[Poll. / 8.]
1,000—24-8-97.

Political (1898) Department.

ORDINARY MS.

G.O., No. 757

DATED 22-10-98

INDEXED.

[Despatch Abstract.]

Stating that there is fair ground for procuring from the Cochin Durbar some compensation to certain British Abkari Contractor for damages incurred by him in consequence of the seizure of his arack by the Cochin Officials, & requesting the Resident to make on the Durbar a claim for a compensation of Rs 300 to be paid to the contractor.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
1147/98							
cur 316/98 – 622/99							
cur 426/99							

R.G. 26/8 Revenue

Political (1898) Department.

Cust No. 1841 & 731 Cheque 1898.

Transferred to the Revenue Department.

CURRENT No. 6091 1139

C.S. 29/8/98 Chief Secretary

H. Stokes
CHIEF SECRETARY
REC. AUG. 1898
GOVERNMENT OF MADRAS

From

The Resident in Cochin

Order

Refers No. 206

Dated 15th August 1898

Received 31/8/20

Registered 1/9

Enclosures one

Spare copies –

SUBJECT.

Cochin Abkari Renter's case

Forwards a bill of charges claimed as damages against the Cochin Durbar for prosecuting the Abkari Renter for the outstanding patterns of British Cochin.

1A 29/8

BACK PAPERS.

G.O.	No.	Department	Date.
R 127	2-5-98		
Mis	1778	1279 / 2-8-98	28-4-98

FURTHER PAPERS.

G.O.	No.	Department.	Date.

CURRENT NO. 1139

Ref: cul-nr. 2106

Resident's Office on Circuit
Cochin, 15th August 1898.

Department —

From J. W. Rees, Esquire C.S.E.
Resident in Cochin

To The Chief Secretary to Government,
Ootacamund

Sir,

With reference to G.O. Nr. 1778 Revenue dated 28th April 1898 communicated with G.O. R. Nr. 127 Political of the 2nd ultimo following, I have the honor to report for the information of Government, that the only observation which occurred to me on perusal of the records of the case in which the Abkarry renter of the outlying pattoms of British Cochin was prosecuted in the Courts of the Cochin State for the transport of liquor without a proper passport, was, that although the Second class Magistrate who originally tried the case found that one Elavan Kuttakara Kochuni sold the arrack to the Defendant and that he was in the boat when it was seized no attempt was made to prosecute him with the Defendant. I accordingly asked the Dewan of Cochin to let me have his views as to the apparent omission as possibly affecting the bona fides of the Magistrate which has been impugned.

2. The Dewan now informs me that the Magistrate should have proceeded against Kochunni after the disposal of the original case but that he seems to have thought that an appli-

R 127 Mis 2-5-98 M

should have been made to prosecute him which was not done. The Dewan is therefore inclined to think that there is no sufficient reason to question the bona fides of the Magistrate.

3. It seems to me that the Magistrate should have been extremely cautious in dealing with the case, and should have insisted on Kochunni also being prosecuted. I think he behaved in such a manner as to make it doubtful whether he acted with proper impartiality, whether moved by any personal motive or because of the fact that the Cochin Revenue was at stake, there is no sufficient evidence to show but again there is hardly sufficient proof of a corrupt personal motive. On the other hand I see no reason to believe that the Defendant, the British Contractor, was acting other than honestly throughout. I never could understand the action of the Cochin Magistracy and said so earlier in the progress of the matter.

4. The claim for compensation received through the Collector of Malabar was however not such as I could press on the Durbar without the order of Government intimating that it thought some compensation due. It was 600 for Rs 4576/4/- and was clearly excessive. If it is decided that compensation should be given I think the amount should be reduced to something like Rs 307. The original bill with my remarks against each item, herewith submitted, will show how this amount has been arrived at and I think it is ample. I have seen such unintelligent and extraordinary action taken in excise cases, even where no sort of suspicion of partiality or corruption was entertained, that I am somewhat unwilling to say I think one Cochin Magistrate's action was corrupt, more especially as such charges are very lightly made and published in the State and often prove to be interested, false or malicious.

