

[illegible]

Political (1897) Department.

ORDINARY MS.

G.O., No. 35

DATED 14-1-97

INDEXED.

15/11

[Despatch Abstract.]

Informing the Paymaster of Carnatic Stipends
that in view of the Advocate Genl's opinion
Rahmat-unn-Nisa Begum should be treated
as Abd-ul-Hair widow in the distribution
of his pension, and requesting that officer
to revise his ~~offer~~ proposals accordingly.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
40119/97	17/18397						
482/97	434/1797						
401256/98							

[Poll. 7]
L. 000-25-11-00.

Political (189) Department.

Ref

soon CURRENT No. 1860

*This paper is wrongly
sketched out by me not connected
papers but up ?*

*Papers properly sketched
reference put up
29/12*

*Chid
29/12/98*

From The Govt. Solicitor
Madras.

Order

No. 057

Dated 16
Received 14 } 12-98
Registered 14

Enclosures - Poll. C. no. 1569 and
Spare copies enclos.

SUBJECT.

*Stating that Rahmat
un - missa Begum was
the wife of Abahomed
Abdul Hai Sahib and
therefore became his widow
upon his death.*

*R. C.
P. C.*

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

OPINION

1. The extract from the Register kept by the Kazi shows that Nikah was duly performed. It is contended by Mahomed Mahmud Khan - Bahadur that as the Nikah was not followed by cohabitation Rahmat-un-nissa Begum was only the "intended wife", and is, therefore, not the widow of his deceased son. There is no authority in support of this contention.
 2. Marriage is a civil contract depending for its validity upon proposal and acceptance. Nikah is marriage, and does not require - consummation to complete its legal effect upon the status of the - contracting parties. It is not a mere "promise of marriage" which has no legal effect under Mahomedan Law. It is not a voidable Contract which requires consummation to give it full legal effect. It is a - completed contract of marriage creating reciprocal rights and duties, and can be put an end to only by divorce, or the death of one of the parties.
- Rahmat-un-nissa Begum was, according to Mahomedan law, the - wife of Mahomed Abdul Hai Sahib, and therefore became his widow upon his death.

Madras
16th December 1896.

J.H. Spring Branson
Advocate General.

(True Copy)
Ernest Barclay
Government Solicitor.

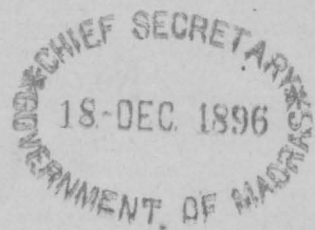
29. 1. 2. 3.
(1896) Department

From Ernest Barclay
Government Solicitor
Madras

To The Chief Secretary to
Government
Madras

N^o 657.

Dated 16 December 1896.
Recd



Enclos: 65

Forwarded with enclosures
with reference to the order
of Government N^o 438
dated 10 December 1896
Judicial.

Ernest Barclay
Government Solicitor

[Poll.]
7
1,000-25-11-96.

Political (1896) Department.

CURRENT No. 1861

From

Mohammed elbahamood
Khan Bahadur.

Order

No.

Dated	14	} 12-96
Received	18	
Registered	18	
Enclosures	- one	
Spare copies	-	

SUBJECT.

Re the distribution
of the stipend of his
son Abdul Hye Sahib.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Query

4

Please state whether "pension" which is an Imperial grant comes under the category of an estate in our sacred law and oblige.

Reply

"Pension," in our sacred law, does not come under the category of an estate as is mentioned in our books on jurisprudence - and God knows better.

Dated 19th Jama diosb 1314 Hijree

(Signed and sealed)

Obydullah, Kazeer of
Madras
for Sunni Sect.



"Agree Baugh"
Ningumbakum
18th December 1896

To
The Honorable the Chief Secretary
to Government

Fort St. George

Sir,
I beg to state for the information
of Government that my son Abdul Aze Sabir
who was a Member of the Arcot family, and
in receipt of a monthly stipend of Rs 155-6-8,
as maternal grandson of His Highness the First
Prince of Arcot, died a bachelor on the
19th October 1896. The stipend enjoyed by him
being of a perpetual nature should be distributed
amongst his surviving brothers and sisters as
is done in similar cases.

2. I have made the necessary application
through the Paymaster of the Bernatic Stipends
who informs me that the matter has been laid
before Government with his report thereon.

3. As in the present case there are some
intricacies involved which require to be explained
to Government to enable it to arrive at a proper
understanding of the case, I take the liberty
to address this representation to you.

