M.R.O. 1—77,006—8-6-37.

(1) Number of pages 20

(2) Date of repair 3-4-40

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 1166	Press / Mis.
115-116	
Dated 16-8-	18 73.

115-116 9/10

Not to be folded or roughly handled

Proceedings of the Madras Government, Financial Department,
16th August 1873.

No. 115. Read the following letter from Colonel G. H. SAXTON, Madras Staff Corps, Deputy Superintendent, No. 3 Topographical Party, Central Provinces and Vizagapatam Agency Survey, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Ootacamund, 4th August 1873 :—

I have the honour to request that I may be favoured with an expression of the opinion of Government as to my liability to taxation as in the exercise of a profession within the Ootacamund Municipality.

2. The following are the grounds on which I assert that I am not liable to a tax on the exercise of any profession within the Municipality.

3. I am on the effective strength of the Madras Army, and draw my full pay as such. I am also a Deputy Superintendent in the Topographical branch of the Survey of India, and my Survey District is limited to the Northern Circars of the Madras Presidency and the South-Eastern District of Central Provinces, beyond which I do not, and cannot, execute any survey work.

4. My professional duties as a military officer are for the time entirely in abeyance, though I am drawing my full pay, and am liable at any moment (on relief from Survey Department) to be called upon for such duty.

5. My survey duties are performed in a most unhealthy tract of country, and on that account are restricted to a limited period of the year; during that period I cannot reside at Ootacamund. The other portion of the year is called the recess season, and solely with the object of recruiting health, and gaining strength for the peculiarly arduous duties of the working season, survey officers are permitted to spend the time of such recess season at the place most conducive towards that object.

6. This privilege is granted to survey officers under heavy restrictions, which are held justifiable on the plea that they go to such stations as Ootacamund, not on duty, but entirely for their own benefit.

7. Under these restrictions, I am not allowed to bring horses, servants, or camp equipments, except at my own expense, and the working establishment (Natives) as well as survey instruments and appliances remain at the Depôt Station (Vizianagram).

8. Further, an extra allowance granted to my survey party is disallowed from the date of quitting the district, within which my survey duties are conducted, until my return thereto.

9. Further, I am under absolute restriction, forbidding my taking privilege leave to any place whatever during my working season, on the plea that, during a long recess season, I have extra advantages of that tendency.

10. The wording of the Act requires a person to exercise his profession within the municipal limits, and, by the letter of such law, I hold that I am not taxable.

11. The spirit of the Act undoubtedly is that a person gaining some benefit from a source within the municipal limits shall pay, for instance, a medical practitioner, a lawyer, a tradesman, and under such meaning of the Act I do not come, for not an iota of my professional duties, or emoluments, would be in the least

changed, or interfered with, if no such place as Ootacamund existed, and, therefore, I think that, neither by the letter nor spirit of the Act, should I be held liable to the tax.

12. As far as the Municipal Commissioners have given reasons for considering me liable, I am of opinion that they are absurdly inadequate. They are as follow:—Colonel Saxton is an officer holding an office with a certain rate of salary; to this I reply that I am not objecting to an income-tax, but to a local municipal tax upon the exercise of a profession. Then the Commissioners remark that Colonel Saxton draws his pay from Government in the Civil Department; that his pay and salary are the remuneration for his office; that he frames reports to Government on survey work performed whilst away from this during another portion of the year; to this I reply that my salary is for actually surveying within given districts, and not for preparing reports upon that survey work; but these questions as to when, and how, and why, I draw pay do not concern the point at issue, which is simply whether I exercise a profession or trade within this town.

13. Beyond such reasons as the above, the Commissioners have not met the objections raised by me, and merely remark: "The Commissioners see no reason to modify their previous resolution. The Commissioners, of course, raise no objection to Colonel Saxton's addressing Government on the subject."

14. I have ascertained that survey officers recessing at Mussoora Hill Station do not pay municipal tax on profession.

15. I respectfully remind the Government that a few years ago, when I offered my professional labours gratuitously for survey work on these hills during my recess, the Government raised objection to my being allowed to exercise them even without emolument, and that, under the protest then made by this Government, I am still under a prohibition, not only against actually surveying here, but am forbidden to hold any communication with the local authorities on the subject of my professional duties.

16. I am aware that Government does not stand in the place of a Court of Appeal for the decision of such a case; but, as the Municipality does not object to the reference, I hope that an opinion may be given for my guidance.

