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MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 1025 Press / Mis.

1249-140

Dated 18-7- 1873.

10/11

Not to be folded or roughly handled

No. 139. Read the following letter from J. H. MASTER, Esq., President of the Municipal Commission, Bellary, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Bellary, 4th July 1873, No. 39:—

In my letter, No. 28, dated the 21st March 1872, I reported to the Government the fact of a suit having been filed against me by Lieutenant-Colonel Bates for the recovery of the professional tax levied from him, as he asserted, illegally.

2. In G. O., Financial, No. 475, dated the 6th April 1872, the opinion of the Government Pleader upon the case was furnished to me.

3. The Judge of the Cantonment Small Cause Court stated a case for the opinion of the Judges of the High Court, and their ruling was only received a few days ago. It is to the effect that the levy of the tax was illegal.

4. I have the honour to enclose copy of a decree given by the Judge of the Cantonment Small Cause Court and copy of the ruling of the High Court Judges, as also of Resolution No. XI. passed at a Meeting of the Commissioners held on the 1st instant.

5. The question as now settled will affect the income of the Municipality for the current year considerably. On this subject I shall perhaps have to address the Government again shortly.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Monday, the Twenty-eighth day of April, One Thousand Eight Hundred and Seventy-three.

PRESENT:

The Hon. W. HOLLOWAY, *Acting Chief Justice*, and
The Hon. Mr. Justice KINDERSLEY.

Referred Case No. 23 *of* 1872.

Lieutenant-Colonel C. E. Bates, *Plaintiff*.
The Municipal Commissioners for the Town of Bellary, *Defendants*.

Case stated under Section 22, Act XI. of 1865, by the Judge of the Cantonment Court of Small Causes at Bellary.

This case coming on for final hearing, and the parties not appearing in person or by Counsel: Upon perusing the return to the Proceedings of this Court, dated 26th March 1873, the Court delivered the following—

JUDGMENT.

The plaintiff sues the defendants, the Municipal Commissioners for the town of Bellary, for a certain sum alleged to have been illegally levied by the defendants from him as his trade and profession-tax, with interest, &c. The sanction of the Governor in Council, under Section 38 of Act III. of 1871, was obtained on the 4th July 1871, with authority to levy the tax from 1st May 1871. The plaintiff states that no notice, under Section 61 of Act III. of 1871, was served upon him; that the levying of the tax was illegal, as the approval of Government was obtained three months after the commencement of the official year, and that the Act cannot have retrospective effect.

The questions referred are—

(1.) Can the levying of the tax have retrospective effect?

(2.) Is it essential that notice in writing, under Section 61, must be given to persons liable to the tax before the Municipal Commissioners can legally levy it?

The Act, so far as the plaintiff was concerned, imposes a new tax. The sections under which it is to be imposed and levied, make it an annual tax payable in two instalments, but they mani-

festly provide for no case but that of the imposition of that annual tax at the commencement of the official year. Here there was no legal authority whatever for its imposition at the commencement of the year. The sections as to notice enforce the construction that there is only one legal period of imposition of the tax, and at that period there was no tax legally in existence. We answer, therefore, that the levy from the plaintiff was illegal.

In the Court of Small Causes of Cantonment, Bellary.

Original Suit No. 160 *of* 1873.

Lieutenant-Colonel C. E. Bates, *Plaintiff.*

The President of the Municipal Commission for the town of Bellary, *Defendant.*

	Rs.	A.	P.
Judgment for plaintiff for	24	3	8
Costs	8	2	0
Total ...	32	5	8

The above sum is ordered by the said Court to be paid into Court by the said defendants on or before the 1st day of July 1873.

Given under my hand and the seal of the Court this 24th day of June 1873.

(Signed) G. H. OAKES, Captain,
Judge of the Small Cause Court,
Cantonment Bellary.

The plaintiff is cautioned not to receive the amount of this judgment except through the Court.