5. The Government may consider that to prefer a claim for a sum not exceeding Rs 300 would be a useful lesson to Cochin Revenue Magistrate so to govern their proceedings that no possible suspicion of partiality may attach to them in case in which the Durbar is interested.

I am with honor to be
Sir
Your most obedt. Servt.
J. Rees
Resident

Pty

To Secretary.

An Alekari Contractor for parts of British Cochin surrounded by Native Cochin territory was, according to his own account, transporting 100 gallons of arrack from Travancore. His boat and arrack were seized within the limits of Native Cochin, and he was prosecuted for exporting liquor without a permit from the State Contractor. His account given by the accused was disbelieved; for, if the liquor had been purchased in Travancore, a permit from the Peshkar of that State (according to an understanding between the two States) would have been obtained. The permit produced, however, was that granted by a Travancore renter, which was valid only within the limits of his farm. The Sub-Magistrate found

I think I recollect that this matter has already been the subject of correspondence in the Pol. Dept. – Please see if it is so & transfer the Current, with the notes, for disposal there.

HS
3/3/98

To Secy

This file may be forwarded to the Political Dept. with reference to the first sentence of the H. M's ~~note~~ remarks.

KD
5/3/98

Page 15 of Enclosures to the current.

Do.

Report (on separate slip)

Cash
5/3/98

C. 3/3/98
R. 3/3/98.

found by independent evidence that the liquor he was purchased from a licensed retail vendor within Cochin territory, who could not sell so much liquor under his licence and that the export to British Cochin not being covered by a permit from the State Contractor, the accused was guilty. He was accordingly sentenced to pay a fine of Rs 25 and his boat and liquor were confiscated. The conviction was upheld on appeal, but the High Court quashed it on the ground that there was "nothing on the re-
"cords to show that the
"accused knew or ought to
"be taken to have known
"that his vendor had no
"right to sell the quantity
"of arrack which he pur-
"chased from him". The refund of fine was ordered; and the arrack and boat

appear

Page 13 of the Enclosures to the Currents.

Page 21. do.

appear to have been re-
turned, though this is
not stated in the Judg-
ments.

2. The Collector of Malabar forwarded to the Resident, a bill for Rs 454-4-0 to be paid by the Cochin Govt., as compensation to the British renter. The bill was made up as shown below:-

Page, 28 of Enclosure to the Currents.

	Rs.	as.	p.
Value of liquor lost	36	0	0
Cost of carrying it from Cut	6	12	0
Boat hire repairs to boat	63	2	10
Carriage of arrack boat ashore when seized	1	0	0
	106	14	10 A
Interest on fine from date of payment to date of refund	2	1	0 B
Vakils fees	225	0	0
Petitions to Cochin officials	1	2	11
Telegrams to Collr & petitions to him & by Collr.	16	13	0
Stamp papers, receipts & copying charges	23	8	8
Boat hire & ferry charges to Courts & back	76	3	7
Batta to witnesses	2	0	0
Coolie	0	8	0
	345	4	2
Grand Total (A+B+C)	454	4	0

Enclosure

The Resident did not go into the justice of the claim put forward and replied that he could not demand payment from the Raja, unless he was required to do so by this Govt. Hence the present application.

3. The Collector states that no proceedings were taken against the retail-vendor, who sold the liquor to the British contractor, that the said the Cochin renters were therefore acting in collusion, and that the proceedings before the Sub-magistrate, and the District magistrate were characterized by anything but impartiality. He therefore thinks that the bill should be paid by the Cochin Govt.

4. The Board presumes that the Govt will be disinclined to question the

Page 30 of Enclosure.

Last para of current.

the good faith of the Cochin Courts, but considers that the Cochin Govt may be called on to express its opinion on the whole matter and on the Contractor's claim for compensation. The Board bases its recommendation on "the exterior aspects of the case", and on the fact of the Contractor's having sought the Collector's protection in carrying out his contract.

