

THE PRESIDENCY SMALL CAUSES COURT OF CALCUTTA

By a Royal Charter of 8th January 1753 a Court of Requests was established in Calcutta for determination of civil suits of small pecuniary amounts. The Supreme Court, however, was established on 26-3-1774. Thereafter by the Charter of Justice and the Proclamation, the Courts of Requests in the Presidency towns were placed under the control of the Supreme Court. The Presidency Small Causes Court was established on 15-3-1850, by Act IX of 1850 for the "more easy recovery of small debts and demands" and the respective Courts of Requests were merged in the Presidency Small Causes Courts.

Judges "professional" and "non-professional"

The Court of Requests originally consisted of 3 Commissioners who sat together in deciding cases. The first Indian Commissioner in the Court of Requests in Calcutta, Russomoy Dutt, was appointed in 1837 and was succeeded by Hurre Chandra Ghosh. David Hare acted as the Third Commissioner from 17.3.1840 to 1.6.1842. From 1814 to 1850 only three of the Commissioners were lawyers and they were called "professional judges" while the remaining Commissioners were non-lawyers and were called "non-professional judges."

Judges deciding cases according to Advocate General's advice

Jadu Nath Roy was the first Sub-Judge to be promoted as a Judge while Tara Pada Chatterjee was the first Munsif to be appointed as Registrar of this Court. As most of the Judges were not lawyers, the practice was that whenever a difficult question of law arose the Judges made reference to the Advocate General and cases were decided on his advice. This will appear from notes of the following cases preserved in the papers of the Court from 1826:

(a) On 19.5.1843 the Commissioners wrote to the Judicial Secretary for the Advocate General's opinion on the following points arising in a suit for the recovery of Rs. 39 on account of fees at Rs. 4 per visit as a medical practitioner by Shamcharan Ghose who obtained a diploma of Sub-Assistant Surgeon from the Calcutta Medical College. He treated H. Geffray, a Barrister practising in the Supreme Court. Geffray gave such a signed memo to Baboo Shamcharan Ghose.

The visits appear to have been made while Shamcharan Ghose was a student of the Medical College and had not obtained the diploma to practise as a medical practitioner. The point raised in the suit was whether the plaintiff, not having obtained a diploma to practise as a medical practitioner at the time when the cause of action arose, can recover any charges in a court of law?

(b) On 8.1.1828 in a claim case, the Commissioners wanted to have the opinion of the Law Officers of the Government as to whether the Commissioners should allow the claim case or order the property to be sold.

(c) On 28.8.1837 the Senior Commissioner wrote to Pearson, the Advocate General: "The Commissioners of the Court are divided in their opinion on the subject and it is one of some importance involving the rights of landlords.

(i) When the property of a defendant has been taken in execution of a decree of a court and is still under seizure of its officers, has a landlord any right to oust the possession of the officer and sell such property under a distraint for rent? A public notice was affixed on the door of the premises for five days previous to its intended sale; calling upon the parties who may have any claim upon the property to register the same in Court for future adjudication.

(ii) After the sale of effects and realisation and deposit of the proceeds in Court, and before payment thereof to the plaintiff in the suit, should the landlord's claim in rent be allowed or not out of such proceeds?

Suits against Judges

The proclamation of 1802 empowered the Presidency Court of Requests to frame its own rules and regulations. But as a matter of fact no such rule was framed and the Judges carried on the business of the Court on their own responsibility. Thus carrying on business of the Court in the absence of any prescribed rules, the Judges some time acted beyond their power and actions were brought against them:

A suit for house rent was heard by one Commissioner and was decreed on 12.12.1843. The defendant's attorney wrote a letter to the Commissioner who then forwarded it to the Judicial Secretary with the remark:

As the case was heard and decided eventually by one Commissioner, we fear that legal objection on this account would be raised to the proceedings altogether: should this matter

be brought before the Supreme Court. To avoid a matter of so disagreeable a nature we deem it expedient to stay the execution against Mr. Butcher for the present and to submit the matter for the consideration of the Hon'ble Governor of Bengal and respectfully suggest that the question of jurisdiction of the Court is one which loudly calls for immediate legislative interference as we have repeatedly and urgently demonstrated in our former letters.

