State of Punjab

Vs

Okara Grain Buyers Syndicate Ltd. and Ors. (and connected appeals)

Civil Appeals Nos. 439 to 451 of 1961

(P. B. Gajendragadkar, K. Subba Rao, K. N. Wanchoo JJ)

15.11.1963

JUDGMENT

AYYANGAR J. –

Section 13 of the Displaced Persons (Debts Adjustment) Act, 1951 (Central Act LXX of 1951) which will be referred to hereafter as the Act, enacts :

> "13. Claims by displaced creditors against persons who are not displaced debtors. At any time within one year after the date on which this Act comes into force in any local area, any displaced creditor claiming a debt from any other person who is not a displaced person may make an application, in such form as may be prescribed, to the Tribunal within the local limits of whose jurisdiction he or the respondent or, if there are more respondents than one, any of such respondents, actually and voluntarily resides, or carries on business or personally works for gain, together with a statement of the debt owing to him with full particulars thereof."

The respondents in each of these 13 appeals, which have been consolidated for hearing are "displaced creditors" and the point arising for decision in them is whether they could make a claim under this provision against the State of Punjab. A petition claiming such relief was filed by the respondent in Civil Appeal 439 of 1961 before the Subordinate Judge, Amritsar who was the Tribunal created under the Act for the purpose of receiving claims under s. 13 and, similarly, the contesting respondents in the other 12 appeals 440-451 of 1961 made similar claims before the Subordinate Judge, Hissar. Immediately the claims were filed and notices issued to the State of Punjab, a preliminary objection to the maintainability of the applications was raised by the State and the Tribunal at Amritsar passed an order on May 7, 1953 rejecting the preliminary objection and holding that on a proper construction of s. 13 the claim was maintainable before it. Similar objections were also raised before the Subordinate Judge, Hissar who, by orders passed on May 25, 1953, similarly over-ruled the preliminary objections and held that the claims were maintainable before him. The State thereafter filed revisions in all the 13 cases to the High Court of Punjab. These petitions came in the first instance before a learned Single Judge who directed that they should be placed before a Division Bench and the two learned Judges constituting the Division Bench after referring briefly to the arguments urged on behalf of the State in support of their contention that the State was not a 'person' against whom a claim could be made under s. 13 of the Act, expressed their opinion that the matter deserved to be decided by a larger Bench and the cases were thereupon placed before the Chief Justice for constituting a Full Bench for deciding the point of law which was formulated in these terms :

> "whether an application under s. 13 of the Displaced Persons (Debts Adjustment) Act, 1951 is not maintainable against the State of Punjab".

A Full Bench of three Judges accordingly heard arguments upon the point raised and held by a unanimous judgment that the applications were maintainable and in doing so over-ruled two earlier decisions which had taken a contrary view. The revision petitions were thereafter posted for final hearing before the learned Chief Justice who had originally heard them as a Single Judge and who, giving effect to the views expressed by the Full Bench, dismissed them. The State of Punjab thereafter applied to this Court for special leave and this being granted, the appeals are now before us.

As would be seen from the foregoing, the only question that arises for consideration is whether under s. 13 of the Act a "displaced creditor" could make a claim against the Government either of the State or of the Union, subject to the limitation of one year referred to in the opening words of the provision. It is not in dispute that each one of the contesting respondents is "a displaced person" nor it is the contention that the State is a displaced person. These two matters being put aside, the submission of the appellant in brief is two fold : (1) that what is claimed in the applications filed against the State is not "a debt" within the definition of the term in the Act to be presently referred to and (2) that even if it be held that the sum claimed is a "debt" the same is not being claimed from a person of whom it could be said that he or it "actually and voluntarily resides or carries on business or personally works for gain. Both these arguments stem from a single postulate and that is that the State is not within the scope of the enactment, not being named expressly or by necessary implication, and hence is not bound in respect of the liabilities, if any which the respondents might have against it by the provisions of the Act, and therefore is not subject to the jurisdiction of the tribunals created by the Act. It is the further contention that far from the intention of the enactment being to bind the State, the language that it employs and the provisions that it enacts, both from the point of view of the positive provisions as well as the omissions, tend strongly to establish that the State was outside the Act. These submissions were supported by an elaborate and able argument which covered a very wide ground of constitutional law and general jurisprudence which we shall notice and deal with, in their proper place. It would be seen from this brief statement of the points involved that nothing very much turns on the facts of the case. We would, however, set out the facts in one of the appeals, Civil Appeal 439 of 1961, merely as illustrative of the type of claims involved in these appeals. We should, however, hasten to add that in regard to most of these applications made by the respondents to the Tribunal there is a dispute about the facts themselves and about the genuineness and the quantum of the claim which have not yet been investigated, since only the preliminary objection to the maintainability of the applications has been decided and not the merits of the claims or the defence.

In Civil Appeal 439 of 1961 the facts as stated in the application were briefly as follows : The respondents are M/s. Okara Grain Buyers Syndicate Ltd. They were originally carrying on business in Okara in District Montgomery of the undivided Punjab - now in Pakistan. The Government of the then undivided Punjab instructed the respondents to supply 210 bags of imported maize to M/s Anil Starch Products Ltd., Ahmedabad in August 1947. The respondents accordingly carried out these instructions and despatched the goods by train. Delivery of the same was taken by M/s Anil Starch Products. Subsequent to the partition of India the respondents transferred their place of business from Okara to Amritsar and the Company was duly registered with the Registrar of Companies in the State of Punjab. In July 1948 after the respondents moved over to Amritsar, they submitted to the State Government their bill for the value of the maize supplied, being a sum of Rs. 3059/9/-. The respondents were then informed that the Anil Starch Products had made payment of the said sum of

Rs. 3059/9/- to the Director-General of Food Supplies, East Punjab in or about October-November, 1948. This was brought to the notice of the Government of the State of Punjab which was required to make the payment to the respondents but as no payment was made, they made an application against the Government under s. 13 of the Act to the Subordinate Judge who was constituted as the Tribunal under the Act. In this they claimed payments of Rs. 3059/9/- together with interest at 6% from the 15th August, 1947 till the date of the applicaion. We might mention that it was not in dispute that under the relevant constitutional instruments to which we shall refer later, if the claim were true, it would be enforceable by suit against the appellant-State.

As stated earlier, nothing turns in these appeals on the merits of the claim or about the defence to it on the merits by the State, but we are only concerned with the preliminary objection to the maintainability of the application based upon the provisions of the Act on the ground that what is claimed from the Government of the State is not a "debt" within the Act and that the State of Punjab is not a "person" against whom an application under s. 13 of the Act could be made.

