M.R.O. 1—77,005—8-6-37.

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MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No.	320	Press Mis.-
204-207.		204-205
Dated	26-2-	1876.

14/15

Not to be folded or roughly handled

No. 204. Read the following letter from E. BARCLAY, Esq., Acting Government Solicitor, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 1st May 1873, No. 237, forwarding the following Opinion of the Advocate-General:—

OPINION.

The Advocate-General, Bombay, has urged, and the President and Council have adopted his view, that local Legislatures are not competent under the Indian Councils' Act to tax the revenues or property of the Government.

Proceedings, Legislative Department, p. 71.

2. His argument is that by Section 19 the Governor-General in Council has power to frame measures which shall affect the public debt or public revenues of India, *or by which any charge would be imposed on such revenues*, and that these latter words refer to measures by which the property of the Crown would be taxed.

3. Then he compares this with Section 43, which, he says, "limits a local Council in its sphere of making laws and regulations," and points out that the words "or by which any charge would be imposed on such revenues" do not occur in this section as they do in Section 19.

4. From this omission he infers that the power of taxing Crown property is confined to the Governor-General; and, though he admits that the words "or by which any charge shall be imposed on such revenues" in Section 38 throw some doubt on this view, he thinks that the difficulty is got over by supposing the words to refer "to charges incidental to, and connected with, those very measures for the taxing of the people which the Governor-General has power under this Section 43 to delegate to a local Council."

5. I am unable to concur in this argument. My view of the Act is this. It is not quite correct to speak of Sections 19 and 43 as defining the powers of the Governor-General in Council and the Governors in Council, respectively. Section 19 provides for certain cases in which the previous sanction of the Governor-General is necessary to the introduction of a measure into his Council: Section 43 deals with certain cases in which the previous sanction of the Governor-General is necessary to the consideration of certain measures in the local Councils; but neither section professes to prescribe generally the subjects with which the Councils are competent to deal.

6. This matter is dealt with in Section 22 as regards the Governor-General's Council, and in Section 42 as regards the local Councils. It does not, therefore, as it appears to me, necessarily follow, because no reference is made to charges on public revenues in Section 43, that therefore local Legislatures are incompetent to impose such charges.

7. Taking the three sections (19, 38, and 43) together their effect appears to be this—

(1.) Measures affecting the public debt or public revenues of India or by which any charge would be imposed on such revenues cannot be introduced into the Governor-General's Council without previous sanction of the Governor-General.

(2.) Measures "affecting the public revenues of the Presidency or by which any charge shall be imposed thereon" cannot be introduced into the local Councils without the sanction of the Governor.

(3.) Measures affecting the public debt of India, the Customs duties or other tax or duty in force on 1st August 1861, and imposed by the Government of India for the general purposes of the Government, cannot be passed or taken into consideration by the local Councils without the sanction of the Governor-General previously communicated to the Governor in Council.

8. Subject to these restrictions the Governor-General's Council can, in my opinion, pass any measure not prohibited by Section 22, and the local Councils any measure not prohibited by Section 42.

9. The object seems to have been to give the Governor-General in his Council and the several Governors in their Councils the power to prevent the introduction of measures affecting public revenue or any charge thereon, and to give the Governor-General power to stop any measures in a local Council affecting the public debt or imperial taxes; but I do not see that there is anything in this to affect the competence of a local Council to impose a charge on the public revenues of the Presidency, supposing the previous sanction of the Governor to be obtained in compliance with Section 38; on the contrary, as this power is not taken away from the local Legislatures by Section 42, which prescribes their general powers, and as its existence is certainly suggested by Section 38, I am of opinion that the local Legislatures must be deemed to have it, and that accordingly they are competent, with the previous sanction of the Governor, to discuss and pass measures for imposing charges on the public revenues or property so long as such measures do not come within the scope of Section 43, by affecting the public debt of India, the Customs or any other tax or duty in force and imposed by the authority of the Government of India at the time of the passing of the Indian Councils' Act, in which case the previous sanction of the Governor-General would be necessary.

