

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1367	Press
	43 44	<u>Mis.</u>
Dated	17-10	19-187

Not to be folded or roughly handled

1367
AP

Fort St. George, Judicial Consultation, 20th October 1857.

No. 43. Read the following letter from J. RATLIFF, Esq., Acting Sessions Judge of Rajahmundry ; to E. MALTBY, Esq., Acting Chief Secretary to Government, Fort St. George, dated 30th September 1857, No. 64.

SIR,

1. Were it not that I felt it peculiarly incumbent at the present time, that all collision between authorities, especially Civil and Military, should be avoided and prevented, I should have hesitated in submitting the herewith correspondence and reference for the consideration and decision of Government. I have, however, under existing circumstances, deemed it best to do so, with the view of for ever, and definitively, setting the matter at rest.

2. I have, since receipt of the Subordinate Judge's letter, instituted thorough personal enquiry, and learn, that this is the first occasion upon which any such authority has been assumed, or interference exercised, by any Commanding Officer, and am assured that the Jail peons were simply doing, in the celebration of their festival, what they have annually done hitherto unmolested and unquestioned, even by the Officer presently on detachment here ; who, as I am informed by the Jailor and Jemadar, himself permitted, last year, (i. e., in no way attempted to prevent,) the very thing now so strongly deprecated, "the passing with lighted torches along a road, on the side of which stands a small magazine, to wit," and by which, I am credibly and positively assured, the Jail peons have always similarly passed in the performance of this annual ceremony, although, as I observe, the present Commanding Officer states (but upon what data I know not) in his letter marked B. that they have "never been permitted to do so," whilst, as regards the permission to beat their tom toms, alluded to in letter "F," I am informed, that in no single instance has application for such ever been made by the peons to, or insisted on by any previous Commanding Officer.

3. The point at issue, albeit, is not the settlement of this or that particular instance of exercise or assumption of authority, by the Officer on detachment here, of which the above are but types, but whether or not he is, as he assumes to be, the paramount authority in what is called the Fort, and if so, to what extent, whether as regards authority, or area ; seeing, that the so called fort exists in name only ; portions of its once ramparts alone remaining here and there.

4. It is not very easy to arrive at the Commanding Officer's precise views on the subject, seeing that in his letters B, D, F, and H, he speaks of "the Fort," as if some specially defined locale, in and over which his own authority extends, whereas in his (official) letter "No. 451," after similarly dealing with it in para. 2, he in para. 3, for the first time, appears disposed to admit a limit to his jurisdiction, even in the said Fort, of which, as he very justly observes, it would be (indeed) difficult to draw the boundary, this limit however being as will be observed, very imperfectly defined, and the term "vicinity" admitting of every latitudinal application.

5. The present is, as far as I can learn, the first instance on record, with the exception of that furnished by Lieutenant Brackenbury, in which any officer on detachment here, has thought it worth while or incumbent to raise a question of jurisdiction, whilst it is very possible that none of Captain Wood's successors would care to follow his example, and consequently, that future collision might be assumed as improbable yet, as on the other hand, he *might* be succeeded by others similarly disposed, I have, as above stated, felt justified in submitting the matter as solicited by the Subordinate Judge, for the decision of Government, which I have now the honor to do accordingly.

(Signed) J. RATLIFF,
Acting Sessions Judge.

From J. H. BLAIR, Esq., Subordinate Judge of Rajahmundry ; to J. RATLIFF, Esq.,
Acting Session Judge of Rajahmundry, dated 29th September 1857, No. 95.

SIR,

1. I have the honor to forward copies of a correspondence between the Officer Commanding Detachment 9th Regiment M. N. I., stationed here, and myself, with a request that you will refer the matter to Government, with such remarks as you think proper.

Fort St. George, Judicial Consultation, 20th October 1857.

2. A complaint was made to me by the Jail peons on the morning of the 25th Instant, that on the previous evening, while proceeding in procession with lighted torches, &c., from the pandal built at the Jail gate in the usual place for the celebration of the Dusserah feast, they were ordered not to go that road, and were also afterwards prevented beating tom-toms, &c. by the sepoy on guard, who said they did so by order of the Commanding Officer.

See Jemadar's statement of what occurred.

3. I cannot understand Captain Wood's reasoning in his various letters, which seem to me to contradict each other, but on one point there is no doubt, that he considers he has some authority within the fort, and that his standing orders must be obeyed by private individuals as well as his own men.