As a step leading to the consideration of these submissions it would be necessary to advert to and read certain of the provisions of the Act which have a bearing on the matter in controversy. Section 2 contains the definitions of the terms used in the Act and it enacts :

> "2. Definitions. - In this Act, unless the context otherwise requires. -
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> (6) 'debt' means any pecuniary liability, whether payable presently or in future, or under a decree or order of a civil or revenue court or otherwise, or whether ascertained or to be ascertained, which -
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> (c) is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends;
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> but does not include
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> any pecuniary liability due under a decree passed after the 15th day of August, 1947, by any court situate in West Pakistan or any pecuniary liability the proof of which depends merely on an oral agreement;"

to quote only what is material for these appeals. A definition of the expression "displaced person" used in cl. (c) above is to be found in sub s. (10) which reads :

> "2. (10) 'displaced person' means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has, after the 1st day of March, 1947, left, or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage supervise or control any immovable property

> belonging to him in West Pakistan, but does not include a banking company;"

Special provisions have been made in the Act in regard to claims due to displaced banking companies and the phrase 'displaced bank' is, by sub-s. (7), stated to mean :

> "2. (7) 'Displaced bank' means a banking company which, before the 15th day of August, 1947, carried on the business of banking, whether wholly or partially, in any area now forming part of West Pakistan and is declared to be a displaced bank within the meaning of this Act by the Central Government by notification in the Official Gazette;"

Sub-section (8) contains the definition of 'displaced creditor' which it states means :

> "(8).'Displaced creditor' means a displaced person to whom a debt is due from any other person, whether a displaced person or not;"

while sub-s. (9) defines 'displaced debtor' and it runs :

> "(9).'Displaced debtor' means a displaced person from whom a debt is due or is being claimed;"

Sub-section (12) defines 'Tribunal' and it runs :

> "(12).'Tribunal' means any civil court specified under section 4 as having authority to exercise jurisdiction under this Act;"

There are, however, some substantive provisions which have a bearing on the proper construction of s. 13, but we shall defer reference to them at this stage.

On the terms of s. 13 of the Act set out earlier, the matters in controversy may be stated thus : Starting from the premise, as to which there is no contest, that the respondent is "a displaced person", the questions to be considered are : (1) Is he a displaced creditor ? This would, having regard to the definition of the term 'displaced creditor' in s. 2(8), depend upon (2) whether the claim made by him is a "debt" which would be the second point for consideration viz., is the sum claimed as due from the State a "debt" within the meaning of s. 2(6)(c) and lastly (3) Would the State by 'any other person' within s. 13 ?

Now, what is invoked by the learned Advocate-General is the well-known rule of construction which in the phraseology which is apt to the constitutional set up in the U.K. is expressed in the proposition that "the Crown is not bound by a statute unless it appears that it is brought within it by express words or by necessary intendment." We shall in due course consider the scope of this rule of construction which has been held by this Court to be applicable to the interpretation of Indian statutes both pre as well as post-Constitution, but at this stage it is sufficient to mention three matters in relation to it. The first is that the expression "Crown" or "King" in the rule has to be understood as referring to the Executive Government of the State in the context of our Constitution. If authority were needed for what we consider so obvious a proposition it is to be found in the judgment of Griffith, C.J. in Roberts v. Ahern [1 C.L.R. 406 at p. 418.]. The next is that it is common ground that there is no express mention of the State or the Government of the State in the Act now under consideration. Lastly, the rule is merely one of construction which raises an initial presumption in its favour, not any hard and fast rule. It is a rule intended to give effect to the

intentions of the legislature and consequently if there is either in the purpose of the Act or in its provisions a manifestation of a clear intention to the contrary, the presumption would be rebutted and the State would be bound. There being, in the cases before us, no contention that there is any lack of legislative power for the Union Parliament to bring in the debts due to or owing by the Government of the State and the Union within the ambit of the enactment, the whole question is whether by the provisions it has enacted Parliament has manifested a clear intention to include these debts also within the scheme of the Act.

As preliminary to the detailed consideration of the provisions of the Act, it would be useful to appreciate the historical background of this legislation which seeks to confer certain substantive and adjectival benefits on persons, who owing to the situation created by the partition of the country in 1947 were forced to migrate from what is now West Pakistan into the present State of Punjab.

Prior to partition, under s. 176 of the Government of India Act, 1935 the Provincial Government of the Punjab could be sued by the name of the Province in regard to claims arising against the State on contracts entered into by it. When the partition of India was effected and the State of the Punjab was divided between Pakistan and the rest of India, provision had necessarily to be made in regard to the claims which persons had against the former province of undivided Punjab. This was effected by the Indian Independence (Rights, Property & Liabilities) Order, 1947 which in its 8th paragraph dealt with contracts entered into by the Governor-General before the 15th August, 1947 (the appointed day) as well as by the undivided province of the Punjab. Paragraph 8(3) ran :

> "8. (3) Any contract made on behalf of the Province of the Punjab before the appointed day shall, as from that day, -
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> (a) if the contract is for purposes which as from that day are exclusively purposes of the Province of East Punjab, be deemed to have been made on behalf of that Province instead of the Province of the Punjab; and
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> (b) in any other case be deemed to have been made on behalf of the Province of West Punjab instead of the Province of the Punjab;
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> and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights or liabilities of the Province of the Punjab, be rights or liabilities of the Province of East Punjab or the Province of West Punjab, as the case may be".

It was not disputed that in regard to the claims which were the subject of the applications from which the appeals before us arise, if tenable on the merits, would be claims which could be properly made against the State of Punjab. Reading this provision in conjunction with Art. 300 of the Constitution the result would be that if a suit for enforcing the claim were filed against the appellant State, apart from any contention on the merits or based on any plea of limitation, there could be no defence to the suit, save that under procedural law of India as enacted in the Civil Procedure Code, as understood by a long course of decisions interpreting the provisions of the Code, the suit would have to be filed in the Court having territorial jurisdiction over the area where the cause of action for the suit arose. Very soon after partition the Indian legislature enacted the Displaced Persons (Institution of Suits) Act, 1948 which received the assent of the Governor-General on September 4, 1948. It was a temporary enactment which was to be in force for three years and it replaced an earlier ordinance of the same name - Ordinance XVIII of 1948 containing identical provisions. Its

principal object was to provide for and validate certain suits which had been instituted in India, though the cause of action therefor had arisen in territories which became Pakistan and for extending the period of limitation for the institution of suits by displaced persons. Section 4 of the enactment which constituted its core ran :

> "4. Notwithstanding anything contained in section 20 of the Code of Civil Procedure, 1908 (V of 1908) or in any other law relating to the local limits of the jurisdiction of Courts or in any agreement to the contrary, a displaced person may institute a suit in a Court within the local limits of whose jurisdiction he or the defendant or any of the defendants, where there are more than one at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, if -
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> (i) the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides or carries on business, or personally works for gain in India and is not a displaced person;
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> (ii) the cause of action, wholly or in part, arises or has arisen in a place now situate within the territories of Pakistan;
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> (iii) the Court in which the suit is instituted is otherwise competent to try it; and
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> (iv) the suit does not relate to immovable property."

