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or it be a citizen cannot enforce the fundamental rights against another body which can be regarded also as a State within the meaning of Art. 12 of the Constitution.

In my view, therefore, the first question should be answered in the affirmative, and the first part of the second question in the negative. The answer to the second part of the second question will be as follows: even if the State Trading Corporation be regarded as a department or organ of the Government of India, it will, if it be a citizen competent to enforce fundamental rights under Part III of the Constitution against the State as defined in Art. 12 of the Constitution.

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BENGAL NAGPUR COTTON MILLS
v.
BOARD OF REVENUE, MADHYA PRADESH & ORS.

(A. K. SARKAR, M. HIDAYATULLAH AND J. C. SHAH JJ.)

Octroi duty—Agreement—Exempted by former State—Liability to pay Octroi duty—Merger of State—If Municipality can levy after merger.

The Ruler of the former State of Nandgaon established a mill called Central Provinces Mills Ltd. A firm purchased the said mill and changed its name to Bengal Nagpur Cotton Mills Ltd. The ruler and the appellant company entered into an agreement on March 1, 1943. By this agreement the appellant company was exempted from liability to pay octroi duty to the State or to the municipality of the area. The ruler bound himself in consideration of certain advantages promised to him by the mill. In consequence of the said agreement neither the ruler nor the municipality collected octroi from the company. On December 31, 1947, the State merged with the State of Madhya Pradesh. On September 20, 1952, the Municipal Committee passed a resolution stating therein that this committee would levy octroi duty on the appellant company as the *Darbar Agreement* of 1943 was not binding on this committee. The appellant challenged this resolution in a petition under Art. 226 and Art. 227 of the Constitution before the High Court. The High Court dismissed the application and hence the appeal has been filed in this Court.

Held (i) that the agreement of 1943 cannot be regarded as law as it is in the shape of a contract between both the parties.

Madhaorao Phalke v. *State Madhya Pradesh,* [1961] 1 S.C.R. 957, explained.

Maharaja Shree Umaid Mills Ltd. v. *Union of India,* [1963] Supp. 2 S. C. R. 515, relied on.

(ii) that the agreements culminating in the agreement of 1943, could not be regarded as law but must be regarded only as agreements which might have bound the sovereign as a contracting party and not the Municipal Committee.

(iii) that an indication of the will of the ruler meant to bind as a rule of conduct and enacted with some formality either traditional or specially devised for the occasion, resulted in a law, but not an agreement to which there were two parties, one of which was the ruler.

(iv) that the Municipal Committee's rules and bye-laws though they applied to the appellant-company, remained in suspense because of the ruler's desire not to collect octroi from the appellant-company, but could be invoked when the ruler's wish ceased to operate.

(v) that the ruler's desire that octroi should not be collected ceased to operate from the moment he ceased to be the ruler and therefore the resolution of Municipal Committee was in order and binding on the appellant.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 416 of 1961.

Appeal by special leave from the judgment and order dated April 4, 1959, of the Madhya Pradesh High Court in Misc. Petition No. 546 of 1956.

S. T. Desai and *G. C. Mathur,* for the appellant.

H. N. Sanyal, Solicitor-General of India, and *A. G. Ratnaparkhi,* for respondent No. 2.

July 30, 1963. The Judgment of the Court was delivered by

Hidayatullah J.

HIDAYATULLAH J.—This is an appeal by special leave against an order of the High Court of Madhya Pradesh dated April 4, 1959, dismissing a petition filed by the appellant under Art. 226 of the Constitution. By that petition, the appellant asked for a writ of *certiorari* to quash an order of the Board of Revenue, dated September 15, 1956, by which the right of the Municipal Committee, Rajnandgaon, to levy octroi from the appellant was recognised, and for a *mandamus,* directing the Committee not to realise octroi from the appellant, in the following circumstances :

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Rajnandgaon, is a limited company incorporated under the Indian Companies Act, and carries on business of manufacturing textiles as Rajnandgaon with its head office at Calcutta. Rajnandgaon was the capital of the former State of Nandgaon in the Eastern States Agency Group before it merged with the State of Madhya Pradesh. A mill called the Central Provinces Mills Ltd., was established in the year 1893 by the then Ruler Raja Bahadur Balram Dass, who owned most of the shares. The mill was in difficulties owing to heavy losses, and in 1896, the Ruler agreed to sell it to M/s. Shaw Wallace & Co. On August 5, 1896, the Ruler wrote a letter to Shaw Wallace & Co., promising to assist the mill in various ways if the company purchased it. The mill was bought by Messrs. Shaw Wallace & Co., on September 13, 1896 and its name was changed to Bengal Nagpur Cotton Mills Ltd. In 1897, there was an agreement between the Raja Bahadur and Shaw Wallace & Co., which contained the following terms among others :

"2. The Rajah will assist the New Company by the special privilege of freeing its manufactured goods from octroi duties and by enhancing the present octroi of three pies per rupee *ad valorem* on imported goods which are the product of other mills outside the said State to one anna per rupee *ad valorem*.

