

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

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Not to be folded or roughly handled

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Fort St. George, Judicial Consultation, 8th June 1858.

No. 57. Read the following Extract from the Proceedings of the Sudder Udalut, under date the 27th May 1858, No. 39.

Read letter dated the 4th Instant, from the Civil Judge of Cuddapah.

1. The Civil Judge herein reports that, on receiving copy of Extract from the Minutes of Consultation, under date the 23rd February last, he called upon the Collector to state if he had any objection to the appointment of Jungum Mullapah, as Government Vakeel at Cuddapah; that, instead of at once advancing his objections, the Collector requested the Civil Judge to inform him, whether there was any order on the records of the Civil Court unfavorable to Jungum Mullapah's character; and that he, the Civil Judge, replied in the negative; but that the Collector subsequently communicated his opinion that the said person was not fitted for the office in question, although he would not state his reasons for his opinion, unless called upon to do so, by the authorities at the Presidency.

2. The Civil Judge then proceeds to state that, as the Collector appears disposed to oppose every nomination he makes, without offering any valid or sufficient objections to the parties nominated, relying on private information, by which, in one instance at least, the Civil Judge shows that he has been totally misled, he considers that the Collector's opposition should not be allowed to prevail; but, in the event of the Government feeling themselves precluded from appointing Jungum Mullapah, that Krishnama Charlooo would, in the Civil Judge's opinion, be the next best person for the office.

3. The Court of Sudder Udalut observe that the law on the subject (Clause second, Section XXXVII, Regulation XIV of 1816) was before the Collector, and must have shown him that the nomination to the appointment of Government Vakeel rested with the Civil Judge; and a reference to the Circular Order No. 52 A, must have rendered it apparent that its design was simply to give the Collector the opportunity of objecting to the nomination, should he have ground for doing so.

4. The fact of the Government having accordingly desired the Collector to say whether he had any objection to take to the appointment of Jungum Mullapah, certainly did not give the Collector authority to call upon the Civil Judge to defend, to *him*, his nomination of that individual.

5. The Collector's letter, marked D, appears to show that, at the date thereof, he had no such objection; and his proper course, therefore, was to have stated so, and to have left the nomination to have effect; and the Judges think that, had these two officers not been on other grounds at discord, this course would have been taken. They attribute the enquiries to which the Collector alludes in his letter marked F, and the stand he makes against the Civil Judge's nomination, to the bad feeling which unfortunately exists between himself and the Civil Judge.

6. Former correspondence respecting Vencatadry Shastri's appointment to this same post showed that the Collector rested his opposition to the Civil Judge's then nomination upon grounds that would not stand the test of examination; and, in the present case, though bound by the Circular Order before quoted to state to the Civil Judge the reasons for his objection, in order that the Civil Judge might exercise his judgment thereon, he declines stating them, the Court cannot but think in further demonstration of his ill-feeling towards the Civil Judge.

7. The Judges feel little confidence in the soundness of any objection to the Civil Judge's nomination, thus taken by the Collector; and accordingly, in forwarding the papers to the Government for their orders, they consider that they may with propriety recommend that the Civil Judge's nominee be appointed Government Vakeel, without further reference to the Collector,

(True Extract.)

(Signed) C. F. CHAMIER, *Acting Register.*

From WILLIAM ELLIOT, Esq., Civil Judge of Cuddapah; to C. F. CHAMIER, Esq.,
Acting Register to the Court of Sudr Adalat, Madras, dated 4th May 1858, No. 185.

SIR,

1. On receipt of the Extract from the Minutes of Consultation, under date the 23rd of February 1858, I requested the Collector to inform me if he had any objection to the nomination, as Government Vakeel, of Jungum

Enclosure A. dated 2nd March.

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Mullapah, on whom the Government were willing to confer the appointment. In reply, I was requested to furnish "plain and distinct replies" to certain questions, from which style of communication it was evident that the Collector had himself no objections to offer, with respect to the said nominee, and looked to me to ascertain the general character of the man, and to learn how he had performed his duties as Vakeel. I was moreover called on to explain the grounds of my recommendation to Government.