At the time when this enactment lapsed on the expiry of the period of 3 years which was its life, came the Act which was a comprehensive piece of legislation designed to redress not merely the procedural difficulties to obviate which was the main object of the temporary Act of 1948, but the enactment of substantive provisions to alleviate the hardships of those who after suffering, in most cases, grievous loss of property in Pakistan were forced to migrate to the Punjab.

Pausing here, we might mention, and there was no dispute as to this, that so far as private individuals i.e., all parties other than the Government of the Union or of the State, were concerned, the enactments of 1948 and 1951 effected the necessary alterations in the procedural law as to the forum to which displaced persons could resort in which proceedings should be instituted to overcome the difficulties consequent on the entire cause of action having arisen in Pakistan. The contention of the appellant-State before us was that as regards causes of action against the State, the matter was left where it was.

The judgment of the Full Bench of the High Court negativing this contention is an elaborate one, but its reasoning may be summarised as resting on the following postulates : (1) unless there was an explicit exemption of the State from the operation of any particular statute, the State was bound by its provisions, (2) that the object of the Displaced Persons (Institution of Suits) Act of 1948 and the present Act was to supplement the Independence (Liabilities) Order, 1947 and to furnish the adjectival relief to the substantive rights conferred by it against the State, (3) that unless the construction contended for by the respondent was accepted, most persons who had claims against the State of the type contemplated by para 8(3) of the Independence (Liabilities) Order, 1947 would be remedyless - a circumstance which would be repugnant to the basic idea underlying the Indian Independence (Rights, Property & Liabilities) Order, (1947). The learned Advocate-General contested the correctness of each one of these and submitted to us an elaborate argument which may

be summarised thus :

> (1) This Court has, in Director of Rationing and Distribution v. The Corporation of Calcutta & Ors. [[1961] 1 S.C.R. 158.], accepted as correct the rule of construction adopted in the U.K. that the State is not bound by a statute unless it is so provided in express terms or by necessary implication. Applying this principle of interpretation to the terms of the Act, far from the State being expressly named as being bound, there are indications arising from the nature and description of the persons brought within the scope of the enactment which clearly exclude the State and the obligations of the State from its purview.
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> (2) The Act was preceded by the Displaced Persons Suits Act 1948 which employed substantially the same phraseology as the Act now under consideration. The scope of the earlier Act, viz., the liability of the Government was the subject of adjudication before the High Court of Punjab in M/s Nagi Bros. v. The Dominion of India [I.L.R. 4 Punjab 358.], where it had been held that the provisions of its s. 4 was held not to permit suits against the Dominion of India for the reason that the State was not a "person" within its terms. The re-enactment of the law, on the expiry of the Act of 1948, adopting substantially the same phraseology in s. 13 and other relevant sections to indicate the "person" against whom the claim could be made was therefore a legislative confirmation of that ruling and a strong indication that Parliament intended the same result.
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> (3) Lastly, the hardship which might be caused in cases where claimants might be left without remedy in case the construction for which he contended was accepted, must in the nature of things be in a few marginal cases at the most, and even if they were more widespread, would not by itself be a factor which could weight either to rebut the presumptive rule that statutes do not bind the State, or the other argument arising from legislative confirmation of previous judicial construction, particularly when according to him no ambiguity existed in the construction of the Act or the language employed in its various relevant provisions.

We shall now proceed to deal with the submissions in the order in which we have set them out. The learned Advocate-General is right when he says that this Court in Director of Rationing and Distribution v. The Corporation of Calcutta and Ors. [[1961] 1 S.C.R. 158] has accepted the continued applicability of the principle of construction of statues laid down by the Privy Council in Province of Bombay v. Municipal Corporation of the City of Bombay [[1946] L.R. 73 I.A. 271.]. In the case of Director of Rationing [[1961] 1 S.C.R. 158.], s. 386(1) of the Calcutta Municipal Act forbade any "person" to use or permit to be used any premises for the purposes named otherwise than or in conformity with the terms of the licence granted by the corporation. The question that was considered by this Court was whether the Director of Rationing representing the Food Department of the Government of West Bengal was subject to this provision. The High Court of Calcutta had held that in the absence of any provision in the enactment exempting the Government from the operation of s. 386 the Government of West Bengal as well as the Director of Rationing were also bound. It was from this decision that the appeal was preferred to this Court. This Court allowed the appeal and held that tha decision of the Privy Council in Province of Bombay v. Municipal Corporation of the City of Bombay [[1946] L.R. 73 I.A. 271] laid down the correct rule of interpretation of statutes and that the coming into force of the Constitution did not make any difference as regards the applicability of that rule. Sinha C.J. observed :

> "The rule of interpretation of statutes adopted in England and applied by the Privy Council to an Indian statute in Province of Bombay v. Municipal Corporation of the City of Bombay (1946) L. R. 73 I.A. 271) that the State is not bound by a statute unless it is so provided in express terms or by necessary implication, is still good law."

The next question to be considered is the scope of this rule of construction. In this connection learned counsel for the respondent drew our attention to the following paragraph :

> "It is well-established that the common law of England is that the King's prerogative is illustrated by the rule that the Sovereign is not necessarily bound by a statutory law which binds the subject. This is further enforced by the rule that the King is not bound by a statute unless he is expressly named or unless he is bound by necessary implication or unless the statute, being for the public good, it would be absurd to exclude the King from it. Blackstone's Commentaries (Vol. I, 261-262) accurately summed up the legal position as follows :-
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> "The King is not bound by any act of Parliament, unless he be named therein by special and particular words. The most general words that can be devised...... affect not him in the least, if they may tend to restrain or diminish any of his rights or interests. For it would be of most mischievous consequence to the public, if the strength of the executive power were liable to be curtailed without its own express consent by constructions and implication of the subject. Yet, when an act of Parliament is expressly made for the preservation of public rights and the suppression of public wrongs, and does not interfere with the established rights of the crown, it is said to be binding as well upon the king as upon the subject; and, likewise, the king may take the benefit of any particular act, though he be not specially named". (Quoted at p. 355 of Holdsworth, A History of English Law, Vol. X) (italics ours).
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> Based on this passage, particularly the words italicised, his submission was that the Act now for interpretation is one enacted for the public good and that consequently the presumption would be that the executive government was bound by it. We consider that the passage extracted is not capable of that construction. It has to be read not in vacuo and divorced from the rest of the judgment but in conjunction with the express approval of the rule of construction as explained by the Privy Council in Province of Bombay v. Municipal Corporation of the City of Bombay [[1946] L.R. 73 I.A. 271.] Lord du Parcq dealt with the submission regarding statutes "enacted for the public good" being exceptions to the rule in these terms :
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> "It was contended on behalf of the respondents that whenever a statute is enacted 'for the public good' the Crown, though not expressly named, must be held to be bound by its provisions and that, as the Act in question was manifestly intended to secure the public welfare, it must bind the Crown. This contention, which did not meet with success in the High Court, was again raised before their Lordships. The proposition which the respondents thus sought to maintain is supported by early authority, and is to be found in Bacon's Abridgment and other text-books but in their Lordships' opinion it cannot now be regarded as sound except in a strictly limited sense. Every statute might be supposed to be 'for the public good', at least in intention, and even when, as in the present case, it is apparent that one object of the legislature is to

> promote the welfare and convenience of a large body of the King's subjects by giving extensive powers to a local authority, it cannot be said, consistently with the decided cases, that the Crown is necessarily bound by the enactment."

