 of the Code came on for hearing-(it was actually heard on May 30, 1952, when it reserved it for orders to be pronounced on June 2, 1952) the State of Bihar issued on May 19, 1952, a notification under s. 3(1) of the Act declaring that the Handwa Raj Estate belonging to the respondent, had passed to and became vested in the State under the provisions of the Act. The notification ran: "In exercise of the powers conferred by sub. section (1) of section 3 of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950), the Governor of Bihar is pleased to declare that the Estates described in the First Schedule and the tenures described in the Second Schedule hereto annexed belonging to the proprietor and the tenure-holder named in the respective schedules have, with effect from the date of the publication of this notification in the Bihar Gazette, passed to and became vested in the State under the provisions of this Act ".

The Handwa Raj Estate with the name of the respondent as the tenure holder was specified in the Second Schedule.

This was followed by an authentication in these terms:

By order of the Governor of Bihar, K. K. Mitra, Additional Secretary to Government."

On coming to know of this notification the respondent moved the Subordinate Judge on June 2, 1952, for taking action against the defendant in the suit, for contempt under 0. 39, r. 2(3) of the Code of Civil Procedure.

When notice of this petition was served on the State it submitted an answer in these terms:

"That in obedience to the said order, the defendant begs to submit that in view of the Article 31B of the Constitution, the aforesaid Notification, dated 19-5-52, and published in Bihar Gazette, dated 21.5.52 is valid, legal and authorised and the publication of the same does, not constitute contempt of court."

The only matter here set out, viz., that the constitutional validity of the Act had been affirmed by an amendment of the Constitution, could obviously afford no defence to the breach of an injunction order and indeed this was not sought. to be supported before us. The learned Subordinate Judge

passed an order on July 31, 1952, which ran " that in view of the notification constituting a breach of the injunction, the property of the defendant State of Bihar shall be attached to the value of Rs. 5,000. The plaintiff is directed to file the list of properties of this value and necessary requisites for issue of the attachment with in seven-days of this order."

From this order the State preferred an appeal to the High Court. The appeal was, however, dismissed by the High Court by judgment rendered on June 30, 1954, and by reason of a certificate granted by the learned Judges under Art. '133(1)(c) the State has preferred this appeal. The arguments addressed to us by Mr. Lal Narayan Sinha who appeared for the appellant State, when closely analysed resolved themselves into five points:

(1) That the order of the Subordinate Judge dated March 19, 1951, did not on its' plain language, interdict the issue of a notification under s. 3(1) of the Act, but merely directed the State, not to disturb the possession of the plaintiff. It was common ground that beyond the issue of the notification, neither the State, nor its officers or servants had done anything by way of interfering with the possession of the plaintiff.

(2) That at the worst the order of the Subordinate Judge, having regard to the language employed, was reasonably capable of two interpretations-(a) that the direction to the State included a prohibition against issuing a notification under s. 3(1), and (b) that there was no interdiction against notifications under s. 3(1) but only against notifications which directly involved or authorised interference with the plaintiff's possession of her Estate. Proceedings for, contempt even for the enforcement of orders of Civil Courts being quasi-punitive in their nature, it was urged that a party who bona fide conducted himself on the basis of one of two possible interpretations could not be held guilty of contempt.

(3) That the rule that the Crown or the State could not be proceeded against for a tort or wrong-doing applied to the present case, since disobedience of an order of injunction is virtually a wrong for which 0. 39, r. 2(3) provides the punishment or compensation.

(4) That a State is not bound by a Statute unless it is named therein expressly or by necessary implication, and as there is no mention of a State in specific terms in 0. 39, r. 2(3), a State cannot, as such, be proceeded against for disobedience of an order of Court.

(5) Even if a State could be proceeded against for willful disobedience of an order, the publication of the notification under s. 3(1) which was the contempt alleged, was not proved with certainty, to be an act of the State Government, and that in the absence of a definite proof of this fact, the liability of the State could not arise ; and that if the notification dated May 19, 1952, constituted the act of disobedience, then only the Additional Secretary, Mr. K. K. Mitra who authenticated the notification could, if at all, be made liable.