2. It was sufficiently evident from the Minutes of Consultation that the Government were pleased to approve of the nomination of Jungum Mullapah, in consequence of the information I had submitted respecting the service and character of that Vakeel, and that it only remained to be ascertained from the Collector whether he had any objection to offer. I therefore reminded the Collector in my letter of the 15th of March that it was not *my* opinion which was required; but that if he had *himself* any real objection, he should explain the grounds of the same in conformity with the instructions contained in the Circular Order of the Sudr Adalat; No. 52 A; but the Collector having again written on the 22nd Idem, shewing that he had nothing whatever to urge against the nominee from his own knowledge of the said individual, and that he could only form an opinion from what he might perchance glean from the records of the Court, and that it was necessary "prior to concurring" in my recommendation that he should know whether any diary order had ever been passed against the said Jungum Mullapah, I, on the 3rd Ultimo, informed the Collector that the records for several years had been searched and nothing could be found to the prejudice of Mullapah's character. I likewise informed the Collector in answer to his queries, that I considered Mullapah's qualifications for the office not surpassed by those of any other Vakeel, and again invited him to state any objections he might have, observing that if deemed necessary to ascertain my estimation of the nominee to enable him to form an opinion of the fitness of the said Vakeel, *prior to concurring* in my recommendation, all that had already been written by myself was sufficient to point out my appreciation of the merits and qualification, in every respect, of Jungum Mullapah, but on the other hand if my opinion were in no way really desired, it appeared useless so repeatedly to solicit it.

3. From the letters of the Collector, it is evident that for at least one month after the receipt of the Minutes of Consultation he himself neither entertained nor could discover any objection whatever, and only waited for the receipt of my opinion to *concur* in my recommendation: yet on the 12th of April the Collector writes "from the enquiry I have made with regard to Jungum Mullapah, and the information I have received, I consider him not a fit person," and adds in the 2nd paragraph, "I decidedly object to the nomination of Jungum Mullapah to the office of Government Vakeel, but decline at present to state my reasons for doing so, unless called upon by the authorities at the Presidency."

4. This *declining* to state the reasons for objecting to the appointment seems to be in direct opposition to the ruling of the higher Court who in their Circular Order, dated 8th June 1838, No. 52 A. have so very plainly laid down that in the event of the Collector not concurring in the nomination of the person selected by the Zillah Court, he must explain the grounds of such objection, leaving it to the Judge, if deemed requisite, to submit his reasons for considering the Collector's objections invalid and untenable, but the determination of the Collector to act at variance with their Court's instructions after they had been duly pointed out to him in my letter, is most unaccountable; whilst from his letter of the 12th of April it appears that the Collector is desirous of setting aside the regulations* as well as their Court's Orders, and to nominate himself the Government Vakeel, the Civil Judge being merely the medium of communication without having any voice in the matter, as he again proposes and recommends to Government, through me, Shashacharry, whose claims the Collector had already laid before Government, who after the receipt of my letter of the 30th of January last, disposed of the case in the Minutes of Consultation, dated 23rd of February, by directing that some other of the Vakeels of the Court should be selected, and at the same time observing that Jungum Mullapah would appear to be the proper person, if not objected to by the Collector.

* 12th of April. 5. From the Collector's last letter,* it will be observed that the only reasons for non-concurrence are given in these words, "from the enquiry I have made with regard to

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Jungum Mullapah and the information I have received;" now this *enquiry*, the nature or result of which are not specified, and *information* of which the particulars are not given, much have been respectively made and received subsequent to the Collector's express intention to postpone *concurrence* in the nomination till after he had ascertained my opinion of Mullapah's correct character and suitable qualifications for the office; some new private enquiry seems to have been got up and information elsewhere received; but really if every nomination of mine or any other Civil Judge is to be set aside simply on the gossip or interested motives of some of the Collector's Cutcherry servants, who amongst other suppository ineligibilities may have discovered that Mullapah is not like themselves, of the Bramin caste, the whole list of Vakeels may have to be gone through, with highly inconvenient, if not interminable, correspondence, before one may be found whom *private* enquiry pronounces acceptable; but who may be totally unfit for the duty, or undeserving the appointment.