We consider that the principle here explained should also be deemed to have been approved of and accepted by this Court in the Director of Rationing case [[1961] 1 S.C.R. 158.] In another passage in the same judgment Lord du Parcq explained the scope and ambit of the rule which have in terms relevance to the question arising in these appeals. The learned Lord said :

> "The general principle to be applied in considering whether or not the Crown is bound by general words in a statute is not in doubt. The maxim of the law in early times was that no statute bound the Crown unless the Crown was expressly named therein............ But the rule so laid down is subject to at least one exception. The Crown may be bound, as has often been said, 'by necessary implication'. If, that is to say, it is manifest from the very terms of the statute, that it was the intention of the legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named. It must then be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions".

He added a little later :

> "In the present case the High Court disposed of the submission by a finding that, on the material before them, it was not shown to be for the public good that the Crown should be bound by the Municipal Act. This is, perhaps, not a wholly satisfactory way of dealing with the respondents' contention, which was, not that the court must consider whether it is for the public good that the Crown should be bound by a particular Act, but that wherever an Act is 'for the public good' it must be taken to bind the Crown. Their Lordships prefer to say that the apparent purpose of the statute is one element, and may be an important element, to be considered when an intention to bind the Crown is alleged. If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound".

In the view we take of the construction of the provisions of the Act before us, in the light of the principles of construction formulated by Lord du Parcq, we do not consider it necessary to examine whether there are any further limitations, qualifications or exceptions to the rule as applied to Indian statutes as have been accepted in the United Kingdom which have been set out and expounded at pages 438-443 of the sixth edition of Craies on Statute Law. We shall therefore proceed to examine the provisions of the Act on the footing that the test for determining whether the Government is bound by a statute is whether it is expressly named in the provision which it is contended binds it, or whether it "is manifest that from the terms of the statute, that it was the intention of the legislature that it shall be bound", and that the intention to bind would be clearly made out if the beneficent purpose of the statute would be wholly frustrated unless the Government were bound. We might here point out that a question such as has now arisen has been before this Court on at least two earlier occasions. In the State of Bihar v. Rani Sonabati Kumari [[1961] 1 S.C.R. 728.] the question raised was whether Government was bound by the provisions of O.XXXIX.r.2(3) of the Civil Procedure Code where the expression used to designate the party subject to be proceeded against was "person". This Court held that in the context of the other provisions of the Order and the other

relevant law, the word "person" was intended to include in its connotation the state where it was a party against whom any order of injuction had been passed. A similar question also arose in The State of West Bengal v. The Union of India [[1964 1 S.C.R. 371.] filed in this Court against the Union of India and others. Sinha, C.J. speaking for the majority observed :

> "The rule that the State is not bound, unless it is expressly named or by necessary implication in the statute is one of interpretation. In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

We shall therefore proceed to consider the terms of the Act in the light of these principles and see whether debts due to displaced persons by the Government are within its scope, by reason either of the words used or by reason of the same being necessitated by the policy, purpose or provisions of the Act.

As regards the phraseology used in the enactment, the submission of the learned Advocate-General was simple. Assuming that on the merits the claims made by the contesting respondents in the several appeals were enforceable against the State of Punjab he submitted that the earlier legislation referred to by the learned Judges of the Full Bench could not and did not materially assist in the construction of the Act. Under s. 8 of the Indian Independence (Rights, Property & Liabilities) Order, 1947, the right of the respondents would, reading it along with Art. 300 of the Constitution, be merely a right to institute a suit and that could be no justification for holding that the respondents were conferred rights to file applications under s. 13 of the Act unless its terms were satisfied. In order that a claim may fall within s. 13 it should satisfy the requirements of the section relating to the nature of the claim : (1) it must be to a displaced creditor (that, of course, was satisfied in the sense that he was a displaced person to whom amounts were due; (2) such a person must be claiming "a debt" i.e., a debt falling within s. 2(6)(c) i.e., a debt due from "a person" "ordinarily residing" in the territories to which the Act extends, and (3) such person should be one who is not a "displaced person." "Person" is not defined in the Act, but in the absence of any express provision therefor or by reason of any necessary implication arising from the provisions of the Act, the State or the Government of the State would not be a 'person'. This was particularly so in view of the description of the "person" referred to or described in the relevant provisions viz., of whom it could be said that he "actually or voluntarily resided" or "carried on business or personally worked for gain". It is only "a person" who had these attributes or to whom these characteristics could be attributed that was intended to be brought within the term 'person' and as it could not be said of the State that it either "voluntarily resided" or "carried on business" or "personally worked for gain" such a body was not within the contemplation of the expression 'person' against whom claims could be made under the section. In support of this submission, based on the connotation of the term 'person' as used in this Act, we were referred to the decision of the Bombay High Court pronounced by Chagla, C.J. in which the identical question now debated before us viz., the construction of s. 13 of the Act was considered and it was held that no application under that section could be made against the Union Government. The learned Advocate-General naturally relied very strongly on this judgment as correctly interpreting s. 13 and his complaint was that the learned Judges of the Full Bench of the Punjab High Court when dealing with this question in the proceedings which had given rise to these appeals, were in error in refusing to follow the decision of the Bombay High Court.