It would be convenient to deal with these 'matters in that order.

The first point urged was that the order of the Subordinate Judge dated March 19, 1951, did not in terms or in substance prohibit the State from issuing a notification under s. 3(1).

Section 3(1) of the Act runs:

" The State Government may, from time to time, by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State." It was urged that the Subordinate Judge by his order directed the State " not to issue any notification for taking possession "-and as the notification under s. 3(1) does not proprio vigore affect or interfere with the possession of the proprietor or tenure-holder, the issue of such a notification was not within the prohibition. The same argument was addressed to the High Court and was repelled by the learned Judges and in our opinion correctly. In the first place, the only "notification" contemplated by the provisions of the Act immediately relevant to the suit, was a notification under s. 3(1). Such a notification has the statutory effect of divesting the owner of the notified estate of his or her title to the property and of trans- ferring it to and vesting it in the State. The State is enabled to take possession of the estate and the properties comprised in it by acting under s. 4, but the latter provision does not contemplate any notification, only executive acts by authorized officers of the State. Of course, if action had been taken under s. 4, and the possession of the respondent had been interfered with, there would have been a further breach of the order which directed the State. not to interfere with or disturb in any manner, the plaintiff's possession. What we desire to point out is that the order of the Court really consisted of two parts- the earlier directed against the defendant publishing a notification which in the context of the relevant statutory provisions could only mean a notification under s. 3(1) and that which followed, against interfering with the plaintiff's possession and the fact that-the second part of the order was not contravened is no ground for holding that there had been no breach of the first part. In the next place, the matter is put beyond the pale of controversy, if the order were read, as it has to be read, in conjunction with the plaint and the application for a temporary injunction. Mr. Sinha did not seriously contend that if the order of the Court were understood in the light of the allegations and prayers in these two documents, the reference to the " notification " in it was only to one under s. 3(1) of the Act, and that the injunction therefore was meant to cover and covered such a notification. We, therefore, hold that this objection must fail. (2) The second contention urged was that even if on a proper construction of the order, read in the light of the relevant pleadings, the State Government was directed to abstain from publishing a notification under s. 3(1) of the Act, still, if the order was ambiguious and equivocal and reasonably capable of two interpretations, a party who acted on the basis of one of such interpretations could not be held to have wilfully disobeyed the.. order. Stated in these terms, the contention appears unexceptionable. For its being accepted in any particular case, however, two conditions have to be satisfied: (1) that the order was ambiguous and was reasonably capable of more than one interpretation, (2) that the party being proceeded against in fact did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order. We are clearly of the view that the case before us does not satisfy either condition. In dealing with the first contention urged by learned Counsel, we have pointed out the true construction of the order-and in our opinion that is the only construction which it could reasonably bear. But this apart, even if the order was equivocal as learned Counsel puts it, still, it is of no avail to the appellant, unless the State Government understood it in the sense, that the order was confined to acts by which the possession

