

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 452

Press

~~MIS.~~

221-225

Dated 16 — 3 — 1867

6/9

Not to be folded or roughly handled

16th March 1867.

Read the following papers:—

No. 221. From J. D. ROBINSON, Esq., Magistrate of North Arcot, to the Chief Secretary to Government, Fort Saint George; dated Chittoor, 24th November 1866, No. 76.

With much regret I have again the honor to bring before Government the subject of their Proceedings of the 23rd ultimo, the embankment still existing in front of Mr. Roberts' house.

2. The enclosed copy of Proceedings of a Meeting, held in accordance with the said Government Proceedings, will show that, after an interval of four weeks since the receipt of the Government Order, it appeared to us that, even if the former Order on the subject were not conclusive as to the removal of the earth-work, it was no longer probable that any further order would be passed, and that we were therefore justified in exercising the authority conferred on us by Government. This was further necessitated by my having to leave the station to-morrow night, and the present state of the road being a serious obstruction to traffic.

3. Dr. deFabeck, who had taken no subsequent action whatsoever on the order, to put a stop to the work, has refused to listen to our requisition, without the further direct interference of Government, and considers our conduct "tyrannical."

4. It appears to me unnecessary to comment on the abrupt termination of the Meeting.

5. I am, however, compelled to point out the state, sufficiently obvious, of our relations with Dr. deFabeck.

6. In his public capacities as Civil Surgeon and Superintendent of the Jail, Dr. deFabeck habitually evinces a spirit of apathy or antagonism, which renders co-operation with him impracticable. As a Medical Attendant, he has long since ceased to have the confidence of Mr. Roberts or myself, and our unwillingness to have recourse to his aid, except as it were under compulsion, has been the source to us of much inconvenience, anxiety, and expense.

7. I am naturally unwilling to enter into details, but I am prepared, if called upon by Government, to substantiate the opinion I have now expressed in general terms. The former correspondence already before Government, and the facts now submitted, serve to illustrate the spirit which actuates Dr. deFabeck in his relations with us.

8. Reference has been made in my enclosure to a letter from Mr. O'Shaughnessy, the Assistant Engineer, but, being of a demi-official character, I have a delicacy in making use of it, in his absence from the station, without his express permission.

9. Copies of my letter and its enclosure have been forwarded to Dr. deFabeck.

At a Meeting held at the Jail at Chittoor, on the 24th November 1866.

With reference to the powers given to the Committee by the Proceedings of Government of the 23rd ultimo, the purport of which it is believed to be that Dr. deFabeck should remove the earth-work objected to in front of Mr. Roberts' house; to the fact that no step has been taken by Dr. deFabeck, although four weeks have elapsed since the receipt of the above Order; and to the Magistrate's approaching absence from the Station on a visit to the Zemindaries, the Superintendent was requested to give orders to remove the embankment, and to complete the repairs of the road at its original level.

*Proceedings of the Madras Government, Judicial Department,
16th March 1867.*

Dr. deFabeck stated that he would not cause the embankment to be removed without the direct order of Government, and that it was "tyrannical" to force a man to obey an order.

Dr. deFabeck then asked if any Order had been kept back from him, and was asked, in reply, how he could dare make such an implication when every letter on the subject had been communicated to him without delay, and the other members were wholly in the dark as to the defence set up by him before Government, with the single exception of a private communication, quasi withdrawing an opinion obtained from the writer in ignorance of the merits of the case, and apparently in an underhand manner.

Dr. deFabeck then got up and left the Meeting held in the usual Jail Office, an open shed, stating that he would not be subjected to such unseemly treatment before convicts.

The Superintendent of the Jail is requested to cause the circulation, every Saturday, of the convict labor work.

(Signed) C. A. ROBERTS;

Session Judge.

(Signed) J. D. ROBINSON,

Magistrate.

VENKATAGHERRY, 13th November 1866.

*DEAR SIR,

I received your note of Saturday before I left Chittoor, and would have written in reply sooner, but at first I thought no reply was required. As Dr. deFabeck has, however, departed from what I consider, the usual course of official etiquette, by not placing a copy of his defence, in regard to the road in front of Mr. Roberts' house before you, I feel bound to inform you that, when I told him the work he was doing would be an improvement, I told him also that it was by no means a necessary improvement, and justifiable only on the ground that he had a superabundance of labor and materials. This opinion was without any reference whatever to the annoyance caused to Mr. Roberts.

