

**(1954) 08 CAL CK 0053**

**In the Calcutta High Court**

**Case No :** Civil Rules No's. 33M to 35M of 1954

Union of India (UOI)

APPELLANT

Vs

Manmull Jain and Others

RESPONDENT

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**Date of Decision :** 11-08-1954

**Acts Referred:**

Chandernagore (Administration) Regulations, 1952 — Section 7  
Civil Procedure Code, 1908 (CPC) — Section 9  
Constitution of India, 1950 — Article 1, 243, 53  
Contract Act, 1872 — Section 188

**Citation :** AIR 1954 Cal 615 : 59 CWN 107 : (1956) 1 ILR (Cal) 493

**Hon'ble Judges :** K.C. Das Gupta, J;Debabrata Mookerjee, J

**Bench :** Division Bench

**Advocate :** S.M. Bose, General, Hemendra Kumar Das and Smriti Kumar Roy Choudhury, for the Appellant;Nalin Chandra Banerjee and Dhruva Kumar Mukherjee, for the Respondent

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## Judgement

K.C. Das Gupta, J.—In these three applications, the Union of India prays for this Court's permission to prosecute three appeals in place of the Percepteur and Municipal Reserveur of Chandemagore. The Percepteur issued on 2-8-1951, "Commandments" upon the respondents-opposite parties for payment of certain sums of money, who thereupon filed "oppositions" calling upon the Percepteur to appear before the Subordinate Judge. Finally, the Subordinate Judge dismissed the three miscellaneous cases started on the three "oppositions". The respondents-opposite parties filed appeals against the decisions of the Subordinate Judge to the District Judge, Chander-nagore, and on 16-6-1952 the appeals were allowed by the learned District Judge.

2. Against this, three memoranda of appeals were filed on 9-9-1952 by the Union of India. The applications for permission to continue the appeals were filed on the same date.

3. Before, however, any orders were passed on the applications, the appeals

were placed for hearing under Order 41, Rule 11, Civil P. C., before a Bench of this Court, and the Court unaware of the fact that the Union of India, which had preferred the appeals, was not a party to the appeals before the District Judge, ordered the second appeals to be heard. Some time after this, the applications to prosecute the appeals in this Court came up for hearing before the Registrar and the Registrar passed orders granting the prayers.

4. The Registrar's orders granting the applications and the orders of the Bench ordering that the second appeals be heard were vacated by an order of this Court passed on 28-3-1953.

5. The applications which had been filed by the Union of India for prosecuting the appeals in this Court were thereafter moved in Court and the present Rules were issued.

6. The applicant bases its prayer on the allegation that the rights in the subject-matter of the appeals have become vested in the Union of India with effect from 9-6-1952. This allegation is founded on a Regulation framed by the President of India under Article 243 of the Constitution. On behalf of the opposite parties it is said that the treaty by which Chandernagore is said to have become part of India is itself without legal validity, as the Parliament has not legislated on the treaty by which Chandernagore was ceded to India, and consequently, the Regulation has no legal validity.

7. Chandernagore was formerly under the sovereignty of the French Republic. The French Republic, admittedly, claims no longer any sovereignty over the territory. The Government of the Republic has proclaimed that it has ceded the territory in full sovereignty to India. The treaty containing this proclamation was published in an extraordinary issue of the Gazette of India on 19-8-1952.

8. Even if it were assumed that this treaty was not legally valid without parliamentary legislation, the transfer of the territory to India remains an accomplished fact, which is accepted as such by both the interested parties, namely, the French Republic and the Union of India. Consequently, it would be territory comprised within the territory of India, whether or not the treaty was legally valid. It is well to remember in this connection the principle laid down in the case of -- "Secretary of State v. Rustam Khan AIR 1941 PC 64 at p. 67 (A) that when a territory is acquired by a sovereign State for the first time, it is an act of State; it matters not how it is acquired; it may be by conquest, it may be by cession following a treaty, it may be by occupation of territory hitherto occupied by a recognised ruler--in all cases the result is the same.

9. There is absolutely no reason, however, in my opinion, for thinking that the treaty was not legally valid. Mr. Banerjee's contention that without parliamentary legislation making the treaty an Act of Parliament, the treaty cannot have any legal force or validity, is based, in my judgment, on a misconception of the nature of a treaty. Making a treaty is an executive act and not a legislative act. Legislation may be and is often required to give effect to the terms of a treaty.

Thus if a treaty, say, provides for payment of a sum of money to a foreign power, legislation may be necessary before the money can be spent; but the treaty is complete without the legislation. Mr. Banerjee has drawn our attention to item 14 of the Union List which runs in these terms:

"Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries."

Undoubtedly, this provides for all legislation in connection with entering into treaties. This cannot, however, in my opinion, justify the conclusion that the makers of the Constitution intended that no treaty should be entered into unless the Parliament has legislated on the matter. The power of legislation on this matter of entering into treaties leaves untouched the executive power of entering into treaties. I can see no justification in principle or authority for the view that making a treaty requires legislation for its validity. The President makes a treaty in exercise of his executive power and no Court of law in India can question its validity.