17. Since writing the above, I requested the Honorary Secretary of the Municipal Commission to allow me to peruse the Act, with the clauses marked, showing under what rules I am considered liable to the tax, and I find that there is a rule applicable to "any military or civil officer under Government drawing a salary," without anything being further defined as to nature of, or any office whatever. I consider that, on strict legal grounds, I cannot come under such a rule, for in the title of the Act the Government of Madras is defined. No officer under any other Government could hold an executive office in any way connected with a municipal town under the Madras Government, and the Act could not have contemplated the case of an officer exercising a calling elsewhere, under another Government, and merely permitted, temporarily, and solely on climatal considerations, to reside and draw pay at Ootacamund during a recess, or non-working season.

18. I offer a case in illustration. A military officer, not in active employ, though on the effective list, may be allowed to reside and draw full pay in Ootacamund all the year round. If that officer was under the Madras Government he

2

Proceedings of the Madras Government, Financial Department,
16th August 1873.

would be liable to exercise professional functions at the bidding of that Government, but if he was under the Bombay Government he would not. The Madras Act would apply to the one, and not to the other.

No. 116. ORDER THEREON, 16th August 1873, No. 1166.

Colonel Saxton will be informed that the Government must decline to express any opinion in regard to the interpretation to be given to the provisions of the Towns' Improvement Act III. of 1871.

(True Extract.)

Chief Secretary.

To Colonel G. H. Saxton, M.S.C., Deputy Superintendent, Topographical Survey.
,, the President of the Municipal Commission, Ootacamund.

Exd. J. Wright.

Govt. of 1873 Madras.

FINANCIAL.

To

COLONEL G. H. SAXTON, M.S.C.,
Dy. Supt. Topographical Survey,
&c. &c.

Dated August, 1873.

Read

Rec.

G. O. 1666 August 1873. No. 1166.

AUGUST.
Nos. 115-116.

Enforcement Municipality.—Colonel Saxton informed, with reference to his appeal against his liability to the Profession-tax, that the Government must decline to express any opinion as to the interpretation of the provisions of the Towns' Improvement Act.

Octacamund 4th August 1873

3

From

Colonel G. H. Saxton
Madras Staff Corps &c &c

To

The Chief Secretary to Government
Octacamund

1. I have the honor to request, that I may be favored with an expression of the opinion of Government as to my liability to taxation, as in the exercise of a profession within the Octacamund Municipality -

2 The following are the grounds on which I think I am not liable to a tax on the exercise of any profession within the Municipality -

3 I am on the effective strength of the Madras Army, and draw my full pay as such. I am also a Deputy Superintendent in the Topographical branch of the Survey of India, and my Survey District is limited to the Northern Circars of the Madras Presidency, and the South Eastern District of Central Provinces beyond which I do not, and cannot execute any Survey work -

4 My professional duties as a Military officer are for the time entirely in abeyance, though I am drawing my full pay, and am liable at any moment, (on relief from Survey Department) to be called upon for such duty -

5 My Survey duties are performed in a most unhealthy tract of Country, and on that account are restricted to a limited period of the Year; during that period I cannot reside at Octacamund. The other portion of the Year is called the cold season, and I do [illegible] object of recruiting health, and gaining [illegible] the peculiarly arduous duties of the Working [illegible] Survey officers are

permitted to spend the time which such persons
at the place most convenient towards that object.

6 The privilege is granted to Surveyors under
heavy restrictions, which are liable to be forfeited on the
plea, that they get such Materials & Encampment,
not on duty, but entirely for their own benefit.

7 Under these instructions I am not allowed to keep
Horses, Servants, or Camp Equipments, except at my own expense
working Establishment (below), as well as Survey
Instruments and appliances pertaining to the
Depot Station (Ogamog) and ~~[illegible]~~,

8 Further, as the allowance granted to my
Survey Party is disallowed from the date of quitting the
district within which my Survey duties are Confined
until my return thereto

9 Further, I am under distinct instructions, prohibiting
my taking private leave to any place whatever during
my working Season, on the plea, that during a long out
Season, I have ~~[illegible]~~ advantages of that kind away-

10 The wording of the act requires a person to exercise
his profession within the Municipal limits, and of the
letter of such law I hold that I am [illegible]

11 The spirit of the act undoubtedly is, that a person
gaining Income brought from abroad within the
Municipal limits shall pay, for instance, a
Medical practitioner, a Lawyer, a trader-pedlar, and
under such meaning of the act I do not Come
for within its ~~[illegible]~~ of my professional duties or

emoluments would be in the least changed or
interfered with, if no such place as Colaccarmund
existed, and therefore I think, that neither by the
letter nor spirit of the act should I be held liable
to the tax.

