

MISCELLANEOUS.
Government of Madras.
EDUCATIONAL DEPARTMENT
—♦—

FOR RECORD ONLY.

G.O. No. 775, 15th July 1916

Juvenile offender

Informing the Director of Public Instruction that the Government are unable to accept his proposal to transfer — Kuruvilla from the Reformatory School at Chingleput to the Reformatory School in Travancore.

2

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GOVERNMENT OF MADRAS

EDUCATIONAL DEPARTMENT

READ—the following papers:—

I

Letter—from the Hon'ble Mr. J. H. STONE, M.A., F.R.H.S., C.I.E., Director of Public Instruction.

To—the Secretary to Government, Educational Department.

Dated—Madras, the 4th February 1916.

No.—Ref. on Cur. 734.

The Superintendent, Reformatory School, Chingleput, reports that pupil No. 255 named Kuruvilla, who is a Roman Catholic Christian aged 14 years and who was admitted into the school on 22nd January 1916 under the committal warrant of the Fourth Presidency Magistrate, Madras, who ordered his detention in the Reformatory School, Chingleput, for a period of four years, i.e., until he attains the age of 18, is a native of Alleppy in the Travancore State, where his brother, his sole surviving relative, is now living. He states that the boy seems to have taken service under one Mr. Fernandez of the Telegraph Department, that he accompanied his master on his transfer to Madras and that after some months he left him and took service under Dr. James of the Maternity Hospital, Madras, from whom he stole four currency notes of Rs. 10 each with the result that he was sentenced to rigorous imprisonment for six months, but being a juvenile, was ordered to be detained in the Reformatory School, Chingleput, instead.

As the pupil is a native of the Travancore State, I have the honour to recommend that with reference to the spirit of the resolution of the Government of India, Home Department (Education), Nos. 466-477, dated 7th May 1910, communicated with G.O. No. 317, Educational, dated 2nd June 1910, arrangements be made for his transfer to the Reformatory School, Travancore, especially as the accommodation available in the Reformatory School, Chingleput, is taxed to provide for boys belonging to this Presidency.

II

Memorandum No. 420 C-1, Judicial, dated 23rd February 1916.

The Government have before them a case of a juvenile offender (a native of Alleppy) who has been ordered by the Fourth Presidency Magistrate, Madras, to be detained in the Reformatory School, Chingleput, for four years, i.e., until he attains the age of 18. It has been proposed to the Government that the youth should be transferred to a Reformatory School in the Travancore State, as the native place of the offender is in that State.

Section 15 (c) of the Prisoners' Act (III of 1900) read with section 14 would allow the transfer of a juvenile offender confined in a Reformatory School in the Travancore State to one in British India with the previous sanction of the Government. There appears, however, to be no provision in the Prisoners Act for the converse case.

Under section 14 (b) of the Reformatory Schools Act (VIII of 1897), the Government can order any youthful offender "to be removed from one Reformatory School to another such school situated within the territories subject to such Government." The Honourable the Advocate-General is requested to be so good as to advise the Government whether an order within the meaning of this section would be legal for transferring the youth to the Native State, and, if not, whether the transfer of the youthful offender to a Reformatory School in Travancore can be legally effected by any other means.

P. RAJAGOPALA ACHARIYAR,
Secretary to Government.

To the Government Solicitor (memorandum only).

III

Opinion of the Advocate-General, Madras, dated 3rd March 1916, No. 799.

I presume that the "youthful offender" who is a native of Alleppy is a subject of the Travancore State. His transfer from the Reformatory School, Chingleput, to a Reformatory School in the Travancore State cannot be effected under section 14 (b) of the Reformatory Schools Act, 1897. The first reason is that the Act is applicable only to British India and extends only to persons and things within it. Secondly, the words "territories subject to such Government" in clause (b) of section 14 of the Reformatory Schools Act cannot include the territories of any Native Prince or Chief under the suzerainty of His Majesty exercised through the Governor-General of India, the Governor or other officer subordinate to the Governor-General. For the sovereignty of the British Crown over the Native States is exercised neither through the Indian Legislative Council nor through the Local Legislature but by the Governor-General of India in Council in his executive capacity. See Ilbert's Government of India, second edition, page 3-7 and the Kathiawar case, 33 I.A., page 1. Therefore, the Local Government referred to in section 14 of the Reformatory Schools Act cannot be read as Government of Madras exercising suzerainty over the Travancore State [vide the definition of Local Government in the General Clauses Act, section 3 (29), read with section 4 (1)]. Thirdly the school referred to in section 14 (b) to which the removal of the juvenile offender may be made must be a school referred to in section 5 and subject to the inspection of the Inspector-General under section 7 and cannot be a school maintained or used by the Travancore State under its own laws.