3. The Rajah will cause that octroi on goods imported into Nandgaon by the New Company; such as cotton, fuel, oil, stores and *C (*as in the original) will be levied at the same scale of rates as that levied by the Nagpur Municipality on goods imported by the cotton mills in Nagpur."

. . . . . .

"6. The Rajah agrees that his personal claims against the old company shall as from the date of sale be considered as discharged by the undertaking agents as aforesaid that the New Company will pay to the Rajah a royalty of twenty-five per cent per annum on all net profits of the New Company after payment out of such net profits to the proprietors of a dividend of ten per cent per annum on the share capital of the New Company including in such capital such money as may be raised by way of debentures."

It appears that the increase of octroi on imported goods produced by other mills was later found to hamper the trade and commerce of the State, and the appellant company was persuaded to forego the protection, and the Municipal Committee, by a special resolution passed on April 13, 1901, restored the original rate of three pies per rupee. On October 29, 1906, another agreement was executed by the Ruler and the appellant-company. This was necessary because differences had arisen about the correct interpretation of the agreement, and the Ruler had a large claim on the appellant-company for royalty. This agreement again referred to the concessions which the Ruler had granted to the appellant-company. On March 1, 1943, there was yet another agreement between the Ruler and the appellant-company. That agreement came into force from January 1, 1941. It was divided into three parts and Part III referred to the concessions in the following words:—

Agreement of 1896.

"III. Save only as modified in manner aforesaid the Principal Agreement is confirmed as valid and subsisting.

And the *Darbar* in consideration of the relief given to it by the Company by reason of the modification in the Principal Agreement as stated above hereby declares that the *Darbar* will at all times hereafter as hitherto use its power and authority in maintaining and protecting the company under its special favour and hereby confirms the privileges and rights heretofore enjoyed by the company and in particular the *Darbar* with the intent to bind the Chief for the time being thereof hereby covenants with the company as follows:—

1. That the company shall during the currency of the Principal Agreement continue to enjoy freedom from all cesses duties (whether excise octroi or otherwise) licences taxes or other impositions leviable either by the said State or by the Municipality of Rajnandgaon or other local Authority in the said State on any goods manufactured by the Company and on any machinery raw materials or Mill Stores imported into the said State by the company for its

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own use for the working of the Mills."

. . . . . .

From the time of the execution of the agreement of 1943, the Municipal Committee, Rajnandgaon, did not collect octroi and other duties contemplated by the agreement as indeed it had not, ever since 1896. On December 31, 1947, Nandgaon State merged with the State of Madhya Pradesh. It seems that for a few years, the Municipal Committee did not recover octroi from the appellant-company. On September 20, 1952, the Municipal Committee at a general meeting passed a resolution in the following terms:

> "This Committee, therefore, resolves that the so called *Darbar* agreement of 1943 is not binding on this Committee when the State Government has already started collecting taxes and cases exempted under Clause 1 of Chapter III and, therefore, the Committee shall levy octroi duty (on the imports) and other legitimate dues on Bengal Nagpur Cotton Mills from 1st November, 1952."

On October 19, 1952, the Deputy Commissioner, Durg, suspended the resolution, but on May 19, 1953, the Government of Madhya Pradesh rescinded the order of suspension. The Municipal Committee on June 14, 1953, informed the appellant-company that octroi would be collected retrospectively from November 1, 1952, and asked the appellant-company to furnish full particulars including cost of imports made by it after that date. The appellant-company filed an appeal before the Deputy Commissioner, Durg, under s. 83(1) of the Central Provinces & Berar Municipalities Act, challenging the imposition of octroi. The Deputy Commissioner, by his order dated March 13, 1954, quashed the imposition and the demand made, but the Board of Revenue, Madhya Pradesh, on September 15, 1956, purporting to act under s. 83A of the Municipalities Act, set aside the order of the Deputy Commissioner in a revision filed by the Municipal Committee. The appllant-company thereupon filed a petition under Articles 226 and 227 of the Constitution for the writs above-mentioned. On the High Court's dismissing the petition, the present appeal has been filed.

