

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 394

Press

~~Mis~~

221-223

Dated

18-3-1874

6/7

Not to be folded or roughly handled

Read the following papers:—

No. 221. To His Excellency the Honorable E. MALTBY,

Governor in Council of Madras.

The humble Petition of the Tenganlay Inhabitants of Teruvendrapooram, attached to the Taluq of Cuddalore, South Arcot.

MOST RESPECTFULLY SHEWETH,

That the petitioners are prevented from conducting their religious processions through the streets of their village by a powerful combination of the Vadagalay sect; and the Magistrate has upheld the latter's proceedings apparently under the authority of a decree passed by the late Sudder Court in 1839, or nearly quarter of a century back.

2. That it was politic to have conceded such sectorial rights when custom or mamool was the great bug-bear of the day; but now that the times have altered, and that it has been most glaringly and practically made evident from the recent proceedings in Tinnevely (where the corpse of a Native Christian was permitted by strong arm to pass through streets that could have claimed more privacy than those which the Vadagalay sect wish to shut up against their co-religionists) that no person has any right whatever to prevent another from passing through the public streets by reason of his color, creed or caste, the petitioners beg to submit that the proceedings of Mr. Reade are anything but in accordance with the enlightened views of the British Government.

3. That the very orders and decrees of the Sudder Court have since undergone a material change will be apparent from their decision in case Sambulinga Moorti versus Vembary Govinda Chetty and others; and the petitioners beg to

Vide Sudder Udalt Report 1857, page 219. (Put up.)

refer your Excellency to a very recent decision of the Magistrate of Madras, in a case in which he openly declared an order of the Sudder Court dated 1862, granting sectorial rights to a certain class of religionists, null and void, as it interfered with the public and inherent rights of a British subject, and tended to restrain the freedom of worship and liberty of conscience.

4. That the petitioners need not here detail the petty annoyances to which they are subjected by the Vadagalays who, having the Magistrate's decision in their favor, interfere in every act of the petitioners' worship, even in their private dwelling houses.

5. That under all the foregoing circumstances the petitioners humbly beg that the Government will be pleased to declare the streets under dispute open to them to conduct their religious processions, and secure to them that protection against the persecution of the Vadagalay sects which has been promised to persons of every creed or caste in the following memorable words of the Proclamation issued by Her Most Gracious Majesty:—

"We declare it to be Our Royal will and pleasure that none be in any wise favored, none molested or disquieted, by reason of their religious faith or observances; but that all shall alike enjoy the equal and impartial protection of the Law; and we do strictly charge and enjoin all those who may be in authority under us, that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure."

That for this act of justice the petitioners shall, as in duty bound, ever pray.

(Signed) J. NAYANAH NAIDOO,

18th December 1863.

and three others.

From C. READE, Esq., Magistrate; to Mr. HECKY, Vakeel on behalf of Teroovandipooram Thengalayars, dated South Arcot, 9th November 1863, No. 379.

The right to go in public procession now prayed for by the Thengalayars has been denied to them under a decree of Court in Special Appeal so far back as 1839, in Suit No. 1 of that year, and on the grounds enunciated by the Magistrate at the hearing of the case in open Court it only remains for the Magistrate to prohibit any public procession of the kind as sought by Thengalayars in conformity with legal decision referred to.

The petitioners rely chiefly on decrees passed by the Sudder Court in 1853, No. 55, and again in 1861, No. 228, by which the Vadagalay sect were prohibited erecting a temple or instituting

public worship on a spot of ground objected to by the petitioners, and which is within the range of their temple. But in the case *Sambalinga Moorti versus Vembura Govinda Chetty*, Sudder Udalut Report 1857, page 219, in the case of a religious procession the Court laid down the principle "that custom could not control the public and inherent rights of a British subject, and that such rights could not be interfered with or limited, and that no one could be prevented from going through public thoroughfares carrying religious insignia and banners however disagreeable to the feelings of the members of other sects." This principle of non-interference is here clearly and distinctly laid down, and is one generally applied throughout the Presidency. Under these circumstances I uphold the order of the joint Magistrate, Mr. Hooper, dated March the 14th 1863. Mr. Hooper in communication with the Police will take the necessary precautions to ensure the preservation of the peace.

