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Judicial (193) Department.

~~Petition~~ SERIES.

G.O. No. 3258

DATED 18-12-1884

Confidential

[Despatch Abstract.]

Sanjivan Agency

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

15TH DECEMBER 1884, No. 3258, JUDICIAL.

CONFIDENTIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers:—

From J. G. HORSFALL, Esq., Collector and Agent to the Governor in Ganjam, to the Chief Secretary to Government, Judicial Department, dated Chatrapur, 21st October 1884, No. 563.

I have the honor to enclose translation of a plaint, filed by one Annapantula Narayanamurti, against the Collector and Agent to the Governor, in the District Munsif's Court at Berhampore.

2. The facts of the case connected with the said Narayanamurti have been fully stated in Mr. Goodrich's letter referred to in G.O., dated 2nd December 1882, No. 1504, Miscellaneous (Public Petition Department), I will, however, briefly give them below.

3. The said Narayanamurti, when he was a Gumastah in the District Munsif's Court at Aska, was convicted of having fabricated false evidence, and was sentenced to four years' rigorous imprisonment, on 3rd December 1870, by the Sessions Court. On the 17th April 1877, he was convicted of theft in a building and sentenced by the 2nd-class Magistrate, Sompot, to six months' rigorous imprisonment and 200 rupees fine, or in default six weeks' additional rigorous imprisonment.

4. Soon after leaving the jail the second time, he entered the service of the Mandasa Zemindar, who, some time afterwards, dismissed him for bad conduct.

5. He subsequently entered the service of the Budarasingi Zemindar, who is a neighbour of Mandasa, and, in order to take revenge upon the Mandasa Zemindar, caused the Budarasingi tenants to disobey the judgment of the High Court passed in the matter of a dispute between Mandasa and Budarasingi as to their rights in regard to the flow of water of a stream flowing out of Budarasingi estate into that of Mandasa. As he then brought down the Hillmen of Budarasingi to take part in the dispute, Mr. Goodrich issued orders on the 9th August 1882 forbidding him to enter upon or live in the Budarasingi Zemindari.

6. The orders in question were appealed against to Government, who, however, declined to interfere (*vide* the Government Order quoted above).

7. Narayanamurti did not, however, cease giving trouble to the Mandasa Zemindar, who, therefore, took him into his service again under the impression that the measure would secure peace to himself and his subjects, and would also tend to effect a compromise between himself and his neighbour, the Budarasingi Zemindar. But the Zemindar of Mandasa soon found that he had taken an imprudent step in taking Narayanamurti into his service. In his petition to me, dated 17th September 1883, he writes as follows:—

"Although I engaged him in my service with the object mentioned above, I could not live in peace as I expected. The wicked fellow did not leave his treachery: he sent several anonymous petitions against me, my dewan and some of my servants, and privately instigated many of the ryots to refuse payment of legal rents due to me, and created several unnecessary troubles and disputes between me and my ryots. I was displeased with his behaviour, and made up my mind to dispense with him from my service, and brought it into effect on the 9th of last month. He

then left Mandasa for Tekkali with his family and remained there for a few days and returned back to Mandasa. After his return from Tekkali he is gathering some of the persons who were discharged from my service, and trying to create some false suits and cases against me and my dewan in Civil and Criminal Courts."

8. Considering that the order passed by Mr. Goodrich prohibiting the said Narayanamurti from entering upon, or living in, the Budarasingi Zemindari should be extended to Mandasa also, I issued orders on the 22nd September 1883 (translation of which is enclosed) directing him to leave the Mandasa Zemindari and not to re-enter it without the orders of the Agent.

9. It is against this order that he has preferred the plaint in question. If Narayanamurti lives in Mandasa, he can easily get the Hillmen of Budarasingi and Mandasa to cause a disturbance, and he can do the same if he lives in Budarasingi, the Zemindaris being adjacent.

10. It is true that the two Zemindaris in question contain ordinary tracts (i.e., tracts subject to the jurisdiction of the ordinary Courts of justice) also, and that the Agent has nothing to do with those tracts; but orders prohibiting Narayanamurti from entering upon the Agency tracts would be futile if he were permitted to live in the adjacent ordinary tracts.

