

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	803	Press Mis.
22-23 Dated	2-6-1820	19

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
2nd June 1870.*

No. 22. Read the following letter from the Officiating Secretary to the Government of India, Financial Department, to the Secretary to the Government of Madras, dated Fort William, 28th February 1870, No. 1,437:—

I AM directed to acknowledge the receipt of your letter, No. 147, dated the 27th January 1870, forwarding, for transmission to the Secretary of State, a Memorial from Jivani Boye, appealing against the orders of the Madras Government transferring a pension hitherto enjoyed by her to one Jivu Boye.

2. The Governor-General in Council observes that the action of the Madras Government against which this appeal is brought is founded on the assumption that the pension had been improperly continued to Nursinga Row on the death of Kristna Row. It would thus appear to be admitted that Jivu Boye was properly the first life after Kristna Row. If so, Jivu Boye would be entitled not to Rupees 1,500 per annum, but to Rupees 3,000 per annum, and, after her death, the next heir would be entitled to a pension of Rupees 1,500 per annum.

3. The payment of this pension is either legally binding or is not legally binding on the Madras Government. If it is legally binding on them, and they have paid the money to the wrong person, they are liable to be made to pay Rupees 3,000 per annum, and mesne profits to the right person, Jivu Boye, except in so far as they may be protected by the Statute of Limitations. But His Excellency in Council is of opinion that the Madras Government ought to have waited until this claim was enforced against them in a Court of Law before they deprived Jivani Boye of a pension which she and her husband had received for 20 years.

4. His Excellency in Council however believes that the grant is not legally binding on the Madras Government at all, but is a mere matter of grace and favour, and upon this supposition it seems harsh to alter the decision arrived at by that Government in September 1848, by which the payment of the pension has been regulated for 20 years.

5. By a reference to the case of Pillai V. Pillai IX. Mories I. A. p 406, quoted in paragraph 16 of the judgment of the High Court, it appears clear that the Court referred to that case merely in order to guard as strongly as possible themselves against the supposition that they had decided the question as to the validity of the adoption. They say in substance "Let it not be supposed that the case of Pillai V. Pillai disposes of this case." The judgment therefore leaves open the question of the adoption.

6. I am to suggest that the Madras Government may, with reference to these remarks, re-consider the orders which they have passed.

(True Copy.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

Exd. E. C. Shunker.

REVENUE DEPARTMENT,
FORT SAINT GEORGE,
2nd June 1870.

No. 803.

No. 23.

To

THE OFFICIATING SECRETARY TO THE GOVERNMENT OF INDIA,
FINANCIAL DEPARTMENT.

Miscellaneous.

SIR,—In accordance with the instructions of the Governor-General in Council, conveyed in your letter, dated

28th February 1870, this Government have considered the orders passed in regard to the pension now enjoyed by Jivu Boye, and direct me to submit the following observations.

2. The pension in question comes within the scope of Regulation IV. of 1831, which reserves to the Governor in Council the power to decide on the succession to "personal or hereditary grants of money or of land-revenue conferred by the Government in consideration of services rendered to the State," etc., etc., and prohibits the Courts of Adawlut from taking cognizance of any claim to such.

3. The object of this Regulation was that the pensions in question "should be strictly applied to the purpose for which they were granted, and should not be liable to be diverted from that purpose to the use or benefit of persons who have no claim upon the State."

4. It has been usual to select the nearest legal heir of the last holder as the successor to the pension, but such a course is not incumbent on the Government; and I am to submit that the spirit of Regulation IV. of 1831 indicates the propriety of occasionally deviating from the ordinary rule.

5. There can be no doubt that Kristna Row believed his adoption of Nursinga Row to be valid, and his desire that the latter should be his heir is evidenced by his having bequeathed to him all his private property. Nursinga Row was, moreover, irrespectively of the adoption, the only male heir of Kristna Row.

6. As the pension was conferred upon Kristna Row "for three lives," in consequence of the personal service which he had rendered to the State, his known wishes as to the disposal of the pension justifies the selection of Nursinga Row as "second life."