of the plaintiff was directly interfered with and the notification was issued on that understanding and belief. There are two pieces of conduct on the part of the State Government which are wholly inconsistent with the theory that the order was understood by them as learned Counsel suggested. The first is that before the notification under s. 3(1) was issued they applied to the Court to vacate the order of injunction so that they might issue notification, and it was during the pendency of this application that the notification was issued-without waiting for the orders of the Court on their petition. The second is even more significant. When notice was issued to the defendant to show cause why it should not be committed for contempt, one would naturally expect, if the point urged has any validity, the defence to be based on a denial of disobedience, by reference to the sense in which the order was understood. We have already extracted the relevant paragraph of the counter-affidavit and in this there is no trace of the plea now put forward. Even in the memorandum of appeal to the High Court against the order of the learned Subordinate Judge under 0. 39, r. 2(3) there is no indication of the contention now urged and though a faint suggestion of inadvertence on the part of some officer appears to have been put forward during the stage of argument before the High Court, the point in this form was not urged before the learned Judges of the High Court, as seen from the judgment. The question whether a party has understood an order in a particular manner and has conducted himself in accordance with such a construction is primarily one of-fact, and where the materials before the Court do not support such a state of affairs, the Court cannot attribute an innocent intention based on presumptions, for the only reason, that ingenuity of Counsel can discover equivocation in the order which is the subject of enforcement. The argu- ment being in effect that a party who had bona fide misconstrued the order and acted on that basis, could not be held to have wailfully and deliberately disobeyed the order, such a plea could obviously be urged only when it is proved that a party was in fact under a misapprehension as to the scope of the order, but this was never the plea of the Government right up to the stage of the hearing before the High Court. Besides, if the case of the State was, that acting bona fide it had committed an error in construing the order, one would expect an expression of regret for the unintentional wrong, but even a, trace of contrition is singular lacking at any stage of the proceedings. We are clearly of the opinion that there is no factual basis for sustaining the second ground urged by learned Counsel. (3) Turning to the next point urged, learned 'Counsel amplified it in these terms. No doubt, having regard to Art. 300 of the Constitution-which practically reproduces the earlier statutory provisions in that behalf going back to 1858, States are not immune from liability to be sued. Learned Counsel added that he would not dispute that Title Suit 40 of 1950 was properly laid and that the Court had jurisdiction to entertain it, as also jurisdiction to pass the order of temporary injunction against the defendant State pending. the decision of the suit. But learned Counsel urged that it did not automatically follow that the State was amenable to proceedings, for disobedience of the injunction. Proceedings for contempt even for enforcing an order of a Civil Court, he submitted, were really a punishment for wrong doing and in essence, therefore, quasi- criminal. For this reason he contended that Art. 300 which permitted suits to be filed against the Union and the States could not be held to authorise proceedings of such a quasi- criminal nature, and that as a result the Common Law rules, that the King could do no wrong and that the Crown could not be sued for a tort, were attracted. In this connection learned Counsel invited our attention to the decisions in District Board of Bhagalpur v. Province of Bihar(1) and Tarafatullah v. S. N. Maitra (2). In the first of these cases, a large number of English and Indian decisions on the liability of the Crown in (1) A.I.R. 1954 Pat. 529.

(2) A.I.R. 1952 Cal. 919, 927.

tort were discussed. The question for consideration before the learned Judges was whether the suit before the Court against the Government could be legally maintainable and as to the scope and limits of the rule,, respondent superior" in such actions against the State-but both these matters are far removed from the pale of the controversy before us. In regard to the other ruling of the learned Judges of the Calcutta High Court, learned Counsel relied not so much on the decision itself but on the following observations of Mukerji, J. (1):

" A State as such cannot be said to commit contempt. In the case of the State the allegation must be against a particular officer or officers of the State. Where as in this case an order was obtained against the State. in a civil proceeding restraining certain acts of the State, and it is alleged by the complainant or the petitioner that there has been a contempt by breach of that order, the petitioner for contempt will have to take out the Rule for contempt against the particular officer or officers who has or have disobeyed that order. In such a petition for contempt the Rule must be asked against an individual and not against the State. Article 300 of the Constitution of India provides for proceedings by way of suit against the State or the Union of India and cannot be extended to apply to contempt proceedings ".

In order however to appreciate the observations it is necessary to consider briefly the facts of the case. The decision was concerned with an application to commit the respondents for contempt for disobedience to an order of ad interim injunction granted by a single Judge of the High Court on a petition for the issue of a writ of Certiorari under Art. 226 of the Constitution. No doubt, the order of temporary injunction was issued against the Government, but the disobedience complained of was not any act of the Government as such, but of certain officers. Not with. standing this, the Secretary to Government who had been formally impleaded as representing the Government, was sought to be proceeded against personally (1) A.I.R. 1952 Cal. 919. 927.