The appellant-company contends that it was exempted

from the operation of the bye-laws of the Municipality which imposed octroi by the Ruler, and his will however expressed, must be regarded as law which continued to bind the Municipal Committee unless it was set aside by other competent authority. It further contends that as the Municipal Committee was not authorised to grant the exemption, it had no power to rescind the exemption which could not be held to be granted by it, and thus take away an exemption granted by a sovereign ruler, which could only be taken away by the succeeding sovereign by appropriate legislation. The appellant-company further contends that if the resolution passed by the Municipal Committee did not impose the tax and it could not be construed as rescinding an exemption since no exemption was granted by the Municipal Committee, then so long as the agreement stood and the appellant-company paid the royalty, the exemption could not be withdrawn. Lastly, it is contended that the order passed by the Board of Revenue was barred by time.

The main question is whether the agreement of 1943 operated as *a law* before the merger and it must continue so to govern the Municipal Committee till it is repealed or abrogated by suitable legislation. Reliance is placed upon the observations in *Madhaorao Phalke* v. *the State of Madhya Bharat*(1), where this Court observes that in dealing with the question as to whether the orders issued by an absolute monarch amount to laws or regulations having the force of law or whether they constitute mere administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands, is likely to be merely academic where the ruler is the source of all power, and that all the orders of the ruler; however issued, must be regarded as law. It is contended that these observations show that the order of the ruler incorporated in the agreement of 1943 must be read as a law enjoining upon the Municipal Committee not to recover octroi from the appellant-company and abrogating the law imposing the levy in respect of the mill. It is also contended that in determining whether a particular order bears the character of law, the name which the orders bear is not

(1) [1961] 1 S.C.R. 957 at 964.

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conclusive, and its character, its content and its purpose must be independently considered.

The above observations were made by this Court in connection with certain Kalambandis which were issued by the Ruler of Gwalior and which created a tenure to which certain persons were subject, granting to them at the same time military pensions. Those Kalambandis were held by this Court to be laws binding upon the subsequent Government until repealed or replaced by other laws. In a subsequent case decided by this court between *The Maharaja Shree Umaid Mills Ltd.* v. *the Union of India and others*(1), the earlier case in this Court was considered and explained. The latter case is more in point. In that case, an agreement was entered into by the *Umaid Mills,* and *The Maharaja of Jodhpur* relieved the mills of some taxes and also promised to obtain an exemption from any federal tax or excise which was likely to be imposed if Jodhpur joined the Indian Federation when it came into being under the Government of India Act, 1935. It was contended in that case that the agreement was in the nature of a law which bound the succeeding sovereign unless it was repealed or abrogated by suitable legislation, and the mills were, therefore, entitled to exemption from the Central excise duty. This contention was not accepted by this Court. This Court pointed out that where the enforceability of an exemption from tax depends not upon a law but upon consensus, what results is not a law granting an exemption but only an agreement which is enforceable as an agreement. Mr. S. T. Desai, arguing for the mill in the present case, attempts to distinguish the *Umaid Mills'* case on the ground that in that case the promise was to obtain an exemption from another sovereign in future and the ratio of the case was that one sovereign could not bind another sovereign. No doubt, the decision was also rested on this aspect of the case, but it was quite clearly laid down in the case, that an agreement cannot rank as a law enacted by the Ruler. The consensual aspect of the document there considered was pointed out in *Umaid Mills'* case. It is plain that an agreement of the Ruler expressed in the shape of a contract cannot be regarded as a law. A law must follow the customary

(1) [1963] Supp. 2 S.C.R. 515.

forms of law-making and must be expressed as a binding rule of conduct. There is generally an established method for the enactment of laws, and the laws, when enacted, have also a distinct form. It is not every indication of the will of the Ruler, however expressed, which amounts to a law. An indication of the will meant to bind as a rule of conduct and enacted with some formality either traditional or specially devised for the occasion, results in a law but not an agreement to which there are two parties, one of which is the Ruler.