I remain, &c.,

(Signed) J. O'SHAUGHNESSY.

To J. D. Robinson, Esq.

No. 222. From Assistant Surgeon W. F. DEFABECK, Civil Surgeon and Superintendent of Jail, Chittoor, to the Chief Secretary to Government, Fort Saint George; dated Chittoor, 25th November 1866, No. 163.

Last evening, at a late hour, a copy of Mr. Robinson's letter to your address of yesterday's date (No. not stated), and a copy of the Proceedings of the Jail Committee, held yesterday morning at the Jail, were sent to me by Mr. Robinson.

2. As the perusal of the statements made in both these papers must leave a very false impression on the mind as to what has occurred, I have the honor to address Government direct. I trust I shall not be deemed irregular in so doing under the peculiar circumstances of the case—in consideration also of the serious allegation brought against my professional character, and the grave imputation made against my character as a gentleman, as contained in the last part of the Proceedings of the Jail Committee, where I am accused of obtaining the professional opinion of the Assistant Engineer in an underhand way.

MEMORANDUM.

Forwarded with Mr. O'Shaughnessy's permission, and by order of J. D. Robinson, Esq., Magistrate of the North Arcot District.

NORTH ARCOT,

26th November 1866.

To the Chief Secretary to Government, Fort Saint George.

(Signed) C. CUNDASAWMY,

Deputy Magistrate.

*Proceedings of the Madras Government, Judicial Department,
16th March 1867.*

3. I received a copy of the Proceedings of Government, Judicial Department, of the 23rd ultimo, through the Inspector General of Jails. An explanatory letter having been addressed by me to Colonel Wilson on the 5th ultimo, I requested the Inspector General to submit the same for the orders of His Excellency the Governor in Council, with the entire correspondence, plans, &c. As the Inspector General of Jails has been making a tour of inspection, some time would necessarily elapse ere these papers could be laid before Government.

4. The Order of Government above referred to simply directs that the work objected to be stopped. This was, in fact, done before the commencement of the official correspondence on the subject between the Magistrate and myself. Mr. Robinson states, however, in paragraph 3 of his letter, that I took no subsequent action whatever on the Order, to put a stop to the work, as though this had not been already done.

5. The Order appears to me in no way to authorize any further steps being taken either of addition or removal. On this point, and to this extent, I differed from the other members of the Jail Committee. I may mention that, since the receipt of the Government Order, two Meetings of the Jail Committee have been held. At the first Meeting, not a word was said either by Mr. Roberts or Mr. Robinson regarding the authority they now consider themselves entitled to exercise, viz., directing the removal of the incomplete repairs of the road. When, therefore, at the Meeting yesterday, Mr. Roberts, in behalf of the Magistrate and himself, stated that the first thing they wished done was the removal of the "embankment," I said that, as the subject was still before Government, I could not direct the convict labor to be so employed, until further orders from Government were received.

Not to await the arrival of further orders, under the circumstances, would, I consider, be disrespectful. I did state that to oblige me to carry out their order without authority would be tyrannical; and I have, I regret to say, only too much reason to feel that the manner in which I have been treated with reference to this subject by the Magistrate has been totally unauthorized and degrading to me.

6. I was about to state at the Meeting that, if any papers have been communicated which I had not seen, such not having had time to reach me from the Inspector General of Jails, I would request to see them. I had not completed my sentence when Mr. Roberts most emphatically, in an overbearing and violent tone, exclaimed "how dare you make such an implication."

I was quite taken aback by this conduct, and thought it high time and right to remark that if this was the way in which the affairs of the Meeting are to be conducted, I would wish them "good morning." It was at this crisis, and not later, that I left the office. The Police, the Jailer, the Jail Warder, and the Convicts were all near the spot, and must have witnessed what passed. On this, account, also, I did not hesitate to characterize the mode of carrying out business as most unseemly.