7. The same argument cannot be urged in favour of Nursinga Row's widow (Memorialist), whose succession took the pension out of Kristna Row's family; and when, in addition to this detraction from her claims, the High Court pronounced that all the authorities had declared adoptions of the son of a person with whom the adopter could not have intermarried to be invalid, the Government of the day doubtless felt that a sufficient case had been made out for withdrawing the pension from Jivani Boye (Memorialist), and conferring it on Jivu Boye, the nearest surviving relative of Kristna Row.

8. Taking the view they do of Nursinga Row's claims, the Government of course do not admit that Jivu Boye should be regarded as the "second life." It may be added that she and her husband acquiesced in Nursinga Row's succession, inasmuch as they did not take the necessary legal proceedings to set aside his adoption, after the local Courts in 1846 ordered them to hand him over to his adoptive father.

9. As observed in paragraph 5 of your letter the High Court in their judgment did not determine the validity of the particular adoption in question, because it was unnecessary to do so; but there can be no doubt, from the expressions used by the Court, that, if it had been necessary, they would have declared it invalid. Considering this and also the fact that the continuance of the pension to Jivani Boye took the pension out of the grantee's family altogether, notwithstanding that his daughter was alive, the Government cannot but regard its transfer to the latter as most in accordance with the original object of the grant.

10. I am, however, to state that the Government see reason to regret that Jivani Boye was deprived of the entire pension which had been conferred on her, because, as Nursinga Row's widow, she might fairly claim some support from the family pension; and they resolve so far to modify the decision arrived at in 1866 as to grant her a third of the pension (Rupees 500), leaving Jivu Boye the remaining Rupees 1,000. When this concession has been carried into effect, they believe that full justice will have been done both to the intentions of the Government, who granted the pension, and to the claims of those interested in it.

I have the honour to be,

Sir,

Your most obedient Servant,

(Signed) R. A. DALYELL,

Acting Secretary to Government.

Financial 1870 Department.

[]

From Government of

Port St. George.

Dated 2nd June.

R.

No. 803.

Enclosures.

6 spare copies.

D. No.

Progs.

{ D.

L. No.

{ No.

Submitting observations with reference to the pension enjoyed by the widow of the late Nursinga Row, and intimating the Resolution of Government modifying the decision of 1866 so as to grant her a third of the pension.

Revenue Dept.

Memo. for Orders on N^o 443.

In their letter dated 28th February 1870, N^o 1437, the Govt of India in animadverting on a Memorial relating to a pension which had been forwarded to them for transmission to the Secy. of State, request that the Govt will re-consider their former order on the case.

2. A summary of the case has already been given in the letter to the Govt of India dated 27th Jan'y 1870 N^o 147, with which the Memorial

Memorial was forwarded
and it now only remains to
notice the arguments adduced
by the Govt of India.

3. In para 2, the Govt.
of India call attention to a
flaw in the procedure of
G.O. dated 29 August
1866, N^o 2272, by which the
pension of Rs. 1500 was con-
ferred upon Jivani Boye. The
case stands thus. A pension
of Rs. 4,500 per annum
was conferred upon Krishna
Row for three lives, subject
to deductions of one-third
and two-thirds for the second
and third lives. Krishna

Row

5
Row enjoyed the pension
during his life time, and at
his death the Govt. conferred
the pension reduced by
one-third on Mursinga
Row, who was then sup-
posed to be the validly
adopted son of Krishna
Row. Mursinga Row having
held the pension of Rs. 3000
during the whole of his life
time, the Govt. at his death
conferred it, reduced by two-
thirds, on his widow Jivani
Boye (Munimahet). But
while Jivani Boye was en-
joying the pension of Rs. 1500
the High Court pronounced
the adoption of Mursinga
Row

Row by Krishna Row who
have been invalid and in
consequence of this dictum
the Govt took the pension
of Rs. 1,500 away from Jwari
Boys and conferred it on
Jwari Boys Krishna Rows
widow. The Govt of India
now point out that Jwari
Boys being by the implied
acknowledgment of Govt
the second life, ought to
have inherited the pension
reduced only by one-third
viz Rs. 3,000. This is un-
doubtedly technically
speaking the case for
although the then supposed
"second life" Nursinga Row
had

I should argue that
Narsinga Row has
fin de hande de
the adoption / the
designated heir
of Krishna Row.