11. I am of opinion that the order should be considered as one emanating under the provisions of Regulation II. of 1819 and Act XXIV. of 1839, and submit the following draft defence for approval and sanction.

12. The hearing of the suit was fixed for the 17th October, but I have applied for two months' extension.

ENCLOSURE.

PROCEEDINGS of the Collector and Agent to the Governor in Ganjam, dated 22nd September 1883, No. 30.

The Zemindar of Mandasa having brought to the notice of the Agent that he is in great apprehension that troubles will be caused in his estate by the residence therein of one Annapantula Narayanamurti Pantulu, who was convicted of forgery and other crimes, and who, after undergoing sentence, was formerly employed by the proprietor of Barwah and the Zemindar of Budarasingi, and created great dissensions between them and the Zemindar of Mandasa, and who, when subsequently taken into the employ of the latter, fomented disputes between him and his taluk people, and was dismissed, the Agent hereby directs that the said Annapantula Narayanamurti Pantulu shall immediately leave the Mandasa fort without staying there or elsewhere within the taluk, and shall not re-enter the taluk without his permission. The Sub-Magistrate of Sompot will immediately enforce this order by removing him and report the same. The Sub-Magistrate and the Police of the Haripur Station will have their eye upon him, so that he may not enter the taluk again.

CHATRAPUR.

(Signed) J. G. HORSFALL,
Collector and Agent to the
Governor in Ganjam.

Mis. No. 3012.

The papers will be forwarded to the Advocate-General for early submission of opinion.

FORT ST. GEORGE,
19th November 1884.

To the Government Solicitor,
with papers in original, to be returned.

(Signed) E. F. WEBSTER,
Chief Secretary.

From E. BARCLAY, Esq., Government Solicitor, to the Chief Secretary to Government, dated Madras, 21st November 1884, No. 611.

ABSTRACT.—Forwarding the following opinion of the Hon'ble P. O'SULLIVAN, Advocate-General dated 20th November 1884.

OPINION.

I have read the papers sent to me with the Order of Government, Judicial Department, dated the 19th November 1884, No. 3012.

It seems to me that neither Regulation II. of 1819 nor Act XXXIV. of 1839 authorises the Agent of the Governor in Ganjam to make the order which he made on the 22nd September 1883, touching the plaintiff A. Narayanamurti Pantulu.

Regulation II. of 1819 authorises the Governor in Council, under the hand of one of the Secretaries to Government, to issue a warrant "to the officer in whose custody" the person named therein is to be placed. The power given is to commit to some custody, not to direct a person to leave a particular place and not to return without permission. See the Appendix to the Regulation for form of warrant of commitment.

The power given to the Agent of the Governor by Section 7 of Act XXXIV. of 1839 is a power of "making commitments by Warrant under his hand, which is possessed by the Governor of Fort St. George in Council by virtue of Regulation II. of 1819."

If there is no other law which justifies the order of the Agent (and I know of none), his action as regards the plaintiff was probably *ultra vires*.

Section 2 of Act XXXIV. of 1839 may be of some use to the Agent in defending the suit, but I do not think it is likely to avail much.

Further, so much of the order of the Agent as purported to restrain the movements of the plaintiff in places beyond the limits of the territorial jurisdiction of the Agent was not valid, even if the Agent had power to make the order as to territory within his jurisdiction.

I think all references to Regulation II. of 1819 and Act XXXIV. of 1839, Section 7, should be omitted in the written statement to be filed.

ORDER—dated 15th December 1884, No. 3258, Judicial.

The Advocate-General's opinion will be communicated, confidentially, to the Agents in Godavari, Vizagapatam, and Ganjam.

2. In the case now reported for orders, there can be no doubt the action of the Agent in dealing, under Section 7, Act XXIV. of 1839, with a resident in Mandasa was illegal, not to speak of the orders given to the Sompot Sub-Magistrate and Haripur police, which appear to have been also *ultra vires*; the Agent will, therefore, cancel the order dated 22nd September 1883, No. 30, and, if possible, arrange a compromise with the plaintiff in the suit; if that is not possible, he will inform the Court of his action and leave it to the Court to assess damages.

