Revenue Department

Minutes of Consultation

22nd June 1858

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Order no 836 dt 17th June 1858.

(A Deb)

பாதுகாப்பு பிரிவு - 1

செப்பனிடுபவர் பெயர் : மா கோபாலகிருஷ்ணன்

செப்பனிடுவதற்காக எடுத்தக் - 07/05
கொள்ளப்பட்ட நாள்.

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தூராய்ச்சி
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Fort Saint George, Revenue Consultation of 22d June 1858.

No. 18. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudder Udalut; to W. H. BAYLEY, Esq., Acting Secretary to Government, dated Madras 5th June 1858, No. 53.

SIR,

Para. 1. In continuation of the letters I had the honor to address to Government under the dates and numbers noted in the margin, and with reference to the Extract from the Minutes of Consultation passed thereon, also noted in the margin; I have the honor to report for the information of the Right Honorable the Governor in Council, that the Appeal Suits these referred to, came on again for hearing before the Court of Sudder Udalut on the 5th Ultimo, when I on behalf of the Collector admitted, that the late Varegonda Ramanapah the last Zemindar, and who died in 1810, was a Brahmin, but not of the Sacerdotal class or order, whereupon the Counsel for Cavaly Vencata Narrainapah claimed the judgment of the Court in favor of his client; I however objected, denying that he was entitled to such judgment under any arrangement made on the 14th April, and reminded the Court, I had not been heard on the point. The Court decided in favor of my objection; when, at Mr. Maynes' request, the further argument was postponed to Saturday the 8th May; on which day after argument the Court dismissed both Appeals with costs, on the ground that the crown cannot succeed to the property of a Brahmin.

Letter from Government Pleader to Acting Secretary to Govt., 21st April 1858, No. 36.
Do. from do. to do. 26th April 1858, No. 40.
Extract Minutes Consultation, 29th April 1858, No. 548, Revenue Department.

2. I do myself the honor of enclosing a copy of the Decree* passed by the Sudder Udalut.

* *Not yet obtained will be forwarded when procured.*
C. D., Govt. Pleader.

3. I have since given the subject much consideration, and although the decision may be deemed to be in accordance with the texts in the Dhaya Bhaga and Mitacshara which were quoted by the Counsel for Cavaly Vencata Narrainappah, if construed literally, and with the law as laid down in the 1st Volume of Sir Thomas Stranges' work page 149;—I must say that I am of opinion, that a dictum as there laid down, given in such general and uncertain terms, containing a position that it is not possible can be ever carried out or enforced; that is opposed to reason, and is so manifestly absurd, *is* far "too comprehensive;" and I agree with Mr. Norton when he says, he "can scarcely suppose that the Courts would seek to uphold or enforce such "a proposition at the present day" and I am of opinion, that the Court of Privy Council will hold that such a dictum, if to be construed literally, cannot be upheld as law; and that from its very uncertainty it is void, unless a reasonable solution of it can be arrived at, which I will endeavour to shew is the case.

4. Such it appears to me would be also in conformity with Hindu law, for brihaspate (see 2nd Digest 128) writes a decision must not be made solely by having recourse to the letter of "written Codes; since, if no decision were made according to the reason of the law, there "might be a failure of justice."

5. In Sir Thomas Stranges' work Volume I pages 309-310, after shewing how the payment of debts can be enforced, and the course to be pursued in the case of a Defendant having no effects to satisfy a judgment he adds "a Brahmin can only be compelled to pay according to "his income by little and little. But in this, and in *every case of exemption* in favor "of the Brahmin, one of the Sacerdotal class is intended; all being born capable of that class, "but few comparatively speaking belonging to it. The rest being secular Brahmins pursuing "various worldly pursuits permitted to them by the law. The Sacerdotal learned Brahmin "has indeed various exemptions, extending to capital punishment, but their number has proba-"bly in all time, rendered their claim an evil of no great importance &c., and in the 2d Vol. "p. 247, when observing on the opinion of Bombay Pundits, where it is laid down in general "terms that—The Magistrate shall never *take* the property of a Brahmin, and with reference "to the case in question adds. "The Magistrate must cause it to be expended in performance "of his funeral rites" Mr. Ellis remarks. The law referred to applies to a REAL BRAHMIN,

