
(1902) 12 MAD CK 0010
In the Madras High Court

Maharaja of Jeypore

APPELLANT

Vs

Neladevi and Another

RESPONDENT

Date of Decision : 17-12-1902

Acts Referred:

Vizagapatam Agency Rules — Rule 31

Citation : (1904) ILR (Mad) 109 : (1903) 13 MLJ 151

Judgement

1. Objection was taken on behalf of the respondents that Rule XXXI of the Vizagapatam Agency Rules gave no general right of petitioning the Government, but only presented the channel through which petitions that were otherwise provided for should pass. If this view were correct, the rule would have been quite unnecessary, as at the time it was enacted there were no cases in which petitions were otherwise provided for. The cases to which our attention has been drawn were provided for subsequently to the passing of Rule XXXI. Rule XXXI must therefore have been intended to provide for cases for which no previous provision had been made--such as petitions relating, like this, to matters in execution of decrees, for which no appeal was allowed, It is unlikely that Government should have overlooked the necessity for providing for revision by them of the orders of the agent and his assistants in the very important subject of execution of decrees when several rules have been made regarding the subject, and the control of Government in the matter is expressly reserved in one instance (see Rule XXII). The provision in the Rule XXXI that the petition thereunder received may be referred to certain authorities, shows that the rule was one of a substantive character and not merely to provide for the formality to be observed in the submission of the petition. Our view is the same as that taken in Chakrapani v. Varahamma ILR

18 M. 227.

2. It was next contended that if the rule was what we consider it to be, it was ultra vires, inasmuch as it was in excess of the powers conferred

upon the Government by Section 4 of Act 24 of 1839 under which the rules were made. We are unable to agree with the contention that it was not

competent for the Governor-in-Council acting under that section to reserve any control in himself over the agents and their subordinates in the

exercise of their judicial powers. The words "" to determine in what suits an appeal shall lie to the Sadar Adawlut "" should not be understood as

restricting the Government from making rules for the control of the agents and their subordinates otherwise than by appeal to the Sadar Adawlut

and the words ""to determine to what extent the decisions of the agents in civil suits shall be final"" have been held in Maharajah of Jeypore v.

Jammanadhora ILR 24 M.345 not to disable the Government from making the decisions of the agents subject to review under the orders of the

Sadar Adawlut as provided in Rule XX although no appeal is provided for. We consider that the words "" to prescribe such rules as he may deem

proper for the guidance of such agents, etc., "" are wide enough to warrant the Governor-in-Council to reserve to himself a power of control such

as he gives himself under Rule XXXI. Under the Act the operation of the ordinary lands within the Agency tracts was excluded and the control of

the administration of justice was virtually vested in the Governor-in-Council as is implied from the provision empowering him to make such rules in

that respect as he deems proper, without any limitation to his powers. The designation of the officer in whom the actual administration of justice

was vested in the Act namely the "" Agent to the Governor"" shows that the Legislature itself recognized his subordination to the Governor, leaving it

to the Governor to define and explain the extent of such subordination by rules. As in our opinion the Rule XXXI was not "" ultra vires"" the question

whether it was validated under the Indian Councils Act 24 and 25 Vic. Chap. 67, Section 25 does not arise.

3. It was further urged that the order was not that of the agent but of his assistant, and so Rule XXXI was inapplicable, but we find that the order

was passed under the authority of the Agent as is expressly stated therein.

4. Coming to the merits we must take it that the Agent's order refusing to attach

and sell the property in execution of the decree was not passed in the exercise of his discretionary power under the concluding part of Clause 2 of Rule XXXI, but because the agent considered the property was not liable to be proceeded against in execution of the decree. The Agent relied on a provision of the CPC which does not apply to the Agency tracts. The property sought to be attached viz., the interest of the defendant in the land, even assuming it was a grant for her maintenance, is not exempted from attachment under the proviso to Clause 2 of Rule XXXI by which alone the Agent was bound. He should, therefore, have granted execution unless the application for execution was barred by limitation. This the Agent held was not the case, with reference to the only contention before him that it had become barred subsequent to August 1896. Though the correctness of this view could not be impeached, the respondent's vakil wanted to show that the execution of the decree had become barred previous to 1896. As this point was not raised before the Agent, and no satisfactory explanation was forthcoming why it had not then been raised we must decline to allow the question of limitation to be reopened in the manner suggested. We must therefore reverse the order in question and direct that the application for execution be restored to the file and proceeded with in due course The petitioner's costs in this Court should be paid by the respondent.