The decision of the Bombay High Court is reported in Advani v. Union of India [1 I.L.R. 1955 Bom. 970.]. An application under s. 13 of the Act had been filed before the Judge of the City Civil Court Bombay - the appropriate tribunal under the Act - making a claim against the Union of India. The learned Judge who heard the application took the view that the Union of India was not bound by Act LXX of 1951 and that s. 13 would not enable a displaced person to make an application against the Union of India. The matter was brought up in appeal to the High Court and the learned Judges dismissed the appeal. The reasoning adopted for their conclusion was exactly identical with the submissions made to us on the construction of s. 13 we have summarised a little while before which laid stress on the definition of "debt" in s. 2(6)(c) being inappropriate to a debt owned by a State having regard to the description of the person by whom it was payable. The question whether the Union of India would be "a person ordinarily residing in the territory of India to which the Act extends" was, in this context, examined in great detail, on the assumption that the Union of India might be "a person" i.e., an artificial or a juristic "person" within the Act. Chagla, C.J. then referred to a long catena of cases in which it had been held that it could not be predicted that the Government resided in any place or that it carried on any business in any particular place. It was, therefore, held that the claim made was not a debt under s.2(6)(c) and therefore the application was not maintainable. We see force in the submission of the learned Advocate-General and if the matter had to be decided solely on the basis of the expressions used to define the word "debt" and the description of the "person" against whom proceedings could be taken under s. 13 of the Act, there would undoubtedly be grave difficulties in the way of accepting the view that "person" was intended to include the Government of the Union or of the State.

But the matter does not stop here, and the question depending, as it is, on "the intention of the legislature" cannot be answered without an examination of the provisions and purposes of the Act for ascertaining as Lord du Parcq said, "whether its beneficent purpose would be wholly frustrated unless the Crown were bound". It was the same enquiry that was envisaged by this Court when it said in the West Bengal suit [[1964] 1 S.C.R. 371.]

> "The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

Before, however, we do so, it is necessary to advert to an argument addressed to us by the respondent that the expression "person" used in the Act must be held to include the State, inasmuch as not merely natural persons but artificial and juristic entities like companies and corporations as well as unincorporated bodies are expressly brought within the Act. In this connection strong reliance was placed on the definition of 'displaced person' according to which only 'banking companies' were excluded thus indicating that other companies were within it. If companies other than banking-companies, besides firms and associations of persons were included in the word 'person' it was submitted for the respondent, there was no anomaly or impropriety in including the State also as an entity which could be comprehended by the word 'person'. It was urged that if the reason for excluding the State from the connotation of the expression "person" was that no "actual or voluntary residence" could be attributed to it, the same would equally apply to companies, as well as firms and associations of persons in regard to whom no doubt was cast on their being included within the scope of the Act. In this connection it was pointed out that it was only in a very notional or artificial sense that residence could be attributed to artificial persons like firms or unincorporated associations or to corporations, the submission being that if these bodies could be included there was no reason why the concept of notional residence could not be extended to a juristic entity like a

State.

The learned Advocate-General submitted to us an elaborate and erudite argument as to whether the State was a corporation in any sense, the conclusion which he desired us to draw being that though the State was a body politic, it had not the characteristics of a corporation. In this connection he referred us to various writers on Public International Law and on Political Science and to certain decisions of the American Courts. We do not, however, feel called upon to examine these submissions and pronounce upon their correctness in view of the conclusion we have reached on a construction of the provisions of the Act. We would, however, make two observations : (1) that the mere fact that certain artificial entities like corporations are brought within the scope of the Act, would not by itself rebut the presumptive rule of construction that the State is not bound by a statute unless it is brought within its scope expressly or by necessary implication, (2) it would not be correct to say that the State is not a constitutional or even juristic entity for the reason that it does not partake the characteristics of or satisfy in whole, the definition of a corporation. The State is an organised political institution which has several of the attributes of a corporation. Under Art. 300 of the Constitution, the Government of the Union and the Government of a State are enabled to sue and be sued in the name of Union of India and of the Government of the State, as the case may be. It would not, therefore, be improper to speak of the Union and the State as constitutional entities which have attributes defined by the Constitution.

From the above it follows that the respondent does not gain any advantage for the decision of the matter now under debate by being able to establish that the State or the Government of a State is an entity, nor the appellant by demonstrating that the State is not a juristic person of the same type as a corporation. We do not therefore propose to deal any further with this point.

We shall now proceed to detail the substantive provisions of the enactment which bear upon the question now at issue. That it was a beneficent piece of legislation enacted to afford relief to persons who had suffered displacement by reason of the partition is not in dispute. The hardship which such persons suffered either as creditors or as debtors was the subject of alleviation by the Act. In broad outline without going into minute details the substance of the remedial provisions was this : As regards displaced creditors the relief afforded to them was by permitting them an inexpensive procedure for enforcing their claims together with prescribing the forum which made substantial departures from the principles which underlay s. 20 of the Civil Procedure Code which obviously could not wholly fit into the problems created by partition. The relief afforded to displaced debtors was naturally more extensive. Besides certain special provisions in respect of secured debts there were elaborate provisions for scaling down debts due to unsecured creditors, the principle underlying being that the debtor should be left with enough to live, while the creditors should between themselves take the entirety of the property save that which was left to the debtor. There was a sort of distribution of the assets among the proved creditors. The benefits provided fro the displaced debtor and to the displaced creditor were an integrated scheme; the one running into the other.

Chapter II in which s. 13 occurs is headed 'Debt Adjustment Proceedings'. It opens with s. 5 which deals with applications by displaced debtors for the adjustment of their debts. That section runs, to quote only the material words :

> "A displaced debtor may make an application for the adjustment of his debts, to the Tribunal within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business or personally works for gain."

Sub-section (2) specifies what the application shall contain and among the matters to be included in the application are : (1) a schedule containing full particulars of all his debts, whether owned jointly or individually, with the names and addresses of his creditors and his joint-debtors.............. (2) a schedule of all his properties, both movable and immovable, including claims due to him. The purpose of these schedules would be apparent from s. 32 which deals with the manner in which the debts of a displaced debtor are to be scaled down and to which we shall draw attention later. Sections 6 to 9 lay down the procedure regarding applications made under s. 5, the object of the procedure being the ascertainment of the total of the debts owing by a displaced debtor and the total amount of his assets, the relief which that Act grants on the basis of this ascertainment being the subject-matter of later provisions. Sections 10 to 14 deal with the converse case of claims by displaced creditors first against displaced debtors and next against debtors who are not displaced debtors. In their case also the procedure is directed to the ascertainment of the genuiness and the quantum of the claims in the presence of the interested parties. The interrelation between these two sets of provisions is perhaps brought out by s. 11 which enacts :

> "Procedure on creditor's petition. -
>
> (1) Where an application under section 10 has been made, the Tribunal shall cause notice thereof to be served on the displaced debtor calling upon him either to show cause, if any, against the application or to make an application on his own behalf under section 5.
>
> (2) If, in response to a notice under sub-section (1), the displaced debtor makes an application in accordance with the provisions of section 5, the Tribunal shall proceed further in the matter as if it had commenced with an application by the displaced debtor under section 5, and all the other provisions of this Act shall apply accordingly; but, if the displaced debtor does not choose to make any such application, the Tribunal shall, after considering such evidence, if any, as may be produced before it, determine the claim and pass such decree in relation thereto as it thinks fit.
>
> (3) The period of limitation specified in sub-section (1) of section 5 in respect of an application by a displaced debtor shall not apply to an application made under sub-section (2)."