Extract from Proceedings of the Bellary Municipal Commission, dated 1st July 1873.

* * *

XI. Read judgment given in the High Court of Judicature at Madras, under date 28th April 1873, in the Referred Case No. 23 of 1872 of—

Lieutenant-Colonel C. E. Bates, *Plaintiff.*

The Municipal Commissioners for the town of Bellary, *Defendants*, as follows :—

"The plaintiff sues the defendants, the Municipal Commissioners for the town of Bellary, for a certain sum alleged to have been illegally levied by the defendants from him as his trade and profession-tax, with interest, &c. The sanction of the Governor in Council, under Section 38 of Act III. of 1871, was obtained on the 4th July 1871, with authority to levy the tax from 1st May 1871. The plaintiff states that no notice, under Section 61 of Act III. of 1871, was served upon him ; that the levying of the tax was illegal, as the approval of Government was obtained three months after the commencement of the official year, and that the Act cannot have retrospective effect.

"The questions referred are—

"(1.) Can the levying of the tax have retrospective effect ?

"(2.) Is it essential that notice in writing, under Section 61, must be given to persons liable to the tax before the Municipal Commissioners can legally levy it ?

"The Act, so far as the plaintiff was concerned, imposes a new tax. The sections under which it is to be imposed and levied, make it an annual tax payable in two instalments, but they manifestly provide for no case but that of the imposition of that annual tax at the commencement of the official year. Here there was no legal authority whatever for its imposition at the commencement of the year. The sections as to notice enforce the construction that there is only one legal

period of imposition of the tax, and at that period there was no tax legally in existence. We answer, therefore, that the levy from the plaintiff was illegal."

Resolved that the approval of the Governor in Council, of the determination by the Commissioners to levy a tax on arts, professions, trades, and callings for the current year 1873-74, having been conceded to them subsequent to the commencement of the year, viz., in G. O., 16th April 1873, No. 492, the effect of the High Court's ruling, above quoted, is to render the levy of the tax illegal, because the circumstances under which it is being levied are parallel to the above case in that "there was no legal authority whatever for its imposition at the commencement of the year ;" and "there is only one legal period of imposition of the tax, and at that period there was no tax legally in existence."

Resolved, further, that this judgment be forwarded for the information of Government, through the President, without delay ; that a refund of sums received on account of the tax for the current year be made to all applicants ; and that no further collections be made thereon until further orders.

(True Extract.)

(Signed) H. E. DYNELEY, Lieut.-Colonel,
Officiating Vice-President,
Municipal Commission.

No. 140. Order thereon, 18th July 1873, No. 1025.

The Governor in Council sees nothing in the decision of the High Court to warrant the assumption by the Bellary Municipal Commissioners that an annually-renewed sanction of Government for the levy of any municipal tax which has once been sanctioned is *necessary*, nor is there any such direction in the Towns' Improvement Act III. of 1871.

2. The decision has reference solely to the first occasion of the Profession-tax being sanctioned, and to the date from which that sanction legally operated. The Governor in Council considers that the sanction has legal force until formally cancelled, notwithstanding the fact that it may have been subsequently though unnecessarily repeated.

(True Extract.)

Chief Secretary.

To the President of the Municipal Commission, Bellary.

Exd. J. Wright.

In the Court of Small Causes Contonment Bellary.

Original Suit No 160 of 1872.

Lieutenant Colonel C.E. Bates - Plaintiff

The President of the Municipal Commissioners for the Town of Bellary } Defendant

Rs. as P.

Judgment for Plaintiff for Rs — 24 — 3 — 8

Costs — 8 — 2 — —

Total Rupees 32 — 5 — 8

The above sum is ordered by the said Court to be paid to the said Plaintiff by the said Defendants on or before the 1st day of July 1873.

Given under my hand and the seal of the Court this 24th day of June 1873.