(True Extract.)

E. F. WEBSTER,
Chief Secretary.

To the Government Agent, Godavari.
" " " Vizagapatam.
" " " Ganjam.
" Copy to the Government Solicitor.

Exd. F. R. Bantleman.

Govt. of 1884 Madras.

JUDICIAL.

Issued

Recd.

Encl.

G.O., 15th December 1884, No. 3258.

DECEMBER.

Ganjam Agency.

Communicating to the several Government Agents the Advocate-General's opinion on the Ganjam Agent's proceedings dealing with one Annapantula Narayanamurti Pantulu, who has been troublesome to the Mandasa Zemindar.

N^o 563 / 84.

From

J. G. Horsfall Esquire
Agent to the Governor
in Ganjam

To, The Chief Secretary to Government
Judicial Department

Dated Chhatrapur 21st October, 1884

Sir, I have the honor to enclose translation of a plaint filed by one Annapantula Narayanamurti against the Collector and Agent to the Governor, in the District Munsif's Court at Berhampore.

2. The facts of the case connected with the said Narayanamurti have been fully stated in Mr Goodrich's letter referred to in Government Order dated 2nd December 1882

3 Enclosures

no.

N^o 1504, Miscellaneous (Public
Petition Department) I will
however briefly give them below.

3. The said Narayanamurti
when he was a Gumnasta in
the District Munsif's Court
at Aska was convicted
of having fabricated false
evidence and was sentenced
to 4 years rigorous im-
prisonment on 3rd December 1870.
by the Sessions Court. On the
17th April 1877 he was con-
-victed of theft in a building
and sentenced by the 2nd Class
Magistrate Sonpet to 6 months
rigorous imprisonment and
200 Rupees fine or in default
6 weeks additional rigorous
imprisonment

imprisonment.

4. Soon after leaving the
jail the second time he
entered the service of the
Mandasa Zemindar who
some time afterwards
dismissed him for bad
conduct.

5. He subsequently entered
the service of the Budarasingi
Zemindar, who is a neighbour
of Mandasa. and in order
to take revenge upon the
Mandasa Zemindar caused
the Budarasingi tenants to
disobey the judgment of the
High Court passed in the
matter of a dispute between
Mandasa and Budarasingi
as to their rights in regard
to

to the flow of water of a stream flowing out of Budarasingi Estate into that of Mandasa. As he then brought down the Hill men of Budarasingi to take part in the dispute Mr Goodrich issued Orders on the 9th August 1882 forbidding him to enter upon or live in the Budarasingi Zemindari.

6. The Orders in question were appealed against to Government who however declined to interfere. Vide the Government Order quoted above.

7. Narayanamurti did not however cease giving trouble to the Mandasa Zemindar. who therefore took

2// took him into his service again under the impression that the measure would secure peace to himself and his subjects and would also tend to effect a compromise between himself and his neighbour the Budarasingi Zemindar. But the Zemindar of Mandasa soon found that he had taken an imprudent step in taking Narayanamurti into his service. In his petition to me dated 17th September 1883 he writes as follows;—

“Although I engaged him in my service with the object mentioned above I could not live in peace as I expected. The wicked fellow

fellow did not leave his
 treachery - he sent several
 anonymous petitions against
 me, my dewan and some
 of my servants and privately
 instigated many of the
 ryots to refuse payment
 of legal rents due to me - and
 created several unnecessary
 troubles and disputes between
 me and my ryots - I was
 displeased with his behaviour
 and made up my mind
 to dispense with him from
 my service and brought
 it into effect on the 9th of
 last month. He then left
 Mandasa for Tekkali with
 his family and remained
 there for a few days and
 returned

returned back to Mandasa
 After his return from
 Tekkali he is gathering
 some of the persons who were
 discharged from my service
 and trying to create some
 false suits and cases against
 me and my Dewan in
 Civil and Criminal Courts
 8. Considering that the
 order passed by Mr Goodrich
 prohibiting the said Nara-
 yanamurti from entering
 upon or living in the Buda-
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 be extended to Mandasa
 also, I issued orders on the
 22nd September 1883 (translation
 of which is enclosed) directing
 him to leave the Mandasa
 Zeminadari and not to
 re-enter

re-enter it without the orders of the Agent.

