

PAKISTAN DEFEATS INDIA IN THE HYDERABAD FUNDS CASE

High Commissioner for Pakistan in the United Kingdom v National Westminster Bank (and various interveners) [2016] EWHC 1465 (Ch)

Introduction

By a 75 page decision handed down on 21 June 2016 in *High Commissioner for Pakistan in the United Kingdom v National Westminster Bank (and various interveners)* (“the Hyderabad Funds case”), Henderson J dismissed an application by India for summary judgment/strike out against Pakistan’s claim to be beneficially entitled to the funds at the subject-matter of the dispute. The case has important historical and legal implications.

Background

In the face of India’s invasion and annexation of Hyderabad in September 1948, the Hyderabad Finance Minister and/or the Agent-General for Hyderabad in London arranged for the transfer of approximately GBP1 million (which, adjusted for inflation today, is approximately GBP35 million) to a bank account in the name of the High Commissioner for Pakistan in London. A few days after he had surrendered his authority to India, the VIIth Nizam of Hyderabad (reputedly the richest man in the world at the time) is alleged to have denied that the transfer took place with his authority. A claim was brought in 1954 which was stayed by the House of Lords. Since then, negotiations at various stages to resolve the fate of the funds were unsuccessful.

Before the English High Court (when proceedings were restarted in 2013), claims to beneficial entitlement to the funds were made by Pakistan, India and two grandsons of the VIIth Nizam of Hyderabad (the ruler of Hyderabad at the time of the Indian invasion).

In March 2016, a heavily contested 4-day hearing was held to determine India’s application to dismiss Pakistan’s claim summarily on the basis that it had no real prospects of success.

Pakistan, with a new legal team in place from March 2015 (led by Khawar Qureshi QC), placed mainly UK archival Government and intelligence documents before the English courts that provided an explanation as to the circumstances surrounding the original transfer to the High Commissioner. This evidence showed that Pakistan had come to the aid of Hyderabad (a Sovereign State), at the request of its ruler the VIIth Nizam who was allegedly facing pressure from India to surrender his sovereignty. In addition, extensive argument took place as to the application of the principles of Act of State and Non-Justiciability. Pakistan also contended that a Sovereign State could never be held to be a trustee under domestic law unless there was very clear evidence that it accepted such a role.

Decision

Henderson J rejected India’s application on the basis that: (1) there was good evidence in

support of Pakistan's claim to the monies which would need to be fully considered at trial and could not be said to be hopeless or doomed to fail; and (2) there were good legal arguments (Act of State, Non justiciability and a State cannot be presumed to be a Trustee) supportive of Pakistan's position that were not amenable to determination on a summary basis.

A further mailing on legal aspects of the decision will follow. The full judgment is available **here**.

23rd June 2016