7. In paragraph 8 of his letter, Mr. Robinson refers to a demi-official letter addressed to him by the Assistant Engineer. In the copy of the Proceedings of the Jail Committee, it is remarked with reference to the defence of my conduct before Government, that, "with the single exception of a private communication, quasi withdrawing an opinion obtained from the writer in ignorance of the merits of the case,

and apparently in an underhand manner," the other members of the Jail Committee were wholly in the dark. As my communication containing the Engineer's opinion was addressed to the Inspector General of Jails, I did not consider it necessary to send Mr. Robinson a copy of it. This letter was written before the Order of Government constituting a Jail Committee was published.

8. Mr. O'Shaughnessy returned to Chittoor about 2 p. m. yesterday, and being made aware of his arrival, I addressed the demi-official note to him, of which I enclose a copy, and his reply in original is also sent. It will be seen from this reply that Mr. Robinson has totally misrepresented the case throughout. As the professional opinion of the Engineer is of material importance in determining the advantage and necessity of such an improvement of the road as I was conducting, I beg to draw your special attention to this point.

9. Before proceeding further, I beg to state that both Mr. Robinson and Mr. Roberts appear to me to imagine that I am determined the work shall progress. If such is the case, they were never more mistaken. It is, and has been, a matter of no moment to me whether the work be continued or removed. The repairs were undertaken for the public good, and for this only. I have been from the first unable to understand how any private comfort or advantage can be affected injuriously by these repairs. I have throughout and do still protest against the Magistrate's action in this matter, and have now to protest against the violent and overbearing conduct of both Mr. Roberts and Mr. Robinson at the Meeting yesterday; their language was such as might have been addressed to a menial, rather than to an Officer of social position.

10. I have very respectfully to remark that I do not see what connection the matter mentioned in paragraphs 6 and 7 of Mr. Robinson's letter has with the subject under discussion. The subject taken alone is one, however, of grave importance. With regard to my having Mr. Roberts and Mr. Robinson's confidence as a professional man, I would remark that, as they both exhibit strong leanings towards other systems of medicine—Homeopathy and the like—it is, therefore, extremely difficult for any medical man to obtain and keep their confidence; while the less sceptical members of our society here, I rejoice to say, have very openly expressed themselves as thoroughly satisfied with my professional treatment, and confess themselves as approving entirely of my conduct in this unfortunate dispute between the Magistrate and myself, in regard to the repairs of the road.

11. I have specially to point out that I have been uninterruptedly, for nearly five years, resident in this District, and, until the appointment of Superintendent of the Jail was conferred upon me, no misunderstanding whatever took place between the principal Civil Officers of the station and myself. Now, for the first time, is a want of confidence in me as a Medical Attendant expressed by these Officers.

12. With reference to paragraph 7 of Mr. Robinson's letter, I have the honor to request that, in justice to myself, this Officer may be called upon to substantiate the opinion he has expressed in the previous paragraph of his letter.

13. If Mr. Robinson and Mr. Roberts consider that I have evinced any spirit of apathy in my relations with them, both as Civil Surgeon and as Superintendent of the Jail, I beg very respectfully to remark that their conduct towards me has induced this apathy. I find it hopeless to co-operate with them, as I see, but too

plainly, that, unless I can bring my views to coincide with theirs on all points, I must be prepared to find myself obnoxious, and to meet with a haughty and overbearing manner. So keenly have I been made to feel this that, before the receipt of the correspondence which has elicited these remarks, I felt my only course would be to volunteer the resignation of my appointment should this be accepted; and I have done this, though opposed to my present interests and future prospects, rather than submit to the annoyance and interference to which I have been constantly subjected at the hands either of the Session Judge or the Collector since I have become Superintendent of the Jail.

14. A copy of this letter has been forwarded to the Inspector General of Jails.

CHITTOOR, 24th November 1866.

MY DEAR O'SHAUGHNESSY,

With reference to certain Proceedings of the Jail Committee held this morning, I shall feel obliged by your informing me whether the professional opinion you gave me lately regarding the repairs of the road opposite Mr. Roberts' house is not the same now as it was then; 2ndly, whether your opinion was obtained by me in an underhand manner; and 3rdly, if you were not at the time fully aware of the merits of the case.

I must ask your permission to make official use of your reply.

Yours, &c.,
(Signed) W. F. DE FABECK.