10. The words "public revenues of the Presidency" in Section 38 must, I think, be taken to mean "such part of the public revenues of the Government of India as arises within the Presidency," not to point to any distinction between the revenues of the Presidency and those of the Government of India generally, otherwise the result would seem to be that a Bill imposing a charge on the public revenues of the Government of India might be introduced into a local Council without the previous sanction of the Governor—a result which never can have been intended.

29th April 1873. (Signed) H. S. CUNNINGHAM,
Advocate-General.

No. 205. ORDER THEREON, 26th February 1874, No. 320.

The Governor in Council entertains no doubt whatever as to the power of the local Legislatures, under the Indian Councils' Act, to tax the revenues or property of the Crown within their respective territorial limits. That power is clearly vested in them by Section 38 of the Act. Moreover, the Governor-General has already assented to the Acts passed by the local Council subjecting Crown property to municipal taxation, and His Excellency in Council is of opinion that exemption from taxation in favour of such property would be inequitable.

2. He does not, therefore, consider it necessary to make any reference on the subject to the Government of India.

(True Extract.)

Acting Chief Secretary.

To the Government Solicitor.

Exd. A. S. Rodgers.

Govt. of 1874 Mar
FINANCIAL.
To
THE GOVERNMENT SOLICITOR
Dated February, 26th.
Read.
Read.
G. O., 26th February 1874, No. 320.

FEBRUARY.
Nos. 204-205.

Municipal Taxation.—No doubt whatever entertained as to the power of local Legislatur under the Indian Councils' Act, Section 38, subject Crown property to municipal taxation, a exemption from taxation in favour of such proper considered to be inequitable.



MADRAS

Proceedings Legislative Deptt P. 5/2. 71

Vide Para see also pp 61, 62, 67 of the Bdy Proc.

Opinion.

The Advocate General, Bombay, has urged, and the President and Council have adopted his view, that Local Legislatures are not competent under the Indian Councils Act to tax the Revenues or property of the Government.

His argument is that, by S 19, the Governor General in Council has power to frame measures which shall affect the public debt or public revenues of India, or by which any charge would be imposed on such revenues, and that these latter words refer to measures by which the property of the Crown would be taxed.

Then he compares this with S. 43, which, he says, "limits a local Council in its sphere of making laws and regulations", and points out that the words "or by which any charge would be imposed on such revenues" do not occur in this Section as they do in Section 19.

From this omission he infers that the power of taxing Crown property is confined to the Governor General; and though he admits that the words "or by which any charge shall be imposed on such revenues" in S. 38 throw some doubt on this view, he thinks that the difficulty is got over by supposing the words to refer to charges incidental to and connected with those very measures for the taxing of

of the people which the Governor General has power under this Section 43 to delegate to a local Council."

I am unable to concur in this argument. My view of the Act is this. It is not quite correct to speak of Sections 19 and 43 as defining the powers of the Governor General in Council and the Governors in Council respectively. Section 19 provides for certain cases in which the previous sanction of the Governor General is necessary to the introduction of a measure into his Council: Section 43 deals with certain cases in which the previous sanction of the Governor General is necessary to the consideration of certain measures in the Local Councils; but neither Section professes to prescribe generally the subjects with which the Councils are competent to deal.

This matter is dealt with in Section 22 as regards the Governor General's Council, and in Section 42 as regards the Local Councils. It does not — therefore, as it appears to me, necessarily follow, because no reference is made to charges on public revenues in Section 43 that, therefore, Local Legislatures are incompetent to impose such charges.

Taking the 3 Sections 19, 38 and 43 together their effect appears to be this.

(1.) Measures affecting the public debt or public revenues of India or by which any charge would be imposed on such revenues, cannot be introduced into the Governor General's Council without previous sanction

sanction of the Governor General.

(2.) Measures "affecting the public revenues of the Presidency or by which any charge shall be imposed thereon" cannot be introduced into the Local Councils without the sanction of the Governor.

(3.) Measures affecting the public debt of India, the Customs duties or other tax or duty in force on 1st August 1861, and imposed by the Government of India for the general purposes of the Government, cannot be passed or taken into consideration by the Local Councils without the sanction of the Governor General previously communicated to the Governor in Council.

Subject to these restrictions the Governor General's Council can, in my opinion, pass any measure not prohibited by Sec: 22, and the Local Councils any measure not prohibited by Section 42.