5. There appears no ground for this Govt to question the bona fides of the Cochin Courts. The Sub magistrate states in his despatch of this Court "having had a doubt as to "whether the arrack should "be handed over to the "accused or whether a full "inquiry should be held "to investigate the offence "of smuggling, with "which the accused is

charge

Pages 3 0 4 of Enclosures
to the Currier

"charged, reported the matter
"to the District Magistrate
"x x x. The District
"Magistrate x x x directed
"this Court to hold a full
"enquiry in the matter
"and then to give its de-
"cision. Hence, the case
"was filed and posted
"for enquiry." It is
this reference which
appears to the Collector
to evidence mala fides,
but it is submitted that
there can be no objection
to the Sub-Magistrate's re-
ferring to his superior
authority for clearing up
a doubt on a preli-
minary point. He was
directed to hold a full
enquiry, and this he did.
But there is one point
which is not clear. The
British renter was con-
victed for exporting
hides without a permit
and this offence remains,
whether he knew that
his

his vendor had no per-
mission to sell so
large a quantity as 100
gallons or not. If, there-
fore, the conviction was
right, its reversal was
based on a mistaken
view of the case. However
this may be, a claim
for compensation ap-
pears to be unreasonable
abroad. In
our own Courts lots
of persons are prose-
cuted for what in the
end is pronounced by
an appellate Court to
be no offence. And yet
no claim for compensation
for expenses incurred is
ever made or grant-
ed. Should the case be
different if the Courts hap-
pen to be the Courts in a
native State. It is not
contended that those Courts
had no jurisdiction to
entertain the case against
the British renter, nor
can it be maintained
that

This is not a
correct analogy

that they acted on bad
faith.

KD
28/2/88

H.Y.

It is not necessary to go
into the principles upon
which a claim for compensation
can be made upon a Foreign
State when a British subject
suffers loss or injury at
the hands of the its subjects or
through the mistake or error of
its Courts. It is unquestionable
that such a claim can be made
if the Govt considers that in
the circs. there exists upon
which justify such a claim.

In the first place
I would note that the Dewan's
reflections on the Cochin
Courts are unfortunate &,
I think, wholly unjustifiable,
& he certainly not have been
made in official correspondence.
His animadversions as well
as certainly come to the
knowledge of the Cochin
Darbar & to the claim in

its acceptance palatable to
them, & indeed now throws
great difficulties in the way
of pressing it.

If the contractor was
acting throughout honestly
& if the law be, as the H.C.
lays it down, that he is not
guilty of the offence charged
unless he knew that or
ought to have known that
the Cochin vendor who sold
him the liquor had no right
to sell the quantity in question
then there wd be some ground
for making a claim.

If on the other hand his
bona fides is open to suspicion
I wd not advise a claim
being made, even tho he has
been discharged by the final
Court of appeal.

It is a very doubtful
case for such action. In any
event the criminality of

the infraspression of a revenue law does not depend upon the scienter, but upon whether the revenue law has or has not in fact been broken, consciously or unconsciously. Here the Cochin ~~Excise~~ revenue rule was infringed in fact. Shd the petitioner be left to endure the consequences; or as there H.C. has declared his legal guilt not to be made out are we to make a claim.

If the latter course is decided upon, we may just ask the Dt. to sound the Dewan & ascertain his views

1/3/98

Note for the Chief Asstt

The paper referred to by the H.M. was received & disposed of by G.O. No. 282 Jud dated 16th February 1898. The whole case is reported in the Resident's letter in the above G.O.

11/3/98

To.

Judicial Dept

Cwb. 12.3.98 Current No. 1683 of 1897.

Forwarders

This is in connection with the British Cochin Abkari renters' case reported on by the Resident in his letter dy 28.1.98 communicated to the District Magte of Malabar with the G.O. referred to above. In para 9 of that letter the Resident stated that he received from the Collector a claim by the abkari renter for damages to the extent

G.O 202 16-2-98 Judicial A

extent of Rs 454-4 being the actual expenses he was put to in consequence of the seizure of his arrack by the Cochin officials, and that he (the Resdt) requested the Collector to refer the matter to Govt without whose order he was not prepared to make any demand from the Sirkar in as much as the decisions of its lower courts, however mistaken in point of law, must be presumed to have been passed in good faith.