for contempt and the prayer being that he as representing the Government should be committed to prison. As Chakravartti, C. J., pertinently pointed out, a more ridiculous prayer could not be imagined. The learned Judges further found that as a fact no disobedience of the order had been proved. The question therefore whether the Government could be liable to be proceeded against for contempt for disobedience of an order which a Court has jurisdiction to pass and which bound the Government, the act constituting the contempt being unmistakably an act for which Government could not as such disclaim responsibility did not arise for consideration in that case. Having regard to the findings of fact reached by the Court, the observations regarding the scope of the liability of Government were wholly orbiter. In regard to the passage relied on we need only say that observations about the ambit of Art. 300 of the Constitution are too widely expressed and do not take into account, the provisions of the Civil Procedure Code 0. 21, r. 32 & 0. 21, r. 39(2)(3) which directly bear on the matter and which we shall discuss presently. Further, they cannot also apply to those cases where the disobedience takes the form of a formal Government order as in this case. In this connection we prefer the approach to the question indicated by the learned C. J., who said:

" I do not say that in fit cases a writ for contempt may not be asked for against a corporation itself, or against a Government. In what form, in such a case, any penal order, if considered necessary, is to be passed and how it is to be enforced are different matters which do not call for decision in this case. In England, there is a specific rule providing for sequestration of the corporate property of the party concerned, where such party is a corporation. I am not aware of any similar rule obtaining in this country, but, I do not consider it impossible that in a fit case a fine may be imposed and it may be realised by methods analogous to sequestration which would be a distress warrant directed against the properties of the Government or the Corporation Learned Counsel laid considerable stress on the proceedings under 0. 39, r. 2(3) being quasi-criminal, in an attempt to establish that the State could not be proceeded against for such a criminal wrong. Though undoubtedly proceedings under

0. 39, r. 2(3), Civil Procedure Code, have a punitive aspect-as is evident from the condemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the Civil Procedure Code for the execution of a decree for a permanent injunction. Order 21, r. 32 sets out the method by which such decrees could be executed-and cl. (1) enacts-" where the party against whom a decree..... for an injunction has been passed, has had an opportunity for obeying the decree and has willfully failed to obey it, the decree may be enforced, in the case of a decree ..... for an injunction by his detention in the civil prison, or by the attachment of his property or by both Clauses 2 and 3 of this rule practically reproduce the terms of cls. 4 and 3 respectively of 0. 39, r. 2, and the provisions leave no room for doubt that 0. 39, r. 2(3) is in essence only the mode for the enforcement or effectuation of an order of injunction. While on the provisions of 0. 21, r. 32, it may be pointed out that learned Counsel for the State does not contend that a State Government against whom a decree for a permanent injunction has been passed is not liable to be proceeded against under this provision of the Code in the event of the decree not being obeyed by them. No doubt the State Government not being a natural person could not be ordered to be detained in civil prison, On the analogy of Corporations; for which special provision is made in 0. 39, r. 5, but beyond that,, both when a decree for a permanent injunction is executed and when an order of temporary injunction is enforced the liability of the State Government to be proceeded against appears to us clear. The third point urged lacks substance and is rejected.

Some point was sought to be made of the fact that as the State was a juristic entity merely, the wrong which constituted the disobedience, must have been the act of some servant or agent of the Government and that except on the principle of vicarious liability the State could not be liable. This argument which is partly based on the observations of Mukherji, J., in the passage already extracted would if accepted deny that there could be any action by the State at all, is really part of the last submission and could conveniently be dealt with along with it. Besides, it need only be mentioned that the fact that officers and servants of Government could be dealt with as individuals bound by the orders passed against the defendant Government, nor the fact that they would be liable in' contempt is no ground at all for holding that the State Government itself would not be liable for their own act. (4) The invocation of the rule of construction that the Crown was not bound by a statute unless by express words or by necessary implication the intention so to bind was manifested, was the next submission of learned Counsel, reliance being placed for the position, on the recent