It was features of this type that we had in mind when we said that the provisions regarding the relief to displaced debtors and displaced creditors had to be read together since the Act dealt with them as one integrated whole - the one running into and determining the other.

Some of the reliefs to which displaced debtors making applications under ss. 5 and 11(2) would be entitled are dealt with in ss. 15, 16 and 17 but to these it is not necessary to refer as they are not material for the purposes of the point arising for decision. What is, however, of more immediate relevance are the provisions in Ch. III in which s. 32 occurs which is headed 'Reliefs'. Section 29 which is the first of the sections in this Chapter and those following it set out the reliefs which shall be available to displaced debtors. They include s. 29 - Cesser of accrual of interest, s. 30 - Exemption from arrest or imprisonment for the recovery of any debt, and s. 31 - an enlargement of the scope s. 60 of the Civil Procedure Code as regards property which shall not be liable to attachment in the case of displaced debtors. Next, we come to s. 32. This section runs:

"32. Scaling down of debts. - (1) Where, on the application of a displaced debtor under section 5 or sub-section (2) of section 11, the Tribunal has determined the amount due in respect of each debt in accordance with the provisions of this Act, it shall proceed to determine the paying capacity of the debtor.

(2) If the paying capacity of the debtor is equal to or exceeds the aggregate sum of all the debts so determined (exclusive of any debt in respect of which the creditor has elected to retain the security in accordance with the provisions of section 16), the Tribunal shall pass a decree for the aggregate sum so determined, specifying the amount due to each creditor and shall allow repayment thereof in instalments, in accordance with the provisions contained in section 33, unless for reasons to be recorded it directs otherwise.

(3) If the paying capacity of the debtor is less than the aggregate sum referred to in sub-section (2), the Tribunal shall divide the decree into two parts and provide in the first part thereof (hereinafter referred to as the first part of the decree) that the sum equivalent to the paying capacity shall, subject to the provisions contained in section 33, be realised from the assets of the debtor in India, and provide in the second part thereof (hereinafter referred to as the second part of the decree) that the balance shall be realised, subject to the provisions contained in sub-section (6), from any compensation which the debtor may receive :

Provided that if no such compensation is received, the balance shall be irrecoverable.

(4) A creditor who has elected to retain his security under section 16 shall have no right to realise any money due to him from the assets of the debtor in India, but nothing in this sub-section shall affect any of the rights given to him by section 16.

(5) A creditor shall have the right at any time at least six months before the receipt by the debtor of compensation to apply that the whole or the balance of the first part of the decree, in so far as any debt due to him is concerned, may be added to the second part of the decree, and thereupon he shall have no right to realise any money from the assets of the debtor in India.

(6) For the purposes of this Act, the amount payable from the compensation for the satisfaction of the second part of the decree shall be that amount as bears to the aggregate amount of all the debts in the second part of the decree (including therein any sum added to it under sub-section (5) and the sum determined in favour of the secured creditor in the manner specified in the proviso to clause (a) of sub-section (3) of section 16) as the compensation in respect of the property of the debtor payable to him under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950) bears to the verified claim; and the balance of the compensation, if any, shall be refunded to the displaced debtor.

(7) Every instalment paid by the displaced debtor in respect of the first part of the decree and any sum payable from the compensation in accordance with sub-section (6) shall be distributed rateably amongst the decree-holders, if more persons than one are entitled thereto :

Provided that the secured creditor who has not elected to be treated as an unsecured creditor under section 16 shall be entitled to a prior charge on the amount payable from the compensation.

(8) Where a displaced person receives compensation by way of exchange of property, then, subject to the prior charge, if any, of a creditor under section 16, the aggregate sum payable in respect of the second part of the decree shall be a second charge upon the property received by way of exchange bears to the value of the original property verified and valued under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950).

(9) Where a displaced person makes a default in the payment of any instalment fixed in respect of the first part of the decree or does not pay the amount determined in accordance with sub-section (4) of section 16 or sub-section (8) of this section for which the first or the second charge may have been created upon the property received by way of exchange, the creditor may apply for the execution of the decree by the attachment and sale of the attachable assets of the judgment-debtor or by the sale of the property obtained by way of exchange upon which the charge has been created, as the case may be, and the amount realised by such execution shall be distributed rateably among the decree-holders:

Provided that nothing contained in this sub-section shall affect the rights of any charge-holders.

(10) For the purposes of this Act, where the compensation is paid in cash, the amount which shall be available for purposes of satisfaction of the debts in the second part of the decree shall in no case exceed seventy-five per cent of the amount of such compensation; and where it is by way of exchange of property, the extent of the property which shall be available for the said purposes shall in no case exceed seventy-five per cent in value of such property.

Explanation. - In this section the expression 'paying capacity' means the aggregate of the market value of all the attachable assets in India of the displaced debtor plus the income which is likely to accrue to him for the next three years succeeding, excluding from the computation of such income a sum calculated at the rate of two hundred and fifty rupees a month."

It is manifest that the basic idea of s. 32 is as follows : When a displaced debtor has made an application under s. 5 or s. 11(2) the Tribunal fist ascertains under ss. 5 to 9 the amount of the debt due in respect of each creditor. Next, it proceeds to determine "the paying capacity" of the debtor and the relief open to the displaced debtor, or expressed in an other way, the reduction in the debt which his creditors must suffer, is directly dependent on the paying capacity compared with the total indebtedness of the displaced debtor.

Now, the question arises how this "paying capacity" is to be determined. The expression "paying capacity" is defined by the Explanation to the section as meaning "the aggregate of the market value of all the attachable assets in India of the displaced debtor plus the income which is likely to accrue to him for the next three years succeeding, excluding from the computation of such income a sum calculated at the rate of two hundred and fifty rupees a month". It needs little argument to show that a debt which has accrued due to a displaced debtor from the State would be an attachable asset in

India and if this were so, it is the requirement of s. 32(1) that the Tribunal shall take into account that asset also for determining "the paying capacity" of the "debtor". So far as the Explanation to s. 32 is concerned, it could not be the contention that the expression "attachable assets in India belonging to the displaced debtor" should be exclusive of the amounts in regard to which the State is indebted to the displced debtor. The expression "attachable assets" would bring in s. 60 of the Civil Procedure Code, and whatever be the limitations on the execution of decrees against Government under s. 82 of the Civil Procedure Code, debts due by the State to a judgment-debtor are certainly attachable. The contrary construction of the words in s. 32 viz., that debts due by the State are not assets" besides being inconsistent with the express terms of the Explanation, would also render the entire scheme of scaling down provided for in sub-ss. (2) to (10) infructous and unworkable. The conclusion that for the purpose of s. 32 a debt due by the State is within the Explanation and that it has to be taken into account for determining the paying capacity would appear to be reinforced by s. 47 which runs in these terms :

> "47. Effect of failure on the part of displaced debtor to disclose certain matters. - Where a displaced debtor has not mentioned in the relevant schedule to his application any debt owing by him or any property, movable or immovable, belonging to him, whether such property is liable to attachment or not liable to attachment at all, nothing contained in this Act shall prevent -
>
> (a) in the case of the debt, the creditor from instituting any proceeding for the recovery thereof under any law for the time being in force other than this Act; and
>
> (b) in the case of the property, from being attached or otherwise dealt with under any such law."

