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MADRAS RECORD OFFICE

Government of Madras

Subsidiary

DEPARTMENT

G.O. No. 1245~~B.P. No.~~

Press

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Dated

89

1882.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From A. MACKENZIE, Esq., Officiating Secretary to the Government of India, Home Department (Judicial), to the Chief Secretary to Government, dated Fort William, 25th February 1882, No. 279.

The attention of the Government of India has been drawn to the remarks made by the Agent to the Governor, Vizagapatam, in paragraphs 59 to 61 of his report*

* Embodied in the Proceedings of the Madras Government, in the Judicial Department for the month of July 1881, pages 435 to 460. on his annual hill tour during the year 1880-81, and to the orders* passed thereon by the Special Commissioner, Northern Districts, on the subject of the enactments which should be considered as in force in the Districts of Ganjam and Vizagapatam.

The Agent strongly urges the issue of a Notification by the Madras Government under Section 3 of the Scheduled Districts Act (No. XIV of 1874) declaring what Acts are actually in force, and what are not actually in force, in the Scheduled Districts of the Madras Presidency, as the present state of the law in the Agency Tracts is, in his opinion, wanting in clearness. The Special Commissioner, however, expresses his dissent from this view, and remarks that

† An Act for the administration of justice and collection of the revenue in certain parts of the Districts of Ganjam and Vizagapatam. “as regards Ganjam and Vizagapatam, parts of which became *quasi* ‘non-regulation’ in 1839, Act XXIV† of that year, with rules passed under it, prescribed

what the change was to consist in. These rules the legislation of 1874 continues in force, and since 1874 all Acts of the Governor-General in Council are either enacted to extend to all India, or all India except the Scheduled Districts. This leaves the Local Government free to extend those in the latter category to any of our Scheduled Districts, but not to limit what the Legislature expressly enacts.” I am now directed to communicate the following observations on the above subject for the consideration of His Excellency the Governor in Council.

2. —The Districts of Ganjam and Vizagapatam were to a certain extent deregulationised by Act XXIV of 1839, the operation of the rules for the administration of civil and criminal justice, as also of those for the collection of the revenue, having been suspended in those districts by Section 2 of that Act. The administration of civil and criminal justice (including the superintendence of the police) and the collection and superintendence of the revenues of every description were vested by Section 3 of the Act in the Collectors who were designated “Agents to the Governor of Fort St. George,” and the Governor in Council was empowered by Section 4 to prescribe rules for the guidance of the Agents and officers subordinate to them. This Act is still in force, and, although it only expressly suspends the law relating to civil and criminal justice and to the collection of the revenue existing at the date of its enactment, the Governor-General in Council is advised that it might be held that the power conferred by Section 4 of the Act of making rules for the guidance of the Agents and officers subordinate to them also bars by implication the operation of any enactment relating to the above matters which may have been passed after the date on which the Act came into force.

3. Again, in order to ascertain whether any particular enactment is or is not barred under the Act as stated above, it must first be decided whether such enactment is or is not an enactment relating to any of the subjects mentioned in Section 2. If it is not, then the enactment, if it extends to the whole of British India or to the whole of the Madras Presidency, must be held to be in force in the Districts of Ganjam and Vizagapatam in common with the rest of British India or of the Madras Presidency. To decide this point, however, would often be a matter of considerable difficulty; inasmuch as almost every enactment may be said to be, in some sense or another, connected with the administration of civil and criminal justice or with the collection of the revenue. It accordingly appears to the Government of India that there must always be considerable doubts as to what enactments do apply to the Scheduled Districts in question, and what enactments do not so apply. For these reasons the Governor-General in Council is of opinion that the most convenient course to adopt would be to declare in force, under Section 3 of the Scheduled Districts Act, all the Regulations and Acts which are held to apply to the districts concerned, whether such Regulations and Acts do or do not, strictly speaking, fall within the scope of the provisions of Act XXIV of 1839. If this course were adopted, the local officers would be furnished with a comprehensive statement of the law which they are required to administer, and a reference to this statement would enable them at once to determine whether any particular enactment is or is not in force. On the other hand, so long as such a statement has not been authoritatively published, the question as to the law actually in force must necessarily be surrounded by considerable doubt, from which some amount of confusion and variety of practice can scarcely fail to result.

4. I am accordingly to request that, with the permission of His Excellency the Governor in Council, a complete list of all the enactments which are held to be in force in the Districts of Ganjam and Vizagapatam may be prepared and submitted for the sanction of the Governor-General in Council under Section 3 of the Scheduled Districts Act XIV of 1874.

LETTER—to the Secretary to the Government of India, Home Department, dated Ootacamund, 8th September 1882, No. 1245, Judicial.