6. The Government in consenting to the appointment of Jungum Mullapah provided the Collector had no objection, doubtlessly did not thereby intend to intimate that the mere assertion of non-concurrence accompanied by a refusal to state any reason, or ground for objection, were sufficient to set aside the nomination of a selected Vakeel; because, whilst by the regulations the nomination rested entirely with the Courts, it is clear that in the above alluded to Circular Order, No. 52 A, by which alone it is ruled that the Collectors should be consulted in the matter, it is most pointedly laid down that the objection of the Collector must be valid and tenable; but as the Collector declines to state any reason for his *decidedly* objecting on account of "information received" it is obviously out of my power to offer, in conformity with the instructions contained in the said Circular Order, any remarks on the grounds of the sudden change in the Collector's opinion, which change only occurred after hearing from me that there was nothing to injure the character of the nominee, to be discovered on the records of the Court.

7. I can only look upon the Collector's present refusal to concur in the nomination I have made, as a factious opposition to any proposal emanating from the Zillah Court, and such as evinces a desire to assume the authority, and usurp the privileges vested by the Regulations in such Court, the object possibly being to induce the Vakeels of the Civil Court to look to himself and establishment alone for the nomination of the Government Pleader, which course has in the present instance actually been the one adopted by Shashacharry, who moreover, as would appear from the petition of Jungum Mullapah to me (translate of which is herewith submitted) was perfectly aware of all that transpired in the Collector's Cutcherry, then 35 miles from Cuddapah, and divulged the contents of the public letter to my address, dated 12th of April, before that letter had been given by me into the office.

8. To shew the nature of the *information* to which full credit seems to be given, I would observe that in the 3rd para. of his letter of the 12th Ultimo, the Collector speaks of having been "informed" that all the Court Vakeels waived, in favor of Shashacharry their claims to the appointment of Government Pleader and had done so whilst addressing me in public Court; but as I happen to preside over that Court, it is in my power to declare that there is not the slightest foundation for such a ridiculous statement, for not only had no Vakeel addressed the Court in the style mentioned by the Collector, but on the contrary, many of them have solicited the appointment for themselves.

9. If all the private information received by the Collector respecting Jungum Mullapah be of the nature of that above noticed and derived from similar sources, no credibility can be attached to it, and probably the unwillingness of the Collector to make me acquainted with the result of the private enquiry arises from his own doubt of the trustworthiness of the information received, and his declining to afford the reasons for objecting to the nomination might spring from a feeling on his part of their being perfectly futile and utterly untenable, and that such could with facility be shewn by me to be so. It is therefore for their Court to decide whether the Collector is right in refusing to furnish me with the ground of his decided objection, and I trust the Judges of the Sudr Adalat will be pleased to determine whether the Collector's simple or unsupported refusal to concur in the nomination amounts to that valid objection contemplated by the Circular Order adverted to, and whether the declining to state any grounds for such refusal appears to their Court a sufficient and satisfactory reason for setting aside my nomination.

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10. The Collector seems to lay great stress in his letter on that part of the Minutes of Consultation in which it is remarked that the nominee should enjoy the confidence of the Collector and possibly it is because it was by him held sufficient, in order to annul the appointment of any nominee, merely to state he had not such confidence, that the Collector declined giving any reason; but the nature of the confidence contemplated and required should be determined by the ability, behaviour, character and service of the individual rather than by the whim of any Collector in consequence of any private gossip. The simply asserting a want of "confidence" without assigning any reason would according to the Collector's interpretation be sufficient to place the appointment altogether in his hands, but the Vakeels are so entirely attached to the Courts, that if the Civil Judge who is in daily personal communication with them, and therefore better able to form an opinion, considers any one of them entitled to the confidence of Government, it seems rather hard upon such nominee of the simple statement of no confidence on the part of the Collector, who had never seen him, and who had never heard of him, except through his Cutcherry servants, were deemed sufficient to injure his character and his prospects. The only occasion on which any personal confidence in the Government Vakeel may be said to be in any way required by the Collector is with regard to defending those Civil suits in which the Collector may be a party; but in such cases and they are particularly few, he can only act according to the written instructions received from the Collector's office, it being quite out of his power to practice any deception, whilst both the Subordinate and Sessions Courts have constant calls upon his services to prosecute on behalf of Government in Criminal cases, which are very much more numerous than those in which the Collector may be concerned, and the Courts would derive much annoyance from having as Government Vakeel, an old stupid or inefficient man, in whom nevertheless the Collector may have the most perfect confidence.