2. In the present current received from the Sepl. Revn Dept, the Collector has come up to Govt with reference to the above claim.

3. The Board suggests that the Resdt be called on to obtain & submit the Cochin Govts opinion on the matter, on the contractors claim for compensation. It is submitted that the Bd's suggestion may be adopted.

Asst 14-3-98

R 16/3/98

[G. 25]
1,000 - 22-11-97

Judicial DEPARTMENT.

C. No.

SUBJECT.

~~HIS EXCELLENCY THE GOVERNOR.~~

THE HON'BLE SIR HENRY BLISS, K.C.I.E.

~~THE HON'BLE MR. GROSE, C.I.E.~~

Claim of an Abkari Renter against the Cochin Govt.

FOR ORDERS.

It was a mistake which escaped notice at the time for Judicial to correspond at all with the Resident in Travancore & Cochin. There is an order requiring all such communications to go thro' Political. This should be adhered to.

A.A.

The notes below have been transferred to this Dept, with ref. to Bd's note d 3/2/98. Judicial has only incidentally learned the details of the case. The D.C. Malabar having complained in connection with another matter that the Resdt did not answer his letters, the Resdt was asked to be replied explaining the details of this case.

Please see his letter in G.O. 252 Jud. d 16/2/98. (D) The Resdt says in para 5 of that letter to which he does not understand the connection.

Orders are requested with ref. to the notes below,

P.T.O.

as to (1) what action should be taken, &
(2) In which department it should be taken.
H.H. directed that the papers should be transmitted to Political Dept. when nothing of this letter is said except as to Judicial.

HK
15/3/98

The correspondence in Judicial throws no light on the matter but it may be referred for perusal to Revenue where the others must be passed wh. can be communicated to Political if Communication with the Resident be decided on.

The Cohin's ~~XXX~~ language in his letters has unfortunately damaged his case seriously. The tone is most unbecoming and his assumption as to the control of the Resr. over the Cochin Judiciary quite misplaced. KA 17.3.98.

To Rev. dept.

Hy
14.8.

To Secretary

Please see the note of the Judicial Department on pages 13 & 14.

KA
28/3/98

H/W

At the end of his letter of the 28th Jan. 98 on P.C. 282 of 4/98 Jan. the Resident states that he has called for the records in order to a correct understanding of the case. I think he may be asked to give his opinion he has formed after such perusal & with the knowledge he must have of all the case. And I think I would add that if there is no reason to suppose that the contractor was acting otherwise than honestly, it would apparently be for consideration whether some compensation should not be procured. This would elicit the Rs Views on this qn.

S.R. 31.3.98

R.C. 14/98 dt. 13/4/98. & 19/4/98

A.94 15.4.98

To Secy

Please see a draft order below.

KD
23/4/98.

From the ~~Financial~~ Political Dept, Cndt.

No. 1841 of 31.8.98 (C. no 609).

To Secretary

With the above endorsement, the Political Department forwards the report called for from the Resident in Travancore and Cochin in G.O. no 1778 dated 25-4-98. M

2. An abkari contractor for parts of British Cochin was prosecuted by the Cochin state for buying arrack from its contractor and exporting it without a permit from them; but the conviction was set aside by the High Court for want of proof of knowledge on the part of the accused that his vendor was not permitted to sell the quantity purchased.

Pages 1 to 2 of this file.

G.O. 1478 of 25.4.98 (M)

A claim for compensation amounting to Rs 454-4-0 having been made by the Collector of Malabar on behalf of the contractor, a reference was made to the Resident, who had seen the papers, for an expression of his opinion on the subject. The G.O. stated—

"If there was no reason to suppose
"that the British contractor was
"acting throughout otherwise
"than honestly, it would
"apparently be for consideration
"whether some compensation
"should not be procured for
"him from the Cochin Govt.
"for the trouble and expense
"to which he has been put."