" not to one merely reputed as such. To ascertain what a real one is, see the Mitacshara, and 2d Dig. 127. " The Mitachsara, in treating on the succession of strangers upon failure of the Kindred, (page 353) after defining the Preceptor, the disciple, or the fellow student, as the parties to succeed to those dying without Kinsmen, proceeds to quote the text of " Gantama, that" venerable *Priests* should share the wealth of a Brahmana who leaves no " issue " and of Men that" on failure of all those, the lawful heirs are such Brahmanas as " have read the three vedas, as are pure in body and mind, as have subdued their passions " and " then concludes" never shall, a King *take* the wealth of a PRIEST and as his authority quotes " menu. The property of a *Brahmana* shall never be *taken* by the King" as also Nareda if " there be no heir of a Brahmanas wealth on his demise, it must be GIVEN to a Brahmana, " otherwise the King is tainted with sin (In a note it is however stated that this passage is not found in the institutes of Nareda) in the 3rd Digest. p. 557 is the following commentary on Menu's text. The other classes, other than the sacerdotal tribe, namely the military class and the rest, the wealth of a Brahmana must never be *taken* by the King, consequently on failure of honest Brahmanas HE *must* GIVE the property of A PRIEST to Brahmanas in general; such is the notion of cullucabhatta. The wealth of other classes, in default of heirs including kinsmen sprung from the same branch of a venerable stock the King should GIVE to honest Brahmanas, on failure of them, he may *take* it himself as an escheat such is the opinion of Jernutavahana. But Misra and the rest hold, that the first text of menu relates to the property of " Brahmanas, but the wealth of cshatriyas and the rest shall be taken by the King alone. " Such being the rule of decision, why may be not likewise take the estate of a Priest ? To " obviate this doubt, the legislator first Ordains, that the property of a Brahmana shall not be " *seized* by the sovereign. Accordingly, Bandhayana declares the taking of holy property " reprehensible in a King." Again (quoting Bandhayana) that " holy property unduly appropriated destroys like the most exalted poison adds therefore the King shall on no account take " the property of a Brahmana and (in page 538) is the following Commentary." Must it not be " affirmed that this text shews it highly *reprehensible* to take wealth from a Brahmana by force, " fraud, or the like, but not so, to take it without violence as an escheat ? No, for the text " of Dèvala is explicit—" And then quotes Devala. In every case the King may *take* the wealth of a subject dying without an heir, except the estate of *a Priest*, for the property of a Brahmana dying without an heir must be *given* to learned Priests"—And in page 539 quoting sancha and sichita says " The property of a learned Priest descends to Brahmanas, not to the King, wealth consecrated to the gods, or allotted to *Priests*, must not be seized by the sovereign." And in the commentary on that text is the following " the property consecrated *to the gods* or allotted to *Priests* must on no account be taken by the King unless as a fine, or the like." The seizure of a Brahmanas property being forbidden in these texts, on whom shall the estate of a Brahmana devolve ? This question arising, and the words of Devela bearing the same import the text of Menu must relate *to the sacerdotal class only*."

6. Sir Thomas strange does not refer to any authority in support of his text in page 310; Mr. Ellis however would appear to support Sir Thomas Strange's view, that it must be a Brahmin of the sacerdotal class. The Digest offers a similar construction, while the Mitachsara, to which Mr. Ellis refers, expressly states the King shall not *take* the wealth of a *Priest*. This view is moreover supported by some of the texts I have quoted from the Digest.

7. I am of opinion that the true construction to be put upon the Texts quoted is, that under Hindu Law it is sinful in the King to retain the property of a Brahmin of the sacerdotal Order; and therefore to avoid sin *he* is to give it to learned Priests. If this be the correct construction, it follows, that by Hindu Law the property of Brahmins of the sacerdotal class, who shall die without any heirs, as of right belongs to or vests in the King but with the denouncement that (under Hindu Law) he will commit sin if he retains it, and does not give it to learned Priests. In the Bombay case, to which I have referred, it is evident that the Magistrate " *took* the estate of the Deceased Brahmin, for the Pundit proceeds to shew the manner in which the Law (Hindu) required *him* to dispense it.

8. The other points arising in the case were not argued; however I entertain no doubt upon them; and that had it been decided, that the exemption claimed on behalf of the Defendant in consequence of Varegonda Ramanapah having been of the Brahmin Caste, did not apply, that on those points the law is clearly in favor of the Plaintiff's Case.

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9. On careful consideration of the point raised by the Defendant, and on which the Court of Sudr Udalut has decided, the suits, I am of opinion 1st that the Texts quoted by the Defendant cannot be upheld as law, if they are to be read literally, as claimed by the Defendants counsel; 2ndly That according to the true construction of those texts, the exemption can only be claimed where the estate was owned by a Brahmin of the sacerdotal class, which Varegonda Ramanapah was not; and consequently that the estate can be claimed as an escheat by Government; and 3rdly That in cases of estates, the last possessor whereof was a Brahmin of the Sacerdotal class, and who dies without Heirs, that the estate (by Hindu law) would devolve on the Sovereign Power, but that (if such Sovereign were a Hindu) it would be sinful for the Sovereign to retain such Estate, Hindu Law enjoying such Sovereign to *give* the Estate to learned Priests. Hence it follows (if my opinion be well founded) that the defence failed, while the claim put forward on behalf of Government was Established; and that the Decree should have been for the Plaintiff; the power of selection to whom the Estate should be given by the Sovereign (if a Hindu) would be vested in such sovereign; and no Municipal Court has the power to interfere with such selection.

10. Under these circumstances and for the foregoing reasons I have the honor to advise that against the Decree of the Sudr Udalut an Appeal to Her Majesty in Council be lodged.

No. 19. ORDER THEREON, No. 836; dated 17th June 1858.

The Right Honorable the Governor in Council will await the receipt of copy of the Decree which is the subject of the above letter. They hope to receive it at an early date, and will then take into consideration the advisability of a further appeal to the Queen in Council.

(Signed) W. H. BAYLEY,
Acting Secretary to Government.