I am now directed to reply to your letter of 25th February last, No. 279, requesting that, with the permission of His Excellency in Council, a complete list of all the enactments which are held to be in force in the (Scheduled) Districts of Ganjam and Vizagapatam may be prepared and submitted for the sanction of the Governor-General in Council, under Section 3 of Act XIV of 1874.

2. Before preparing the list desired, His Excellency the Governor in Council directs me to request a reference to the correspondence marginally noted, regarding the Bhadrachalam and Rékapalle Taluks and the Rampa country of the Godavari District. The wild Rampa country formed part of the Godavari Zila till scheduled under Act XIV, 1874; and Bhadrachalam and Rékapalle were not British territory till the 31st December 1860, and then not incorporated into this Presidency,

but left under the Central Provinces Administration, till the 1st April 1874. In these circumstances this Government deemed it expedient to ask the sanction of the Government of India to the issue of an exhaustive list of enactments in force in such exceptional tracts. To this the following reply was received:—"The Government of India do not consider it necessary or desirable to notify, under Sections 3 or 5 of the Scheduled Districts Act, enactments which clearly must be in force. In notifications under those sections, only such laws need be dealt with regarding which some doubt exists, or which clearly do not apply. It may be contended that Section 3 (a) of the Scheduled Districts Act contemplates the issue of an exhaustive list; but taking Sections 3 and 4 together, the Government of India do not think that this is what was meant, and it would be somewhat inconvenient if it were meant. If any reason

can be shown for doubting whether any of the enactments in question are in force in the taluks and in the country under reference, the matter will be reconsidered; but if it is only necessary for the information of the local officers to point out that these enactments are in force, this can be done by a circular from the Local Government."

3. An exhaustive list having been considered inappropriate for three Scheduled Districts so exceptionally circumstanced as Bhadrachalam, Rékapalle, and Rampa, it is hoped that the Government of India will allow this Government to deprecate the issue of any such list for the Ganjam and Vizagapatam hills, as equally unnecessary and undesirable. As observed in paragraph 2 of the letter under reply, these tracts "were to a certain extent deregulationised by Act XXIV of 1839," but only to the extent of vesting the entire administration in the hands of the Collector, under such rules for his guidance as might be prescribed by the Governor in Council. The argument that, although the Act only expressly suspends the law relating to the administration of civil and criminal justice, and to the collection of the revenue existing at the date of its enactment—it might be held that the power conferred by Section 4 of making rules for the guidance of the local officers bars by implication the operation of any enactment relating to the above matters which may have been passed after the date on which the Act came into force—appears to have been deliberately considered by the legislature and rejected, no further back than 1873. In that year "the Madras Civil Courts Act" was passed, not by the Local Council, but at Calcutta. Section 1 enacted that the Act "extends to the whole of the Madras Presidency." There the sentence would have stopped, had the argument now advanced been considered tenable. That it was not so considered is proved by the words added "except the tracts respectively under the jurisdiction of the Agent for Ganjam and Vizagapatam."

4. It is true that the late Agent in Vizagapatam, who was new to the post and has now left it, declared himself confused on the subject of the present state of the law in the Agency tracts; but this was because he entertained the singular belief that, given a Regulation or Act mentioned in the tolerably comprehensive second schedule of the "Laws Local Extent Act, 1874," such enactment has no force in the Agency, unless it has been or until it shall be formally notified by the Government to be in force; declarations preceding Act XV of 1874, effected by judicial recognition and the like he seems to have considered wholly inadequate. Similar misapprehensions are not likely to arise again, or if they do may be readily corrected. Eight years have elapsed since the above-quoted Act was passed; from the first this Government formed and has held to the opinion that no exhaustive notification of the enactments in force in the Ganjam and Vizagapatam hills is required; and they would wish to leave the question as it stands at present.

C. G. MASTER,
Chief Secretary.

Govt. of 1882 Madras.

JUDICIAL.

Issued

Recd.

Encl.

Letter, 8th September 1882,
No. 1245.

SEPTEMBER.

Scheduled Districts.

Submitting in reply to a call therefor, that it
is not necessary or desirable to issue a list of the
enactments in force in Ganjam and Vizagapatam.



To 1257/15-2-7-01

Judicial (1882) Report

R.D.
1882

From

The Government of India
No 279

Of 25-2-82
Of 2-3-82

CONFIDENTIAL NO. 723

Requests that a complete list of all the enactments held to be in force in Gougam & Vijagapa may be prepared and submitted

To D. (Munichal)
File submitted
7/2/01

No 1245. To India - Home S. C.