10. My conclusion is that when the President, in whom Article 53 of the Constitution vests all the executive power of the Union, has entered into a treaty, the municipal Courts cannot question the validity of the treaty. We find from the Notification No. S.R.O. 1466 dated 19-8-1952, which was published in the extraordinary issue of the Gazette of India on 19-8-1952 that a treaty of cession of the territory of the free town of Chandernagore was signed in Paris on 2-2-1951 by the representative of the President of India and the President of the French Republic, which treaty, in Article 1, provided that France transfers to India, in full sovereignty, the territory of the Free Town of Chandernagore. We find further from this Notification that on 30-5-1952 the President of India having considered the treaty confirmed and ratified the same and undertook faithfully to perform and carry out all the stipulations therein contained. The treaty became effective in law after exchange.

11. I hold that thereafter, the territory of Chandernagore became comprised within the territory of India within the meaning of Article 243 of the Constitution. The Regulation that was made by the President was, therefore, validly made and it has the same force and effect as an Act of Parliament applying to such territory. Section 7 of the Regulation runs as follows:

"Rights and obligations--

All rights, liabilities and obligations of the Government of the French Republic or the Municipal Assembly or the Administrative Council in relation to Chandernagore shall, as from the appointed day, be the rights, liabilities and obligation of the Central Government:

Provided that nothing in this section shall affect the settlement of any financial issue between the Government of India and the French Republic arising out of the transfer of the free town of Chandernagore."

If, therefore, the Municipal Assembly had the right of litigation in respect of any matter immediately preceding 9-6-1952, the appointed day in the Regulation, that right became the right of the Central Government of the Union of India.

12. The question arises if there was any right in regard to the present litigation in the Municipal Assembly immediately before 9-6-1952. For an answer to this question we have to consider the nature and subject-matter of the litigation.

13. The opposite parties are dealers of motor spirits in the town of Chandernagore and had petrol pumps from which petrol was sold to the consumers. The Municipal Assembly of Chandernagore passed a resolution on 18-11-1949 imposing a duty of 1 anna 6 pies per gallon upon the consumption of petrol and provided for the collection of the duty from the petrol dealers upon the basis of their sales of petrol. By a resolution of 28-12-1950 the Municipal Assembly in revision of its former resolution raised the duty on the consumption of petrol from 1 anna 6 pies to 4 annas per gallon with effect from 1-1-1951. Thereafter the Percepteur or Municipal Reserveur of Chandernagore issued "commandments" against these opposite parties for collection of this duty. On this, the opposite parties filed "oppositions" in respect of each of the "commandments" questioning the legality and validity of the "commandments" for realisation of petrol consumption duty from them. The "oppositions" were rejected, and the question which the learned District Judge had to consider in the appeals was whether the "oppositions" had been rightly rejected.

14. It seems to me abundantly clear from these facts that the persons who started the present litigation brought their action to get relief against certain impositions by the Municipal Assembly. They did not make the Municipal Assembly a party to the action but made the Percepteur and Municipal Reserveur of Chandernagore a party instead. When they lost in the first Court and preferred appeals to the District Judge's Court the Percepteur and Municipal Reserveur was again made the respondent. It is as plain as day, however, that the Percepteur and Municipal Reserveur was made party only as representing the Municipal Assembly and not in his personal capacity,

15. The Percepteur and Municipal Reserveur was there only representing the Municipal Assembly. The right of litigation in the trial Court as also the appellate Court was in the Municipal Assembly, but it was being exercised by the Assembly through the Percepteur and Municipal Reserveur. When, therefore, on 9-6-1952 all rights of the Municipal Assembly became the rights of the Central Government of the Union of India, the Percepteur and Municipal Reserveur became henceforth the representative of the Central Government of India for the purpose of this litigation.

16. The appeals were allowed and the question now is whether the Percepteur and Municipal Reserveur alone can prefer appeals to this Court against the decision of the Appellate Court, the District Judge of Chandernagore. I can see no reason for such conclusion. Where litigation is being carried on by any person

in the name of an agent, the agent can certainly continue to carry till the last stage of litigation. But there appears to be nothing in authority or principle to justify the view that the principal cannot step in to carry on the litigation in his own name.

17. In my opinion, it is, in such a case, open to the principal to carry on the litigation in his own name. Consequently, the Union of India, which was being represented by the Percepteur and Municipal Reserveur at the time the appeals were allowed, had the right to prefer second appeals against the appellate decree in its own name.

18. I would, therefore, make these Rules absolute, allow the applications of the Union of India and permit them to present the appeals against the opposite parties.

19. There will be no order as to costs.

Derarrata Mookerjee, J.

20. I agree.