The object seems to have been to give the Governor General in his Council and the several Governors in their Councils, the power to prevent the introduction of measures affecting public revenue or any charge thereon, and to give the Governor General however to stop any measures in a Local Council affecting the public debt or imperial taxes. But I do not see that there is any thing in this to affect the competence of a local Council to impose a charge on the public revenues of the Presidency, — supposing the previous sanction of the Governor to

to be obtained in compliance with S. 38. On the contrary, as this power is not taken away from the Local Legislatures by Section 42, which prescribes their general powers, and as its existence is certainly suggested by S. 38, I am of opinion that the Local Legislatures must be deemed to have it and that accordingly, they are competent, with the previous sanction of the Governor, to discuss and pass measures for imposing charges on the public revenues or property, so long as such measures do not come within the scope of Section 43. by affecting the public debt of India, the Customs or any other tax or duty in force and imposed by the authority of the Government of India, at the time of the passing of the India Councils Act, in which case the previous sanction of the Governor General would be necessary.

The words "Public revenues of the Presidency" in Section 38 must, I think, be taken to mean, "such part of the public revenues of the Government of India as arises within the Presidency", not to point to any distinction between the revenues of the Presidency, and those of the Government of India generally - otherwise the result would seem to be that a bill imposing a charge on the public revenues of the Government of India might be introduced into a Local Council without the previous sanction of the Governor, a result which never can have been intended.

/Signed/ H. S. Cunningham
Add: Genl.
29-4-/73.-

/True Copy/
Ernest Hanbury
Actg. Government Solicitor.-

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Financial Department.

B

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Advocate General Solicitor, Madras dated 1st May 1873 No 237.

Dated November 1873 No

The Municipal Act for the town of Bombay (Bom Act 3 of 72) exempts from Municipal taxation, buildings and lands owned or occupied by Govt and vehicles, horses ponies or mules belonging to the Govt (Secs 77-103-104) and in the debate on the bill dated 11th Sept 1872, the Adv. General for Bombay maintained that, the local legislatures have no power to make Crown property liable to Municipal taxation.

I would be content with first referring to Govt - if that be deemed necessary - to the Advocate

2. The Advocate General for

for Madras is of opinion that by implication, Sec. 38 of the Indian Councils Act does vest the power in local legislatures with the previous sanction of the Governor, and this Govt. are disposed to agree with him; but the papers will be referred for the consideration of the Govt. of India.

3. In the Madras Town Municipal Act. 9 of 1867 Sec. 70, houses buildings and lands in Fort St. George are exempted from rates, and by Secs. 35. 45 & 51, "carriages carts horses mules and bullocks belonging to Govt." "Gun-carriages, ordnance carts or waggons the property of Govt." and "troops and Military or Govt. Stores and Equipages on their march, or Military or Police Officers on duty and persons or property in their custody" are exempted from tax or toll, but in the Mofussil Towns Improvement Act 3 of 1871, the Exemption from tolls is alone maintained.

4. The Presidents of all Municipalities will be required to report whether in Mofussil stations Govt. buildings and lands, horses and equipages or conveyances are taxed. The Govt. are aware that in Madras town Govt. buildings outside Fort St. George are taxed.

To
The Presidents of the several Municipalities in the Presidency and in the Provinces.
The Committee for the revision of the Madras Act

Power of local legislatures to tax Crown property

Govt. of [illegible] 187 } Bombay.

To _____

Dated
Recd. } 187 , No.

Nos.

1788

Financial Department

To

The Secretary to the Govt. of India
in the Dept. of Agriculture,
Revenue & Commerce.

Sir,

I am directed to sub-
mit, for the consideration
of His Excellency the Govern-
General in Council, the
+ 8/ No accompanying Proceedings
of this Govt. on the question
as to the competency of the
several Indian local
legislatures to tax the
revenues or property of
the Crown within their terri-
torial limits.