3. The Resident's opinion is

(i) that he has no reason to believe that the "contractor was acting otherwise "than honestly throughout;"

(ii) that there is "hardly "sufficient proof of a corrupt "personal motive" on the part of the convicting magistrate;

(iii) that he (the magistrate) behaved

however, in such a manner "as
to make it doubtful whether
he acted with proper impartiality;"

(iv) that the amount
claimed as compensation is
excessive.

The Resident's advice
is given in the last para of his
letter. He states "The Govern-
ment may consider that to
prefer a claim for a sum not
exceeding Rs 300 would be a
useful ~~lesson~~ lesson to Cochin Revenue
" magistrates so to govern
" their proceedings that no
" possible suspicion of partiality
" may attach to them in cases
" in which the Darbar is
" interested."

4. The question for
consideration is whether this
claim may be preferred.

KO.
5/9/98

If the Pol. Dept agrees
with the Resident that there
is no political objection
to making a claim, then
this dept will agree that

some compensation to
the petitioner is due.

His original claim is
for R454 vide p. 3 of Notes
supra: but of this sum
R225 is entered as Vakil's
fees.

The liquor confiscated
& lost is valued at R36. The
~~value~~ boat was confiscated
but was returned, and the
repairs we are estimated ~~to~~
at R63. Some of the other
charges appear to be
preposterous.

If a claim is made
I think it would be exceptional
to put it at ~~R~~ R200

S.R.
5/9/98

Pol Dept as

Recd 7/9/98

H.E. 20/9/98

I think there is ~~no~~ ground to
make a claim — as it
~~seems~~ Mr Rees has gone into
court & the matter item by item. We
may accept his finding —

BS
19/9/98

From the decision of the Cochin High
Court it appears that the Sub Magte
passed an erroneous ~~decision~~ order
to the detriment of the petitioner.
The Sub Magte's order was set aside
& the petr. claims to be reimbursed
for his legal & other expenses. There
is ground to suspect that the

KO.

but there is no proof that he was corrupt. The uncertainties of the Law are proverbial and exist it is clear in Cochin as elsewhere. Govt would not listen to a claim for damages preferred by a British subject whose conviction by a Sub Mgte in B. Territory had been reversed by the Madras High Court, and I do not see why pressure should be put on a native State to make a payment wh. this Govt would undoubtedly refuse.

AH 20.9.98

The question, as I understood it, is not merely one of the uncertainties of the law, but one of its unfair application. Such unfairness might injure the British contractor very seriously - since in order to get his work into or out of Cochin, the British contractor has to have through H Native Cochin, and is therefore placed at the mercy of the Cochin Govt. They. I think we should be unwilling to protect a British contractor from this kind of

inference, - unless Hon. Members think that a warning to the Cochin Durbar should on the next occasion prefer a claim for damages, would suffice. If Hon. Members prefer this course, I make not object.

A.H
22.9.98

To
The Hon Rd. Arundel
(The Hon Sir H Blair has already agreed to a claim being made - note of 19/9/98.)

S.R
23/9/8

As H.E. C.M. agree that claim should be made.

AH 20-9-98

Political Dept

C.S.

The Resident inclines apparently to the opinion that some compensation should be claimed (vide para 5 of his letter) and the sum named by the Revenue Dept (Rs 200) would appear to meet the requirements of the case.

Cwb.
13.9.98.

I do not think that there is any need to make a claim for compensation but if he decides to make it I think it will be better to take the Resident's valuation than an arbitrary one like 200 Rs.

H
14/9/98.

To Rev Dept (U.O.)

C.W.
R. 23/9.

Rev Dept 22

H.M.

Orders

S.R

16/9/8

H.M. & cei.

To Secry.

Please see draft below.