Depd. with 54/2749

Sir/ I am now directed by the letter of 25th Feb last, No 279, requesting that, into the possession of R. & C. a complete list of all the enactments which are held to be in force in Gougam & Vijagapa (Scheduled) districts of Gougam & Vijagapa may be prepared & submitted for the sanction of Secy. of India in C. under Sect 3 of Act XIV of 1874.

2. Before preparing the list desired, Secy. of India directs me to submit to the Secy. of India a reference to the correspondence marginally cited, regarding the Poha & Nampur country of the Godavari dist. The Nampur country formed part of the Godavari zila till scheduled under Act XIV, 1874; and Poha & Nampur were not British territory till the 31st Decr 1860, & not incorporated into his Pres. & but till the 1st April 1874. In these circumstances the Secy. of India deemed it expedient to ask the sanction of the Secy. of India to the issue of an exhaustive list of enactments in force in such exceptional & tract of country. To this the following reply was recd: - "The Secy. of India do not consider it necessary or desirable to notify, under S.S. 3 or 5 of the Schedule to the Act, enactments which clearly must be in force. He notifies under these provisions

To Home Secy
No 1563 d/3/7/77

From Home Secy
No 2483 d/18/10/77

To Home Secy
No 1039 B. d/15/5/79

British India Vol V
p. 222
Under the Central Provinces
Administration

only such laws need be dealt with
 regarding us some doubt exists, on
 we clearly do not apply. Strongly, we con-
 sider that S. 3 (a) of the Sch. Act
 contemplates the issue of an exhaustive
 list; but having S. 3 & 4 together, we
 do not think that this is what
 was meant, & it would be somewhat
 inconvenient if it were intended. If
 any reason can be shown for doubting
 whether any of the enactments in question
 are in force in the talukas & in the
 country under reference, the matter will
 be reconsidered; but if this only necessary
 for the information of the local officers to
 point out that these enactments are in force
 this can be done by a Circular from the
 Local Govt.

3. If the exhaustive list is to be
 considered inappropriate for these
 Schedule districts do exceptionally cir-
 cumstances as Pothanah, Chalam, Pe-
 napalli & Rampana - it is hoped that
 the Govt. of India will allow the Govt. to
 defer the issue of any such list
 for the Ganjam & Vizag: hills, as
 equally unnecessary & undesirable -
 As we observed in para 2 of the letter
 under reply, these tracts were to a
 certain extent de-regulated by
 Act XXIV of 1839, but only to the extent
 of vesting the entire admin in the
 hands of the Collr., under such rules
 for his guidance as might be prescribed
 by the Govt. - The argument that

3P
 is not the only one, and that the Act only expressly
 mentions the law relating to civil &
 criminal justice & to the collection of the
 revenue - it might be held that the
 power conferred by S. 3 of making rules
 for the guidance of the local officers
 has no implication of any enactment
 relating to the above matters which has
 been passed after the date on which the
 Act came into force - appears to have
 been deliberately considered by the
 Legislature & rejected, no further back
 than 1873. In that year the Madras
 Civil Courts Act was passed, not by the
 Local Council but at Calcutta - Sect 2
 enacted that the Act extends to the
 whole of the Madras Presidency. There the con-
 sideration would have stopped, had the
 argument now advanced been consid-
 ered tenable. That it was not so considered
 is proved by the words added "except
 the tracts respectively under the jurisdiction
 of the Agents for Ganjam & Vizag: hills".
 4. It is true that the late Agent in
 Vizagapatnam, Mr. [Name] who was new
 to the post & has now left it, declared
 himself confused on the subject of the
 present state of the law in the Agency
 tract; but ^{this was because} ~~he was not familiar with the law~~ he
 entertained the belief that, given a
 Progn or Act mentioned in the 2^d
 Schedule of the laws local Ex. Sect
 Act, 1874, such enactment has
 no force in the Agency, ^{unless it is} ~~unless it is~~
 it shall be formally notified to be in
 force; that declaration, by judicial
 recognition & the like he seems to have
 considered wholly inadequate. Similar
 misapprehensions are not likely to arise again,
 or if they do may be readily corrected. Eight
 years have elapsed since the Act above quoted

in singular
 to be fully comprehended
 - however

preceding Act of
 1874, effected

Cotacambus
8th Sept. 1812

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4. FIRST No

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20-8-12
23-4-15 III
16-7-9
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18-5-26-11
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29-11-35 I
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PRESS.

Indl DEPARTMENT.
G.O. DATED 8-Sept/82
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[Despatch Abstract.]

*Scheduled Districts. Submitting
only to a call through, that it
necessary & desirable to issue a
to the enactments in force in
again & Vigasatam*

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