11. As from all that has been stated above, it is evident that the Collector can have no valid objection to the appointment of Government Vakeel being conferred on Jungum Mullapah, the Civil Judge trusts their Court will be pleased to forward the correspondence to Government and obtain their sanction for the appointment of Mullapah, but should the Government be pleased to deem the Collector's objections valid and tenable, I shall be prepared according to the Regulations to nominate another Vakeel, and the individual after Mullapah whom I consider qualified for the duty is *Krishnama Charloo*, who was entertained as Vakeel on the sanction of the Provincial Court in July 1841, and therefore has been in the service nearly 17 years.

12. As part of the correspondence has been submitted through their Court, the Civil Judge trusts the Judges of the Sudr Adalat will not object to the submission to their Court of the present communication.

A.

From WILLIAM ELLIOT, Esq., Civil Judge of Cuddapah; to M. MURRAY, Esq., Collector of Cuddapah, dated 2nd March 1858, No. 95.

SIR,

With reference to the Extract from the Minutes of Consultation, under date the 23rd Ultimo, copy of which I suppose you have already received, I have the honor to request you will inform me whether you have any objection to the appointment, as Government Vakeel of Cuddapah, of Jungum Mullapah, one of the Vakeels attached to the Civil, Subordinate and Sudr Ameens' Courts.

(True Copy.)

(Signed) W. ELLIOT,

Civil Judge.

B.

From M. MURRAY, Esq., Collector of Cuddapah; to W. ELLIOT, Esq., Civil Judge of Cuddapah, dated Vaimpully, 4th March 1858.

SIR,

In your letter No. 95 of the 2nd Instant, you wish to be informed whether I have any ob-

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jections to the appointment of Jungum Mullapah, one of the Vakeels attached to the Civil, Subordinate and Sudr Ameens' Courts. To enable me to give a reply, I have the honor to request, you will favor me with distinct replies to the following questions.

Has Jungum Mullapah acquitted himself of the duties of Vakeel faithfully, and to your entire satisfaction, since the time you first became acquainted with him, and have you ever heard of his doing or being cognizant of any act which you consider was wrong or unbecoming?

Has he ever been punished or censured, if so, by whom and for what, and favor me with copy of any diary which may have been passed with regard to them?

Does his recommendation to be appointed as Government Vakeel by you, arise from any superior merit or intelligence on his part above his contemporaries, or the high character he bears among his townsmen?

To these questions, I have to request you will forward to me plain and distinct replies as early as convenient.

(True Copy.)

(Signed) W. ELLIOT,

Civil Judge.

C.

From WILLIAM ELLIOT, Esq., Civil Judge of Cuddapah; to M. MURRAY, Esq., Collector of Cuddapah, dated 15th March 1858, No. 117

SIR,

On receipt of the Extract from the Minutes of Consultation, under date the 23rd Ultimo, I had the honor of addressing you to ascertain if you had any objection to the appointment of J. Mullapah to the office of Government Pleader in this district; but in lieu of favoring me with any direct reply for the information of Government, certain questions were proposed to myself in your letter of the 4th Instant apparently to ascertain my own opinion regarding the nominee, as well as to learn the reasons which induced me to recommend J. Mullapah; but which I really do not feel it necessary to particularise, except to the Government and the Court of Sudr Adalat. It appears to me that the intention of Government in the Minutes of Consultation, above referred to, was to ascertain whether you concurred in the nomination, but if otherwise that you might explain the grounds of any objection you entertained, and in communicating the same to Government, I would, as authorised by the Circular Order of the Sudr Adalat, No. 52A., make thereon such observations as might be deemed necessary.