2. Of course section 11 of the Indian Extradition Act, 1903, neither enables such a removal to be effected nor prevents such removal, if otherwise it is lawful.

3. Apart from the Reformatory Schools Act and without any amendment thereof, the Local Government have full power to remove a subject of the Travancore State from the part of British India subject to its executive administration. As the Privy Council decided in *Mugroo v. Chan Teeong Toy*, (1891) A.C., 272, an alien has no legal right enforceable by action to enter British territory. Nor can there be any doubt of the right of the executive power to remove from the country upon such grounds as may seem to it sufficient any persons who are the subjects of another State: 14 Halsbury's Laws of England, page 404, paragraph 925. For, at Common Law the Crown has power to reject or expel aliens: 1 Halsbury's Laws of England, page 320, paragraph 705. The Native States, as held by the Privy Council in the Kathiawar case, must be regarded as on the whole not within the King's dominions (vide 33 I.A., page 1). As Sir Courtenay Ilbert puts it, "for purposes of Municipal Law their territory is not British territory and their subjects are not British subjects." Though for the purposes of International Law and of section 15 of the Foreign Jurisdiction Act, 1890, and for the purposes of enforcing the suzerainty of the Crown over the rulers of the Native States, they must be regarded as owing allegiance to the British Crown and as under its protection; for purposes of British Indian Law or Legislation, subjects of Native States must, ordinarily, be regarded as foreigners or aliens unless they are naturalized (see Act XXX of 1852). The Local Government therefore have the right either to expel such foreigners from British Indian territories or not to allow them to enter British India. The same conclusion follows from the Foreigners Act III of 1864 as amended by Act III of 1915. (See sections 3 and 17 of the Act of 1864 and the definition of "foreigner" as now amended). The removal of a juvenile offender from British India to the Travancore State is justified by the power of the executive Government of the Presidency under the Common Law, assuming such removal does not amount to an act of State. I think however it will also be an act of State not subject to the jurisdiction of civil courts.

4. The proposed transfer can also be effected in exercise of the extra territorial powers which the Governor-General in Council has in his executive capacity, which are far wider than those of the Legislative Council (Ilbert's Government of India, page 337). The Statute of Parliament, the Foreign Jurisdiction Act, 1890, and the Indian Foreign Jurisdiction Order in Council, 1902, issued thereunder enable the Governor-General in Council and those to whom he delegates his powers, to exercise

all the jurisdiction and powers which the Crown has in the Native States by treaty, capitulation, grant, sufferance or other lawful means. The power under section 15 of the Reformatory Schools Act was availed of under the Indian Foreign Jurisdiction and Extradition Act, 1879, by the notification of the Government of India No. 2779-I.B. of 1898, with reference to certain areas within the Nizam's Dominions over which the jurisdiction of the Government was exercised. Similarly either section 15 or section 14, clause (b), can be applied to cases like the present by a notification of the Governor-General in Council enabling the removal of juvenile offenders being subjects of the Travancore State from reformatory schools in Madras Presidency to reformatory schools in the Native State of Travancore. No legal limits exist or can be set to the exercise of this extra territorial jurisdiction by the suzerain power within Native States even though it concerns subjects of Native States and even though the reformatory school to which the offender may be removed is one not under the authority of the Political Agent in Travancore but under the authority of the Native State itself. As I presume the Travancore State consents to the proposed transfer, the want of any precedent or the political limits to such jurisdiction hitherto observed, which are entirely for the Government to consider, do not seem to present any difficulty. A notification therefore extending section 14 (b) or applying section 15 of the Reformatory Schools Act to such cases can be validly issued by the Governor-General in Council or by the Government of Madras if the power has been delegated to them.