9. It is against this Order that he has preferred the plaint in question. If Karayanamurti lives in Mandasa he can easily get the Hill men of Budarasingi and Mandasa to cause a disturbance and he can do the same if he lives in Budarasingi, the Zamindari being adjacent.

10. It is true that the two Zamindaries in question contain ordinary tracts (i.e. tracts subject to the jurisdiction of the ordinary Courts of justice) also and

3/ and that the Agent has nothing to do with those tracts - but Orders prohibiting Karayanamurti from entering upon the Agency tracts would be futile if he were permitted to live in the adjacent ordinary tracts.

11. I am of opinion that the order should be considered as one emanating under the provisions of Regulation II of 1819 and Act XXIV of 1839. and submit the following draft defence for approval and sanction.

12. The hearing of the suit was fixed for the 17th ^{October} Instant but I have applied

applied for 2 months
extension-

I have the honor to be
Sir,
Your most obedient servant

J. G. Stampall
Agent to the Governor
in Ganjam

W
1883

J O No 4352

Proceedings of the Collector
and Governor's Agent of
Ganjam dated September 22^d
1883, N^o 30.

The Zemindar of Mandasa
having brought to the notice of
the Agent that he is in great
apprehension that troubles will
be caused in his Estate by the
residence ^{therein} of one Annapantula
Karayana murto Pantulu,
who was convicted of forgery
and other crimes and who after
undergoing sentence, was former-
ly employed by the Proprietor
of Barwah and the Zemindar
of Budarasingi, and created
great dissensions between them
and the Zemindar of Mandasa
and who, when subsequently
taken into the employ of the
latter, fomented disputes
between him and his Taluk
people

people and was dismissed, Enclosure N^o 1 in N^o 563/187

the Agent hereby directs
that the said Annapantula
Narayana murti Pantulu
shall immediately leave

the Mandasa fort without
staying there or elsewhere
within the Taluk, and shall
not re-enter the Taluk without
his permission - The Sub-

Magistrate of Sompeta
will immediately enforce
this order by removing
him and report the same

The Sub-Magistrate and
the Police of the Hanpur
Station will have their
eye upon him so
that he may not enter the Taluk
again

Chaitrapur

Sign of J. H. Horsfall
Collector & Agent to the Govt
[True translation] in English

J. H. Horsfall

Agent to the Government
in English

4/12

July 10. 2-12-82. 1582

CURRENT No. 4352

Judicial (1884) Department
GANJAM DISTRICT.

From
THE AGENT TO THE GOVERNOR OF
FORT ST. GEORGE
IN GANJAM.

To
The Chief Secretary
With the Governor
Judicial Department
Cotacaimun

Dated 21st } October 1884
Received 3/11 }

No. 563/84 Subject. Encl. 3

Forwarding translation of
a plaint filed by one Anna-
pandula Narainamooty in
the District Munsif's Court
at Berhampore, and also
the draft answer for the
approval of Government

Order
The papers will be submitted
to the Advocate General for
submission to
Opinion.

The Agent to the Governor of Fort St. George
with papers in orig.
- to be returned.

It seems doubtful whether the
action can be defended in
this case. The Advocate General
had better report before the
defence of the suit is made.

Think there is no doubt about it. The
order cannot be
justified. 15/11
17/11 8/19/11

Opinion

I have read the papers sent to me with the
Order of Government, Judicial Department, dated
the 19th November 1884, No. 3012.

It seems to me that neither Regulation II of 1819
nor Act XXXIV of 1839 authorises the Agent of the
Governor in Ganjam to make the order which he
made on the 22nd September 1883 touching the
plaintiff. A. Narayana & Marti Puntulu.