4. Although for many years past, (and even last year when Captain Wood was here) no objection was ever made. I told the peons not to go past the magazine with torches, and referred Captain Wood to the Magistrate, if he had any other objection to make, as he had no authority to interfere with the peons, nor had I. I also sent him a former order of Government, shewing that the Officer Commanding Detachment has no authority within the fort; but as you will perceive by his letters, he considers he has authority of some kind. If any proof is required that the peons were only doing what they have done for many years without the slightest objection, it can be adduced.

(Signed) J. BLAIR,
Subordinate Judge.

(True Copy.)

(Signed) J. RATLIFF,
Acting Session Judge.

A.

My dear Wood,

The Jail peons have complained to me that, by your orders last night, the celebration of the Dusserah was stopped at the pandal built in the usual place at the Jail gate, and they were prevented from going in procession to the town, according to the custom of many years.

I shall therefore be much obliged by your letting me know, whether you gave any such orders, and if so, to what extent, and for what reasons.

Your's sincerely,

(Signed) J. HUNTER BLAIR.

September 25th

Please answer this by bearer, as the men want to go on with their feast to-night.

B.

My dear Blair,

By the standing orders of the Garrison no one is permitted to pass by the magazine with fire, torches, &c., and last night some Jail peons were accordingly stopped and prevented from so doing. Their procession was not in any other way impeded; neither are tom-toms permitted to be beaten inside the fort without permission. The order is as old as the hills, and the peons are perfectly aware of it, and have never been permitted to carry torches or fire when passing the magazine.

Your's sincerely,

(Signed) M. WOOD.

25th September 1857.

Fort St. George, Judicial Consultation, 20th October 1857.

C.

My dear Wood,

I have told the peons not to go past the magazine on the road with lighted torches, &c., but with regard to the tom-tomming and holding their feast at the usual place, I shall be much obliged by your giving an order that they are not to be interfered with, or interrupted.

Your's sincerely,

(Signed) J. HUNTER BLAIR.

September 25th.

D.

My dear Blair,

The peons have not been interfered with in any way, nor will they be, provided they do not disobey the orders of Government. Be good enough to let me know if you have given them permission to beat tom-toms inside the fort after 10 P. M.

Your's sincerely,

(Signed) M. WOOD.

Friday, 25th September.

E.

My dear Wood,

I have told them, as far as I am concerned, they have my leave to do what they have always done at former Dusserahs, except carrying fire and torches past the magazine. If you object, the matter must be referred to the Magistrate to decide, as I have no jurisdiction, nor have you that I am aware of, except as regards your own men and their lines, &c.

Your's sincerely,

(Signed) J. HUNTER BLAIR.

25-9-57

F.

My dear Blair,

I conceive that I have jurisdiction inside the Fort; and the board of Orders in my Guard, dated so far back as 1852, are quite clear and explicit on that point as also are the General Regulations of the Service. No fresh orders have been issued this year on the subject, neither has any interference taken place. No one has permission to beat tom-toms in the town after 10 P. M. without permission of the Magistrate, neither has any one a like permission inside the Fort, without permission of the Commanding Officer, and your peons are perfectly aware of it and they also know it has never been refused when they asked for it.

Your's sincerely,

(Signed) M. WOOD.

Friday, 25th September.

G.

My dear Wood,

As you consider you have the right to prevent tom-toms being beaten, &c. without the Fort, I have told the Jemadar to ask your leave, which you say has never been refused, so that the poor men may go on with their usual ceremonies, &c. But with regard to your jurisdiction within the Fort, which contains both the Courts, the Jail, Church, and other buildings, and which is not, I believe, a Military Cantonment or under Military law, in which case only can you have jurisdiction out of your own lines, &c., I beg to differ from you, and in order to settle the matter definitely, I shall refer it to Purvis, or if necessary, eventually to Government.

Your's sincerely,

(Signed) J. HUNTER BLAIR.

25-9-57.

Fort St. George, Judicial Consultation, 20th October 1857.

My dear Blair,

Refer the matter *by all means*. I contend I have authority in the Fort, and that it has never been disputed by any but yourself, my letter will go in to the General, so, for the present, I wish to have no further correspondence on the subject. Be good enough to send me your letters to my address, and also my own, the latter I will return.

Your's sincerely,
(Signed) M. WOOD.

J.

My dear Wood,

As I am going to write to Purvis, regarding our difference of opinion about your jurisdiction in the Fort, I shall be much obliged by your sending me my letters to you, that I may have them copied; if you want them back again, I will return them, I think it the best plan just to send him copies of what we both wrote, as that will put it all clearly before him.