It is manifest that the 'property' referred to in the schedule prescribed under s. 5(2) (iii), the expression "attachable assets" in the Explanation to s. 32, and the words "property movable or immovable" in s. 47 must all bear the same connotation. If a debt due to a displaced debtor is not within s. 5 it could not be within the other provisions just now referred to. If that were the proper construction, the result would be that the displaced debtor could obtain the entire benefit provided for by s. 32(2) and (3) etc. and later if he realised any dues from the State keep the same to himself free of the claims of all his creditors. It is obvious that such a result could not have been intended and, therefore, it must be held that such a debt as an asset must be included in the schedule of properties referred to in s. 5 and that so far as s. 32 is concerned the debts owing by the State to a displaced debtor ought to be ascertained for determining the paying capacity of the debtor and relief afforded to the displaced debtor on the basis that such debts due to him are realisable assets within the scope of the Act. It would follow that the debt due by the Government or by the State is within the Act by necessary implication, because the same is necessary for working our the relief to which a displaced debtor who files an application under s. 5 or s. 11(2) is entitled. We have already made reference to s. 11. Its first sub-section deals with an application by a displaced creditor who seeks to enforce his claim against a displaced debtor. The second sub-section permits the displaced debtor to make an application under s. 5 and the two - the claim and what might be called a cross-claim - have to be considered together, and the relief open to the displaced person who might be a debtor or a creditor have to be worked out conjointly.

No doubt, s. 13 is concerned with claims by displaced creditors against debtors who are not displaced persons as contrasted with s. 10 under which claims may be made against debtors who are displaced persons. But this cannot make any difference. It is not possible by any principle of

construction to hold that the debt due by the State to a displaced debtor is within the Act for the purpose of ascertaining the paying capacity of the debtor notwithstanding the definition of "debt" in s. 2(6)(c) but that the State is not within the scope of s. 13 for the purpose of the same liability being ascertained. This is so because for the very purpose of determining paying capacity under s. 32 the genuineness and the quantum of the alleged debt due by the State is the subject of enquiry and adjudication by the identical tribunal which would be conducting the enquiry and make the decision if the claim were made under s. 13. Adopting, therefore, the very principle for which the learned Advocate-General contends we consider that the test formulated by Lord du Parcq in Province of Bombay v. Municipal Corporation of the City of Bombay [[1946] L.R. 73 I.A. 271.] :

> "............ Its beneficent purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound",

is satisfied in the case of the provisions of the Act now before us. That the Act was passed for the beneficent purpose of affording relief to those who owing to the disturbances which followed the partition of the country suffered grievous wrong is not in dispute. What we have stated earlier about the impact of s. 32 on the scheme of the Act which so far as relief to debtors is concerned constitutes the core of the enactment would be wholly frustrated and defeated if the State were not bound by the Act is equally beyond dispute.

There is one other aspect also from which the question may be viewed. This is as to whether when a displaced debtor owes a debt to the State he is bound to include that debt in the schedule which he has to file under s. 5(2)(i). Now, let us see how if such debts are not to be included, s. 32 would work. The paying capacity would then be determined without reference to such a debt. The other creditors will receive satisfaction in the manner laid down in s. 32(2) & (3) etc. but that would obviously be on the footing that the debts of the displaced debtor are less than what they really are. When once on the determination of the paying capacity the others receive adjustments there is no question of the government coming in later to disturb that arrangement. What is allowed under s. 32 to the displaced debtor cannot be the subject of any attachment or seizure by government for the payment of debts because s. 3 of the Act enacts :

> "3. Over-riding effect of the Act, rules and orders - Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any decree or order of a court, or in any contract between the parties."

Every other law, decree of court having been superseded, the government would be left without remedy to realise its dues. Section 32 contemplates a balancing of credits and debits with a view to adjust them in a manner consonant with equity and the justice of the case as felt by the legislature. The entire scheme will go away and the balance and harmony which are intended to be brought in would be nullified and on the other hand disharmony brought into the working of the Act if the contention which the learned Advocate-General supports were accepted.

Before concluding, it is necessary to add that before holding that the presumptive rule of the State not being bound by the provisions of any statute has been overborne by necessary implication arising from an examination of its purpose and provisions, we have taken due account of the language used in the Act both in s. 13 as well as in the definition of 'debt' and have arrived at the conclusion that that language is not intractable nor such as to create any insuperable obstacle in the

way of such a construction. Undoubtedly, if s. 13 stood by itself read in conjunction with the definition of 'debt' in s. 2(6), the submission that a debt due by Government was not within them might have weight. But there is nothing in s. 13 which would negative the construction at which we have arrived after considering the scheme and purpose of the Act. Taking first the terms of s. 13, the contention that debts due by the Government are not within the scope of the provision, is in ultimate analysis based on the last portion of the section which speaks of "actual and voluntary residence" and "carrying on business" not being capable of being attributed to the Government. If, in this context, one looked at s. 20 of the Civil Procedure Code it will be found that when it dealt with Companies and artificial persons it was not so much the residence as the situs where the business was carried on that was treated as being relevant for determining the forum, for Explanation II to s. 20 reads :

> "A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place",

thus departing somewhat from the concept of notional residence attributed to artificial bodies like trading corporations in the law relating to Income-tax. Expressed differently s. 13 proceeds on the basis of equating the notional residence of artificial persons or bodies with the actual residence of natural persons and it is thus that though actual residence could not be attributed to companies, it is admitted that debts owing by them are within s. 13 of the Act. It is, therefore, obvious that the reference to "actual residence" in s. 13 is due to the circumstance that primarily natural persons are intended to be included by the use of the words "any other person" and the qualification of residence was necessary to be added in order to fix the forum in which applications claiming sums due from them ought to be filled. From this, however, it would not follow that every attribute referred to should be satisfied by "every person" against whom claims could be filed. The next question is whether there is any thing which is clearly discernible in s. 2(6) which could be held to negative the construction of a State being brought within the scope of the enactment. Confining oneself to what is strictly material "Debt" is defined as a pecuniary liability due to a "displaced person" from "any other person" ordinarily residing in the territory to which the Act extends. It was because of the circumstance that such a condition of residence would not be apt in the case of a State or Government as regards which no residence could be attributed, that it was said that the debt due by a State was not within the definition. That is, no doubt, a weighty argument and if it stood alone its effect could be overwhelming, but as against it, it must be noticed that it is really a part of the definition which has to be aplied in the absence oa fanything to the contrary in the context and if on a consideration of s. 13 and the other relevant provisions to which we have referred it was the intention of the enactment not to exclude the State from its operation, the definition clause could not per se negative such a construction. The definition would, in the context of the other provisions, be read as applying the test of "residence" or "of carrying on business" exclusively to natural or artificial persons to whom such conditions would be apt.