5. I presume, however, that the law of the Travancore State is adequate to justify the detention by that state in its own reformatory schools of juvenile offenders directed to be detained in British Indian reformatory schools and afterwards transferred to its own reformatory schools. For the order of the court under section 8 of the Reformatory Schools Act will not, in the absence of effective recognition given to it by the laws of the Travancore State, bar the claim of the juvenile offender to be set at liberty in case he chooses to appeal to the courts of the State for his release. If, however, the Travancore State has passed laws which reciprocate the provisions of section 15 of the Prisoners Act III of 1900; if, in other words, the law of Travancore provides for the reception, detention, or imprisonment within that state of persons directed by British Indian courts to be detained in reformatory schools there is no difficulty whatever. In that case there is no necessity for the issue of a notification under the Foreign Jurisdiction Order in Council. Nor is there any necessity that the Reformatory Schools Act, section 14 (b), should contain a provision enabling the British Government to effect such a transfer.

6. I am therefore of opinion—

(1) that the transfer of a juvenile offender from the Reformatory School, Chingleput, to a reformatory school in the Travancore State cannot be effected under section 14 (b) of the Reformatory Schools Act, 1897;

(2) that such transfer can, however, be effected by an executive order of the Government in exercise of the Common Law right of the Government to remove an alien, though sections 3 and 17 of the Foreigners Act of 1864 may not in terms be applicable to the case;

(3) that in the alternative, a notification of the Governor-General in Council may provide for such cases by extending the operation of section 14 (b) or section 15 of the Reformatory Schools Act to schools in Travancore State and such notification can lawfully be issued under the Indian (Foreign Jurisdiction) Order in Council of 1902;

(4) and that, in any view, and apart from any such notification if the law of the Travancore State is efficient, the proposed transfer can safely be effected.

S. SRINIVASA IYENGAR,
Acting Advocate-General.

IV

Memorandum No. 469-3, Educational, dated 19th April 1916.

A juvenile offender by name Kuruvilla, a Roman Catholic Christian, aged 14 years, was admitted into the Reformatory School, Chingleput, on the 22nd January 1916, under the committal warrant of the Fourth Presidency Magistrate,

Madras, who ordered his detention in the school for a period of four years, i.e., until he attains the age of 18. As the youth is a native of Alleppey in the Travancore State, where his brother, his sole surviving relative, is now living, it has been proposed to the Government that the youth should be transferred to the reformatory school in the Travancore State. The Resident in Travancore and Cochin is requested to ascertain and report whether the Travancore Darbar has any objection to the transfer of the pupil to the reformatory school in the State with the previous permission of the Government of India.

A copy of the acting Advocate-General's opinion, dated the 3rd March 1916, is enclosed.

P. RAJAGOPALA ACHARIYAR,
Secretary to Government.

To the Resident in Travancore and Cochin.

V

Letter—from R. A. GRAHAM, Esq., I.C.S., Resident in Travancore and Cochin.

To—the Secretary to Government, Educational Department.

Dated—Trivandrum, the 19th/27th June 1916.

No.—Dis. 443.

With reference to Government Memorandum No. 469-3, Educational, dated the 19th April 1916, regarding the transfer of juvenile offender, Kuruvilla, from the Reformatory School, Chingleput, to the Reformatory School in Trivandrum, I have the honour to inform you that there is no statutory provision in Travancore for the admission, into the reformatory, of a youthful offender convicted in British India. The Darbar therefore regrets that as the law stands at present, there is no possibility of effecting the transfer.

Order—No. 775, Educational, dated 15th July 1916.

The Director of Public Instruction is informed that the Government are unable to accept his proposal to transfer to the Reformatory School in Travancore pupil No. 255 (Kuruvilla) of the Reformatory School at Chingleput, as it cannot be legally made.

(True Extract)

P. RAJAGOPALA ACHARIYAR,
Secretary to Government.

To the Director of Public Instruction.

EDUCATIONAL DEPARTMENT.

NOTES CONNECTED WITH G.O. No. 775, EDUCATIONAL, DATED
THE 15TH JULY 1916.

