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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No. / ~~B.P. No.~~	1949	Press. / ~~Mis.~~
Dated	3-12-1878	~~197~~

Not to be folded or roughly handled

Archives I—5,806—24-2-78.

1966
1

No. 2,975.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 6th November 1878.

Read the following letter from H. ST. A. GOODRICH, Esq., Acting Collector of Vizagapatam, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Vizianagram, 19th October 1878, No. 1,595 :—

I HAVE the honor to submit the explanation called for in G.O., 12th August 1878, Revenue Department, No. 1,286, and Proceedings, Board of Revenue, No. 2,526, 13th September 1878.

2. In employing a Pleader without making any special bargain as to fees, I followed the course which has been always observed by my predecessors as far as I can discover.

3. I regret that I did not file an application for a review of the decree. I was advised by the Pleader, whom I spoke with on the matter, that the Acting Judge would decline to review an order of the Judge in whose Court he was temporarily presiding.

4. On receipt of the Government Orders I wrote to the Pleader who conducted the suit and informed him that the fee drawn had been considered excessive, and [illegible] enclose his reply : it contains a decided refusal to forego the full amount of his fee.

5. The facts cited in the last paragraph of the Pleader's letter are correctly stated and show what the practice was before my time.

6. Pending further orders I will, if possible, make special arrangements where the work entailed upon the Vakil by a case is light.

ENCLOSURE No. 1.

From V. LAKSHMI NARSIMHAM, Pleader, to H. St. A. GOODRICH, Esq., Acting Collector of Vizagapatam, dated 18th October 1878.

I BEG to acknowledge the receipt of your letter, dated 8th instant, No. 1,532, asking me to refund Rupees 900 out of the Rupees 1,000 paid to me by you as my fee in the Siripuram adoption case, and to state in reply that I am fully entitled to the whole sum under Sections 25 and 27 of Regulation XIV of 1816, and that the objection of Government is illegal and unfair as may be observed from the following paragraphs.

2. As is done in every other case in which you are a party, a vakalutnamah was executed by you in my favor, from which you will find that the powers given were not merely for filing the written statement as may have been supposed, but for conducting the suit throughout to an end as I did.

3. By virtue of its authority I obtained copies of plaint and other documents on your behalf, presented the written statement, appeared at the time of the first and the final hearings, and specially addressed the Court on your behalf at the close of the suit and obtained copies of the judgment and decree. In fact I did as usual and without restriction all that should and could have been done.

4. Supposing a Vakil is employed simply for putting in his client's pleadings, then he will be entitled to half the prescribed fee—*vide* Rules of Practice, paragraph 13, under head "Vakils," and Ruling (2) of the late Sadr Court quoted under Section 31 of the Pleaders' Regulation (XIV of 1816), Sloan's Code, page 333.

5. You will perceive from the copy of the decree of the Court in the case, already furnished to you, that I conducted the case as your representative, and that a separate fee of Rupees 1,000 was specially taxed as incurred by you, that sum being my legal due both with reference to the value

(Rupees 1,25,000) of the suit and the quantity of work done by me in the suit; the Court did not, however, award your costs, though it ought to have done so. Now it appears that the Government object to the payment of my full fee not on the ground that your costs were not allowed—and even this would be no ground—but that there was no occasion for the payment of so much fee for the work that should have been or was done on your behalf. Now, if the Court had awarded the costs, or if the suit will be dismissed with costs on appeal now before the High Court, you would be entitled to recover that sum of Rupees 1,000 taxed in the decree from the plaintiff on account of your costs. In that case also my work would have been the same, and if you consider that only 100 Rupees is a fair sum for the work done by me, who will take the remaining sum of Rupees 900? Of course the Government could not take it, as it would not meet the expense nor would it give it to me. Thus you may observe that the principle of the objection is wholly inapplicable, and that quantity of work is not the guide for the payment of Pleaders' fees, which is regulated by special enactment and rules. If the Government itself bargain in this way in violation of the law, *a fortiori* private parties would do, leaving the regulation and the taxation in the decree a dead letter.

