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MADRAS RECORD OFFICE.

Government of Madras.
Judicial DEPARTMENT.

G.O. No. 1298

Press
Mis.

Dated 20-5-1884.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From A. MACKENZIE, Esq., C.S., Secretary to the Government of India, Home department (Judicial), to the Secretary to the Government of Bengal, dated Simla, 5th May 1884, No. 604.

I am directed to acknowledge the receipt of your letter, No. 732, dated the 22nd May last, submitting, for approval and publication in the *Gazette of India*, two draft notifications under sections 3 and 5 of Act XIV of 1874 (The Scheduled Districts Act) regarding enactments to be declared in force in, or to be extended to, the Mchhal of Angul.

2. In reply, I am to communicate the following observations. The question whether a particular enactment should be included in a notification issued for a scheduled district under section 3 or section 5 of the Scheduled Districts Act is one which, as a rule, requires careful consideration, and as it appears, from the mode in which applications for sanction to the issue of such notifications are at times made by local Governments, that some misapprehension prevails regarding this matter, the Governor-General in Council deems it well to take the present opportunity to explain the manner in which such questions should be treated.

3. In the first place I am to observe that section 3 of the Scheduled Districts Act, though it is worded in the most general terms, was intended merely to provide a means of removing doubts, and that therefore its use should be restricted to cases in which there is some room for doubt as to whether an enactment is or is not in force in the scheduled district in question.

4. Accordingly, when an enactment by its terms clearly applies to a scheduled district specifically, or to the entire province in which that district is comprised, or to the whole of British India, and there is no reason to be found in a special deregulationizing enactment or otherwise for supposing that its operation may be in any way barred or restricted, the Governor-General in Council has, as a rule, declined to sanction its being declared in force under section 3 of the Scheduled Districts Act, and this appears to be the safest course, inasmuch as any attempt to frame an exhaustive declaration of all enactments in force is likely to fail, and the issue of a declaration which is evidently intended to be exhaustive, but which is incomplete, is calculated to create doubts regarding such enactments as may happen to be omitted from it. If a local Government considers it convenient that the officers administering a scheduled district should be furnished with as complete lists as possible of the enactments in force in that district, there can be no objection to its compiling such lists; but they will best be issued not under Scheduled Districts Act, but unauthoritatively in the same way as the various Codes and Tables of Acts issued by the Legislative department of the Government of India.

5. On the other hand, it need hardly be observed that when it appears, having regard to all the circumstances of the case, that an enactment clearly is in force or clearly is not in force in a scheduled district, a notification cannot properly be issued under section 3 of the Scheduled Districts Act declaring that it is not in force or is in force (as the case may be). Such a declaration would, no doubt, under section 4 of the Act, be above question; but the issue of it would be a manifest abuse of the powers conferred by the Act.

6. It being thus understood that in order to warrant the issue of a notification under section 3 of the Scheduled Districts Act there must be some room for doubt, the next point to be considered is the nature of the doubts which ordinarily necessitate the issue of such a notification. Perhaps the commonest case is that of an enactment which contains nothing in the way of a local extent clause, or which is so framed as to leave the area of its local application in some degree doubtful. Within this category fall most, if not all, of the enactments specified in the first five schedules annexed to the Laws Local Extent Act, 1874. The difficulty thus arising is removed by that Act so far as regards the whole of British India, with the exception of the scheduled districts; and in regard to these districts, it has to be removed by a declaration under section 3 of the Scheduled Districts Act. It is accordingly to be taken as the rule that the circumstance of an enactment being included in one of the first five schedules to the Laws Local Extent Act is a sufficient reason for making it the subject of a declaration under section 3 of the Scheduled Districts Act.

7. Again, a doubt as to whether a given enactment is in force in a scheduled district may arise from one of those special enactments passed from time to time for some of the scheduled districts, and commonly called deregulationizing enactments, which purport to bar the operation in the scheduled district of general enactments previously passed or of future general enactments as well. One of these deregulationizing enactments may be sometimes so loosely worded as to leave it doubtful whether it bars the operation in the scheduled district of a particular enactment which, having regard to its wording, would otherwise clearly apply; and when this is the case, a notification under section 3 of the Scheduled Districts Act is the proper remedy.

8. In the two classes of cases just referred to the doubt is a patent one, manifest on the face of the Statute Book; but there are other cases in which a doubt arises from something outside the Statute Book, and especially from the way in which the enactment in question has been treated in the scheduled district.

9. The Scheduled Districts Act proceeds on the assumption that there was in times past a certain haziness as to the laws in force in the scheduled districts; that enactments came to be regarded as in force in them, though never regularly extended to them and by their terms inapplicable to them; and that, notwithstanding the absence of any deregulationizing enactment, enactments which by their terms would apply came to be regarded as not applicable. One of the main objects of the Scheduled Districts Act, as will be seen from Sir A. Hobhouse's speech in Council on the 8th December 1874, was to provide a means of removing all doubt as to the legality of this questionable state of things, and accordingly the 3rd section of that Act empowers regarding which there may, on the face of the Statute Book, be room for doubt, but in regard to all enactments.