[*SUBJECT.—Transfer of a pupil from the Reformatory School, Chingleput, to the school in Travancore.*]

From the Director of Public Instruction, dated the 4th February 1916, No. 734/16.

In their resolution Nos. 466-477, dated the 7th May 1910, the Government of India have authorized the transfer, whenever occasion may require, of juvenile offenders from the province in which they are convicted to a reformatory school, if one exists, in the province of which they are natives or in which their relatives may be domiciled, provided that no such transfer shall be made without the previous concurrence of the local Government or Administration to whose territory the juvenile offender is to be sent (vide G.O. No. 317, Educational, dated the 2nd June 1910). With reference to the spirit of the above resolution and especially as the accommodation available in the Reformatory School, Chingleput, is taxed to provide for boys belonging to this Presidency, the Director of Public Instruction recommends that arrangements may be made for the transfer to the Reformatory School, Travancore, of a pupil named Kuruvilla, who was admitted into the school at Chingleput on the 22nd January 1916, under the committal warrant of the Fourth Presidency Magistrate, Madras, to be detained there for a period of four years and who is a native of Alleppey in the Travancore State where his brother, his sole surviving relative, is now living. If this proposal of the Director of Public Instruction is approved, the previous consent of the Darbar to the proposed transfer may be obtained through the Resident in Travancore. If so, the draft memorandum below is for approval. It may issue with the concurrence of the Political Department.

A.S.—9-2-16.

T.K.—10-2-16.

Travancore is not a portion of British India and therefore the above argument falls to the ground. There is no law which authorizes a local Government to transfer a convict to outside British Indian jurisdiction: and I take it that the youth's detention in a reformatory in Travancore will be equally illegal. Will Judicial please examine the question and advise?

P. RAJAGOPALA ACHARIYAR—12-2-16.

To the Judicial Department.

JUDICIAL DEPARTMENT.

With the previous sanction of the Local Government, a Native State court can commit to a British Indian prison a prisoner, be he a British Indian subject or not [please see section 15 (c) of the Prisoners Act (III of 1900)]. Section 14 of the Prisoners Act (III of 1900) makes that provision of law applicable to reformatory schools as well. To take the case of a British Indian youth committed to the Reformatory School in Travancore, he can be transferred to the Reformatory School, Chingleput, under the above provision of law. But there appears to be no specific provision for a similar treatment being accorded to a Native State subject committed to a Reformatory School in British India by one of our courts.

Section 14 (b) of the Reformatory Schools Act (VIII of 1897) empowers the local Government to order any "youthful offender" to be removed from one reformatory school to another, such school situate within the territories subject to such Government. It is not clear whether the words "subject to such Government" may be taken to empower this Government to order the transfer of a pupil of the Chingleput Reformatory School to the Travancore school.

Perhaps the Advocate-General may be consulted as to whether those words are capable of such a broad construction.

A.V.S.—17-2-16.

P.R.R.—17-2-16.

The Advocate-General may be consulted; but *prima facie* the words seem to be incapable of such a construction.

E. A. HARVEY—18-2-16.

I have no objection to the Advocate-General being consulted: but I am pretty certain what the reply will be. Let me see the draft reference please before issue.

P. RAJAGOPALA ACHARIYAR—20-2-16.

A draft memorandum to the Advocate-General is submitted for consideration.

A.V.S.—21-2-16.

P.S.R.—21-2-16.

E.A.H.—22-2-16.

P.R.—23-2-16.

[Memorandum to the Government Solicitor No. 420/C-1, dated the 23rd February 1916.]

From the Government Solicitor, dated the 3rd March 1916, No. 315.

The Advocate-General's reply is summed up in paragraph 6 of his opinion. The provisions of the Reformatory Schools Act being inapplicable for the transfer of the youth to the Travancore Reformatory School, he suggests three other modes whereby the transfer could be legally effected. The third alternative, viz., that the proposed transfer can be safely effected if the law of the Travancore State is efficient, may be referred to the Political Department for examination.

Of the other two alternatives, the one permits the local Government to direct the transfer, and the other necessitates a reference to the Government of India before the transfer could be effected.