13th April 1863.

(Signed) R. G. ELLIS,
Acting Magistrate.

No. 3405 of 1863.

Referred to the Magistrate of South Arcot for report.

(By order.)

FORT SAINT GEORGE,
20th January 1864.

(Signed) W. H. KERR,
Deputy Secretary to Government.

No. 222. From C. W. READE, Esq., Magistrate of South Arcot; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Cuddalore, 27th January 1864, No. 7.

I have the honor, in acknowledgment of the endorsement dated 20th instant, to report on petition No. 3405 of 1863.

2. The petitioners complain that in a recent order of mine withholding my sanction from a procession of their sect, I have not acted "in accordance with the enlightened views of the British Government."

3. The history of the case with which the petitioners are identified is too long to enter upon here, nor is its detail necessary to enable the Government to dispose of the present representation made to them. At the same time I am accused of being behind the times, and my act affecting the petitioners is brought into unfavorable contrast with a recent decision of the Magistrate of Madras, on a like question, though having no analogy in its circumstances with the one under notice; it is therefore requisite in my own justification that I should disabuse the Government of any impression which the petition is calculated to create, to the effect that in what I have done I have in any degree violated the enlightened views of which the petitioners speak.

4. In furtherance of my desire to correct so erroneous an impression, I venture to submit copy of an official Memorandum circulated in October last to all my subordinates on this very subject, setting forth the principles which I desired might in future guide their interference in local processions generally in all parts of the District; and it was the enunciation of these views and the practical application of them that emboldened the present petitioners to make their original application to me for permission to carry out the procession, the prohibition of which has evoked the present appeal.

5. In the old Town of Cuddalore there had been long standing orders by the Magistracy, prohibiting a particular ceremonial procession by certain sects in contravention of the feelings, and against the avowed hostility of their more powerful opponents. The procession had been prohibited for 30 years, simply to avoid threatened bloodshed and opposition. On the principles stated in my Circular "Memorandum," I upheld the perfect right and freedom of the then applicants to do as they liked, and the procession took place and passed off in perfect quiet without any resort to more than the ordinary precautions.

6. In that case I explained my views to both parties, and expressed my resolve to support and carry them out every where, as being based on the principles which now-a-days were alone recognized as correct, and which must, therefore, govern a Magistrate in his decision in matters of

the kind. The result was satisfactory, and precisely what I had anticipated. But the present petitioners losing sight of the total absence of analogy between their own and the case referred to, at once applied for the same indulgence in respect to themselves, and sought to have a procession in the streets of Trivandepoorum where they and the Vadagalas jointly reside.

7. The application then made to me was immediately opposed on the ground that the right of the applicants (petitioners) had long since been negatived so far back as in 1839, and that the idol, which it was claimed by petitioners to carry in procession, was simultaneously and in conformity with a Civil Decree, deposited in the Taluq Cutcherry, and where to this day it has still remained.

8. The arguments on both sides were ably advocated in my open Court: a Vakeel of the High Court from Madras being engaged by the opposite party, and the petitioners themselves employing an East Indian to represent their interests.

9. The documents put in by the petitioners' opponents were all perfectly clear on the question. The very right now contended for had been denied, and its exercise strictly prohibited by the highest Court in the country, the late Sudder Court of the Presidency. This Decree and the other documents appealed to did not merely present precisely analogous cases, but they treated of this very case in issue; the parties were the very same; the interests also the same; the idol to be carried in procession was the very idol which now lies in the Tahsildar's Cutcherry under that decree, as just stated, and the entire circumstances as well as the interests and rights involved were identical in every respect. Thus after delivering a somewhat elaborate judgment to meet the various arguments adduced on both sides, on a subject so large and so open to controversy, and after expressing my own individual sentiments in reference to the altered circumstances of the times, and pointing out the absence of all analogy between the petitioners' and other cases in which I had allowed processions, I declared that it was not competent to me as a Magistrate to grant a permission to the petitioners to do an act which had been expressly prohibited by the highest Court of the land, and which act would directly violate the rights and interests of others which had the countenance and protection of a formal judgment by the same high authority. I then pointed out to the petitioners the course which, in my belief, was the best for them to take, although I carefully avoided raising their expectations that any means were open to them of reviving a question that seemed to me to admit of no further discussion, unless by some compromise between the parties concerned.