I really do not
see the necessity
of any reference.
We have no thing
to do with the Bombay
Act. I have no doubt of
the Act as to the powers
and consider that
the Exemption would

C.A.T. 11

2. It will be seen from
the papers recorded in these
Proceedings that the Advo-
cate General for Bombay has maintained
that

C 25/11
R 24/11
C 28
R 9/12
C 9/12

– and the Council of the Govr of that Presidency have adopted his view – that under the Indian Councils Act the local legislatures have no power to make Crown property liable to taxation. The Advocate General for Madras, however, is of opinion that, by implication, section 38 of that Act does vest the power in question in the local legislatures; and this Government ~~are disposed~~ to agree with Mr Cunningham.

3. As the question is one of importance, and it is undesirable that there should be any difference of

be required to the. I cannot find any copy of the Council act at this moment but think there is a clause in it by which the assent of the Viceroy to non-Bills will be secured by the draft of State cases to defeat from lack of being content to bring in a Bill

L. B.

Note with reference to Mr Hobhouse's remarks

It is S. 43 of the Act that provides that "no law or regulation "which shall have been made "by any Govr in Council and "assented to by the Govr General "shall be deemed invalid "only by reason of its relating "to any of the purposes com- "prised in the above list."

It is necessary, in order to the consideration of Bills relating to any of these purposes, that the previous sanction of the Govr Genl must be obtained. There is no express provision in the Act to cure defects in any law passed by the Local Councils, arising from lack of the previous sanction of the Govr, which is required by Section 38.

The sanctions of the Govr to the Bills which became Madras Acts IX of 1867 & III of 1871 was impliedly given when the Motion for leave to introduce them was agreed to by the Govr – & these Bills have been assented to by the Govr General

I hardly think any reference necessary. We have no reason to doubt on the subject. and it is not pressing because as proposed Bombay has failed to raise the question

Concur – the L.G. has already presented to Acts containing provisions subjecting such Bills & Lands

4/12

of policy between the Govts of Madras and Bombay on such a matter, the Govr in Council deems it proper to bring the subject to the notice of the Govt of India, in case they should see fit to take action in the matter in view to clearing up the doubt. —

C. U. F.

Power of Local Legislature to tax Imperial property

(27)

No 237.

Madras 1st May 1873.

From

Ernest Barclay,
Acting Government Solicitor,
Madras.

To

The Honorable W. Audleston
Chief Secretary to Government
Ootacamund.

Sir,

At the request of the Advocate General, I have the honor to forward herewith a Copy of his opinion relative to the Competency of Local Legislatures under the Indian Councils Act to tax the Revenues or property of the Imperial Government; and also forward you a letter from the Advocate General to your address.—

I have the honor to be
Sir
Your most obedient servant
Ernest Barclay
Ag Government Solicitor

C 25/11
C 28
C 27/12
C 27/12

C

2. He does not therefore consider it necessary to make any reference on the subject to the Govt. of India.

/By Order/

22.12.80

To the Solicitor dups 6/3

Financial Department

1873.

From
The Actg. Govt. Solicitor
Madras

To
The Chief Secy. to Govt.
Of Fort St. David.

Dated 1st May
Rec'd 3rd do.

No. 237.

Enclosures 2 in 1

Forwards copy of the Advocate General's opinion relative to the competency of Local Legislatures under the Indian Councils Act to tax the Revenues or property of the Imperial Government; and also a letter from the Advocate General.

C 25/11.
C 28
C 20
C 22/11
C 23/11

26 Feby 74 No 320

5

The Governor in Council entertains no doubt whatever as to the power of the Local legislatures, under the Indian Councils Act, to tax the revenues or property of the Crown within their respective territorial limits. That power is clearly vested in them by Section 38 of the Act. However, the Governor General has already assented to the Acts passed by the Local Council subjecting Crown property to municipal taxation; and His Excellency in Council is of opinion that Exemption from taxation in favor of such property would be inequitable.

We

C 3/11

Govt. of {1874} Madras.

Financial

To The Govt. Solicitor.

Dated Feby. 26.
Rcvd.

Encl.

G. O. 26 Feby. 1874. No. 320.

Nos. 204. 205.

Munl. taxation - No doubt whatever entertained as to the power of local legislatures under the Indian Councils act. See. 38 to subject Crown property to Munl. taxation & Exemption from taxation in favor of such property considered to be inequitable.

40/405-365