September 26th.

Your's sincerely,
(Signed) J. HUNTER BLAIR.

K.

My dear Blair,

You are perfectly welcome to copy your correspondence, and make any reference you think proper. It's a perfect matter of indifference to me, who is to give the order to your peons. It to beat tom-toms after the regulated hour, within a stone's throw of the Garrison Hospital, neither will they be permitted to disregard the Garrison standing orders. Please send back my letters to be copied.
26th.

Your's sincerely,
(Signed) M. WOOD.

L.

My dear Wood,

I have never doubted or disputed the *Magistrate's authority*, the peons' complaint was that *you who had no authority* had interfered with their customary procedure during the Dusserah. I agree in their opinion that the Fort not being a Military Cantonment or under Military law, you cannot interfere in any way with peons or any other parties, and unless you are willing to acknowledge that my opinion is correct, I must refer the matter to prevent any thing of the kind again occurring, and to have things put on a clear and distinct footing.

You have the same remedy as others complaining to the Magistrate, but I wholly deny your authority to give any orders to any private individuals regarding any thing they may choose to do inside the Fort, either as to beating tom-toms, or keeping their feast in their own manner.

Your's sincerely,
(Signed) J. BLAIR,

M.

To Captain WOOD, Commanding Detachment, 9th Regiment N. I.

SIR,

With reference to the correspondence which has already passed between us on the subject of your authority within the Fort of Rajahmundry, I have the honor to draw your attention to a correspondence between Lieut. Brackenbury, Commanding Detachment 30th Regiment M. N. I., and J. Rohde, Esq., Acting Sessions Judge, in the month of November 1844, also to the

Fort St. George, Judicial Consultation, 20th October 1857.

orders of Government consequent thereon, in Extract Minutes Consultation, under date 3rd December 1844, also to a letter from the Collector and Magistrate, under date 13th February 1847, No. 49, and a letter from the Acting Deputy Assistant Quarter Master General, Northern Division, of 20th February 1847, all of which will, I believe, be found in your records.

2. If after perusing the above (of which I had no knowledge previously) you are willing to admit that you have no authority within the Fort, and that you had no right to interfere with the celebration of the Dusserah by the Jail peons, there will be no occasion for any reference regarding what occurred, and I shall therefore delay doing so, until I receive your answer.

Rajahmundry Sub Court, }
28th September 1857. }

I have the honor, &c.,
(Signed) J. BLAIR,
Session Judge.

N.

No. 451.

To J. H. BLAIR, Esq., Subordinate Judge.

SIR,

I have the honor to acknowledge the receipt of your letter of this day's date, and with reference to the letters therein referred to, beg to state for your information, that they are not amongst the records of my office.

2. With reference to the 2nd para. of your letter, if you refer to our private correspondence, you will find that I have distinctly told you that I do possess authority in the Fort, and which I now take the opportunity of requesting you will warn your Jail peons not to dispute, as my sentries have been instructed to enforce their orders.

3. If you refer to the correspondence which has passed between us, you will find that I have never contended that I had authority over the whole of the Fort, for it would be difficult to draw the boundary, I simply declared I had jurisdiction, and I consider that authority extends over the Parade ground, Barracks, Hospital, Magazine and its vicinity, and that I will not permit the Jail peons or any body else, to disobey the Garrison orders as they endeavoured to do on Thursday night last.

4. With reference to that part of the 2nd para. of your letter, wherein you say I interfered with the celebration of the Dusserah, I beg distinctly to deny that any interference took place beyond the prohibition to take lighted torches past the Magazines, with this exception, the assertion is contrary to fact.

5. In conclusion, I beg to inform you that I have referred the matter at issue to the Magistrate of the district, and hope you will not delay to forward, as you said you would do, all correspondence on the subject, which has passed between us.

I have the honor, &c.,
(Signed) W. WOOD, Captain,
Commanding Rajahmundry.

O.

To Captain WOOD, Commanding Detachment 9th Regiment N. I.

SIR,

With reference to the 1st para. of your letter of this day, I have the honor to forward for your perusal, the correspondence between Lieut. Brackenbury and Mr. Rohde, also the Minutes of Council thereon, to save delay, the other 2 letters, referred to in the Memo. on the Minutes of Council are not in my office, but addressed to one of your predecessors here.