6
had already enjoyed the stipend
of Rs. 3,000 during the whole of
his life time, still Jwari Boys
being declared entitled to the
pension, ought strictly to have
succeeded to the pension of
Rs. 3,000, because her title
as the next heir was derived
from her kinship to Krishna
Row the first holder of the
pension, and her recognition
as entitled to the pension
was equivalent to a confession
of the spurious nature of
the claims of her predecessors
Narsinga Row and his
widow.

4. In defence of the
action taken by Govt in 1866
it

it may be urged, that the regu-
lation of the succession to a
pension of this nature is
vested in Govt., that the Court
of Directors only authorised
the grant of a pension for
three lives, and that in
consequence the Govt. would
not have been justified in
granting the pension for
the second life twice over,
but that as the second life
was shewn to have inherited
on a spurious title, the
Govt. made the only repa-
-ration in their power to
the true heir (Jinu Boye)
by reverting to her as the
third

This is the
proper ground
JDs

I understand but arg.
them.

Third life.

5. As regards para 3
of the letter from the Govt. of
India, it appears clear that
the pension in question comes
under the operation of Regu-
-lation IV of 1831, and that
no claim arising from it
can be determined by the
Courts without the sanction
of Govt.

6. In answer to para 4
it may be urged that, al-
though the procedure of the
Govt. may have been ir-
-regular, the term "harsh"
can scarcely be applied
to it; Vide para 5 of the
letter

letter to the Govt of India
dated 27 Jan'y. 1970. No. 147.
The same judgment of the
High Court which indirectly
deprived Memorialist of her
pension, put her into possession
of all the property left by
Christina Row which had
previously been in litigation
between her and Jivu Boye.
She was therefore placed in
comfortable circumstances
and on this aspect of the
case the argument based
on the harshness of with-
drawing from Memorialist
the pension once bestowed
on her loses a great deal
of

8
of its force. And considering
that Jivu Boye has been pro-
nounced legally entitled to
the pension, and may, so
far as the Govt. are aware,
be entirely dependent on it
for support, would not the
argument above referred to
be far more applicable to
depriving her of the pension?

7. In reply to para 5
it is only necessary to refer
to the judgment of the High
Court alluded to. The case
of Pillai v. Pillai, does
not affect the question, but
the High Court (para 16, En-
closure to Memorial G) lay
down

down "On the point of the
"validity of the adoption of
"the son of a person with
"whom the adopter could not
"have intermarried, there will
"be found great conflict of
"opinion among the pundits,
"but none whatever upon the
"authorities. They are all
"perfectly consistent in de-
"claring such adoptions
"invalid." This may
have been an obiter
dictum, but it was
an expression of opinion
quite strong enough to
justify

But the claim is
admitted on the
ground that Jee a Boyee
was the nearest sur-
viving relative.

9
justify the action taken by
the Govt.

8. It is therefore sub-
-mitted that the former
orders of Govt. may be
adhered to, and the Govt.
of India addressed in
justification of them.
P. H.

L. J. Hall

Notes

About commencing
the order for the
letter to the person
of Jeeva Boye.

Jeeva Boye.
Narasimha Rao.

74³

10
The pension referred to
in the correspondence
was granted to Krishna
Rao "and his two next
heirs" as a reward for
his personal services.

Krishna Rao's family
consisted of one only
daughter - whose only
son - [his grandson] he
adopted. To this child
he bequeathed his private
property.

