

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1617	Press ~~Mis.~~
Dated	13 - 11.	19/8/5

104-106

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

13th November 1865.

Read the following papers :—

No. 104. Proceedings of Government in the Public Works Department.

Communicating letter from the Superintending Engineer, 7th Division, reflecting on the conduct of Pleader Teroomal Iyengar and the District Moonsiff of Bhowany, in the case of Anunthoray Iyen, *versus* Mr. R. J. Lowry. (Dated 18th August 1865, No. 2398).

Referred to the Civil Judge of Coimbatore for inquiry and report as to Lieutenant Colonel Walker's representations, touching the conduct of Vakeel Teroomal Iyengar and the Moonsiff of Bhowany.

FORT SAINT GEORGE,
2nd September 1865.

(Signed) W. HUDLESTON,
Acting Secretary to Government.

No. 105. From the Acting Civil Judge of Coimbatore; to the Under Secretary to Government, Fort Saint George, dated Coimbatore, 8th November 1865, No. 13.

I have the honor to acknowledge the receipt of your Official Memorandum, No. 417, dated 30th October 1865, and in reply beg to state that the report therein called for, touching the conduct of Pleader Teroomal Iyengar and the District Moonsiff of Bhowany, will be submitted by Mr. G. A. Harris, the Civil Judge, on his return after the expiration of his leave of absence.

No. 106. ORDER THEREON, 13th November 1865, No. 1617.

To be recorded.

(True Extract).

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. J. Tulloch.

No. 435. Read the following letter from Lieutenant-Colonel G. W. WALKER, R. E., Superintending Engineer, 7th Division, to Colonel C. A. ORR, R. E., Secretary to Government, Department Public Works, dated Coimbatore, 31st July 1865, No. 76:—

Sir,

1. I have the honor to submit, for the orders of Government, a statement of the circumstances under which certain claims (hereafter particularized) are now made in the case of one Anunthoray Iyen, formerly a Sub-Overseer in the Coimbatore District.

2. The first three pages of the enclosure No. 1, give an abstract of the case as I originally found it in August 1863, when Mr. Sub-Engineer Lowry was summoned before the Moonsiff's Court at Bhowany to answer the claim of the late Sub-Overseer for the amount of his security money, Rupees 200, and arrears of salary, Rupees 62-12-9, with interest on the same, and costs. Seeing at once that the claim was good, I decided, after an interview with the Plaintiff, on accompanying Mr. Lowry to Bhowany, and settling the matter out of Court. And the fourth page of No. 1 is my original draft proposal on the date of trial. The Plaintiff preferred personal payment of his claims, without costs, to payment into Court, to avoid the chance of claims being preferred thereon by people in Bhowany. So the matter was understood to be settled, and orders for the amounts of the security money and salary were given to the Plaintiff's Vakeel on the Hoozoor Treasury and Range Office at Coimbatore, where they were in deposit. Mr. Lowry had taken the precaution to appear personally in Court that morning, but came back on being told by the Moonsiff that he could not take up the case just then, and it was understood by him that he would be sent for when wanted.

3. It was, therefore, with the greatest surprise that Mr. Lowry found himself served on 27th May 1865, with an order from the Oodoomalpetta Moonsiff's Court, calling on him to show cause by the 5th June why enforcement of a Decree against him for the entire claim with interest and costs should not be made. By some mistake he attended at the Bhowany Court instead, and when at last he got to Oodoomalpetta he found a Warrant issued for seizure of his goods, which necessitated his paying into Court the entire sum of Rupees 342-3-5. He subsequently obtained an extension of the time for payment of that sum to the Plaintiff till 10th August, and then called on me to refund the same with claims of his own, as per paper No. 2, swelling the amount to Rupees 660-7-0.

4. I am advised by the Government Pleader that I can do absolutely nothing in the case, not having originally been made a party to it; and that Mr. Lowry is the only person who can take further action. But that he has no inclination to do; and there is hardly time for corresponding with him on the subject. I have, therefore, come to the conclusion to hand over to Mr. Lowry the Rupees 262-12-9, which appear still to be in deposit, and to request sanction for the further payment to him of Rupees 79-6-8, interest and costs, together with so much of his own claim as I recommend below.