(b) On 12.1.1827, a Writ of Mandamus was issued on Commissioners C. W. Breetzeke, J.W. Macleod and R. B. Lyod, by Sir Charles Edward Grey, Chief Justice at Fort William, commanding them to furnish the Attorney for the defendant with an attested copy of the affidavit or deposition on which a warrant had been issued from the Court of Requests which had refused to grant such copy. The Commissioners were directed to pay the costs of the application unless they could show cause to the contrary.

(c) On 3.11.1847 the Commissioners reported to the Deputy Governor of Bengal that an action for false imprisonment had been commenced against the Senior Commissioner by one Neamat Khan, a servant of one Dr. Begg in a case in which he was a witness for the plaintiff and Dr. Begg the defendant. In spite of having been subpoenaed Neamat did not appear and so he was arrested under an attachment issued and as the plaintiff wanted time till the next day the witness was remanded and detained in jail for safe custody till 17.8.1847, the date of hearing. The original writ of attachment under which he was arrested was mislaid. In view of the opinion of the Advocate General and the Standing Counsel the case was compromised and Breetzeke, the Senior Commissioner, paid Rs. 200 as compensation to Neamat and promised to pay the costs of the suit. The Company's Law Officer gave the above advice because the warrant of commitment had been signed by a single Commissioner and also the witness had not been brought before the whole Court to be tried for contempt.

(d) An action in the Supreme Court was instituted against Commissioner Russomoy Dutt on 26.1.1848 for false imprisonment.

(e) In 1840, a suit was instituted against Commissioner Russomoy Dutt in the Supreme Court. The question involved was whether the Court of Requests could take cognizance of an action against executors of an estate.

(f) On 27.9.1826 the Commissioners wrote to the Judicial Secretary: "Two actions have been brought against us for alleged excess of power. The first against Mr. Robinson (a Commissioner)

for committing to jail for ten days a witness convicted for gross falsehood and prevarication on oath but afterwards compromised by Government paying to parties expenses. The second action against the Head Bailiff is in fact against the practice of the Court in detaining a defendant after judgment in conformity with what has prevailed since the first establishment of the Court of Requests in 1753".

Independence of the Judges

A cook boy (baburchi) employed by one Captain Balton sued the Captain for his wages and the Captain was arrested for the sum of Rs. 380. The arrested Captain, to put it in his own words "had to attend the Court of Requests when the case was tried and he was obliged to stand in a Court filled up with all sorts of people side by side with a cook boy a race of men notoriously known as of the lowest class of natives and the greatest rascals in India and thus a triumph was gained over the Captain by the low caste native." Captain Balton complained of this to Lt. Col. Watson, Adjutant General Thereupon the Secretary to the Government Military Department wrote to the Commissioners who in their own turn wrote to the Judicial Secretary:

We consider that the Judicial Department is the only legitimate channel of correspondence through which all matters connected with this Court can be received by the Commissioners and it appears to us that the power of inquisition into the judicial acts of Commissioners is distinctly vested by the Proclamation of Government in the Supreme Court, whereas the interference sought to be exercised in the present instance through the Military Department, if admitted would subject the Commissioners to endless correspondence and tend to circumscribe those powers with which they are entrusted.

Court's sittings: "native suits" and "other suits"

The frequent changes in the rules and regulations which were ordered and attempted to be carried into practice without, in some instances, having been sanctioned even by the majority of the Commissioners themselves lessened by degrees the resort to it for justice till at length from July 1825 very few suits were instituted for a considerable time. Originally the Court sat daily but as the institution of suits fell heavily the Commissioners on 20.12.1826 resolved to have three court days every week. From

1837 as there was a large increase of business and the Judges sat daily and on an average each Judge disposed of 12 cases a day. In 1852-53 there were 26,881, as compared to 27,749 suits in the previous year. The average expense of trying each suit was about Rs. 5 in 1853. Suits were of two classes, i.e. "native suits" in which both the parties were natives and "other suits", i.e. suits other than native suits.

