



THE STATE IMMUNITY ORDINANCE, 1981



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THE STATE IMMUNITY ORDINANCE, 1981
ORDINANCE No. VI OF 1981

[11th March 1981]

An Ordinance to amend and consolidate the law relating to the Immunity of States from the jurisdiction of courts.

WHEREAS it is expedient to amend and consolidate the law relating to the immunity of States from the jurisdiction of courts;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C. M. L. A. Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :—

1. Short title, extent and commencement.—(1) This Ordinance may be called the State Immunity Ordinance, 1981.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Interpretation. In this Ordinance, "Court" includes any tribunal or body exercising judicial functions.

IMMUNITY FROM JURISDICTION

3. General immunity from jurisdiction.—(1) A State is immune from the jurisdiction of the courts of Pakistan except as hereinafter provided.

(2) A court shall give effect to the immunity conferred by sub-section (1) even if the State does not appear in the proceedings in question.

EXCEPTIONS FROM IMMUNITY

4. Submission to jurisdiction.—(1) A State is not immune as respects proceedings in respect of which it has submitted to jurisdiction.

(2) A State may submit to jurisdiction after the dispute giving rise to the proceedings has arisen or by a prior agreement; but a provision in any agreement that it is to be governed by the law of Pakistan shall not be deemed to be a submission.

Explanation.—In this sub-section and in sub-section (3) of section 14, "agreement" includes a treaty, convention or other international agreement.

(3) A State shall be deemed to have submitted —

(a) if it has instituted the proceedings; or

(b) subject to sub-section (4) it has intervened or taken any step in the proceedings.

(4) Clause (b) of sub-section (3) does not apply—

(a) to intervention or any step taken for the purpose only of—

(i) claiming immunity; or

(ii) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it; or

(b) to any step taken by the State in ignorance of the facts entitling it to immunity if those facts could not reasonably have been ascertained and immunity is claimed as soon as reasonably practicable.

(5) A submission in respect of any proceedings extends to any appeal but not to any counter claim unless it arises out of the same legal relationship or facts as the claim.

(6) The head of a State's diplomatic mission in Pakistan, or the person for the time being performing his functions, shall be deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of and with the authority of a State shall be deemed to have authority to submit on its behalf in respect of proceedings arising out of the contract.

5. Commercial transactions and contracts to be performed in Pakistan.— (1) A State is not immune as respects proceedings relating to—

(a) a commercial transaction entered into by the State; or

(b) an obligation of the State which by virtue of a contract, which may or may not be a commercial transaction, falls to be performed wholly or partly in Pakistan.

(2) Sub-section (1) does not apply to a contract of employment between a State and an individual or if the parties to the dispute are States or have otherwise agreed in writing; and clause (b) of that sub-section does not apply if the contract, not being a commercial transaction, was made in the territory of the State concerned and the obligation in question is governed by its administrative law.

(3) In this section "commercial transaction" means—

(a) any contract for the supply of goods or services;

(b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and

(c) any other transaction or activity, whether of a commercial, industrial, financial, professional or other similar character, into which a State enters or in which it engages otherwise than in the exercise of its sovereign authority.

6. Contracts of employment.—(1) A State is not immune as respects proceedings relating to a contract of employment between a State and an individual where the contract was made, or the work is to be wholly or partly performed in Pakistan.

Explanation.—In this sub-section, "proceedings relating to a contract of employment" includes proceedings between the parties to such a contract in respect of any statutory rights or duties to which they are entitled or subject as employer or employee.

(2) Subject to sub-sections (3) and (4), sub-section (1) does not apply if—

- (a) at the time when the proceedings are brought the individual is a national of the State concerned; or
- (b) at the time when the contract was made the individual was neither a citizen of Pakistan nor habitually resident in Pakistan; or
- (c) the parties, to the contract have otherwise agreed in writing.

(3) Where the work is for an office, agency or establishment maintained by the State in Pakistan for commercial purposes, clauses (a) and (b) of sub-section (2) do not exclude the application of sub-section (1) unless the individual was, at the time when the contract was made, habitually resident in that State.

(4) Clause (c) of sub-section (2) does not exclude the application of sub-section (1) where the law of Pakistan requires the proceedings to be brought before a court in Pakistan.

7. Ownership, possession and use of property.— (1) A State is not immune as respects proceedings relating to—

- (a) any interest of the State in, or its possession or use of, immovable property in Pakistan; or
- (b) any obligation of the State arising out of its interest in, or its possession or use of, any such property.

(2) A State is not immune as respects proceedings relating to any interest of the State in movable or immovable property, being an interest arising by way of succession, gift or *bona vacantia*.

(3) The fact that a State has or claims an interest in any property shall not preclude any court from exercising in respect of such property any Jurisdiction relating to the estates of deceased persons or persons of unsound mind or to insolvency, the winding up of companies or the administration of trusts.

(4) A court may entertain proceedings against a person other than a State notwithstanding that the proceedings relate to property—

- (a) which is in the possession of a State; or
- (b) in which a State claims an interest,

if the State would not have been immune had the proceedings been brought against it or, in a case referred to in clause (b), if the claim is neither admitted nor supported by *prima facie* evidence.

8. Patents, trade marks, etc. A State is not immune as respects proceedings relating to—

- (a) any patent, trade mark, design or plant breeders' rights belonging to State which are registered or protected in Pakistan or for which the State has applied in Pakistan;
- (b) an alleged infringement by the State in Pakistan of any patent, trade mark, design, plant breeders' rights or copyrights ; or
- (c) the right to use a trade or business name in Pakistan.

9. Membership of bodies corporate, etc.—(1) A State is not immune as respects proceedings relating to its membership of a body corporate, an unincorporated body or a partnership which—

- (a) has members other than States; and
- (b) is incorporated or constituted under the law of Pakistan or is controlled from, or has its principal place of business in, Pakistan,

being proceedings arising between the State and the body or its other members or, as the case may be, between the State and the other partners.

(2) Sub-section (1) does not apply if provision to the contrary has been made by an agreement in writing between the parties to the dispute or by the constitution or other instrument establishing or regulating the body or partnership in question.

10. Arbitrations.—(1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of Pakistan which relate to the arbitration.

(2) Sub-section (1) has effect subject to the provisions of the arbitration agreement and does not apply to an arbitration agreement between States.

11. Ships used for commercial purposes.—(1) The succeeding provisions of this section apply to—

- (a) Admiralty proceedings; and
- (b) proceedings on any claim which could be made the subject of Admiralty proceedings.

(2) A State is not immune as respects—

- (a) an action in rem against a ship belonging to it; or
- (b) an action in personam for enforcing a claim in connection with such a ship;

if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.