Judge of the Small Causes Court Contonment Bellary

The Plaintiff is cautioned not to receive the Amount of this judgment, except through the Court.

Copy applied for 27th June 1873
Copy given — 30th June 1873.

Ex? D'Acunha Clerk

No. 89

BELLARY COLLECTOR'S OFFICE

Dated 4th January 1873.

From,

and President of Revising Court of Commissioners

THE COLLECTOR, OF
BELLARY.

To,

The Chief Secretary to Government

Sir,

1. I have my letter No 28 dated the 21st March 1872, I reported to the Government the fact of a suit having been filed against me by Lieut: Col: Bates for the recovery of the Professional Fee, levied from him, as hereinmentioned the gazette.

2. The Government Order, Financial No. dated the 6th April 1872, the opinion of the Government Pleader upon the case was furnished to me.

3. The Judges of the Bombay and Circuit Courts decided a case for the opinion of the Judges of the High Court, and their finding was only received a few days ago. It is to the effect that the levy of the Fee was illegal.

4. I have the honour to enclose copy of a decree given by the Judges of the Bombay and Small Causes Court and copy of the Judgment of the High Court Judges, as also of resolution No. XL passed at a meeting of the Commissioners held on the 19th instant.

5. The question is now settled will affect the accounts of the various Municipalities in connection with Fee Fund Suits subject shall perhaps have to authorize the Government again the levy.

I have the honour to be,
Sir,
Your most Obedient Servant
[signature]
Collector & Revising Court Co

Rs. 11 Postage
Paid
Bates
Bellary Police

Extract from Proceedings of the Bellary Municipal Commission dated 1st July 1870

* * *

XI — Read judgment given in the High Court of Judicature at Madras under date 25th April 1873 on the referred Case No. 23 of 1872 of

Lieut Colonel E. S. Wakes - Plaintiff

The Municipal Commissioners for the Town of Bellary Defendants

as follows:

"The Plaintiff sues the defendants the Municipal"
"Commissioners for the town of Bellary for a certain sum"
"alleged to have been illegally levied by the defendants"
"from him as his trade and profession tax with interest"
"The sanction of the Governor in Council under Section 35"
"of Act III of 1871 was obtained on the 10th July 1871,"
"with authority to levy the tax from 1st May 1871."
"The Plaintiff states that no notice under Section 61"
"of Act III of 1871, was served upon him, that the"
"levying of the tax was illegal, as the approval of"
"Government was obtained three months after the com="
"=mencement of the Official year and that the Act cannot"
"have retrospective effect."

"The questions referred are,"

" (1). Can the levying of the tax have retrospective effect?"

" (2). Is it essential that notice in writing under "Section 61 must be given to persons liable to

the

DEPARTMENT
BELLARY COLLECTOR'S OFFICE
Dated
To,
The
Enclosure
Received

Financial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from
the Collector of Bellary,
dated 4th July 1873, No
39.

Order thereon recorded
18 July 1873. No 1025

The Governor in Council sees nothing in the decision of the High Court to warrant the assumption by the Secretary Municipal Commissioners that an annually renewed sanction of Govt for the levy of any Municipal Tax in which

which has once been sanctioned, is necessary nor is there any such direction in the Towns' Improvement Act III of 1871.

2. The decision has reference solely to the first provision of the Professor Tax being sanctioned, and to the date from which that sanction legally operated. The Governor in Council considers that the sanction has legal force until formally cancelled, notwithstanding

picture the hardening fact that it may have been subsequently [illegible] through remonstrance [illegible]

The Rockland Rd Board

[illegible]

Govt. of {1873} Madras.
Finance

To
The Board Revd. Comrs.
Bellary.

Dated July 18 }
Recd. } 1873, No. 1025.

Nos. 139-140.

Bellary Revnr. the Comrs informed, with refce to the decision in the Suit preferred by Colr. Bates against them, that Annual sanction for the levy of any Revenue that may be deemed necessary, should be applied for.