Holidays and the Vacation Bench

From a letter of 14.8.1838 it appears that during Durga Poojah holiday the Court used to be closed for three weeks. On 30.11.1843 the Commissioners wrote to the Judicial Secretary for the consideration of the Deputy Governor, Bengal "The Court of Requests and the General Treasury allowed only Christian and Hindu holidays; the Mohamedan amlahs of the Court should not be deprived of Mohamedan holiday". From the letter of the Judicial Secretary, Government of Bengal, dated 26.8.1853, it appears that during summer the Court was to remain closed from 1st to 15th May and during winter from 15th to 31st December every year. On 29.4.1854 the Calcutta Trades Association objected to the closing of the Court in the absence of any provision for enabling creditors during the closure of the Court to institute proceedings against persons about to leave the jurisdiction of the Court. The result was that since 1854 the Court has a Vacation Bench.

Jurisdiction and Subordinate staff

Courts of Requests were established in Calcutta, Madras and Bombay with a starting jurisdiction of 5 Pagodas, i.e., Rs. 20 only. The jurisdiction was gradually extended to Rs. 400. The Act IX of 1850 raised the jurisdiction to Rs. 500. By the Act XXVI of 1864 and the Act XV of 1882 the jurisdiction was extended to Rs. 1,000 and Rs. 2,000 respectively.

The most important position held by an Indian amongst the ministerial staff was that of Treasurer. Gonesh Chandra Bose, Ishan Chandra Bose and Hurre Chandra Bose were appointed treasurers in 1814, 1818 and 1829 respectively. Hurre Chandra's pay was Rs. 50 per month. He had to deposit company's paper to the amount of Rs. 15,000. In 1844 all the bailiffs and deputy bailiffs were either Englishmen or Anglo-Indians and their pay ranged between Rs. 20 to Rs. 60. On 31-7-1843 the Commissioners recommended that authority should be given to them to pay to bailiffs "on such a scale as to secure the service of a respectable class of men."

The Native Seal Bailiff, the European Seal Bailiff, Superintendent of Bailiffs, the Auctioneer of the Court and the Treasurer of the Court had to furnish securities for Rs. 500, Rs. 1,000, Rs. 2,000, Rs. 2,800 and Rs. 10,000 respectively. The Registrar and even Officiating Registrar of this Court had to put in security for Rs. 500. On 2-7-1885, Rs. 4,000 was deposited as security by the Officiating Fifth Judge and the Clerk of this Court.

Litigants

The budget of 1-5-1828 shows that two Brahmins from Gangajali Brahmins and two Mohammedans from Koran Molahs held priestly office in the Court. Their pay ranged from Rs. 5 to Rs. 15 and their duty was to administer special oaths.

On 25-5-1840 the Commissioners wrote to the Judicial Secretary that the priestly office holders were to be discharged from 31-5-1840 and they recommended that one of the Gangajali Brahmins namely Gopeynath Pandah to be retained for Rs. 7 per month to examine Oria accounts as 25 per cent of the suits were by Oria cloth merchants, besides the suits by Oria carpenters, sawyers and other artificers. It was further stated by the Commissioners that in the said suits accounts were filed written in Oria characters on palm leaves.

Budget

The budget of 1-5-1827 shows that the monthly salaries of the Senior, 2nd and 3rd Commissioners were Rs. 1,400, Rs. 1,200 and Rs. 1,000 respectively while the salary of the Head Clerk was Rs. 650. There were three clerks drawing monthly salaries of Rs. 350, Rs. 300 and Rs. 250. The lowest pay of a British employee of this Court who was Deputy Bailiff was Rs. 60 while the highest pay of an Indian clerk was Rs. 40 and the lowest pay of an Indian clerk was Rs. 8. The pay of a Darwan was Rs. 4. The budget for 1-5-1828 shows the monthly expenditure to be Rs. 7,706 out of which Rs. 850 per month was paid as house rent.

Statement of salaries and establishment of the Court of Commissioners on 1-5-1844:-

Senior Commissioner	...	Rs. 1,463-0-0
2nd Commissioner	...	" 1,200-0-0
Head Clerk	...	" 650-0-0
Asst. Clerk	...	" 313-8-0

1st Clerk to the Commissioner	...	"	150-0-0
Interpreter	...	"	150-0-0
2nd Interpreter	...	"	150-0-0
3rd Interpreter	...	"	80-0-0
Head Bailiff	...	"	60-0-0
Deputy Bailiff	...	"	40-0-0
" "	...	"	20-0-0
" "	...	"	20-0-0

(All Englishmen and Anglo-Indian with the exception of the 2nd Commissioner.)