To J. O'Shaughnessy, Esq., Assistant Engineer.

CHITTOOR, 25th November 1866.

MY DEAR DE FABECK,

In reply to your note of yesterday, I have not in any way withdrawn the opinion I gave you on the road work in front of Mr. Roberts' house, but having learnt accidentally that you did not inform Mr. Robinson that you had used my opinion in support of your proceedings, I felt bound to do so myself, and to state, for his information, the opinion I gave you on the subject.

I did not think there was anything underhand in the manner in which you obtained my opinion, but I think you departed from the usual course of official etiquette by not placing a copy of your defence before Mr. Robinson at the time.

Looking at the matter in dispute between Mr. Robinson and yourself from a professional point of view, I was fully acquainted with the merits of the case before I gave any opinion on it.

You are at liberty to make any use you please of this letter.

Yours, &c.,
(Signed) J. O'SHAUGHNESSY.

No. 223. From Lieutenant Colonel W. J. WILSON, Inspector General of Jails, to the Chief Secretary to Government, Fort Saint George; dated Ootacamund, 3rd December 1866, No. 109.

I have the honor to forward a letter from Dr. deFabeck, dated 26th ultimo, in which that Officer tenders his resignation of the office of Superintendent of the District Jail at Chittoor. The circumstances which have induced him to take this step are already before Government, and I am not called upon to make any remarks thereon, but I take this opportunity to say a few words regarding the duties and powers of Official Visiting Members, which do not appear to be clearly

understood; and also regarding the powers which the Session Judge and Magistrate of Chittoor believe to have been conferred upon them by the Order of Government noted in the margin.

Judicial Department, 23rd October 1856, No. 1678.

2. The only orders regarding Official Visitors with which I am acquainted are contained in the 2nd Section of the Jail Rules, and it would seem that the duty of these Officers consists in making a minute inspection of the Jail, including an examination of all books, papers, and records, and that any remarks they may find it necessary to make are to be entered in the Visitors' book, and a copy thereof forwarded by the Superintendent to the Inspector General of Jails, for such orders as may be required. The object apparently is to ensure periodical inspections, and a knowledge on the part of the Inspector General of any defect or irregularity discovered by the Visitors, but I do not understand the Section as entitling these gentlemen to require the Superintendent to send original papers to their houses or offices, to furnish them with copies of documents, or to allow them to have copies made for themselves, or to call upon the Superintendent to explain in writing such and such matters for their information, or to treat him in any way as being subordinate to them. One special feature of the new system was to vest the entire executive management of Jails in Officers directly responsible to the Inspector General, and this principle has been embodied in the rules.

3. It may be thought that this reference is unnecessary, and that the Rules generally, and in particular the Section above quoted, are sufficiently clear to preclude any misapprehension, but this has not been found to be the case; for example, an appeal petition from a dismissed Warder was received by an Official Visitor, who also called upon the Superintendent to furnish him with a Memorandum of the evidence and grounds upon which the petitioner had been dismissed. The Visitor afterwards admitted that this was an error in procedure, as it was in his power to visit the Jail and to call for the record; but, although the rules do give Official Visitors authority to examine the records at the Jail, I am of opinion that their interference in any way between the Superintendent and his subordinates cannot fail to have a most mischievous effect upon the discipline of the Jail. Every one of any experience in this country knows how quick a Native is to detect any antagonism between his superiors, and to endeavour to turn it to his own advantage. The course to be taken by dismissed servants is laid down in the rules, and is perfectly well known.

4. With reference to the recent Order of Government, by which the control of the out-door labor of convicts has been vested in a Committee, and in certain cases in the District Magistrate

Judicial Department, 23rd October 1856, No. 1678.

alone, it will be observed from the concluding paragraph of the Proceedings of the Meeting held at Chittoor on the 21st ultimo, a copy of which has been sent to you by Mr. Robinson, that the Judge and Magistrate have taken the Order as entitling them to require the Superintendent to circulate a labor return to them weekly. I do not dispute the propriety of the principle which would give the District Magistrate a voice in the disposal of such convict labor as may be available for the public roads, nor do I say that even the entire disposal of such labor may not be exercised by that Officer in such a manner as not to give occasion for complaint to the