The question of the
validity of this adoption
was tried in the Court
during Krishna Rao's life-
time - The child's natural
father (Krishna Rao's son-
in-law) repeated the facts
himself as to the cere-
mony of adoption having
been performed - and
Krishna Rao died him-
self.

his wife, Jean Borge.
The court in its
first decision declared
the adoption invalid -
being guided by the
opinion of its President -
But on Christian Rivo's
appeal to the Civil
Court - Justice adverse
prevailed - and urging
that the court had not
been bound to decide
the validity of the adop-
tion - but to secure pos-
session of the child,
who was forcibly de-
tained by his opponents,
the case was remitted
to the court for a
decision - and that
Court then found in
favor of Christian Rivo
to be as related to the
simple restoration of

the child. No further
proceedings were taken
~~and shortly thereafter~~
a year or before
this decision Christian
Rivo died.

There can be
no doubt that he
heir of the adoption
valid - and his de-
sire that the marriage
law should be his heir
is proved by his having
expressed that his pri-
vate property to him.

It is true that, of
late years at least,
it has been usual
to select the nearest
legal heir - but there
is not in common law
an ^{and} put - persons being
pieces of paper & not
of right - In the present

in ~~stated~~ ^{one} it ~~stated~~
that the put. of the day
acted in the property
in passing the pension
to Narasinga Rao - the
deceased had evidenced
his desire that this per-
son should be his heir
by adopting him &
by leaving him his per-
sonal property - and
the child was never
his son &
why make him -

Narasimha Rao died
in 1854 - leaving a widow
Jeeramma Boyce - The
other claimants were
his mother / Jeeramma Boyce
and Kristanna Rao's
widow -

The put. directed
the pension to be paid
to Narasinga Rao's
widow - as his heir -

and the third child
life.
This decision took the
pension entirely out
of the family of the
original grantee - although
his widow & daughter
were both alive -

The private property
appears to have remained
under the management
of Kristanna Rao's widow

Jeeramma Boyce as Jeeramma Boyce was a
minor. On the widow's

Jeeramma Boyce the Jeeramma Boyce
took possession of it - &

Jeeramma Boyce Jeeramma Boyce brought a
suit for its recovery.
Her claim rested on
her husband's adoption
by Kristanna Rao and
the latter's will. The
High Court decided in
her favor on the second
ground - vide her death
& disrespect of the

adoption. The validity
of the latter they did
not determine - because
it was unnecessary to
do so - but they expressly
declared that such
an adoption was ~~void~~
invalid, according to
the authorities, hence
much the parents
might differ.

As for the
part to be referred to
the law to preserve Jeune Boyce
Boyce - "as nearest
surviving relative of
the original painter".

As I think the
decision was just
in the main - the
partition was painted
as an act of power, &
as a reward for purely
personal services - &

to allow it to pass ¹⁵
wholly & be taken out
of the family was in
fact to ignore its origin.
The law takes such
paints out of the ordi-
nary jurisdiction of
the Court - and it is
discretionary in the
part to deal in the then
as circumstances
require -

~~It is necessary~~
~~to preserve the~~
I think it is to
be expected that some
partition was not
made out of the per-
son for creating a dis-
tinction - Jeune Boyce -
and I would take
advantage of this
opportunity to modify
the order of part to be
as to give her $\frac{1}{3}^d$ or 500

Jeune Boyce

leaving from Boyer the
day the 1000. No. This
will I think be the
fairest course.

I would meet the
criticisms of the pub-
lic by maintaining
the right of the state
to deal with plants
of this nature as public
weeds. I point out
that the course followed
fairly meets the pub-
lic claims of these interests
while it fulfills
the intentions of the

J. D. L.

I agree generally in
the view of this case
taken by Mr. Boyer.

J. D. L.

I entirely agree
with the opinion
expressed above by
Mr. Boyer. J. D. L.

signed in presence of Rev. J. D. L.
the 10th 803. at noon

The Off. Secretary to the Com. of Public
Financial Affairs
of the State of New York
in accordance with
the instructions of the Governor
General in Council con-
sidered in your letter dated
the 10th 803. that the
said Com. has ordered the orders
passed in regard to the
persons not employed by
the State and directed
to submit the following
observations
The persons in
question comes within the
scope of Regulation No
of 1031 which reserves
the

J. D. L.

J. D. L.

to the Governor in Council
the power to decide on
the succession to personal
or hereditary grants of
"money or of land revenue
conferred by the Govt in
consideration of services
rendered to the State &c &c,"
and prohibits the Courts
of Adalat from taking
cognizance of any claim
to such.