1896
Poll Dept.
No. /
To
18/11

4 My deceased son named above was betrothed according to the family custom, by a Nika ceremony, some five years ago and the celebration of the necessary marriage was to come off as soon as he had completed his course of studies. Now that he is dead before the celebration and consummation of such marriage, I am informed that his intended wife's father has applied to Government for a portion of the deceased's stipend for the support of his daughter.

5 This claim I may submit is at once futile and unwarranted both by law and precedent. There was actually no marriage; the parties were gocha before each other as two perfect strangers, and during the 5 years that he lived after the betrothal not a single penny piece was paid by him or by me as his guardian and father for the support of his intended wife. When therefore she had no claim on his support during his lifetime, owing to their being no actual marriage, it is not understood how could she have any claim on his pension after his demise. specially when it is remembered that she will soon be given in marriage to another. As she is not a widow in the proper sense of the term, she has not a shadow of a claim for support either from me or from the deceased's stipend.

Moreover

Moreover according to the Muhammadan Law pension being an Imperial grant, does not come under the category of personal estate and is not therefore inheritable, in support of which statement a Fatwa or Decree from the Government Khazi of the Suni Sect in Madras is herewith attached.

6 I may further state that since 1801 (annexation of the Carnatic) there is not a single instance on record of a would be wife being granted a portion of her intended husband's stipend.

7 The Prince of Arcot who was, I believe, consulted by the Paymaster, has taken the same view of the case and does not think that the girl has any claim for pension.

8 Under these circumstances, I respectfully trust that Government will be pleased to distribute the stipend as prayed for in my application to the Paymaster Carnatic Stipends, as any recognition of the request of my late son's intended wife will establish a undesirable precedent, neither warranted by law or precedent, and create difficulties in future administration of pensions.

I beg to remain
Sir
Your most obedient servant

Mohammed Mahmood Khan Bahadur.



GOVERNMENT HOUSE

S.A. 8
Note for compliance
Received by 29 Dec 1896

30-DEC. 1896

My dear Arundel

His Excellency
desires me to say that he would
like to see the petition, of which
the enclosed is a copy, when
it is ready for orders.

yours Sincerely,
H. Altwant

The Hon. A. J. Arundel. S.C.S.
Ap. Chief Secy. O.E.W.

Copy

"Huzar Baugh"

Nungumbakum - 18th December
1896.

To

The Honorable the Chief Secretary
to Government
Fort Saint George

Sir,

I beg to state for the information
of Government that my son Abdul Hye
Sahib, who was a member of the Arcot
family and in receipt of a monthly stipend of
Rs 155-6-8, as a maternal grandson of
His Highness the First Prince of Arcot,
died a bachelor on the 19th October 1896. The
stipend enjoyed by him being of a perpetual
nature should be distributed amongst his
surviving brothers and sisters as is done
in similar cases.

I have made the necessary application
through the Paymaster of the Carnatic stipend
who

10
who informs me that the matter has been
laid before Government with his report thereon.

As in the present Case there are some
intricacies involved which require to be explained
to Government to enable it to arrive at a proper
understanding of the case, I take the liberty
to address this representation to you.

My deceased son named above was
betrothed, according to the family custom,
by a Nikka Ceremony, some five years
ago and the celebration of the necessary
marriage was to come off as soon as he
had completed his course of studies. Now
that he is dead before the celebration and
Consummation of such marriage I am
informed that his intended wife's father
has applied to Government for a portion of
the deceased's stipend for the support of
his daughter.

This claim - I may submit - is
at once

11
at once futile and unwarranted both by
law and precedent. There was actually
no marriage, the parties were Gosha before
each other as two perfect strangers, and
during the five years that he lived after
the betrothal not a single penny piece was
paid by him or by me as his guardian and
father for the support of his intended wife.
When therefore she had no claim on his support
during his lifetime - owing to there being no
actual marriage, it is not understood how
could she have any claim on his pension after
his demise - specially when it is remembered
that she will soon be given in marriage to
another. As she is not a 'widow' in the proper
sense of the term she has not a shadow of a
claim for support either from me or from the
deceased's stipend. Moreover according to the
Mohamedan Law, Pension being an Imperial
grant does not come under the category of personal
Estate

12
Estate and is not therefore inheritable, in support of which statement a Futwa or Decree from the Government Khazgi of the Sunni sect in Madras is herewith attached. I may further state that since 1801 (annexation of the Carnatic) there is not a single instance on record of a woman - i.e. wife, being granted a portion of her intended husband's stipend -

The Prince of Ahrat who was I believe consulted by the Paymaster has taken the same view of the case and does not think that the girl has any claim for pension -

Under these circumstances I respectfully trust that Government will be pleased to distribute the stipend as prayed for in my application to the Paymaster Carnatic stipends, as any recognition of the request of my late son's intended wife will establish an undesirable precedent, neither warranted by law or precedent, and create difficulties in future administration of pensions -

I beg to remain
Sir

Your most obedient servant
[Signed] Mohamed Mahmud Khan Bahadur

13
Query.

Please state whether "pension" which is an Imperial grant comes under the category of an Estate in our sacred Law and oblige -

Reply.