Rajahmundry Sub Court, }
28th September 1857. }

I have the honor &c.,
(Signed) J. H. BLAIR,
Sub. Judge.

Fort St. George, Judicial Consultation, 20th October 1857.

P.

No. 452.

To J. H. BLAIR, Esq., Subordinate Judge, Rajahmundry.

SIR,

I beg to return the records sent for my information, and from a perusal of the correspondence referred to between Lieut. Brackenbury and the Session Judge of Rajahmundry, beg to state that the substance thereof is quite foreign to the question at issue.

Rajahmundry, }
29th September 1857. }

I have the honor, &c.,

(Signed) W. WOOD, Captain,
Commanding Rajahmundry.

(True Copies.)

(Signed) J. H. BLAIR,
Sub. Judge.

Deposition given by Noonna Balaramaswamy, the Jemadar of the Jail.

A. The day before yesterday, at half past 6 P. M., as we were carrying from a shed near the Jail, an idol (Bhatanloodoo) in procession with musical performers, dancing girls, &c., we came near the magazine, where a Sepoy on guard prevented us, saying, that we should not go by this way with musical performances, &c., without the permission of the Commanding Officer, when we went out of the Fort, and after having performed the festival as usual, we returned to the Jail by the road situated near the Civil Court-house, and placed the idol there, and whilst we were performing the festival there in company with the girls dancing, another Sepoy came and prevented the festival, saying, it should not be performed without the permission of the Commanding Officer. Whereon we put a stop to the festival for that night, and represented the same to the Civil and Subordinate Judge and the Doctor. The Subordinate Judge directed us to continue carrying the idol into the town in company with musical performers, &c., without torches, by the way near the magazine, and whilst we were accordingly passing towards the town by the magazine, the Sepoy came and prevented us, when I said that we should not obey your orders, because we were performing the festival by order of the Subordinate Judge; whereupon the Sepoy went and told the Havildar, who came and told the Sepoy to allow us to go, as the Commanding Officer ordered so, we then went away performing the festival.

Q. How long since have you been performing the festival, placing the idol (Bhatanloodoo) near the Jail.

A. Since 30 years we have been placing the idol near the Jail, and passing by the magazine with the idol in procession. We have never heretofore been prevented by any body. In the last year, we placed the idol near the Jail, and passed and re-passed by the magazine with the idol in procession, but we were not prevented then. I do not know why we were prevented this year. We have been performing this festival near the Jail for a great length of time, the Commanding Officers of former times had never prevented the festival. If the Magistrate had offered such an impediment as this, we would have ceased to commence the festival. The Commanding Officer has nothing to interfere with festivals, such as this, and we therefore complained to the Subordinate Judge of the same, a great number of respectable persons know that we have for several years been placing the idol near the Jail and passing with it in procession by the magazine uninterruptedly. I shall, if necessary, prove this by them, the present Commanding Officer was here in the last year, but he did not prevent us then.

26th September 1857.

(Signed) NOONNA BALARAMASWAMY.

Taken before me, this 26th September 1857.

(Signed) J. BLAIR, Sub. Judge.

(True Copy.)

(Signed) J. BLAIR, Sub. Judge.

(True translate.)

Signed) J. RATLIFF,
Acting Session Judge.

Fort St. George, Judicial Consultation, 20th October 1857.

No. 44. ORDER THEREON, No. 1367; dated 17th October 1857.

From this letter and its enclosures, it appears that at the late *Dusserah* feast, the Hindoo Jail Peons at *Rajahmundry* were prevented by the Commanding Officer from passing with lighted torches an old *Pagoda* in the Fort, which has been converted into a Magazine, and further from beating their *tom toms* at another part of the road the procession was travelling.

2. The Peons complained to the Subordinate Judge, in charge of the Jail, between whom and the Commanding Officer a long correspondence ensued. The latter appears at first to have claimed jurisdiction over the whole Fort, which is mainly occupied by civil buildings, but in his letter marked N, he limits his authority to "the Parade Ground, Barracks, Hospital, Magazine and its vicinity." The Subordinate Judge, on the other hand, considers that the Commanding Officer has no jurisdiction at all, and, in support of his view of the case, quotes Extract Minutes Consultation No. 806, dated 3rd December 1844.

3. Those orders, the Government find, were passed on a reference from *Mr. Rohde*, then Acting Judge of *Rajahmundry*. On that occasion a road had been turned by him within the Fort and some buildings removed. Lieutenant *Brackenbury*, the Officer in command questioned these proceedings, but the Government directed him to desist from further interference.

