



PCA (PERMANENT COURT OF ARBITRATION)

PCA Case No. 1910-03

ARREST AND RETURN OF SAVARKAR (FRANCE / GREAT BRITAIN)

AWARD

24 February 1911

Tribunal:

[Jonkheer A.F. de Savornin Lohman](#) (Co-Arbitrator)

[Louis Renault](#) (Co-Arbitrator)

[Gregers Gram](#) (Co-Arbitrator)

[A. Beernaert](#) (President)

[Earl of Desart](#) (Co-Arbitrator)

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Award

[1].

Whereas, by an agreement dated the 25th October 1910, the Government of the French Republic and the Government of His Britannic Majesty agreed to submit to arbitration the questions of fact and law raised by the arrest and restoration to the mailsteamer "Morea" at Marseilles, on the 8th July, 1910, of the British Indian SAVARKAR, who had escaped from that vessel where he was in custody; and the demand made by the Government of the French Republic for the restitution of SAVARKAR;

The arbitral tribunal has been called upon to decide the following question:

Should VINAYAK DAMODAR SAVARKAR, in conformity with the rules of international law, be restored or not be restored by His Britannic Majesty's Government to the Government of the French Republic?

[2].

Whereas, for the purpose of carrying out this agreement, the two governments have respectively appointed as arbitrators:

His Excellency Monsieur BEERNAERT, Minister of State, Member of the Belgian Chamber of Representatives, etc., President;

The Right Honourable, the EARL OF DESART, formerly His Britannic Majesty's Attorney General;

Monsieur LOUIS RENAULT, Professor at the University of Paris, Minister Plenipotentiary, Legal Adviser of the Department of Foreign Affairs;

Monsieur G. GRAM, formerly Norwegian Minister of State, Provincial Governor;

His Excellency, the Jonkheer A. F. DE SAVORNIN LOHMAN, Minister of State, Member of the Second Chamber of the States-General of the Netherlands.

And, further, the two governments have respectively appointed as their agents,

The Government of the French Republic:

Monsieur ANDRÉ WEISS, assistant legal adviser of the Department of Foreign Affairs of the French Republic, Professor of Law at the University of Paris.

The Government of His Britannic Majesty:

Mr. EYRE CROWE, Councillor of Embassy, a senior clerk at the British Foreign Office.

[3].

Whereas, in accordance with the provisions of the Agreement, Cases, CounterCases and Replies have been duly exchanged between the Parties, and communicated to the Arbitrators.

[4].

Whereas the Tribunal met at The Hague on the 14th February, 1911.

[5].

Whereas, with regard to the facts which gave rise to the difference of opinion between the two governments, it is established that, by a letter dated the 29th June 1910, the Commissioner of the Metropolitan Police in London informed the "Directeur de la Sûreté générale" at Paris, that the British-Indian VINAYAK DAMODAR SAVARKAR was about to be sent to India, in order to be prosecuted for abetment of murder, etc., and that he would be on board the vessel "Morea" touching at Marseilles on the 7th or 8th July.

[6].

Whereas, in consequence of the receipt of this letter, the Ministry of the Interior informed the Prefect of the "Bouches-du-Rhône", by a telegram dated the 4th July 1910, that the British police was sending SAVARKAR to India on board the steamship "Morea". This telegram states that some "révolutionnaires hindous" then on the Continent, might take advantage of this to further the escape of this foreigner, and the Prefect was requested to take the measures necessary to guard against any attempt of that kind.

[7].

Whereas, the "Directeur de la Sûreté générale" replied by a letter dated the 9th July, 1910, to the letter of the Commissioner of the Metropolitan Police, stating that he had given the necessary instructions for the purpose of guarding against the occurrence of any incident during the presence at Marseilles of the said VINAYAK DAMODAR SAVARKAR, on board the steamship "Morea".

[8].

Whereas, on the 7th July, the "Morea" arrived at Marseilles. The following morning, between 6 and 7 o'clock, SAVARKAR, having succeeded in effecting his escape, swam ashore and began to run; he was arrested by a brigadier of the French maritime gendarmerie and taken back to the vessel. Three persons, who had come ashore from the vessel, assisted the brigadier in taking the fugitive back. On the 9th July, the "Morea" left Marseilles with SAVARKAR on board.

[9].

Whereas, from the statements made by the French brigadier to the police of Marseilles, it appears:

that he saw the fugitive, who was almost naked, get out of a porthole of the steamer, throw himself into the sea and swim to the quay;

that at the same moment some persons from the ship, who were shouting and gesticulating, rushed

over the bridge leading to the shore, in order to pursue him;

that a number of people on the quay commenced to shout "Arrêtez-le";

that the brigadier at once went in pursuit of the fugitive and, coming up to him after running about five hundred metres, arrested him.

[10]. Whereas the brigadier declares that he was altogether unaware of the identity of the person with whom he was dealing, that he only thought that the man who was escaping was one of the crew, who had possibly committed an offence on board the vessel.

[11]. Whereas, with regard to the assistance afforded him by one of the crew and two Indian policemen, it appears from the explanations given on this point, that these men came up after the arrest of SAVARKAR, and that their intervention was only auxiliary to the action of the brigadier. The brigadier had seized SAVARKAR by one arm for the purpose of taking him back to the ship, and the prisoner went peaceably with him. The brigadier, assisted by the above mentioned persons, did not relax his hold till he reached the half deck of the vessel.

The brigadier said that he did not know English.

From what has been stated, it would appear that the incident did not occupy more than a few minutes.

[12]. Whereas, it is alleged that the brigadier who effected the arrest was not ignorant of the presence of SAVARKAR on board the vessel, and that his orders, like those of all the French police and gendarmes, were to prevent any Hindoo from coming on board who had not got a ticket.

[13]. Whereas these circumstances show that the persons on board in charge of SAVARKAR might well have believed that they could count on the assistance of the French police.

[14]. Whereas it is established that a "Commissaire" of the French police came on board the vessel shortly after her arrival at the port, and in accordance with the orders of the Prefect, placed himself at the disposal of the Commander in respect of the watch to be kept;

that, in consequence, this "Commissaire" was put into communication with the British Police Officer who, with other police officers, was in charge of the prisoner;

that the prefect of Marseilles, as appears from a telegram dated the 13th July 1910, addressed to the Minister of the Interior, stated that he had acted in this matter in accordance with instructions given by the "Sûreté générale" to make the necessary arrangements to prevent the escape of SAVARKAR.

[15]. Whereas, having regard to what has been stated, it is manifest that the case is not one of recourse to fraud or force in order to obtain possession of a person who had taken refuge in foreign territory, and that there was not, in the circumstances of the arrest and delivery of SAVARKAR to the British authorities and of his removal to India, anything in the nature of a violation of the sovereignty of France, and that all those who took part in the matter certainly acted in good faith and had no thought of doing anything unlawful.

[16]. Whereas, in the circumstances cited above, the conduct of the brigadier not having been disclaimed by his chiefs before the morning of the 9th July, that is to say before the "Morea" left Marseilles, the British Police might naturally have believed that the brigadier had acted in accordance with his instructions, or that his conduct had been approved.

[17]. Whereas, while admitting that an irregularity was committed by the arrest of SAVARKAR, and by his being handed over to the British Police, there is no rule of International Law imposing, in circumstances such as those which have been set out above, any obligation on the Power which has in its custody a prisoner, to restore him because of a mistake committed by the foreign agent who delivered him up to that Power.

FOR THESE REASONS:

[18]. The Arbitral Tribunal decides that the Government of His Britannic Majesty is not required to restore the said VINAYAK DAMODAR SAVARKAR to the Government of the French Republic.