10. Had the petitioners' request been a novel one, or had there been no legal judgment opposing it, it is very possible I might have yielded on the same grounds which had influenced my decision in other cases; but with the facts as I have now stated them, I conceive that I had no option in the matter, and that it was not open to an executive officer, whose duty is to uphold and support the law, to permit a direct violation of it; and to have allowed the procession so expressly prohibited by a Decree of the highest Court would have been tantamount to this, and therefore I gave the decision against which the petitioners now appeal.

No. 366.

OFFICIAL MEMORANDUM.

Frequent applications have, of late, been made to the Magistrate of South Arcot connected with ceremonial processions, some praying for permission to have such processions, others opposing such permission. For years past it has been the practice commonly to enter into the merits of the disputes between the various castes, and, in a great measure, on these supposed merits, were made to depend the orders for, or against, any particular procession or other ceremony; and, in instances where any interval of time was shown to have elapsed since the last occasion of its celebration, either from temporary opposition by the opposite sect or from other causes, it was customary to forbid a revival of the festive ceremony as being contrary to "mamool" or usage, and therefore as likely to lead to disturbance and riot from the opposition anticipated and threatened by the rival sect or caste; and thus the broad principle of equal rights and equal laws was interfered

with, and the privilege of going in procession through public streets was accorded to one party and withheld from another, without any fixed principle in support of such decision beyond the plea of supposed "mamool" so far as that "mamool" could be ascertained by the very unsatisfactory means available. Thus, hitherto, fear of the consequences rather than a just regard to equality of rights seems to have regulated all orders on the subject; and in consequence the most contradictory decisions will be found on record, in their effect both arbitrary and unreasonable, and which, had they been tested by sound principles or by considerations of equity, could not, for one moment, have been upheld. But the time has arrived to discontinue this state of things, and with the greater intelligence of the people there is no cause to apprehend that any serious opposition will, even immediately, follow the adoption hereafter of a course which will at once secure to all the full and free exercise of the undoubted rights and privileges to which every class of Her Majesty's Native subjects are equally entitled. It is clear that the important principle of strict neutrality in caste and religious questions is departed from if, on the consideration of such questions, is made to depend whether this or that class or sect of persons shall or shall not observe any particular ceremony, or go in any particular procession in a public street or thoroughfare common to all; nor indeed is it competent to any Magisterial authority to decide a question of the kind, for strictly none could legally arise since the lowest and the highest, the poorest as well as the richest, possess precisely the same rights and privileges on every highway; and so long as personal annoyance and the permanent obstruction of the highway are avoided, all are at liberty to use any public street or thoroughfare unrestrictedly, and with or without procession, according as each individual or each body or community of individuals may think proper, and it appears to the Magistrate that the wider this principle is made known and the more quickly it is understood and introduced practically throughout the country the better. On a late occasion of a contemplated procession in the old Town of Cuddalore, when the feeling on both sides between the right and left hand castes, as they are styled, was very rife and bitter, the Magistrate's interference was called for; and notwithstanding the height of party feeling, the threats of the opposition and the existence of previous orders to the contrary, the Magistrate refused to prohibit the revival of an almost obsolete procession, merely on the broad principle as above, namely, that every one might do as they pleased in such matters. The public highway or thoroughfare, and this principle was fully explained in person to both parties; and the opposition were simultaneously warned of the consequences of any obstruction or interference on their part, and beyond such warning no other steps were taken by the Magistrate, and the procession and the ceremonies passed off in perfect quiet. The order on the occasion given by the Magistrate is now circulated, and the Magistrate will be obliged if all European officers in the District will firmly adopt and carry out the principle therein laid down, as being that which should govern their own decisions in all future cases of the kind when authoritative interference or orders may be sought. At first the aid of the Police may occasionally be necessary, and this will, of course be discretionary with the officer acting; but in a little while the principle now advocated and to be enforced will not only be acquiesced in, but will be fully appreciated and commend itself to every intelligent mind as the only true view of the question and the only equitable mode of dealing with it.