Superintendent, but I object to any interference in details either on the part of the Judge or of the Magistrate, or to their calling upon the Superintendent for any reports or returns. I understand the recent Order to mean that when the Superintendent of a Jail has convicts who are available for out-door work, without detriment to intramural labor, they are to be employed upon such work as may be determined upon by the Committee, and that the Superintendent shall be guided, under the Jail Rules, by such determination in employing and directing the labor of the convicts so engaged. I assumed, as a matter of course, that the number of convicts to be employed outside the Jail would continue, as heretofore, to be regulated by the Superintendent under the control of the Inspector General, but as the Order seemed to be understood in some places as giving the Judge and Magistrate power to direct the general labor of the prison, I issued a Circular on the subject, early in November, to all Officers in charge of Jails, a copy of which I herewith enclose.

From Assistant Surgeon W. F. deFABECK, Superintendent of the District Jail, Chittoor, to the Inspector General of Jails; dated Chittoor, 27th November 1866, No. 165.

I have the honor to forward a copy of my letter, No. 163, of the 25th instant, to the Chief Secretary to Government, Fort Saint George, and copies of papers submitted therewith.

2. It is with much regret that I feel myself bound, by a sense of self-respect, to tender the resignation of my appointment as Superintendent of this District Jail, for submission to Government for acceptance.

3. From time to time, it has been my duty—an unpleasant duty—to lay before you correspondence, and to narrate circumstances connected with the conduct of business, indicative of the frequent interference of the Civil Officers of the station in Jail matters. Under these circumstances, and the facts referred to in the accompanying correspondence, I feel it impossible to continue longer (with any pleasure or hope of success) in charge of the Jail, and I take this opportunity of assuring you that it is with much regret that I tender the resignation of my appointment in the Department of which you are the Chief, and in which I had hoped my services, under a new system of Jail management under your control, might hereafter be found more useful than they have yet been.

No. 221. From Lieutenant Colonel W. J. WILSON, Inspector General of Jails, to the Chief Secretary to Government, Fort Saint George; dated Ootacamund, 11th December 1866, No. 119.

With reference to the fourth paragraph of my letter of the 3rd instant, No. 100, I have the honor to forward a letter from the Superintendent of the Jail at Nellore, and a copy of the Proceedings of the Jail Committee assembled at that station on the 6th instant.

2. It will be observed that the Judge and Magistrate consider themselves at liberty to give the labor of the convicts gratuitously to the Municipality, notwithstanding the Resolution of the Government of India which directs that the labor should be charged for; and from the general tenor of the Proceedings I infer they

Judicial Department, 23rd October 1866, No. 1673.

are inclined to go beyond the object contemplated in the Order quoted in the margin.

3. I regret to be obliged to address Government again upon this matter, but it is one which is beyond my control, and it is very desirable that the extent of the

16th March 1867.

powers of the Jail Committees should be distinctly defined as early as possible; otherwise references, such as the present, are likely to recur.

4. I have informed the Superintendent of the Jail at Nellore that, until further orders, he should adhere to my construction of the Resolution of the Government of India, and of the Order of this Government.

From the Superintendent of the Jail at Nellore, to the Inspector General of Jails; dated Nellore, 6th December 1866, No. 177.

I have the honor to forward a copy of the Proceedings of a Committee held this day at the Court House, in conformity with the Proceedings of Government, No. 1678, dated 23rd October 1866.

2. With reference to Rule 3, will you be good enough to inform me whether you consider the duty therein required is *bona fide* Jail duty, and whether the Jail Writer is to be employed in recording each month the Proceedings? If so, will you be good enough to sanction the purchase of a book for the purpose, at your earliest convenience.

3. The question being raised whether the Committee could place the convicts to work on the roads now handed over to the Municipal Commissioners, free of charge, payment only to be asked when the labor is called for by the Municipal Committee, it was decided two against one, myself being the dissentient, *that they could*. I should feel obliged by your favoring me with your opinion; for I maintain, according to the late ruling of Government Proceedings, No. 133, dated 31st January 1866, that the roads being under the Municipal Association, the convicts are to be employed in their repair solely at the cost of the Association.

Copy of the Proceedings of a Committee held to ascertain the out-door work of Convicts.