Oria Interpreter	...	Rs.	7-0-0
English Writers	...	"	41-10-0
" "	...	"	14-0-0
" "	...	"	33-2-0
" "	...	"	33-7-0
" "	...	"	25-0-0
" "	...	"	25-14-0
" "	...	"	25-0-0
" "	...	"	24-0-0
" "	...	"	20-0-0
" "	...	"	18-0-0
" "	...	"	10-0-0
Record Keeper	...	"	23-0-0
Head Accountant	...	"	26-0-0
Bengali Check Accountant	...	"	10-0-0
Head Cash Keeper	...	"	70-0-0
Deputy Cash Keeper	...	"	20-0-0
Moharer and English Writer	...	"	16-0-0
Head Moharer	...	"	14-8-7
" "	...	"	12-0-0
Poddar	...	"	10-0-0
"	...	"	10-7-2
Bengali Writers of the summons office	...	"	10-0-0
" " " "	...	"	12-8-7
" " " "	...	"	10-7-2
" " " "	...	"	25-0-0
Bucksey office	...	"	16-11-6
Calculator and Accountant	...	"	10-7-2
Suits money as well as of costs	...	"	34-0-0
" " "	...	"	12-6-7
Compromise office	...	"	9-6-5
Deposition office	...	"	16-0-0
" "	...	"	16-11-6
" "	...	"	12-7-7
" "	...	"	12-0-0
" "	...	"	10-0-0
" "	...	"	10-0-0
Writers of letters from Commissioners to public	...	"	10-0-0
Examiner of suits (disputed accounts)	...	"	10-0-0
Subponea office	...	"	8-5-9
Bengali Writers	...	"	8-1-11

Bengali Writers	...	"	8-1-11
" "	...	"	8-1-11
Dufftries	...	"	5-1-2
"	...	"	5-1-2
Aubdor	...	"	5-1-2
Darwan	...	"	7-5-0
"	...	"	4-11-7
"	...	"	4-11-7
"	...	"	4-11-7
Methodors	...	"	4-7-0
Bhisteers	...	"	4-7-0
"	...	"	4-0-0
One Farash	...	"	4-0-0
Two Jamadars	...	"	4-0-0
Oriers of the Court	...	"	4-0-0
28 Peons for service of writs	...	"	16-0-0
8 Hurkurrahs	...	"	11-0-0
8 Hurkurrah	...	"	11-12-0
Commissioners' Head Clerk			
Seal office	...	"	12-0-0
Jail Sarkar	...	"	12-8-7
"	...	"	9-0-0
Eight Burkandages for the use of Court while holding its sittings and cash office	...	"	40-14-4
Court-house rent	...	"	500-0-0
	Total:	...	Rs. 5,770-2-10

Prison

So far back as 1827 this Court had a prison of its own. The returns of prisoners in the jail of the Court of Requests dated 4-1-1827 shows that there were 34 prisoners of whom 6 were Englishmen, 7 Mohammedans and 21 Hindus—the minimum debt being Rs. 3 and maximum Rs. 370. The creditor was bound to pay daily the sum of 1½ anna for the subsistence of his imprisoned debtor. On an omission to pay this for a single day the debtor was discharged. The period of imprisonment varied according to the amount of original debt and costs. The Government Proclamation of 29-10-1829 specifies the terms of imprisonment thus:

Debt	Imprisonment
Rs. 10/- (including costs)	1 month
Rs. 50/- "	4 months
Rs. 200/- "	8 months
Exceeding Rs. 200/- "	1 year

From the Commissioner's report dated 19-6-1830 it appears that the jail of the Court of Requests consisted of 12 wards—nine for natives, male and female—each ward was capable of accommodating 35 prisoners. The remaining 3 wards were for Europeans, each ward holding 9 prisoners. The jail stood on a ground purchased for Rs. 9,000 from one S. Johannes. The construction of the jail building was begun in 1801 and completed by Captain Wood in 1819.