Judged from this angle, it is quite obvious that the document of 1943, was merely intended to bind consensually and not by a dictate of the Ruler. The Ruler bound himself in consideration of certain advantages promised to him by the mill. The document is not worded as a law is ordinarily expected to be. It records a contract and Part III where the concessions occur is also worded as a contract and uses language familiar in agreements between two parties dealing with each other at arm's length. It is not necessary to refer in detail to Part III, but the words,

> "And the *Darbar* in consideration of the relief given to it by the Company by reason of the modification in the Principal Agreement as stated above hereby declares that the *Darbar* will at all times hereafter as hitherto use its power and authority in maintaining and protecting the company under its special favour and hereby confirms the privileges and rights heretofore enjoyed by the Company and in particular the *Darbar* with the intent to bind the Chief for the time being thereof hereby covenants with the company as follows", etc.

indicate that the *Darbar* was binding itself in consideration of certain acts done by the appellant-company in the past, and others, which the appellant-company undertook to perform in the future. This document, therefore, is of the same character as the one which was considered in *Umaid Mills'* case where the sovereign expressed himself not in a rule of law but in an agreement. The present document stands distinguished from the Kalambandis which not only ordered that the pensions were to be paid but also laid down the rules of succession to the privileges and the kind of tenure which the holders for the time being were to enjoy.

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We are, therefore, satisfied that in the present case, the agreements culminating in the agreement of 1943, cannot be regarded as law but must be regarded only as agreements which might have bound the sovereign as a contracting party but not the Municipal Committee.

The Municipal Committee had already imposed octroi in the State but the ruler ordered the Municipal Committee not to collect the dues from the appellant-company because of the agreement. No doubt, the Dewan, who entered into the agreement of 1943, was also the 'local government' and the Chief Officer of the Municipality, but the capacity of the Dewan in entering the agreement was different from his capacity as the head of the Municipality or as the 'local government' of Nandgaon State. His action as the Dewan in foregoing the collection of octroi was not anything he did on behalf of the Municipality but on behalf of the sovereign. The resulting position, thus, was that the sovereign did not collect octroi from the appellant-company because of the agreement, and the Municipal Committee's rules and bye-laws, though they applied to the appellant-company remained in suspense because of the Ruler's desire. After the State merged with the State of Madhya Pradesh and the Municipal Committee was not controlled in any way by the Ruler or by his agreement, the imposition of octroi upon the appellant-company which was in suspense, began to take effect from such date as the Municipal Committee chose to determine. The Municipal Committee ceased to be subject to the wish of the Ruler after the merger, and for a time it did not collect octroi from the appellant-company because the succeeding Government was accepting the royalty. In 1952, the Municipal Committee resolved to recover octroi from the appellant-company in accordance with the original imposition of the tax in the State and there was nothing which stood in the way of the Committee. The resolution was neither a fresh imposition of octroi because it had already been imposed nor the cancellation of an exemption because the Municipal Committee had not granted an exemption to the appellant-company. The resolution only indicated that on and from a particular date, the Municipal Committee would recover octroi which it had already imposed a long time ago upon all and sundry and to which the appellant-

company was also subject and which was no longer affected by the will of the *quondam* sovereign. The agreement of the Ruler bound the Municipal Committee only indirectly, because the Ruler to whom the amount recovered would have gone, had agreed to forego it, but the Ruler's desire that octroi should not be collected ceased to operate from the moment he ceased to be the Ruler.

The Resolution of the Municipal Committee was thus in order and the demand was rightly made. The point about limitation was properly abandoned because it has no substance.

The appeal fails and is dismissed with costs.

Appeal dismissed.

CHERUBIN GREGORY

v.

THE STATE OF BIHAR

(B. P. SINHA, C.J., J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Criminal trial—Trespasser—Duty of owners towards trespassers Indian Penal Code S. 99, 103, 304A.

The appellant was charged under s. 304-A of Indian Penal Code for causing the death of a woman. The deceased was residing near the house of the accused. The wall of the latrine of the house of the deceased had fallen down about a week prior to the day of occurrence and so the deceased along with others started using the latrine of the accused. The accused protested against their coming there. The oral warnings however, proved ineffective and so he fixed up a naked copper wire across the passage leading upto his latrine and that wire carried current from the electrical wiring of his home to which it was connected. On the day of the occurrence, the deceased went to the latrine of the appellant and there she touched the aforesaid fixed wire as a result of which she died soon after. The trial and the appellate court convicted and sentenced the appellant under S. 304A of the Indian Penal Code. Hence this appeal.