10. From the foregoing observations it will be seen that the proper course to follow in dealing with an enactment under section 3 of the Scheduled Districts Act is, in the first instance, to look to the Statute Book, and see whether, on the face of it, having regard among other matters to any deregulationizing or other special Act applicable to the scheduled district, the enactment in question appears to be in force in such district. If it seems on the face of the Statute Book to be in force, then the history of the matter to which it relates in the district in question should be looked to, in order to see whether there is in this anything to warrant a doubt of the nature contemplated by the Scheduled Districts Act as to whether the operation of the enactment may not in some way have become barred. If there is nothing to warrant such a doubt, it is improper to declare, under section 3 of the Scheduled Districts Act, that

the enactment is not in force, and it will probably be superfluous to declare that it is in force. If, on the other hand, it is found that, in the practice of the courts and officers in the district, or elsewhere in the history of the district, there is something to warrant a doubt of the nature referred to above, then the case is a fit one for the issue of a declaration under section 3, declaring the enactment either not to be in force or to be in force, as may, on a consideration of all the circumstances, be deemed proper.

11. When an enactment seems on the face of the Statute Book not to be in force in a scheduled district, the history of the district should be looked to, and if nothing is found in it to suggest the view that the enactment has by some means come into force, it cannot be properly declared that the enactment is in force, and it will probably be superfluous to declare under that section that it is not in force. If, on the other hand, anything in the history of the district suggests the idea that the enactment has somehow or other come into force there, then the case will be a fit one for the issue of a declaration under section 3 of the Act, either declaring the enactment to be in force, or declaring it not to be in force, as a consideration of all the circumstances may dictate.

12. As to what is sufficient to raise a doubt whether an enactment appearing on the face of the Statute Book to be in force is actually in force or conversely, that is a matter which it is impossible to define. The ordinary ground of doubt is obviously a long continued course of action proceeding on the assumption that an enactment appearing on the face of the Statute Book to be in force is not in force or conversely.

13. Shortly, section 3 of Act XIV of 1874 should be used where a doubt as to the application of an enactment to a particular area arises either from the wording of the enactment or from the course of practice which has been followed in the area, and not otherwise.

14. The mode in which the power conferred by section 3 of the Scheduled Districts Act should be used being understood, the exercise of the power of extending enactments conferred by section 5 calls for but little remark. It will doubtless be perceived that cases may at times arise in which, owing to the doubt which surrounds the subject, it will be practically open to the Government either to declare an enactment in force or to extend it; and that though in some such cases it may be of little or no importance which course is adopted, in others, on the contrary, the effect of adopting each course will have to be carefully considered. Thus, when the officers administering a scheduled district have to any extent acted on the assumption that an enactment has been in force in the district, the issue of a notification extending it and thereby suggesting that it was not previously in force may have the effect of throwing doubt on the legality of some of these proceedings. Conversely, when those officers have been acting on the opposite assumption, a declaration that the enactment is in force may have a like result.

15. I am further to observe that in some cases in which there is room for doubt as to whether an enactment has been in force, and it is ultimately determined that the proper course is to extend it under section 5 of the Scheduled Districts Act, it may be well, in order to prevent difficulties of the nature just referred to, to preface the notification extending the enactment by one under section 3 of the Act, declaring that it is not in force; in other words, first to declare that it is not in force and then extend it.

16. Another remark I am to make is, that when it is desired to extend to a scheduled district an Act containing within itself a power of extension, it is better to use that power than to resort to the extraordinary power conferred by section 5 of the Scheduled Districts Act.

17. Lastly, I am to request that every proposal for the issue of a notification under section 3 or section 5 of the Scheduled Districts Act submitted to the Government of India may be accompanied by explanations showing the reasons which have led to the inclusion of each enactment in the draft. Such explanations should be prepared in consultation with the Legal Remembrancer or other legal adviser of the

local Government, and, when the enactments referred to are numerous, would be most conveniently given in the form of a tabular statement A.

No. 10-605.

Extract paragraphs 1 to 17 forwarded to all other local Governments and Administrations for information and guidance.

(By Order.)

(Signed) G. S. FORBES,
Offg. Under Secy. to the Govt. of India.

To the Secretary to the Government of Madras.

ORDER—dated 29th May 1884, No. 1298, Judicial.

Communicated to the Agents, Vizagapatam and Ganjam, for information and guidance.

(True Copy.)

Ag. Under Secy. to Govt.

To the Agent to the Governor, Vizagapatam,
Ganja
" " "
" Copy to the Advocate-General.

Exd. T. O'Connor.

11-11-10 ✓
5-12-10 ✓
29-8-7 ✓
16-7-19 ✓
18-8-70 B. I. ✓
15/6/27 II ✓

Original
Govt. of 1884 Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O. 29th May 1884, No. 1298.