decision of this Court in Director of Rationing & Distribution v. Corporation of Calcutta (1). We shall proceed to consider the soundness of the contention that on a proper construction of the Civil Procedure Code the State of Bihar is not within 0. 39, r. 2(3). Article 300 of the Constitution permits suits, which before the Constitution could have been filed against the Central and Provincial Governments respectively, to be filed against the Union and the State. As already stated, there is no dispute that' having regard to the cause of action alleged in the- plaint, Title Suit 40 of 1950 could be properly laid against the State and the plaintiff could, if she was able to make good her allegations of fact and law, be entitled to be granted the reliefs prayed for in her suit including the relief for a permanent injunction restraining the State from issuing a notification under a. 3(1) of the Act and from interfering with her possession of (1) [1961] S.C.R. 158.

the estate of Handwa. It is also admitted that the Subordinate Judge had jurisdiction to pass the order of temporary injunction against the State Government and that the order bound them. What is contended however is that the method of enforcing that order provided for in 0. 39, r. 2(3) of the Code is not available against the State Government, because the State Government is not named in that sub-rule expressly or even by necessary implication. An examination however of the provisions of the Code and the Scheme underlying it in relation to proceedings against Government establishes that this submission is wholly untenable.

The Code of Civil Procedure does not determine whether any particular suit or class of suits could be filed against the Government or not, these being matters of substantive law. But when in law a suit could be properly filed against Government-be it the Union or the State, it makes a complete provision for the procedure applicable to such suits and the type of orders which Courts could pass in such suits and how these orders could be enforced. Part IV of the Code comprising ss. 79 to 82, sets out the details of the pro- cedure to be followed in suits against Government. Section 79 prescribes what, the cause title of suits against Government should be, the expression 'Government' being used to designate both the Union as well as the State Governments. Section 80 provides-making a special provision not applicable to suits against private parties, for a two months' notice prior to suit. If Government were a party to a suit, it necessarily follows that where the plaintiff succeeds there might be a decree against the Government-the Union or the State-and s. 82 lays down special rules for the execution of such decrees. In the 1st Schedule to the Code, there is a separate chapter-Chapter XXVII, dealing with suits against Government, in which provision is specially made for adequate time being granted to it for conducting the various stages of the proceedings before Courts. The foregoing, in our opinion, makes it clear that the State is bound by the Code of Civil Procedure, the scheme of the Code being that subject to any special provision made in that regard, as respects Governments, it occupies the same position as any other party to a proceeding before the Court.

We are further satisfied that even apart from the Scheme of the Code, the State, as a party defendant is plainly within the terms of 0. 39, r. 2(3) of the Code.

There is here no controversy that the Subordinate Judge had jurisdiction to pass the interim order of injunction against the State on the terms of 0. 39, r. 2(1) which reads:- "In any suit for restraining the defendant from committing injury of any kind, whether compensation is claimed in it or not, the

plaintiff may at any time after the filing of the suitapply to the Court for a temporary injunction to restrain the defendant from committing the injury complained of....."

The reference to the " defendant " in the sub-rule precludes any argument against the State being exempt from or being outside the statute. The entire argument on this part of the case was based on the difference between the language employed in cl. (1) extracted above and cl. (3) of the rule making provision for the manner in which disobedience to orders passed under cl. (1) could be dealt with. Clause (3) runs:

"In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release." Learned Counsel urged that cl. (3) discarded the use of the expression " defendant " employed in cl. (1) which would have included the " State" in cases where the State was a party defendant, and had designated the party against whom the injunction order could be enforced as "the person guilty of the disobedience " and with a further provision empowering the Court to order the detention of such person " in Civil prison. The word " person it was urged was at the best a neutral expression, which in the absence of compelling indication, was not apt to include " a State " and particularly so in the light of the rule of Construction approved by this Court in The Director of Rationing v. Corporation of Calcutta (1). It was further pressed upon us that the construction suggested would not render injunction orders passed on the State when it was a defendant brutum fulmen, because, the State as a juristic person could act only through human agency and there would always be some officer-a natural " person guilty of disobedience " in every case where orders passed against a State were disobeyed. We are clearly of the opinion that the entire argument should be rejected.