At a Meeting to ascertain the out-door work to be done by the convicts, in accordance to the Order of Government, Judicial Department, No. 1678, dated 23rd October 1866.

PRESENT.

C. R. Pelly, Esq.

E. E. Lloyd, Esq.

J. W. B. Dykes, Esq.

I. Resolved that the following rules be prepared.

RULES.

1. That the Senior Member of the Covenanted Civil Service be President.
2. That the Committee meet on the 1st of each month at the Court House, at 7 A. M., or as much oftener as the President may deem it necessary to call a Meeting.
3. That the Proceedings be recorded in a book, and be provided by the Superintendent of the Jail.
4. That, at each Meeting, the Jail Work Book or Morning Report be laid before the Committee, and that the Jail Subordinate who may have had the immediate supervision of the work be in attendance to furnish such information as may be called for.
5. That, as far as possible, the whole available working strength of the Jail be concentrated in a single work until completed.
6. That, in the event of the Officer in medical charge deeming temporary discontinuance of any specific work advisable, the same be reported at once to the President by the Superintendent of Jail, in view to his calling a Meeting, and that, in the interval, the Superintendent of Jail be authorized to discontinue such work and employ them elsewhere.

II. At the request of the Committee, the Morning Report Book, having been produced in accordance to Rule 4, has been examined.

III. Resolved that the President be requested to ascertain the quantity of paddy a man or woman can pound in the day, as 12 males and 18 females is apparently a large number to be employed pounding for 289 prisoners.

16th March 1867.

IV. As regards out-door work, the Committee observe that two gangs are at present temporarily employed on the road to the Civil Dispensary.

V. Resolved that this road be completed, and then the available out-door labor be devoted to completing the reservoir in the Cutcherry Square, which has been long in hand, and on which much labor has already been expended.

(Signed) J. W. B. DYKES,

Collector.

(„) C. R. PELLY,

Session Judge.

(„) E. E. LLOYD,

Supdt. of Jail, Nellore.

No. 225.

ORDER THEREON, 16th March 1867, No. 452.

Assistant Surgeon deFabeck having been permitted, at his own request, to resign his appointment as Superintendent of the Chittoor Jail, the Governor in Council does not deem it necessary to pass any orders on the subject of the differences which arose between that Officer and the Official Visitors of the Jail.

2. On the general question of the official relations between the Superintendents of Jails and the Official Visitors of those Institutions, the Governor in Council entirely concurs in the construction put by the Inspector General of Jails upon the Jail Rules, in the second paragraph of his letter of the 3rd December last. The duties of the Official Visitors are confined to visiting and inspecting the Jail and the prisoners; examining the books and records belonging to it; ascertaining that the orders in force are duly carried out; and entering in the Visitors' Book, for the information of the Inspector General of Jails, such remarks as they deem necessary. The Superintendent of the Jails is in no sense the subordinate of the Official Visitors, nor is it competent to them to interfere in any way between the Superintendent and the servants employed in the Jail.

3. In regard to the employment of prisoners on out-door work, it is, as the Inspector General observes, for the Superintendent of the Jail to determine what number of prisoners can be spared for such work, and it is only with reference to such prisoners that it is competent for the Judge and the District Magistrate to interfere, in deciding on what work they are to be employed.

4. The labor of convicts cannot be given to Municipalities free of charge.

(True Extract).

Chief Secretary.

To the Inspector General of Jails.

„ Magistrate of

„ Public Department.

Exd. J. H. Burns.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following papers.

From the Magte of N. Arcot. 2/24 Novr. 1866. No. 76

From the Civil Surgeon & Supdt.

District Jail Chittoor — 2/25 — " — " — No. 113.

From the Inspector Genl. of Jails. 2/3^d Decr. — " — No. 109.

From ——— do ——— 2/11 — " — " — No. 119.

Order thereon. 16th March 1867 No. 452.

Assistant Surgeon,
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Judicial 1854. Department.

No. 452

PROCEEDINGS OF GOVERNMENT.

File 557/69.

Dated 16th June 1854.

Inspector Genl. of Jails
Magistrates of districts
Super^{ts} of Jails
Public Department } desd 20/3

C 26 Feb.
R 1 March