12 As far as the Municipal Commissioners have
given reasons for Considering me liable, I am of
opinion, that they are absurdly inadequate. They are as
follows, Colonel Sexton is an officer holding an
office with a Certain rate of Salary, to this, I
reply, that I am not objecting to an income tax,
but to a local Municipal tax upon the exercise of
a profession. Then the Commissioners remark, that
Colonel Sexton draws his pay from Government
in the Civil Department, that his pay and salary
are the remuneration for his office. That he frames
report to Government on Survey work performed
whilst away from this, during another portion of the
year - to this I reply, that my salary is for actually
Surveying within given Districts, and not for preparing
reports upon that Survey work - but these questions
as to when, and how, and why, I draw pay do not
Concern the point at issue, which is simply whether
I exercise a profession or trade within this town.

? I don't feel sure of the point I am making here. I think it does so. I will ask the question.

13 Beyond such reasons as the above the Commissioners
have not met the objections raised by me, and merely
remark "The Commissioners see no reason to modify
their previous resolution". The Commissioners of Course
raise no objection to Colonel Sexton's addressing

Government on the Subject.

14 I have ascertained, that Survey officers practising at Mysore will obtain, do not pay Municipal tax on profession.

15 I respectfully remind the Government that a few Years ago, when I offered my professional labours gratuitously for Survey work on the hills during my leave, the Government refused to allow me to exercise them even without remuneration, and that under the Penalties then made by this Government, I am still under a prohibition, not only against actually Surveying here, but am forbidden to hold any Communication with the Local authorities on the Subject of my profession duties -

16 I am aware that Government does not stand in the place of a Court of appeal for the decision of such a Case, but as the Municipality does not object to the reference, I hope that an opinion may be given for my guidance -

17 Since writing the above, I requested the Worshipful Secy of the Municipality Commissioners to allow me to peruse the act, with the clauses marked, shewing under what rules I am considered liable to the tax, and I find, that there is a rule applicable to "any Military or Civil officer under Government drawing a Salary, without any thing being further defined as to nature of, or any office whatever, I Consider that on strict legal grounds, I cannot

Bangalore 14th Augt 73.

The Law provides for a Board of Appeal. and I do not think that Govt should be obliged to put this Govt in a false position - in a matter on which a decision of Govt would be of Legal avail or binding on the

Circular proceedings on appeal from Col. Laxton of 4th Augt 73 on the issue of the Municipal Tax. Before speaking this is now appealed for. but the Commrs have expressed their willingness to refer it. The Act says (Sec 58) that Every person whose name is on the Roll of persons exercising any of the Professions, Trades or Callings specified in Sch. B. shall be liable to the tax. and Sch. B specifies "Civil Officers under Govt whose pay amounts to Rs 800 per annum & upwards." This Court being of opinion that any person employed professionally in the Service pays Municipal Tax in respect of the profession exercised by him there. I do not think

the St. in check. Pass Rs
having the option of choosing
their residence during part
of the year (E.g. the S. Mts. for
hunting &c) & carry on their
duties at St. It appears
to me can do so any where else
than in the assigned field for
their labors.

Lt Col. S. in fact to be
viewed as a private resident
not during his recess - was
an Official carrying on his
duties at his station?

I in chief think he ought
to be viewed as the former

Request orders - if
the Govt. are disposed to
admit the appeal - or
as Col. S. puts it -
his opinion -

L. Aug. 73

the Commr. and
every Sub station keeper
would at
least 6 feet
as to the
merits of the
question - all
depends on whether
the recess is a
period of at
home to idleness
& freedom from
ale official work
whatever - to ale
serving barter
under us. the
year is divided
in to a period of
field-work - out
of doors - and
a period of keep
when the at door
work is suspended
in - & work within
doors for the. I fancy
it is much the

Financial Department.

9—

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from
Colonel G. A. Saxton,
M.S.C. Deputy Superintendent, Topographical
Survey, dated 4th
August 1873.

Order thereon 6th ensuing
16th August 73. No. 1166.

Colonel Saxton
will be informed that
the Govt. must decline to ex-
press any opinion in
regard to the interpre-
tation

interpretation to be
given to the provisions
of the Towns Improve-
-ment Act III of
1871.

(By order.)

To

Colonel G. H. Saxton. R.E.
Deputy Superintendent
Topographical Survey.

Dated 17/8/73.

Enclosure 26/8/73

President M.C. Board — 3 Sept 2/8

N 4to

Govt. of {1873} Madras.

Financial

To

Col. J. A. Saylor M. S. C.

Dy. Supt. Topographical Survey.

Dated Augt. 16 }
Recd. } 1873, No. 1166.

Nos. 115. 116.

Octacamund Minute Col. Saylor informed with reference to his appeal against his assessment to the Profession tax, that the Govt. must decline to express any opinion as to the interpretation of the provisions of the Towns Improvement Act.