We feel wholly unable to accept the construction suggested of the expression " person guilty of disobedience " in the clause. The reason for the variation in the phraseology employed in cls. (1) and (3) of 0. 39, r. 2 is not far to seek. Under the law when an order of injunction is passed, that order is binding on and enforceable not merely against the persons eo nomine impleaded as a party to the suit and against whom the order is passed but against " the agents and servants, etc." of such a party. If such were not the law, orders of injunction would be rendered nugatory, by their being contravened by the agents and servants of parties. For that reason, the law provides that in order that a plaintiff might seek to enforce an order against a servant or an agent of the defendant, these latter need not be added as defendants to the suit and an order obtained specifically against the man order against the defendant sufficing for this purpose. If such agents or servants, etc., are proved to have formal notice of the order and they disobey the injunction, they are liable to be proceeded against for contempt, without any need for a further order against them under 0. 39, r. 2(1). This legal position is brought out by the terms of an injunction order set out in Form 8 of Appendix F to the Code which (1) [1961] 1 S.C.R. 158.

reads:"The Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from..... It is not suggested that the form which the order of the Subordinate Judge took in this case, departed from this model.

If such is the scope of an order for injunction, it would be apparent that the expression " person " has in 0. 39, r. 2(3) been employed merely compendiously to designate everyone in the group " Defendant, his agents, servants and workmen " and not for excluding any defendant against whom the order of injunction has primarily been passed. It would therefore follow that in cases where the State is the defendant against whom an order of injunction has been issued, it is " expressly " named in the clause and not even by necessary implication, and the rule of construction invoked does not in any manner avail the appellant. The matter may also be approached from a broader angle. Where a Court is empowered by statute to issue an injunction against any defendant, even if the defendant be the State- the provision would be frustrated and the power rendered ineffective and unmeaning if the machinery for enforcement specially enacted did not extend to every one against whom the order of injunction is directed. Apart, therefore, from a critical examination of the phraseology of 0. 39, r. 2(3), the obligation on the part of the State to obey the injunction and be proceeded against for disobedience if it should take place would appear to follow by necessary implication. As Maxwell (1) puts it " The Crown is sufficiently named in a statute when an intention to include it is manifest ".

The only point remaining for consideration is as to whether the publication of the notification under s. 3(1) which was treated by the Subordinate Judge to be the disobedience, had been established to be " the act " of the State. The entirety of the argument on this part of the case was rested on the terms of Art. 154(1) of the Constitution reading: (1) Maxwell on Interpretation of Statutes, 10th Edition, P.

140. Cf. Moore V. SMith, (1859) 28 L.J.M.C. 126.

" The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution".

It was urged that the publication of the notification was " an executive act "-an exercise of the executive power of the State-and since such a power could be exercised either by the Governor directly or through officers subordinate to him, it could not be predicated, from the mere fact that the notification was purported to be made in the name of the Governor, in Conformity with the provisions of Art. 166(1) that it was the Governor who was responsible for the notification and not some officer subordinate to him. On this reasoning the further contention was, that unless the respondent proved that it was the Governor himself who had authorised the issue of the notification, the State or the State Government could not be fixed with liability therefore, so as to be held guilty of disobedience of the order of injunction.

The submission of learned Counsel is correct to this extent that the process of making an order precedes and is different from the expression of it, and that while Art. 166(1) merely prescribes how orders are to be made, the authentication referred to in Art. 166(2) indicates the manner in which a previously made order should be embodied. As observed by the Privy Council in King Emperor v. Sibnath Banerji (1)with reference to the term " executive power " in Ch. 2 of Part 3 of the Government of India Act, 1935, corresponding to Part VI, Ch. 11 of the Constitution) " the term 'executive' is used in the broader sense as including both a decision as to action and the carrying out of the decision ".