6. If the Government view this charge as heavy and unnecessary, it would, perhaps, have been better if they had allowed the suit to proceed *ex parte*, whatever the consequences might be, as far as you were concerned. If a written statement was at all to be filed, it could be done only by yourself in person or by your authorized Pleader and by nobody else, and any Pleader under the ruling above quoted on mere presentation of it would be entitled to half the fee, though his authority might subsequently be revoked or even the suit withdrawn.

7. There was a specific relief sought for in the plaint against the Collector to compel him to register plaintiff as proprietor in consequence of that officer's previous refusal to do so. Had I not watched the case throughout, and, in order to exonerate your liability, showed grounds in my closing address, defending the propriety of your procedure in the matter, the Court might have passed, or at least there would have been a chance of passing, a decree against both the defendants for all costs, instead of entirely disallowing plaintiff's costs as it was done; and in that case, both the defendants being liable at law *in solidum*, there would be a chance of plaintiff recovering the whole sum of his costs, amounting to some thousands, from the Collector alone. I do not say that this would have been the result had I not conducted the suit throughout, but there might have been a chance for the same.

8. Under the foregoing circumstances, I respectfully beg to in[illegible] conducted the suit as I [illegible] in other words certified, the proper amount [illegible] due to me under the [illegible] and you have paid to me that sum only and no more; so also, as far as the quantity of work is concerned, I did far more than was supposed to have been done by me by the Government, being actively engaged with the work to the very end for about a year, and as the law does not contemplate the option of payment of a fee less, though it does more, than the prescribed fee, I am perfectly entitled to retain the full fee under question, and do not feel bound to refund any portion of it for any reason.

9. If you doubt my assurance, I request you will be good enough to suggest to the Government to refer the question to the Advocate-General and ascertain his opinion, as it evidently appears that the Government made the present objection perhaps not having in view the fact that I was by law entitled for Rupees 500, only for the mere filing of the written statement, and that as I conducted the suit to judgment and decree, I was entitled to full fee, and that therefore no valid objection to any portion of the fee could be raised.

10. In a certain pauper case brought against the Meranghi Minor Zemindar, dismissed by the Court on some mere preliminary point, the full fee of Rupees 1,000 was paid to Mr. Sice by Mr. Daniel, the then Collector. Though he first questioned the propriety of paying the charge in full, he afterwards satisfied himself, and the Government approved it. So also a fee of about Rupees 700 and odd was paid to me as taxed by the Court in the Penta Channel case between the Bobbily and Salur Estates, on behalf of the latter estate, notwithstanding that case was dismissed on the mere technical point of the plaintiff not paying the additional stamp-duty and not adding defendants' titles, &c.

11. With due deference to Government objection, I should have implicitly obeyed your requisition had I not felt confident, on a careful consideration and consultation of law, rules and practice, that I am perfectly entitled to have drawn and to retain the full sum.

12. Unauthenticated copies of the decree and the vakalutnamah obtained from the Court are enclosed for easy reference.

(True Copy.)

(Signed) H. Sr. A. GOODRICH.
Acting Collector.

Enclosure No. 2.—Copy of Decree and Vakalutnamah.

1914
2

Submitted to Government with reference to G.O., dated 12th August 1878, No. 1,286, and Board's Proceedings, dated 13th September 1878, No. 2,526.

2. The Pleader cannot of course be required to refund any portion of the fee already paid, but in his reply to the Collector he has overlooked Act I of 1846.

(True Copies and Extract.)

Acting Secretary.

To the Secretary to Government, Revenue Department,
with one enclosure to be returned.

Copy to the Collector of Vizagapatam.

G.O., 12th Aug. 1878 No. 1

Rad. A. F. Goodall.

1944
3

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

3rd December 1878, No. 1,944.

Read the following paper :—

No. 25. Proceedings of the Board of Revenue, dated 6th November 1878, No. 2,975.