2. In the bill of charges submitted by the British Contractor the amount allowed by the Resident has been worked out with reference to his pencil notes. He made no remarks on items 41, 74, 75 and 78; but it has been assumed that he admitted them on the analogy of other items passed by him. The result is as shown below, following the classification on page 3 of the note.

C 17/9/18.
R 23/9/18.

	allowed Rs as ps	Disallowed Rs as ps
(i) Value of liquor lost (71)	36-"-"	"-"-"
(ii) Cost of carriage of liquor & boat (1469)	7-12-"	"-"-"
(iii) Boat hire and repair of boats (72173)	30-"-"	33-2-1
(iv) Interest on fine (76)	"-"-"	2-1-"
(v) Vakil's fee (4, 11, 18, 26, 27, 37, 39, 47, 60, 78 & 79) (vide below)	225-"-"	"-"-"
(vi) Petitions to Cochin Officials (54 & 68)	1-2-11	"-"-"
(vii) Telegrams to Collr. and petitions to him & Dy. Colls (2, 7, 9, 13, 14, 30, 31, 36, 38, 55, 61, 63, 64, 67 & 74)	6-5-"	10-8-"
(viii) Stamp papers, receipts and copying charges (3, 12, 15, 17, 25, 29, 34, 41, 44 & 51, 59, 65, 66, 70 & 75)	23-2-8	"-4
(ix) Boat hire and ferry charges (6, 8, 10, 16, 19, 21-24, 28, 32, 33, 35, 40, 42, 43, 45, 46, 48-50, 52-54, 57, 58 & 77)	31-12-5	44-9
(x) Batta to witnesses (20)	2-"-"	"-"-"
(xi) Cooly (56)	"-8-"	"-
Total	363-11-"	90-
Deduct 25 per cent of law expenses, item 9	56-4-"	
Remainder	307-7-"	

a reduction of
The Resident proposed 25
per cent of law charges. Vakil's fee
forms one item. It is not known
whether any other item should be
similarly reduced. May Rs 307-7-"
be entered in the draft order?

as the amount of compensation to be ~~claimed~~
claimed?

KD
7/10/98

The claim may be put
at R300. The draft will go to
Pol dept for issue, after such
additions or modifications
as they may think desirable

8/10/98

Pol: CURRENT NO. 1226

Dharwar

Read 8/10/98

Smith
Civil & Sessions Judge
11/10/98.

to R.D.

Rec'd 13/X.98.
No 1443

Rev. Dept.

Note for the First Assistant

The accompanying file has
come back from Pol: Dept: It is
not known why? The draft order
put up in R.D. was meant
for issue in Pol:

Political Current No 3511
13/10/98

To Chief Assistant, Public Dept

~~It was~~
Is it intended that the draft order
should issue in the Political Dept. why is it
returned?

KD
13/10/98

Rec'd
Reg'd in Political - 18th Octo 98

Regd No 1882

Rev. Dept.

Read again G.O. No. 177 Rev d/ 25.4.98 (2)

Read also the Resident's letter No. 2106 d/ 15.8.98 (C. no. 6091) (3)

C.1 335 D 113

Order nisi. No 751 d/ 22-10-98

On consideration the Govt is of opinion that there is fair ground for procuring from the Cochin Darbar some compensation to the British abkari Contractor. As regards the amount of the claim, the Govt accepts Mr. Rees's finding.

2. The Resident in Travancore and Cochin will accordingly be requested to make on the Darbar a claim for a compensation of Rs 300 to be paid to the British contractor.

Chd 20.x.98

21/10/98

To

The Resident in Travancore & Cochin

(thro. the Pol. Dept.)

" Board of Revenue (S.R.)

—Rv. Dept. (2 copies)

(Brown Orders)

KN 7/10/98

When given for copying ____
When copied ____
When examined 25/6 } 189 .
When signed 27/6

Printed D. 25-6-98 at 6PM.

READ AGAIN G.O., No. , DATED
189 .

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT.	A	A	A	A	A	A	A	
LETTER OF GOVERNMENT.								
STATEMENT WITH DITTO								
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.								

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