Section 3(1) of the Act confers the power of issuing notifications under it, not on any officer but on the State Government as such though the exercise of that power would be governed by the rules of business framed by the Governor under Art. 166(3) of the Constitution. But this does not afford any assistance to the appellant. The order of Government in the (1) (1945) L. R. 72 I. A. 241 present case is expressed to be made " in the name of the Governor " and is authenticated as prescribed by Art. 166(2), and consequently " the validity of the order or instrument cannot be called in question on the ground that it is not an order or instrument made or executed by the Governor ".

Authorities have, no doubt, laid down that the validity of the order may be questioned on grounds other than those set out in the Article, but we do not have here a case where the order of the Government is impugned on the ground that it was not passed by the proper authority. Its validity as an order of Government is not in controversy at all. The only point canvassed is whether it was an order made by the Governor or by someone duly authorised by him in that behalf within Art. 154(1). Even assuming that the order did not originate from the Governor personally, it avails the State nothing because the Governor remains responsible for the action of his subordinates taken in his name. In Emperor v. Sibnath Banerji (1), already referred to, Lord Thankerton pointing out the distinction between delegation by virtue of statutory power therefore and the case of the exercise of the Governor's power by authorized subordinates under the terms of a. 49(1) of the Government of India Act, 1935 (corresponding to Art. 154(1)), said: " Sub-a. 5 of s. 2 (of the Defence of India Act, 1939) provides a means of delegation in the strict sense of the word, namely, a transfer of the power or duty to the officer or authority defined in the sub. section, with a corresponding divestiture of the Governor of any responsibility in the matter, whereas under s. 49(1) of the Act of 1935, the Governor remains responsible for the action of his subordinates taken in his name."

This last point also is therefore without force and has to be rejected.

Before concluding, we consider it proper to draw attention to one aspect of the case. It is of the essence of the rule of law that every authority within the State (1) (1945) L.R. 72 I.A. 241.

'including the Executive Government should consider itself bound by and obey the Law. It is fundamental to the system of polity that India has adopted and which is embodied in the Constitution that the Courts of the land are vested with the powers of interpreting the law and of applying it to the facts of the cases which are properly brought before them.. If any party to the proceedings considers that any Court has committed any error, in the understanding of the law or in its application, resort must be had to such review or appeals as the law provides. When once an order has been passed which the Court has jurisdiction to pass, it is the duty of all persons bound by it to obey the order so long as it stands, and it would tend to the subversion of, orderly administration and civil Government, if parties could disobey orders with impunity. If such is the position as regard private parties, the duty to obey is all the more imperative in the case of Governmental authorities, otherwise there would be a conflict between one branch of the State polity, viz., the executive and another branch-the Judicial. If disobedience could go unchecked, it would result in orders of Courts ceasing to have any meaning and judicial power itself becoming a mockery. When the State Government obeys a law, or gives effect to an order of a Court passed against it, it is not doing anything which detracts from its dignity, but rather, invests the law and the

Courts with the dignity which are their due, which enhances the prestige of the executive Government itself, in a democratic set-up. We consider that on the facts of this case there was no justification, legal or otherwise for the State Government to have rushed the notification under s. 3(1), when its application to modify or vacate the order for interim injunction was pending before the Subordinate Court. But more than that, when possibly by failure to appreciate their error, the notification had been published, and the propriety and legality of its action was brought up before the Court by an application under 0. 39, r. 2(3), the attitude taken up by the State Government and persisted in upto hearing before us, has been one which we can hardly commend. If the Government had deliberately intended to disobey the order of the Court, because for any reason they considered it wrong, their conduct deserves the severest condemnation. If on the other hand it was merely a case of inadvertence and arose out of error, nothing would have been lost and there was everything to be gained, even in the matter of the prestige of the Government, by a frank avowal of the error committed by them and an expression of regret for the lapse, and it is lamentable that even at the stage of the hearing before us, there was no trace of any such attitude.

The appeal fails and is dismissed with costs.

Appeal dismissed.