

Revenue Department

Minutes of Consultation

19th May 1857

Back N^o 17-18

Order no 452 dated 14th May 1857

1387/1857

involves the point whether such action
to be defended on the part of Government
by Collectors now that the control of Public
works has been transferred to the Engineer
Department. In his draft answer Mr Bird
proposes to claim exemption from liability
to be sued on the ground "that he is in no
way liable for the acts of the Engineer De-
partment." But although the Collector must
now, in the Romo's opinion, be held free
by Government from personal responsibility
they consider that a plea of non-liability to
be sued on the ground above stated should
not be urged before the Courts. As the head
of the District and the representative of
Government, it is still the office of the Col-
lector to watch over and defend the rights
of the State and in the opinion of the
Board it is especially necessary that he
should fulfil that duty on occasions like
the present. Engineer officers have not equal
technical knowledge of forms and procedure
or equal means of collecting evidence &
as to the defence of a suit before the
Court in a clear and effective manner
and

30
and instead of being made Defendants the
Board consider that they should remain avail-
able as witnesses whom the Collector has the
power of summoning for the defence of such
actions.

2 In the anticipation of Government con-
curring in this view, the Board submit for
approval an amended draft answer, as they
are of opinion that the defence should be
maintained on higher ground than that
proposed to be taken by Mr Bird.

3 The merits of the case are simple
but involve a question of the highest
importance viz that right of Government
over rivers and streams, which has always
existed and was embodied in the Draft
Act lately prepared for the protection of
works of drainage and irrigation.

A small river called the Caravattan forms
the boundary between the Salween and Irrawaddy
Districts - and the present suit relates
to two villages irrigated from it. Andipoon
in the former and Mooringay Colatone in the
latter Collectorate. Both these villages have
arrangements to turn the water into their channels,
that

that of Andisporum being a few hundred
yards higher up the stream than the other.

10. Lately in consequence of improvements
made by Government to the Andisporum
canal, the stream became so arrested that
the Morningay Clatten Village did not
receive its usual supply of water, and
to correct this defect a new channel was
decided upon to fill its tank. The Andisporum
land owners object to this channel
and have brought the action to stop it,
on the ground that it leads from the river
above their Canal and therefore interferes
with the irrigation of their Village, but the
Engineer Officers of the 2 Districts show that
this objection has no valid foundation
and that the necessity for the new channel
is owing to the alteration and improvement
made for the benefit of the Andisporum
Village to its canal. The stream of the
Caravattour is now so arrested that all
the water, except in high floods is turned
into the Andisporum tank, and after the
tank is filled the surplus water instead
of returning to the river escapes over its
catlingulak

Letter of Acting Col.
of Salem to Col. of
Trichinopoly with
enclosure - dated 11th
February 1857.

Regd 2 of 1802
Section V.

catlingulak and is lost to the Trichinopoly Village.
The new channel was intended to rectify this
injury and received the approval after due enquiry,
of the Acting Collector and District Engineer of Salem.
5. In reporting the institution of the suit
against him Mr Bird states that he is not
very sanguine of being able to defeat it
successfully, but the Board do not share
this doubt. In the first place they consider
that the Salem Court has no jurisdiction
in the case. The Andisporum Village is certainly
within that Collectorate, but the cause of action
clearly arose in Trichinopoly and the Defendants
reside there. Any action connected with the
channel should consequently be brought
in the Courts of that District and the
Board propose urging this point to prevent
the establishment of an injurious and incon-
venient precedent. In the second place the
Board consider that the point at issue is
not one for a Civil Court to decide, and that
the suit must be dismissed on its being
shown that it relates to a public river
over which Government has control, and
that the new channel was dug by order
of

of Government after due inquiry and consultation with its professional and revenue officers.

6. It remains for the Board to notice the injunction issued by the Salem subordinate Court for the stopping of the work on which the Chief Engineer has requested their opinion. They consider as already observed, that the Suit does not fall within the jurisdiction of that Court, and if it had done so, they are of opinion that no such injunction ought to have been issued on the mere application of the Plaintiffs by a miscellaneous Petition, and without some previous inquiry, as was apparently the case. The continual and serious injury which might thus be occasioned to the public interests need not be dilated upon.

In the present instance the channel appears to have been almost completed before the injunction reached the District Engineer but the Board are of opinion that instead of immediately ordering the work to be stopped, S. P. Jones should have consulted the Collector of the District with a view to taking steps for obtaining the withdrawal of the injunction.

Ordered.

S. P. Jones to Chief Eng.
7th April 1854
From Chief Eng. 20th in Com.
27th April 1854.

52
Ordered that copies of these Proceedings be sent to the Government and to the Chief Engineer.

(After Extract)

J. S. M.

Acting Secretary.

13. Since the above was written the Board have received a copy of Extract Minutes Consultation dated 26th instant No 775 which they presume refers to the same suit. They await the further orders of Government as to whether the suit shall be defended by the Collector of Trichinopoly or left to the Collector of Salem as directed in the above Extract Minutes Consultation.

P.W.D. The
In Com. 27th April 1854
No 1172.

J. S. M.
Acting Secretary.

J. P.

H. Forbes Esq.

Acting Secretary to Govt.

