

## 10. OFFICER ON SPECIAL DUTY IN REFORMS OFFICE—MACHKUND RIVER DISPUTE (1945)

Before B.N. Rau was inducted into the Reforms office of the Governor-General as an officer on special duty,<sup>12</sup> Lord Wavell, the then Governor-General of India, wrote to Lord Pethick-Lawrence, the Secretary of State for India at London, in his letter dated 22nd October, 1945 thus :<sup>13</sup>

I have been considering the examination here of the possible provisions of a treaty between His Majesty's Government and the future Indian Government. It so happens that Sir B.N. Rau, who was formerly one of our legal and constitutional experts, and recently retired from the Calcutta High Court, will be available within a few days and I intend to place him on special duty to begin the work. After leaving the Calcutta High Court, Rau became Prime Minister in Kashmir, but disliked the conditions there and resigned during the summer. I then appointed him to report on a boundary dispute between Madras and Orissa, and he expects to submit his report within a few days. He has a high reputation as a lawyer, and I have heard him mentioned as a possible candidate for the Federal Court. I think he will do well on the treaty problem and I will keep you informed of the progress.

Rau was also appointed to deal with the boundary dispute between Madras and Orissa. Lord Wavell, in a subsequent letter to Lord Pethick-Lawrence, referred to the Report of B.N. Rau on the boundary dispute between Madras and Orissa thus :<sup>14</sup>

Sir B.N. Rau has reported on the boundary dispute between Madras and Orissa which held up the Machkund

14. See under "Judge of the Calcutta High Court", *supra* p. 5.

15. See *Transfer of Power* (1942-47) Vol. 6, p. 381. Document No. 157 (Letter dated 22nd October, 1945) from Lord Wavell to Lord Pethick-Lawrence.

16. *Transfer of Power* 1942-47, Vol. 6, p. 557, Document No. 246 (Lord Wavell's letter to Lord Pethick-Lawrence dated 27th November, 1945).

scheme. He has found that the Madras claim has practically no evidence to support it, and has also rejected the counter-claim by Orissa. The middle of the river is now established as the boundary between the two Provinces, and the Machkund scheme will, I presume, be able to go ahead.

The report submitted by B.N. Rau on the above boundary dispute has formed the basis of the Madras-Orissa Agreement, 1946 on the Machkund Hydel Project.

### 11. I.N.A. TRIAL (1946)

It is of interest to note that B.N. Rau was also one of the important persons who joined together in chalking out the line of defence in the famous Indian National Army Trial.<sup>17</sup>

B.N. Rau's deep knowledge of international law was of great assistance in evolving an interesting theory for the defence at the above trial. This theory was, at the trial, put forth with commendable clarity and force by Bhulabhai Desai as the counsel for the defence. The theory was that the accused were entitled, according to the established principles of international law, to take up arms under the aegis of a provisional government headed by Subhash Chandra Bose, in order to gain the freedom of the country and the acts done by them in their capacity as members of such an organised force could not be offences under the municipal law of India. It was urged that the accused were immune under international law from the offences charged against them under the Indian Penal Code. It was pointed out that an organised provisional government to which a substantial number of people (nearly two million in number) owed their allegiance had been established and the Indian National Army was working under the directions and control of this provisional government. The Indian National Army was not a set of rebels, a desultory sort of crowd of no consequence. No doubt, the military court which tried the case did not accept the theory for various reasons. But the defence put forward before it was certainly one deserving consideration. If strict principles of

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17. B.N. Rau, *India's Constitution in the Making*, *supra* note 3 at p. xx.