Item No. 2 of that claim, Rupees 51-4-0, I entirely disallow, as the journey was made through a mistake of Mr. Lowry's own, which should never have occurred.

Items Nos. 3, 4, and 6, for Rupees 45, 30, and 150, cannot be said to have been necessarily incurred. His business with me, which will form one pretext for

them, might have been transacted much more conveniently by correspondence. And any legal advice he wanted might have been got at the Oodoomalpetta Court, where he should have gone in the first instance.

Items Nos. 5, 7, 8, 9, and 10, for Rupees 18½, 7, 1½, 10, and 5, I would allow, as having been necessarily incurred. They aggregate Rupees 42, and with the Rupees 80 mentioned in paragraph 4, will swell the costs, &c., to Rupees 122, for payment of which sanction is requested.

5. Mr. Lowry considers it very hard that he should have sustained such inconvenience in a Government case when not in Government employ, and he can not see that he is in any way the cause of the annoyance to himself and of the loss to Government, by his action when in the Department Public Works. For though I chiefly blame Captain Goddard for not having immediately ordered the return of the security money and payment of arrears of salary, instead of acting as per his endorsement of 28th October 1861, and letter No. 326 of 26th October, yet I see no reason for Mr. Lowry's not repaying the security money on receipt of Captain Goddard's endorsement of 18th May, or for his withholding salary due. For the accusations made by him against the Sub-Overseer, on which Captain Goddard appears to have been induced to act as he did, seem to have been the merest imputations of fraud or intended fraud, and of withholding payments from workmen (who do not, however, thereby appear to have acquired any claim against Government). The files of my Office show no final action on the part of the Deputy Chief Engineer, Southern Circle.

6. I think it right to bring to notice what appears to me to be conduct, on the part of Tiroomal Iyengar, Plaintiff's Vakeel, that should disqualify him from being allowed to practice in any Court of Law in future. He certainly gave me to understand before witnesses that the matter was compromised out of Court, and proceeded, in the absence of any Vakeel on Mr. Lowry's part, to induce the Court to give an *ex parte* judgment in his favour. Mr. Lowry has not supplied me with copy of the decree, but it appears to have been made on the 19th December 1863, more than 3½ months after the date fixed for hearing the case, and its existence was utterly unknown to us till the 5th June 1865, when Mr. Lowry was informed of it at Bhowany, whither he had gone on the supposition that the old case, after lying by so long, was then to be gone into anew. I cannot but think the Vakeel's action in the case to have amounted to sharp practice of a discreditable nature.

7. Whether he kept his client in equal ignorance of the issue I know not; but it is singular that after such a decree had been passed in his favor, Anunthoray Iyen should, under dates 29th January and 21st March 1864, have continued to petition the Government on the subject of his claims, which petitions were naturally enough endorsed by me as having been disposed of on 1st September 1863. I now imagine them to have been got up as blinds to assist in keeping from my knowledge the fact of a decree having been passed in the man's favor, for sums which I had no reason to believe he had not been paid. For these deposits, or payments from them, do not appear in any accounts that pass through my hands; and once the matter was finally, as Mr. Lowry and I thought, disposed of, I gave no further heed to it.

8. The Moonsiff's procedure seems also to have been of a peculiar nature. He was perfectly aware that Mr. Lowry came to Bhowany to attend his Court on the day fixed. But in his decree* upon a petition of Mr. Lowry's, he states

* Paper No. 3.

that he saw him on the evening of the day previous, but ignores his appearance on the day itself, which can be sworn to. He could hardly have made an *ex parte* decree under the circumstances, without some information of what had been going on out of Court. And however it may be laid down that a Judge has nothing to do but to try what actually comes before him, and is not bound to send for absent parties, I do think he might have seen something suspicious in the presence of the Plaintiff only, and the absence of the Defendant, whom he knew to have come miles to attend his Court. No Vakeel was engaged by Mr. Lowry pending the progress of the compromise, and none was thought necessary when the compromise proved successful, as was thought. Had it not been so, our intention was by Vakeel to have me put in as Defendant instead of, or with, Mr. Lowry, and to obtain an adjournment till I could receive the orders of Government as to the action to be taken.