3. The object of this
Regulation was that the
pensions in question should
be strictly applied to the
purpose for which they
were granted and should
not be liable to be diverted
from that purpose to the
use or benefit of persons
who

15
"who have no claim upon
the State"

4. It has been usual
to select the nearest legal
heir of the last holder
as the successor to the
pension, but such a course
is not incumbent on the
Govt, and I am to submit
that the spirit of Reg.
IV of 1031 ^{may} indicate
the propriety of ^{occasionally} deviating
from the ordinary rule.

5. There can be
no doubt that Krishna
Row believed his adop-
tion of Narasinga Row
to be valid, and his
desire that the latter
should be his heir is
induced by his having
bequeathed

bequeathed to him, all his private property. Narasinga Row was moreover, in respect of the adoption, the only male heir of Kristna Row

6. As the pension was conferred upon Kristna Row "for three lives" in consequence of the personal service which he had rendered to the State, his ^{known} (apparent) wishes as to the disposal of the pension ^{justifies} [may, in the opinion of the Govt, be considered as justifying to some extent] the selection of Narasinga Row as "second life".

7. The same argument cannot be urged in favor of Narasinga Row's widow (Memorialist), whose [claim] solely depended on her relationship to her late husband. Her [succession] ^{to the pension}

took the pension out of Kristna Row's family, and when, in addition to this detraction from her claims, the High Court pronounced that all the authorities had declared adoption of the son of a person with whom the adopter could not have intermarried to be invalid, the Govt. of the day, doubtless felt that a sufficient case had been made out for withdrawing the pension from Jivani Boye (Memorialist) and conferring it on Jiva Boye the nearest surviving relative of

of Krishna Row.

4. [If the right of Jura Boye had been regarded from a strictly legal point of view, she would doubtless have been declared entitled as "second life" to the pension reduced by only one-third. But, viewing the nature of the endowment, the Govt do not consider that the succession of Narasinga Row as "second life" involved a departure from its object.]

8. As observed in para

I would say.
7. In doing the law they do of Narasinga Row's claims. The fact of course is not admitted that even when should be considered as the "second life". It may be added that she has been husband as. Guessed in Narasinga Row's succession. inasmuch as they did not take the necessary legal proceedings to set aside his adoption after the local Courts in

1846 ordered them to hand him over to his adoptive father.

I would say
"But, there can be no doubt from the expressions used by the Court that, if it had been necessary, they would have declared it invalid. Considering this & also the fact that the ^{continuance} ~~transfer~~ of the pension to Jevanay Boye took the pension out of the family, fairly altogether - not withstanding that his daughter was alive - the fact cannot be

17
para 5 of your letter, the High Court in their judgment did not determine the validity of the particular adoption in question, because it was unnecessary to do so. But, as Krishna Row could not have married the mother of Narasinga Row, the Government held the general statement of the High Court that adoptions of the son of a person with whom she adopted, could not have intermarried were invalid,

to

to be conclusive against the
justice of Narasinga Rao's claim
in so far as it was based on
adoption.

9. I am however to state
that [on reconsideration of the
case] the Govt. see reason to regret
that Jivani Bai was deprived
of the entire pension which
had been conferred on her
and they resolve so far to
modify the decision arrived
at in 1886, as to grant her a
third of the pension (Rs 500)
leaving Jivai Bai the remaining
Rs. 1000. When this conception has
been carried into effect they be-
lieve that full justice will
have been done both to the
intentions of the Govt. who created
the endowment & to the claims of

those

re paid its to and ten.
~~on the the transfer~~
~~of a certificate~~

to the latter in view
in accordance with
the original object of
the grant.

he came as Narasinga
Rao's son & so she
might fairly claim some
subsidy from the family
pension.

N

presented the pension

those interested in it.
R.

By Mr. Bell

W. B. Griffiths
June 13, 1890