The returns of prisoners dated 31-12-1843 show that there were 27 prisoners of whom 2 were Indian women, 5 Moham-
medan males, 2 Europeans and the rest Hindu males. The total debt for which the 27 persons were imprisoned was Rs. 669-3-6, total including costs, being Rs. 883-4-0.

When the Calcutta Small Causes Court was established on 1-5-1850 the Great Gaol of Calcutta was taken over by the Deputy Governor of Bengal as the prison of that Court.

Charity Fund

By 1944 the Charity Fund of the Court amounted to Rs. 23,882-9-10. From the letter of the Commissioners to the Accountant General, Bengal dated 3-5-1844 it appears that the Charity Fund had existed since 1810 and it may be even prior to that year. On 19-4-1844 the Commissioners wrote to the Accountant General:

With regard to the small fines levied on the amlahs of this Court, we have to state that they are regularly brought to credit of Charity Fund Account and are made applicable partly to payment of pensions to old servants who under the Pensions Rules are not admissible to Government pension and occasionally for payment of debts of indigent debtors.

On 16-12-1844 the Commissioners wrote to the Judicial Secretary:

The Charity Fund Amounting to Rs. 4,900/- is invested in Government securities the interest of which was hitherto applied to the payment of pensions to superannuated servants whose cases on account of the smallness of their salaries did not come within the Government Pension Rules and also for relief of indigent honest debtors.

Chief Clerk, Robert Leslie, appointed in 1811 informed the

Senior Commissioner Breetzeke that the fund commenced under order of the Commissioners by the levying of a small percentage on the issue of attachments as well as of small fines for trivial offences committed by the European and native officers of the Court and by small donations sent occasionally by charitable ladies and gentlemen for the relief of indigent debtors. Some years later on the charge of a small additional percentage on the attachment was stopped by the Commissioners as illegal.

On 5-8-1844 the sums realised on account of fines were credited to the Government. On 4-3-1845 the Commissioner wrote to the Judicial Secretary:

The relief offered to the indigent debtor is regulated by no other fixed rule than a strict personal examination of such debtor by one of the Commissioners and in almost every case inducing the creditor to give up a part of his claim on payment of the balance by the Court.

Micellaneous

The Commissioners' report dated 21-2-1829 shows that when a servant deserted his master without giving a substitute and sued for his wages the Court deducted half a month or a whole month's wages after having considered the inconveniences a master was put to under such circumstances. The Court was also at all times in the practice of making deductions from wages when sued in the Court for articles reported to have been lost or wilfully damaged through the negligence of the servant.

The report of 19-2-1853 shows that complaints were filed in English and then rendered into Bengalee and thus conducted through the office until the issue of process to enforce the terms of the judgment. Thus a complaint which on its first institution was entered by the suitor in English, only reassumed its original form at the final stage when for the second and last time the suitor was brought into personal communication with the amlah. The intermediate proceedings during the pendency of the suit in which the office clerks were only employed and reference to the parties was wholly unnecessary were conducted in Bengalee. John Kind, Clerk of the Court, reported to the Judges that all the proceedings should be conducted in the English language. The Judges Weyllie, Breetzeke and R. Dutt on 24-6-1853 saw no objection to the acceptance of the proposal.

Calcutta Small Causes Court and its Pleadings

As regards the admission of pleaders entitled to practise in the Court of Small Causes, Calcutta, the following passage,

taken from the editorial note of the Statesman, dated January 19, 1875, is interesting:

[that the outsiders] cannot insist upon their right to practise, because the Pleaders Act has not been extended to the Central Province. On the other hand, the Calcutta Court of Small Causes possesses power of admitting any number of pleaders although the applicants have not passed the prescribed Pleadership Examination, and between them and the old pleaders there are more pleaders than suits, the Judges, nevertheless, continue to admit pleaders.

Conclusion

(1) The Presidency Small Causes Courts Act (Act XV of 1882) is an instance of extraordinary bad drafting.

(2) The Presidency Small Causes Courts have become somewhat antiquated and do not fit in with the rest of the Indian Judicial System.

(3) Amendment of the Presidency Small Causes Courts Act is long overdue. The Act should be amended so that it may fit in with the current social, economic and commercial conditions of our country and also with the set-up of the judiciary in India.

*CHARU CHANDRA GANGULY**

* Retired Chief Judge, Small Causes Court, Calcutta.