9. Deposition of Plaintiff's Vakeel in the matter of Mr. Lowry's petition is also forwarded (paper No. 4).

No. 2.

Memorandum of expenses incurred and money disbursed by Mr. R. J. Lowry in the case
ANUNTHORAY versus Mr. R. J. LOWRY.

	RS.	A.	P.
1. To amount paid into the Bowany Munsiff's Court	342	3	5
2. Expenses travelling to and from Bowany from my Estate on the Anamallay, 205 miles, at 4 Annas per mile	51	4	0
3. To do. of two journeys to and from Coimbatore and Estate, 180 miles, at 4 Annas per mile	45	0	0
4. Hotel expenses for six days, at Rupees 5 per day	30	0	0
5. Expenses of journey to Oodoomalpetta and back, 74 miles, at 4 Annas per mile	18	8	0
6. To ten days' loss of time, at Rupees 15 per day	150	0	0
7. To Stamp Paper, Vakeel's fees, &c., at Oodoomalpetta	7	0	0
8. To Vakulatnamah, &c., sent to Bowany	1	8	0
9. Vakeel's fee, Stamp Paper, &c., at Bowany	10	0	0
10. Do. fee at Coimbatore	5	0	0
Total...	660	7	5

(Signed) R. J. LOWRY.

No. 436.

ORDER THEREON, 18th August 1865, No. 2,398.

ESTABLISHMENT, No. 54.

	RS.	A.	P.
Amount in deposit...	262	12	9
Interest and costs...	79	6	8
Travelling and other charges forming items 5 and 7 to 10 of Mr. Lowry's Memorandum.	42	0	0
	384	3	5

1. The Government authorize the payment to Mr. Lowry of the sums marginally noted, and for the reasons stated by the Superintending Engineer, they consider the further claims, amounting to Rupees 276-4-0, to be inadmissible.

*Proceedings of the Madras Government, Public Works Department,
18th August 1865.*

2. It is observed from paragraph 2 of Colonel Walker's letter, that orders on the Hoozoor Treasury and Range Office at Coimbatore for the amount of security money and salary were handed over to the Plaintiff's Vakeel; but this is denied in the statement of the Vakeel, from which it appears that the Superintending Engineer promised to make the payment within a week, but failed to do so. Colonel Walker will explain these apparently contradictory statements.

3. Paragraphs 6 to 8 of the Superintending Engineer's letter will be considered in the Judicial Department.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

To the Judicial Department.

„ Superintending Engineer, 7th Division.
„ Controller of Public Works Accounts.

Encl. S. T. Augustin.

Jud. Dept. No. 1773. 2 Sept 65.

*I have perused these papers
again and consider that all it
is necessary to do in the Jud. Dept.
has been done in this order.*

*The conduct of the Vakeel will be
investigated by the C. Judge who will
also report to what extent
the District Munsiff of Howary
has been careless & negligent
quorbs.*

W.M.

From
The Admrs. Friend & Family
of Commodore

2. Under Secretary
to Government
F. A. Joyce

Date 8/10
 Received 103 Nov 1/39.
 No 2410 No 13.

States that the
report called for
concerning the conduct
of Header Tsonnola
Dyazar & the Postal
Messengers of Bhowany
will be submitted
by Mr. Harris, on
his return.
Honolulu 1854 11th / 1870

What the great things can be
done by the conduct of the
people in the hands of the
Ministry of Education will be
made by Mr. J. J. Davis the
Chief Judge, on his return upon
the operations of his office.

Chas. H. Davis to the
Hon. Secy of Education
Wm. W. Davis