Regulation II of 1819 authorises the Governor
in Council, under the hand of one of the Secretaries
to Government, to issue a warrant "to the officer
in whose custody" the person named therein is to be
placed. The power given is to commit to some custody
not to direct a person to leave a particular place
and not to return without permission. See the
Appendix to the Regulation for form of warrant of
commitment.

The power given to the Agent of the Governor
by Section 7 of Act XXXIV of 1839, is a power of
"making commitments by warrant under his hand"
which is possessed by the Governor of Fort Saint
George in Council by virtue of Regulation II of 1819.

If there is no other law which justifies the
order of the Agent (and I know of none) his action
as regards the plaintiff was probably ultra vires.

Section 2 of Act XXXIV of 1839 may be of some
use to the Agent in defending the suit, but I do
not think it is likely to avail much.

Further, so much of the order of the Agent
as purported to restrain the movements of the
plaintiff in places beyond the limits of the territorial
jurisdiction

Jurisdiction of the Agent was not valid, even if the Agent had power to make the order as to territory within his jurisdiction.

I think all references to Regulation II of 1819 and Act XXXIV of 1839 Section 7 should be omitted in the written statement to be filed.

(Signed) P. O. Sullivan
Advocate General

The 20th November 1884

/ A True Copy /

Ernest MacKay

Government Solicitor

2-12-82: 1544
27.11
1/12

Judicial / 1884 / Department
4635

From Ernest Barclay
Government Solicitor
Madras.

To Mr Chief Secretary to Government
Fort St George.

For orders

Perhaps the best course is to avoid
to let by sticking out mention of it
lets a let the suit go on, truly
the course is to come to terms with
a man which perhaps is not
advisable. The opinion of the
Advocate General should be
submitted by communication
Confidentially to all the agents. They
can control such persons as the
plaintiffs of course by holding them
to threat of a warrant unless they
leave any place they choose to
mention, but a direct prohibition
order of course illegal
I amend this p. 1st as suggested by
Adv. Genl. & let his suit proceed
to all Agents copy of Mr. Barclay's
letter 27/11/82

C. 611

Dated 21 November 1884
Received

Enclosures 2
Geo 4352

Forwarded with enclosures with
reference to the Order of Government
dated 19 November 1884 No 3012 this
Judicial Department.

Ernest Barclay
Government Solicitor

Judicial C. No 4635
1884

The Agent in Gan-
jam exercises his
authority as such
only in what are
known as the Ma-
liak Tracts i.e.
The Hill Tracts
adjacent to and
in some cases, be-
longing to the Zem-
indaris described
in section 2 Act XXIV
of 1839.

Some of
the Zemindaris
themselves have been
placed under the
jurisdiction of the
ordinary courts
vide Notifications
in Fort St George Gazette
of 9 June 1863
28 Aug 1866
25 May 1869

It follows that
a commitment
under section 7
of that Act could
only apply to per-
sons resident in
or resorting to,
such Hill Tracts.

Apart from the
fact that no com-
mitment in terms
of Reg II of 1819 was
made the Agent
had no jurisdic-
tion in Mandasa

Recd Sept

From orders

Confidential

Print of Narayana
sent to Puntelam,
Sanyam

Order 15 Dec 84, No 3258

The advocates general opinion
in the communication confidentially
to the Agent in Godavari, Vijayapatam
and Sanyam.

2 In the case now reported for
orders, there can be no doubt
the action of the Agent in dealing
under Section 7. Act XXIV of
1839 with a remonstrance in Mandase
was illegal, not to speak of the
orders given to the Sompets

But Raynham and Kaipus
police which appear to have been
also ultra vires, the Agent will
therefore cancel the order of 22.
Sept 1883 to 20 and if possible
arrange a compromise with the
plaintiff in the suit, if that is not
possible he will inform the court
of the action & leave it to the
court to apportion damages.
12/11/84 M.H.

Govt. Agents Godavari
Vijayapatam
Sanyam
Capt. H. W. Cole 22/11/84