Read the following letter from H. ST. A. GOODRICH, Esq., Acting Collector of Vizagapatam, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Vizianagram, 19th October 1878, No. 1,595 :—

I HAVE the honor to submit the explanation called for in G.O., 12th August 1878, Revenue Department, No. 1,286, and Proceedings, Board of Revenue, No. 2,526, 13th September 1878.

2. In employing a Pleader without making any special bargain as to fees, I followed the course which has been always observed by my predecessors as far as I can discover.

3. I regret that I did not file an application for a review of the decree. I was advised by the Pleader, whom I spoke with on the matter, that the Acting Judge would decline to review an order of the Judge in whose Court he was temporarily presiding.

[illegible] ply ; it contains a decided refusal to forego the full amount of his fee.

5. The facts cited in the last paragraph of the Pleader's letter are correctly stated and show what the practice was before my time.

6. Pending further orders I will, if possible, make special arrangements where the work entailed upon the Vakil by a case is light.

ENCLOSURE No. 1.

From V. LAKSHMI NARSIMHAM, Pleader, to H. ST. A. GOODRICH, Esq., Acting Collector of Vizagapatam, dated 18th October 1878.

I BEG to acknowledge the receipt of your letter, dated 8th instant, No. 1,532, asking me to refund Rupees 900 out of the Rupees 1,000 paid to me by you as my fee in the Siripuram adoption case, and to state in reply that I am fully entitled to the whole sum under Sections 25 and 27 of Regulation XIV of 1816, and that the objection of Government is illegal and unfair as may be observed from the following paragraphs.

2. As is done in every other case in which you are a party, a vakalutnamah was executed by you in my favor, from which you will find that the powers given were not merely for filing the written statement as may have been supposed, but for conducting the suit throughout to an end as I did.

3. By virtue of its authority I obtained copies of plaint and other documents on your behalf, presented the written statement, appeared at the time of the first and the final hearings, and specially addressed the Court on your behalf at the close of the suit and obtained copies of the judgment and decree. In fact I did as usual and without restriction all that should and could have been done.

4. Supposing a Vakil is employed simply for putting in his client's pleadings, then he will be entitled to half the prescribed fee—*vide* Rules of Practice, paragraph 13, under head "Vakils," and Ruling (2) of the late Sadr Court quoted under Section 31 of the Pleaders' Regulation (XIV of 1816), Sloan's Code, page 333.

5. You will perceive from the copy of the decree of the Court in the case, already furnished to you, that I conducted the case as your representative, and that a separate fee of Rupees 1,000 was specially taxed as incurred by you, that sum being my legal due both with reference to the value

(Rupees 1,25,000) of the suit and the quantity of work done by me in the suit; the Court did not, however, award your costs, though it ought to have done so. Now it appears that the Government object to the payment of my full fee not on the ground that your costs were not allowed—and even this would be no ground—but that there was no occasion for the payment of so much fee for the work that should have been or was done on your behalf. Now, if the Court had awarded the costs, or if the suit will be dismissed with costs on appeal now before the High Court, you would be entitled to receive that sum of Rupees 1,000 taxed in the decree from the plaintiff on account of your costs. In that case also my work would have been the same, and if you consider that only 100 Rupees is a fair sum for the work done by me, who will take the remaining sum of Rupees 900? Of course the Government could not take it, as it would not incur the expense nor would it give it to me. Thus you may observe that the principle of the objection is wholly inapplicable, and that quantity of work is not the guide for the payment of Pleaders' fees, which is regulated by special enactment and rules. If the Government itself bargain in this way in violation of the law, *a fortiori* private parties would do, leaving the regulation and the taxation in the decree a dead letter.

6. If the Government view this charge as heavy and unnecessary, it would, perhaps, have been better if they had allowed the suit to proceed *ex parte*, whatever the consequences might be, as far as you were concerned. If a written statement was at all to be filed, it could be done only by yourself in person or by your authorized Pleader and by nobody else, and any Pleader under the ruling above quoted on mere presentation of it would be entitled to half the fee, though his authority might subsequently be revoked or even the suit withdrawn.