"Pension" in our sacred Law does not come under the category of an Estate as is mentioned in our books on Jurisprudence - and God knows better.

Dated 19th Jamadiul Akhira 1314.

Hijree

[Signed & Sealed]

Obydullah

Khazgi of Madras
for Sunni sect.

14

OPINION

C. No 1606

1. In the second paragraph of Mahomed Abdur Razaq Sahib's petition dated the 7th instant, it is stated that "the ceremony of nuptials was to be performed in the month of Rajjab after duly going through a series of ceremonials in vogue in this country". This seems to imply that the Nikah ceremony performed in May 1891 was looked upon as somewhat in the nature of a betrothal; but I cannot believe that the difference between mangni (betrothal) and Nikah (marriage) was ignored by the writer.

2. The Nikah ceremony is, I believe, followed in some cases by Shadi ceremonies, and, where that is customary, julwa and consummation are postponed until after the Shadi has been performed. The question is - does the Nikah constitute marriage? "Marriage, like other contracts, is constituted by ijab Wa Kabul or declaration and acceptance".^(a) No particular or formal rites are necessary for its validity. "In consequence, however, of the ceremonies practised in India, it is usual to find two distinct local forms existing side by side. The first is the urfi (customary) form; the second the Sharai" (or strictly legal form). The urfi marriage is celebrated among the Shiah and - sunnis with elaborate ceremonies ... The Sharai marriages require no ceremonies (the rusûmât) In the Sharai form of marriage the simple directions of the law are only complied with So far as the legal consequences of a marriage are concerned, it is equally valid

whether it is celebrated in the urfi or in the Sharai form".^(b) Both among the Shiah and Sunnis a valid marriage is contracted by the use of the words Nikah or tazwij which are express in their meaning,

3. The question of consummation may be an important element in the discussion of claims to dower, and in the consideration of the validation of certain classes of invalid or voidable marriages; but it is not necessary to complete the legal effect of a Nikah upon the status of the contracting parties. Even in the case of Dower, the right of the wife thereto accrues upon her death, or that of her husband -

(a) Baillie's Digest of Mahomedan Law

(b) See also Ali's Mahomedan Law Vol II p. 282 (2nd edn)

before consummation according to the Hanafi, the Shiah, and the Shafi doctrines.

4. According to Mahomedan law "a husband or wife is never excluded from the succession. The husband receives his fixed share under all - circumstances, and so does the widow, and it is only after the allotment of their shares, that the partition of the estate can take place among the other heirs". (c)

(c) Syed Amir
Ali's Mahomed.
Olan Larr
Vol II p 117
(2nd edn)

Rahmat-un-Nissa Begum as the widow of the late Mahomed Abdul Hai Sahib is entitled to her share of the estate according to Mahomedan Law.

J.H. Spring Branson

Advocate General.

Madras }
19th December 1896.

(True Copy)

Ernest Barclay

Government Solicitor.

CURRENT No 1681
16d (1896) Department

From Ernest Barclay
Government Solicitor
Madras

To The Chief Secretary to
Government
Madras

No 660

Dated, 22 December 1896
Recd 22-12
Regd 31-12 Dec 96
Ans 1606 recd

Encl 1

Forwarded with enclosure
with reference to the Order
of Government No 447
dated 15 December 1896
Political

Ernest Barclay
Government Solicitor

Note
The previous papers are now with S.A.

31/12

[G.]
26
500-25-11-96.

H. E. THE GOVERNOR.
THE HON'BLE MR. BLISS, C.I.E.
THE HON'BLE MR. GROSE, C.I.E.

Political Dept:

G.Nos. 1569, 1606, 1660 and 1661 8/1681

SUBJECT.

CARNATIC STIPENDIARIES

FOR ORDERS.

The above papers relate to the
continuance of the perpetual allowance
drawn by the late Abdul Hai, a member of the
~~late~~ Arcot family. Abdul Hai was a son of
Attiat-ul-Ali Muhammad-un-nisa Begam, one
of the shadi daughters of Azim Jah, the
~~1st~~ ^{First} Prince of Arcot. On his mother's death
~~in 1889~~ he was granted Rs. 145-6-8 as an allow-
ance plus a house rent allowance of
Rs. 11-1-10 per mensem (G.O. No. 651 Poll.,
d/ 10th Decr. 1889). On the demise in
March 1894 of his sister, Ammat-ur-rauf
Amir-un-nisa Begam, he received an addi-
tion of Rs. 10 to his stipend (G.O. No. 328
Poll., d/ 21st May 1894). Under the terms
of para 2 of G.O. No. 651 Poll., d/ 10-12-89
the house rent drawn by Abdul Hai lapses
and it is only with the allowance of
Rs. 155-6-8 that the present question is
concerned.