New Department.

S. P. Jones.

25th May 1861

1861

Received of the Revenue Board, 25th May 1861

1861

Received of the Revenue Board, 25th May 1861

1861

Received of the Revenue Board, 25th May 1861

1861

Received of the Revenue Board, 25th May 1861

MEMORANDUM

Requested for reference the undermentioned papers on the subject of

1335 from Richmond June 27. 1857
1416 The application for Regr 20. 27. 57

REVENUE BOARD OFFICE,
Chepauk,
17 September 1861

Registrar.

To
The Registrar of the said office -

Canal
1852 E. G. 1857

Rev Sept

Extract from the Minutes of Consultation
Minutes date the May 1857

Read the following
Extract from the Proceed-
ings of the Board of
Revenue.

Side resident draft

Inter 27 April 1857
No 18024

A. G.

With these Pro-
ceedings the Board for-
ward a letter from the
Collector of Trichinopoly,
submitting draft of an
answer proposed to be filed
in suit No 3 of 1857 on the
file of the Subordinate
Court of Salem. The
object of the suit is to
prevent the excavation of
a channel from the
Caravattur

5 The Govt. entirely agree with the Board that the Collector is the proper authority to represent the Govt. in defending actions such as that now brought before the Subordinate Court of Salem, and had not the plaintiff made the Collector a defendant it would have been proper that he should have

have applied to be admitted, and to be heard in the defence of Govt.

4 The plea of non-jurisdiction is in the opinion of Govt a valid one. The cause of action has arisen in the Trincomopoly District, and the parties who have recommended and cut the new channel, reside in that Province.

The competency of the Courts to entertain the question now brought before the Subordinate Court of Salem is, in the opinion of Govt, open to grave question, and the Board's insertion in the answer to be made to the suit, a denial of the matter at

90
at issue being within the Courts jurisdiction, is entirely approved by Government.

5 With these observations the Right Honble the Governor in Council grants authority for the defence, in the first instance at the Public Expense, of the suit, allotted to, but will determine when a copy of the Decree shall be furnished, whether the costs, if any, be adjudged against the Defendants, shall be borne by them or by the Government.

6 The Government consider it desirable that an appeal should be made from the order of

of the subordinate Court
against the prosecution
of the work on the Bara-
-vollar river pending
a decision in the suit
now brought. It is easy to
perceive the greatest em-
-barassment to the pub-
-lic interests if such orders
can be allowed on the
application of any party,
who, unable to understand
a great and comprehensive
-suit scheme, may igno-
-rantly imagine that
his individual interests
will be injuriously affected,
and who may thus be
able to delay, for the
three or four years which
would probably elapse
before his suit come to a
hearing, the commencement
of a work on which the
prosperity

102
prosperity of a Province
might depend.

7 If, as is probably,
the usual time for appeal
has elapsed, the Collector
will be directed to make
a special application
to be heard, on the
ground that the Govt.,
whose servant he is,
have only now been
made acquainted with
the order of the Sub-
ordinate Court.

8 In the Postscript
to their Proceedings the
Board request to know,
with reference to their
Case of 26 April 1875,
whether under the ex-
planation afforded in
their Proceedings, the
suit shall be defended
by the Collector of Trichinopoly
or

or left to the Collector
of Salem as directed in
the above order. The
Govt did not intend,
by the order in question,
to give Mr. Brett any
prominence in the ob-
scurity of the suit. It
was thought that it
would give facility for
conducting the defence
if it were entrusted to
the Collector of the
District in which the
Court is situated; and
this opinion they still
entertain. With slight
alterations, and with an
additional para setting
forth the entire re-
sponsibility of the Collector
and District Engineer
of Salem, the Govern-
ment believe that the
Draft

12
Draft answer now approved
may be made a joint
answer on behalf of
all the Defendants-

RZ

No 452

Extract from the Minutes of Consultation

Held at the 14th May 1857Read the following Ex from the
Pro: of the 18th of Revenue.

/ Here entered 27 April 1857 Pro: 1857

Before passing
orders on this case,
which, as observed
by the Board, involves
a question of great
importance, the R
H the fin b is deci-
sions of having before
him a competent
legal opinion upon
it. He accordingly
resolves to forward
the foregoing Extract
with accompanying
to the Govt Pleader,
to request ~~him~~ ^{him}
that he will report on
the subject at an early
date, as the period for
filing the answer will
expire on the 30th inst.

W H

draft

H
T
P

Copy to the Govt Pleader
with Copy of the C. & P. 1857
as per order
1857

Revenue 1857 Depar't.
D to Gov 19th May.

No 1452.

Extract of this of Gov.

D 14th May 1857.

From the Government Pleader

3rd June 1857 for bond 30

From D 3/17th June 1857 L 1st 7/10

Case 30 June 1857 L 1st 7/10

Ex. Proc. 18th of Dec. 27th May 1857

Ch. 1465 inf.

Forwarding on Extract
from the Proceedings of the Bd.
of Rev. Vits accompaniments
to the Govt. Pleader, & request-
ing him to report on the
subject of a suit filed
against the Colls of
Trichinopoly in the Subor-
dinate Court at Salem.

No 17418.

19th May