I therefore request you will be good enough to state if there exist on your part any real objection to the appointment of Jungum Mullapah to the Government Vakeel of Cuddapah.

(True Copy.)

(Signed) W. ELLIOT,

Civil Judge.

D.

From M. MURRAY, Esq., Collector of Cuddapah; to W. ELLIOT, Esq., Civil Judge of Cuddapah, dated Vempully, 22nd March 1858, No. 204.

SIR,

With reference to your letter of the 15th Instant, No. 117, I have the honor to state, that as you object to answer the questions proposed in my letter of the 4th Idem, and as it is necessary for me to ascertain the conduct of Jungum Mullapah, whether he is a person I can depend upon to conduct the duties of Government Vakeel, I consider it indispensable that I should know his qualifications as to honesty and respectability and therefore request you will favor me with copies of Diary which may have been passed with regard to the said Jungum Mullapah whether for good or for evil.

If there be nothing objectionable recorded against the said individual, there can be no difficulty in your favoring me with the copies of Diary above referred to, but if there be, it is necessary that I should know it prior to my concurring in your recommendation to his nomination as Government Vakeel.

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4. If the Collector had, perhaps raised any objection and the same did not appear satisfactory to the Court, the course laid down in the Circular Order dated 8th June 1838, No. 52 A should be pursued.

5. I was employed as a Pundarum in the Zillah Court on the 2nd July 1827, and continued in that situation till 1839. In 1840, Mr. Walker examined me in the Zillah Court, and recommending me to the Centre Provincial Court at Chittoor, obtained their sanction and favored me with a Sunnud of appointment as Pleader. Afterwards your Court observing my good character conferred on me the situation of Acting District Moonsiff of Cudry on the 26th May 1857. The Sudr Court and Government were not pleased to confer the situation of Government Vakeel on Sashacharloo, whilst the Collector has nevertheless repeated his recommendation in favor of the same Sashacharloo and expressed his dislike to give the same to me without assigning any valid reason for it. From this it would appear that with a view to obtain the said situation for Vakeel Sashacharloo, the Collector has sent a reply which is contrary to the abovementioned Circular Order, merely stating he disapproved of my nomination.

6. The age of the above said Sashacharry is about 70 years, while mine is 50, although he is older than me, yet as the period of my service is more than his and he being very old, it would be manifest to the Court that I am able to transact the duties of the Government Vakeel with more diligence than he could. A perusal of the Indent of the Zillah Court from March 1827, and the date of the Vakeel Sunnud furnished to me, will shew that my period of service is greater than that of Sashacharloo. I therefore pray you will under the order above alluded to, be pleased to report to Government the subject of the Collector's letter.

(Signed) J. MULLAPAH,
Pleader.

(True Copy.)

(Signed W. ELLIOT,
Civil Judge.

No. 58.

ORDER THEREON, No. 744; dated 5th June 1858.

The Right Honorable the Governor in Council agrees with the Court of Sudr Adawlut that under the circumstances which they have represented it is unnecessary to make a further reference to the Collector of Cuddapah on the nomination of Jungum Mullapah to be Government Vakeel of the Zillah Court of Cuddapah. Resolved accordingly that the appointment of that individual be confirmed and notified in the Fort Saint George Gazette and that the usual Sunnud be made out and forwarded to the Civil Judge for delivery to J. Mullapah.

(Signed) T. PYCROFT,
Chief Secretary.

Judicial Department

No 947

*Extract from the Proceedings of the
Cuddor Adawlut.*

Dated 27th May 1858.

For Orders.

I write you with this letter

*At
The following objections are founded
on his wish to have another man
named Sashachary appointed &
he has shown no grounds for
objecting to the Judge's recommendation*

W M

Judicial Dept.

N. 744

Extract from the Minutes of Consultation
dated 5th June 1858

Read the following Exh. for
the Pres. of the Sudan Council.
(Here enter 27th May 1858 No 39).

[Handwritten signature/initials]

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Judge Adawak
Coll of Cuddapah
Judge of Cuddapah
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Supd 10th 11
JP

In the presence of the
Judicial 1853 & 1854

Signe

Actual Sign of Court:

29/5/54 June 1853.

54/53.