4. From a carefully executed plan of the space occupied by the old Fort, which accompanied *Mr. Rohde's* letter, the Government learn that the road in question is not in the vicinity of the ground occupied by the Military. The decision then come to therefore does not make against the claims of the present Commanding Officer. *Captain Wood* asserts jurisdiction over that portion of the old Fort in the occupation of the *Sepoys*, &c., while his predecessor asserted it over the whole of the site, including that is the Gaol, the two Courts and other non-military buildings and premises.

5. The Governor in Council is of opinion that the Commanding Officer is the best judge as to any danger to the Powder Magazine, from lighted torches being carried along the road close by it, and further as to the propriety of *tom toms* being beaten within "a stone's throw" of the Military Hospital. The Peons do not appear to have crossed the road which separates the ground occupied by the Military from the rest of the Fort, but even outside those limits they must not be permitted to conduct their festival so as to disturb the inmates of the Sepoy Hospital. It is very true the *Rajahmundry* Cantonment is not a Military bazar station (Regulation VII of 1832,) but in the vicinity of the space occupied by the Military, the Magistrate is bound to consult as far as possible the wishes of the Commanding Officer. The latter is not only entitled to call in the civil power, but it is competent for him within his limits, to make such regulations for the peace and safety of the Garrison and the Premises pertaining to it as, subject to the orders of his Military superiors, he may think proper. It is not necessary that a Cantonment should be classed as a Military bazar station, before the Officer Commanding would be justified in prohibiting *tom toms* within the lines after ten o'clock at night, or in passing any similar orders.

(Signed) E. MALTBY,
Acting Chief Secretary.

Exd. F. Cartledge.

Judicial Dept 5

No 1367

Ell C under date 17 October 1857

Read the following letter } here enter No 64
from the Acting Civil & Sessions } of 30th Sept/57.
Judge of Rajahmundry.

At
Jy

From his letter & its enclosures it appears that at the late Dusse-
-rah feast, the Hindoo Tail Ponds at Rajahmundry were prevented by the Commanding Officer from passing with lighted torches an old Pagoda in the Fort which has been converted into a Magazine, and further from beating their tomb-tombs at another part of the road the procession was travelling.

3. The persons complained to be Subordinate Judge, in charge of the Jail, between whom & the Comm^d Officer a long correspondence ensued. The letter appears at first to have claimed jurisdiction over the whole Fort, which is mainly occupied by Civil Buildings, but in his letter

marked N, he limits his authority to "the Parade Ground, Barracks, Hospital, Magazine and its vicinity". The Subordinate Judge, on the other hand, considers that the Comm^d Officer has no jurisdiction at all, and, in support of his view of the case, quotes C.M.J. No 806. of 3^d Dec^r 44.

3. Those orders, the Gov^t find, were passed on a reference from Mr. Roberts new acting Judge of Wazirabad. On that occasion a road had been turned by him within the Fort & some buildings removed, at Lt. Brackenbury, the officer in command questioned these proceedings, but the Gov^t directed him to desist from further interference.

4. From a carefully executed Plan of the space occupied by the old Fort, which accompanied Mr. Roberts' letter, the Gov^t learn that the road in question is not in the vicinity of the ground occupied by the Military. The decision has come to

9.
herefore does not make against the claim of the present Comm^d Officer. Captain Wood asserts jurisdiction over that portion of the old Fort in the occupation of the Leprosy &c; while his predecessor asserted it over the whole of the site, including that is the Goal, the two Courts & other non-military buildings & premises.

5. The G-in-C is of opinion that the Comm^d Officer is the best judge as to any danger to the Powder Magazine, from lighted torches being carried along the road close by it, and further as to the propriety of townships being taken within "a stone's throw" of the Military Hospital. The persons do not appear to have crossed the Road which separates the ground occupied by the Military from the rest of the Fort, but ~~draw~~ out. Side bore limits they must not be permitted to conduct their festival so as to disturb the inmates of the Leprosy Hospital. It is very true

The Rajahmundry Cantonment is not
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bon-bons within the lines after
ten o'clock at night, or in ~~repealing~~
issuing any similar orders.

M

Dec 13-10/57

To the Military Depart^t
" Order Judge of Rajahmundry } Dispd 23^d
" Magistrate of Rajahmundry } 14 Copies P 10

By to June 20th Oct

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Charles. Minis. of Am.

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