

# CALCUTTA HIGH COURT

Union of India

Vs.

Loke Nath Saha

Civil Rule No. 691 of 1950

(Roxburgh, J.)

01.12.1950

## ORDER

### **Roxburgh, J.**

1. This rule raises a question of the interpretation of Article 8 (1) (a) of the Indian Independence (Rights, Properties and Liabilities) Order 1947. The plaintiff has claimed for short delivery of goods dispatched in March 1947 before the "appointed day" from one station for delivery at another on the then Bengal Assam Railway. The stations admittedly are now both within Pakistan.

2. The question is whether, under the Order, the Dominion of Pakistan or the Dominion of India is to be held liable for the alleged short delivery if it is found that the plaintiff has a legal claim on whichever is in law responsible. The Dominion of Pakistan will be liable under the provisions of Article 8 (1) (a) if (as from the appointed day) the contract is for purposes which as from that day are exclusively the purposes of the "Dominion of Pakistan". But I am quite unable to see how it can be said that the contract for carriage of goods in March 1947 before the Dominion of Pakistan was ever thought of can be held as from the "appointed day" to be one that is for purposes which from that day are exclusively the purposes of the Dominion of Pakistan.

3. A similar question was considered in the case of the *'Province of West Bengal v. The Midnapore Zemindary Co'.<sup>1</sup>*, in reference to the interpretation of Article 8 (2) of the Order. In that case the contract in question was a lease of a certain house which was used as a hospital, the lease continuing in effect after the "appointed day" and the finding being that the hospital after that day was entirely for purposes of West Bengal. The facts, therefore, are entirely different from those in the present case. In that case it was held that under Article 8 (2) (a) the contract was one which made the Province of West Bengal liable.

4. In deciding the matter one has to be guided practically entirely by the exact words used. Reference to the other provisions of the Order are not very helpful, though some reference was made in course of the argument. The division of rights and liabilities made by the Order is provided for according to different categories in Articles 8, 9, 10 and 11, a

<sup>1</sup>54 Cal WN 677

different system being followed for each category according to its particular nature. It is not possible, in my opinion, to discover any basic principle behind the particular system adopted in each case from which it might be argued that the exact wording, for example, of Article 8 (1) (a) might not be taken to be precisely what it appears to be on a plain reading. On a plain reading of the Article, as I have said, it seems to me clear that Article 8 (1) (a) does not cover the particular contract in question in this suit. Therefore, the liability on the contract must be as provided in the residual provision 8 (1) (b), namely, the liability of the Dominion of India.

5. The result is that this Rule must be discharged, but I make no order as to costs.  
Rule discharged.