2. The decision in the present
case rests on the claims of Rahmat-un-nisa
Begam with whom the deceased Abdul Hai is
reported to have contracted a nikahi

marriage

8/8-197

12

19

marriage which was not however actually consummated, inasmuch as the parties never cohabited as man and wife.

3. In G.No. 1569 the Paymaster reports that had Abdul Hai survived a short time longer, he believes that the Indian rites of shadi would have been completed and that the parties would have lived together. The circumstances are, he states, peculiar and, ^{so} far as he is aware, without precedent. Col: Stewart has obtained from the Kazi appointed by Govt. for the Sunni community an extract from the marriage register and a translation of this is enclosed. He has also consulted the Prince of Arcot and the latter is in favour of disregarding Abdul Hai's connection with Rahmat-un-nisa Begam and of distributing his allowance amongst his brothers and sisters. This course is also supported by Muhammad Mahmud Khan Bahadur, the father of Abdul Hai a letter from whom forms an enclosure to the Paymaster's report, in which ^{Muhammad Mahmud} ~~he~~ denies that Rahmat-un-nisa Begam is the widow of Abdul Hai and affirms that she is only his intended wife. He has forwarded a reply in the negative by the Kazi to a question put by him as to whether — pension comes under the category of an estate in Muhammadan sacred law; but, as pointed out by the Paymaster, the leading question is not important to the point at issue which really is "Is Rahmat-un-nisa

Begam

18

"Begam according to Muhammadan law entitled to be considered a widow of Abdul Hai?"

4. G.No. 1606 is a rambling petition from Muhammad Abdur Razzak, the father of Rahmat-un-nisa Begam, in which he urges his daughter's claims to a share in the allowance of Abdul Hai. Both G.No. 1569 (the Paymaster's report and its enclosures) and G.No. 1606 (Abdur Razzak's petition) were referred to the Advocate General for his opinion and this is contained in G.Nos. 1660 and 1661. It will be seen that ^{he is of opinion that} according to Muhammadan law Rahmat-un-nisa Begam was the wife of Abdul Hai and ~~that she is~~ entitled to her share of the estate.

5. G.No. 1661 is a petition from Muhammad Mahmud Khan Bahadur which contains very little that is not mentioned in the Paymaster's report. Some stress is laid both by him and the Prince of Arcot on the allegation that Rahmat-un-nisa Begam is about to be married to another person.

6. In ^{the} face of the Advocate General's very decided opinion it does not seem possible to exclude Rahmat-un-nisa Begam from a share in the allowance of Abdul Hai.

Orders are solicited.

*Civil
7.1.47* The case is a curious one but the Advocate General's opinion which is a decided one appears to be correct. It is of course very much to the interest of the relatives of the deceased to keep Rahmat-un-nisa Begam out of any share in the pension and naturally they have no stone unturned to establish

that she is not a widow - there can
be no doubt that M. K. K. is not betrothed
but an actual marriage ceremony
though one ~~not~~ inferior to that in
the position which it gives to the
wife. That the parties did not cohabit
has nothing to do with the question;
the contract was complete when the
ceremony ended.

I submit therefore that Rahmat-un-
nisa Begum should be treated
as the widow of the deceased

RD

8/1/97

J. P. P.

J. P. H.

10.1.97

Political Dept

C. No. 1569, 1606, 1660, 1661

+1681

Order No. 35 of 14-1-97.
Mu

In view of the Advocate
General's opinion, the Govt.
considers that Rahmat-un-
nisa Begum should be
treated as ^{his} widow of
the late Abd-ul-Hai. The
Paymaster will revise
his proposals accordingly &
make the necessary intimation
to those concerned

/From Orders/

Cue. S.
12.1.97

16.1.97

P.C.S. (all & but C. No. 1668/1681
= A/

19/1/97

given for copying _____
 copied _____
 examined _____
 signed _____ } 189 .

G.O., No. _____
 189 , DATED

MENT No.

ENCLOSURES TO C. No.

GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

FILES NOT FILED UP, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

*with 5 enclos.
 returned*

N.B.—

- A = Copy in full.
- B = Not to be copied
- P = Copy abstract only.
- Q = Copy heading only