The opinion of the Advocate-General may be passed on to the Educational Department through Political.

A.V.S.—11-3-16.

M.V.V.—13-3-16.

E.A.H.—14-3-16.

Educational through Political.

P.R.—15-3-16.

POLITICAL DEPARTMENT.

The Travancore Reformatory Regulation IV of 1907 does not contain any provision whereby a juvenile offender from a Reformatory School in British India can be transferred to a Reformatory School in the Travancore State. The proposed transfer cannot therefore be effected under the law in force in the State.

2. With the above remarks the file may be passed on to Educational.

C.K.—25-3-16.

A.J.J.—28-3-16.

R. H. COURTENAY—31-3-16.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

Of the three alternative methods suggested by the Advocate-General in paragraph 6 to effect the transfer of the juvenile offender, it would appear that the first, viz., that the transfer can be effected by an executive order of the Government in exercise of the Common Law right of the Government to remove an alien, appears to be the easiest; while the safest course seems to be the second alternative, viz., to move the Government of India to issue the necessary notification under the Indian (Foreign Jurisdiction) Order in Council of 1902. If it is considered desirable to adopt the second alternative then the Government of India will have to be addressed on the subject. But before doing so, it is for consideration whether with reference to the presumption of the Advocate-General that the Travancore State consents to the proposed transfer, the Darbar may be requested to state if it has any objection to the transfer of the pupil with the previous permission of the Government of India. If so, the draft memorandum below is for approval.

A.S.—8-4-16.

T.K.—8-4-16.

Political u.o. for acceptance of the draft.

P. RAJAGOPALA ACHARIYAR—10-4-16.

POLITICAL DEPARTMENT.

The draft memorandum may be accepted.

C.R.—11-4-16.

A.J.J.—11-4-16.

R. H. COURTENAY—12-4-16.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

Submitted that the memorandum may now issue.

T.K.—15-4-16.

P.R.—19-4-16.

[Memorandum No. 469-3, Educational, dated the 19th April 1916.]

From the Resident in Travancore and Cochin, dated the 19th June 1916, No. 443/16.

In reply to Memorandum No. 469-3, dated 19th April 1916, the Resident reports that the Darbar regrets that as the law stands at present in Travancore there is no possibility of effecting the transfer. Apparently the Darbar is also unwilling to the proposed transfer. Such consent seems to be a desirable requisite to the adoption of the first of the alternatives proposed by the Advocate-General.

2. As regards the second alternative, of applying to the Government of India for issuing a notification extending the operation of section 14 (b) or section 15 of the Reformatory Schools Act to schools in Travancore, it is submitted that this may not be of any practical use. In paragraph 5 of his opinion the Advocate-General opines that for this course to be effectively carried out there should be adequate recognition in the laws of the Travancore State to justify detention by that State of offenders directed to be detained in a reformatory school by the court in British India. The Political Department has already noted that the Travancore Reformatory Regulation does not contain any provision in this regard. Thus the second alternative is not also feasible.

In these circumstances it is for consideration whether the Director of Public Instruction may be informed that the transfer of Kuruvilla to the Reformatory school, Travancore, cannot be legally made. Subject to approval a draft order is submitted, which may issue with the concurrence of the Political Department.

C.R.—7-7-16.

Draft for acceptance.

P. RAJAGOPALA ACHARIYAR—8-7-16.

To the Political Department.

POLITICAL DEPARTMENT.

The draft order may be accepted in Political.

T.S.E.—11-7-16.

A.J.J.—11-7-16.

R. H. COURTENAY—12-7-16.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

For orders as to whether the order may issue.

C.R.—13-7-16.

Yes.

P.R.—14-7-16.

[G.O. No. 775, Educational, dated the 15th July 1916.]

Educational Department.

ORDER—

His

The Director of Public Instruction is

informed that the Govt. are unable to accept his proposal to transfer to the Reformatory School in Travancore pupil No. 255 (Kuruvilla) of the Reformatory School Chingleput, as it cannot be legally made.

CA
7.7.16

(Not for R.T.)

To the D.P.I.

Profr
15.7.16

SA
15/7

(C)

10
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