The second point urged by the learned Advocate-General was about the legislative confirmation of the meaning of the word "person" as excluding the State. We have already referred to the Displaced Persons (Institution of Suits) Act, 1948 and the circumstances in which it was enacted and the terms of its s. 4. It is the interpretation which this section received in M/s Nagi Bros. v. The Dominion of India [I.L.R. 4 Punjab 358.] a decision of the High Court of Punjab that forms the basis of the contention now under discussion. The question that arose for decision was whether the terms of s. 4 could be availed of by a displaced person to file a suit against the Union of India, the contention of the latter being that it could be sued only in a court which had territorial jurisdiction over the area

where the cause of action arose and that since it could not be said to actually and voluntarily reside or carry on business or personally work for gain in any place in India, it could not be comprehended within the term "person" in s. 4. This contention was accepted by the Punjab High Court. Under the general procedural law of India, as embodied in the Civil Procedure Code, a suit in respect of a transitory or personal cause of action could be filed only (a) in a court within the territorial jurisdiction of which the cause of action in whole or in part arose, or (b) in the territorial jurisdiction of the court where a defendent, or if the defendents were more than one by one of them, voluntarily and ordinarily resided or carried on his business (vide s. 20 of the Civil Procedure Code). A long line of decisions starting from very early days had construed s. 20 of the Civil Procedure Code and had held that the Government - either of the State or at the Centre - could not be said to reside ordinarily and voluntarily at any particular place, nor to carry on business at any place, with the result that where a suit had to be filed against the Government which was permitted and authorised by the provisions of the Constitutional enactments to which we have referred, the suit could be instituted only in a court with territorial jurisdiction over the place where the cause of action for the suit arose. Kapur, J. who rendered the decision held, following these earlier rulings on the construction of the Civil Procedure Code, particularly s. 20 and other like enactments, that the provisions of s. 4 which enabled suits to be filed in India notwithstanding that the cause of action arose in Pakistan could not be availed of by displaced persons to file suits against the Government - of the State or of the Union.

The net result of this construction was that in cases where no part of the action arose within India, no suit could be instituted against the State or the Union Government notwithstanding that by the combined operation of the Independence (Liabilities) Order, 1947 read with either s. 176 of the Government of India Act, or Art. 300 of the Constitution, as the case may be, a liability was cast on the Government of the State and the Union to make good a claim. This result might be unfortunate but if it was designed, there was no escape from that conclusion.

The argument of the learned Advocate-General was that when this enactment of 1948 lapsed by efflux of time in 1951, its place was taken by the Act and that as the same word "person" with the qualifying expressions indicating his or its residence or place of business were repeated in the Act without any specific provision for claims against the State, Parliament must be taken to have affirmed this decision, adopting its reasoning and that consequently, in any event, the general rule of interpretation about the State not being bound by an enactment in which it is not named expressly or by necessary implication was doubly attracted and reinforced.

We are clearly of the view that this argument does not deserve to be accepted. In the first place, we are concerned solely with the interpretation of the Act of 1951 and unless there was an ambiguity it would be impermissible to refer to any previous legislation for construing the words in it. The examination we have made of the Act read in conjunction with the purposes it seeks to achieve which are manifest in its various provisions have led us unmistakably to the conclusion which we have expressed earlier. In the circumstances, there is no scope for invoking this external aid to the construction of the expressions used in the Act. Secondly, the scope of the two enactments viz., the Act of 1948 and that of 1951 are widely different, and the latter has a definitely more extended scope and is designed to secure substantive advantages to displaced persons which were wholly foreign to the earlier law which was but of very limited scope. Therefore even if the language used in the two enactments were identical - which is not even the case here - the same conclusion would not necessarily follow having regard to the differing scopes of the two pieces of legislation. It could not therefore be said that the two Acts are in pari materia so as to attract the rule relied on. Lastly, the rule of construction which is certainly not one of a compelling nature, is generally adopted in the

construction of consolidating enactments where provisions which have appeared in earlier repealed statutes which have received an uniform and accepted judicial interpretation are re-enacted. Obviously that is not the case here. In the circumstances, we consider it unnecessary to examine whether this solitary decision on the construction of s. 4 of the Act of 1948, was correct. We have, therefore, no hesitation in rejecting the second point urged.

The last submission was that the learned judges were not right in considering that unless the construction of s. 13 which they accepted was correct, almost the entire body of displaced creditors would be without a remedy in respect of their claims against the Government of the State and the Union. Though the learned Advocate-General started by saying that in every case in which there could be a cause of action against the State Government under para 8 of the Indian Independence (Liabilities) Order, 1947, a suit would lie after partition, even on the basis of s. 20 of the Civil Procedure Code, he had to concede that in a number of cases the party would be without a remedy. Apart from this admission, we consider that in a large number of cases the cause of action would have arisen in Lahore where the contract with the Government of the Province of Punjab was concluded and it is possible that no part of the cause of action might arise in India so as to permit a suit against the Government of the Punjab or of the Union if the provisions of the Civil Procedure determined the forum therefor. In our judgment nothing turns on the exact proportion of the cases where the party would be without a remedy. If the terms of the enactment were ambiguous and had to be interpreted in the light of the circumstance whether the one construction or the other would leave parties without a remedy, then in that event something might depend on whether it was only a marginal case that was beyond the provisions of the Act or the bulk of the cases. That, however, is not the position here. We have arrived at the construction of the provisions of the Act, without reference to the hardship which the opposite view might cause to particular displaced creditors. It is for this reason that we say that the question of the relative number of creditors who would suffer hardship is not strictly material for the decidion. We have, therefore, thought it unnecessary to examine the precise circumstances in which displaced creditors might or might not be in a position to institute suits against the State Government to enforce claims which fell within para 8 of the Independence (Liabilities) Order, 1947.

In these circumstance, we consider, though for different reasons that the conclusion of the High Court was right and that the revision petitions were properly rejected.

The appeals therefore fail and are dismissed with costs, - one hearing fee.

Appeals dismissed.

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