MAY.

Scheduled Districts.

Communicating to the Agents to the Governor, Vizagapatam and Ganjam, letter from the Government of India containing observations on draft notifications under sections 3 and 5 of the Scheduled Districts Act regarding enactments to be declared in force in, or to be extended to, the Mehal of Angul, Bengal.

No. 7071

FROM

A. MACKENZIE, Esq., C.S.,
Secretary to the Government of India,

TO

THE SECRETARY TO THE GOVERNMENT OF BENGAL.

Home Department,
Judicial.

Simla, the 5th April 1884.

SIR,

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I have the honour to be,

SIR,

Your most obedient Servant,

A. MACKENZIE,

No. 10
605 Secretary to the Government of India.

Extract paragraphs 1 to 17 forwarded to all other Local Governments and Administrations for information and guidance.

By order,

[Signature]
Offg. Under-Secy. to the Govt. of India.

No. 10
605 The Secretary to the Government of India.



Judicial Dept.

From Govt India. No. 605. 5th May 1884.

Orders

The Government of India forward a copy of a letter addressed to Government Bengal on the Scheduled Districts Act [xiv. of 1874]:

The operation of the following 3 Acts has been a source of difficulty to some officers in Madras.

Act xxiv. 1839. [Madras]

Act xiv. 74. Scheduled Dist Act

Act xv. 74. Local Extent Act.

Mr Garton raised a difficulty when he was in Vijayapattinam, and the Government considered there was no real difficulty. The Government of India did not agree and as the point may come up again it is thought as well to place that correspondence with reference to the letter now received.

Wd's letter? Judicial G.O. No 1307. B. 2nd July 81 para 59.

Mr Garton asked what laws were in force in the Scheduled Tract in Jeypor, i.e. Madras Act xi. 1816. Scheduled under Act xv. of 1874. & so declared by that act to be in force in all the Presidencies except the Scheduled Districts. Are all the acts thus scheduled saved by section 8 of the same Act?

This section saves the operation of laws already in force in the Scheduled Districts.

[Madras] Mr Justice further noted that section 2 Act xxiv of 1839 under which all rules for the administration of Civil & Criminal Justice in force when that act was passed ceased to have effect, apparently

cf also § 4. of the act xxiv of 1839. Made of no effect all general acts passed since, the act continuing in force.

There are then two difficulties.

1. Under act xv. 1874. 2 certain lists of Acts are stated to apply to all India excepting the Scheduled Districts - but Section 8 of that act much limits the operation of the above Enactments, and judicial recognition has been held to prevent the action of the sections 3 & 4. e.g. Whipping Act. & Police Act the Scheduled under Act xv. 1874 are yet in force in the Scheduled Districts.

2. Under Madras Act xxiv. 1839. the Govt have full powers to make rules as to the administration of Civil & Criminal Justice, & there can be little doubt that act when passed was intended to give Government full powers as to decide what laws should be in force in the Agency of Vijay & Sangam. Yet

The operation of section 4. of the act by implication prevents or shows prevent the operation of any general act on Civil & Criminal Justice in the Agency of Vijay & Sangam.

this was held that by judicial recognition certain laws i.e. P. & G. Act etc are in force there although never put in force there by the orders of the Government.

It was this doubt as to what laws were in force in these tracts which led the Govt of India to draw attention to the matter and to direct from the views laid down in the G.O. 1307 B 2 July 81. in which Mr Justice's doubts were made nothing of.

This Govt however declined to move in the matter, tho' the Government of India in the letter read in the marginally noted papers clearly laid down their opinion -

The letter now before Government may it is submitted be "referred" & communicated to the Advocate General if any reference is at any time made from Sangam or Vijayapatnam as to the operation of any laws it may become necessary to notify under § 3 of act xv. 74. but at present nothing need be done.

8th Sept 82. 1245. J. M. L.

G.O. 16th Dec 82. 2168-J. M. L.

No more seem necessary in these papers. The letter of the 8th Sept. gives the clearest view both of the reason of the law & its provisions that we have yet had. I think the paper is better - 29 May 84. 1298. It is recommended to the Agents Vijay & Sangam for information & guidance.

[4th Dec 82]
Agents Vijay & Sangam
Advocate General
2.6.5.

J. M. L.
17/5.

Schedule 1/1/1/1

Section 1/1/1/1

Design

11/11 23/5

[10] *Just* No.

From

*Post of India P.D.
No 10
605*

No.

Dated *5th* } *May 1862*
Received *13th* }
Enclosures- *7th*

SUBJECT.

For. for inspection

*A guidance observation on
draft notes under the Schedule
to Act regarding maintenance to
be declared in force in, or to be
extended to, the British of Au-
gust, Bengal.*

For

Order

Recorded

M

16/5

Copy to Honorable General:

M

16/5