7. There was a specific relief sought for in the plaint against the Collector to compel him to register plaintiff as proprietor in consequence of that officer's previous refusal to do so. Had I not watched the case throughout, and, in order to exonerate your liability, showed grounds in my closing address defending the propriety of your procedure in the matter, the Court might have passed, or at least there would have been a chance of passing, a decree against both the defendants for all costs, instead of entirely disallowing plaintiff's costs as it was done; and in that case, both the defendants being liable at law *in solidum*, there would be a chance of plaintiff recovering the whole sum of his costs, amounting to some thousands, from the Collector alone. I do not say that this would have been the result had I not conducted the suit throughout, but there might have been a chance for the same.

[illegible] conducted the suit, as in every other case, without any restricted power, and as the Court rightly taxed, in other words certified, the proper amount of fee due to me under the law, viz., 1,000 Rupees, and you have paid to me that sum only and no more; as also, as far as the quantity of work is concerned, I did far more than was supposed to have been done by me by the Government, being actively engaged with the work to the very end for about a year, and as the law does not contemplate the option of payment of a fee less, though it does more, than the prescribed fee, I am perfectly entitled to retain the full fee under question, and do not feel bound to refund any portion of it for any reason.

9. If you doubt my assurance, I request you will be good enough to suggest to the Government to refer the question to the Advocate-General and ascertain his opinion, as it evidently appears that the Government made the present objection perhaps not having in view the fact that I was by law entitled for Rupees 500, only for the mere filing of the written statement, and that as I conducted the suit to judgment and decree, I was entitled to full fee, and that therefore no valid objection to any portion of the fee could be raised.

10. In a certain pauper case brought against the Meranghi Minor Zemindar, dismissed by the Court on some mere preliminary point, the full fee of Rupees 1,000 was paid to Mr. Sice by Mr. Daniel, the then Collector. Though he first questioned the propriety of paying the charge in full, he afterwards satisfied himself, and the Government approved it. So also a fee of about Rupees 700 and odd was paid to me as taxed by the Court in the Penta Channel case between the Bobbily and Salur Estates, on behalf of the latter estate, notwithstanding that case was dismissed on the mere technical point of the plaintiff not paying the additional stamp-duty and not adding defendants' titles, &c.

11. With due deference to Government objection I should have implicitly obeyed your requisition had I not felt confident, on a careful consideration and consultation of law, rules and practice, that I am perfectly entitled to have drawn and to retain the full sum.

12. Unauthenticated copies of the decree and the vakalutnamah obtained from the Court are enclosed for easy reference.

(True Copy.)

(Signed) H. ST. A. GOODRICH,
Acting Collector.

ENCLOSURE No. 2.—Copy of Decree and Vakalutnamah.

SUBMITTED to Government with reference to G.O., dated 12th August 1878, No. 1,286, and Board's Proceedings, dated 13th September 1878, No. 2,526.

2. The Pleader cannot of course be required to refund any portion of the fee already paid, but in his reply to the Collector he has overlooked Act I of 1846.

(True Copies and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

No. 26. ORDER THEREON, 3rd December 1878, No. 1,944.

Miscellaneous.

THE Accountant-General is authorized to admit the charge.

(True Extract.)

(Signed) L. A. CAMPBELL,
Under-Secretary to Government.

To the Accountant-General.
„ the Board of Revenue.

Exd. W. H. French.

Govt. of {1878} Madras

REVENUE.

To

THE ACCOUNTANT-GENERAL,

&c., &c.,

Dated December 3rd,

Printed 5th.

Read Encl

G.O., 3rd December 1878, No. 1,944.

DECEMBER.

Nos. 25-26.

Suit No. 4 *of* 1877, *in Vizagapatam Dist. Court regarding Sirigurum Estate.*—Authorizing the Accountant-General to admit the charges in connection with this suit.