Cuddalore,
21th October 1863.

(Signed) C. W. READE,
Magistrate.

NOTE.—In the foregoing instructions it will of course be understood that no rights upheld or withheld by any formal decree or judgment of any Civil Court, competent to pronounce such decree or judgment, is to be set aside or interfered with by the Magistracy in cases where they may be called upon to interpose their authority.

(True Copy.)

(Signed) C. W. READE,
Magistrate.

ORDER.

The left hand caste in old Town want a procession called "Kinnytair," or car with bells, and to take it through the public streets. The right hand caste oppose the procession on the ground that it is contrary to "mamool." Both parties are all of one caste "Soodras," composed of the Goldsmith, Chettys, Vanians and Pully's, &c., in all 17 classes, being Vishnus and Sivas the "right and left" not being distinguished by any particular sect. The procession is alleged to have taken place 25 or 30 years ago, but not since, owing to want of the necessary funds to order the car suitable. In 1859 the procession was again projected, when the right hand opposed; and in fear of disturbance and bloodshed the affair was prohibited, and security was taken from the left hand by the then Magistrate's order not to have it. Application is now renewed for permission to have the procession, and it is again opposed on the ground of "mamool" and previous orders. The question is how far are such grounds sufficient warranty for interfering with the liberty of any class of people to pass in procession or otherwise through the public streets and public thoroughfares which are alike open to all, and why is one class to enjoy a privilege denied to another, or more properly, why is a privilege or right to be enjoyed by one portion of the resident community and to be denied to any other portion. The principle involved is one which, of late years, has received much consideration, and the bug-bear of mamool has ceased to govern cases of the kind. The obvious principle of equal right and privileges to all is now-a-days alone recognized without distinction or difference, and such principle alone must be the guide. The Magistrate considers that he is not empowered to withhold from the left hand caste that to which, in his belief, they have as much a right as their opponents the "right hand;" and in running counter to the plea of custom he is simply upholding equal rights and equal laws to all classes which he is bound to do, and no threats or fears of consequences will deter him from carrying out his views whatever opposition may be made to them.

2. He therefore resolves to permit the procession for which orders are now asked by the left hand caste, and preliminary thereto he has duly warned the heads of both parties that it will be at their peril that any opposition is made, or that any breach of the peace or other disturbance takes place on the occasion in question.

SOUTH ARCOT, MAGISTRATE'S OFFICE,

7th August 1863.

(Signed) C. W. READE,
Magistrate.

(True Copy.)

(Signed) C. W. READE,
Magistrate.

No. 223.

ORDER THEREON, 18th March 1864, No. 394.

The Governor in Council sees no occasion to interfere with the orders passed by the Magistrate in this case.

(True Extract.)

Chief Secretary.

To the Magistrate of South Arcot,
Endorsement to the Petitioners.

Exd. S. T. Angustin.

Read the following letter fr. the Magistrate of South Arcot.

Read again Petition 8409. of 1862 of J. Nagammah & others -
Tongabhy inhabitants of Tennendrapuram - Cuddalore - dist. 18 Dec 1863

Order thereon 18 March 1864 No 394

The Governor in Council
does not see no occasion
to interfere with the orders
passed by the Magistrate
in this case.

W. H. H.

To the Magistrate of South Arcot } despd. 19/3
Endorsement to the Petitioners }

Journal 1804 N^o 15

N^o 394.

Proceedings of the
Madras Government

Dated 15th March 1804
27th 1810/68