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MADRAS RECORD OFFICE

Government of Madras

Revenue DEPARTMENT

G.O. No. 2221

B.P. No.

Press

Mis.

Dated 20 8

18 36.

Not to be folded or roughly handled

No. 2026



Post. DEPARTMENT.

1 B

Official Memorandum.

Dated the 30/11/ 1885.

The Govt. Solicitor,
Madras, is requested
to forward a copy of
the full text of the
opinion given by him
adv. genl. on the 1st
Sep. 1879, in connection
with the operation of
certain Acts in the
Scheduled Tracts.

HAS
24/11

24/11

The Scheduled Districts Act
No. XIV of 1874 must be read
with the Land Revenue
Act No. XI of 1874.

By Sec. 4 of the latter
- must certain specified Regula-
- tions and acts as declared to be
in force ~~in the~~ throughout
the Madras Presidency except
in the Scheduled Districts.

It follows I think that ~~but~~
all regulations and acts not
included in Schedule 2 appended
to Act No. XI of 1874 and not
coming within the provisions
of ~~the~~ Act No. 24 of 1839
must be held to be in force in
the Scheduled Districts.

Under Act VIII of 1865
act and must be kept in force
to be and to remain in force
in the Scheduled Districts till a regulation
be made under Sec. 2 of the

In September 1879. the Advocate
General expressed his opinion that
Act VIII of 65. was not in force in the
the Scheduled Districts, his reason
apparently being that it had never
been put in force there and had
never been declared under the
Scheduled Districts Act to be in force
there.

In G.O. 7th Nov. 79. No 2870. the
Govt distinctly laid down that the
Act was in force in the Scheduled
Districts, as being nothing more than
a plain and practical consolidation
of the old Regulations, which presumably
were in force in the Districts now
Scheduled. I have not the original
of G.O. but think it was drawn
by Mr. Carmichael.

Mr. Shephard now says he
agrees with the Advocate General's
opinion of September 1879. and
he further says that he does not
think that Act No. XI of 1839 had
any prospective effect, in the way
of affecting any laws passed since
the date of that Act.

The Agent now - vide paras 22. and 23. of his report wishes the Act viii of 1865. to be abolished, so far as the ^{Scheduled Districts} are concerned.

Taking Mr. Shephard's second opinion as regards the effect of Act xxiv. of 1839, it is not apparently the opinion of the Gov. of India - vide para 2. of their letter read G.O. 8th September 82. No 1245. -

The Governor General in C. is advised that it might be held that the power conferred by S. 4 of the Act of making rules for the guidance of the Agents and Officers Subordinate to them also bars by implication the operation of any enactment relating to the above matters which may have been passed after the date on which the Act came into force.

It is probable that the opinion of the Gov. of India, which is on the side of the Agent and against the Advocate General was not given without the authority of law officers at Calcutta -

Scheduled Districts Act XIV of 1874 is issued during it not in force W. Wilson

15-1-82

Act xxiv. 1839.

The question now before you is whether in the face of the opinion held by two Advocates General, the Govt should still hold by their order of 79 and tell the Agents that Act viii of 65 is in force in the Scheduled Districts and that no doubt can be held about about the question.

Personally, I have always held that there are cases now where a distinct declaration under the Scheduled Districts Act would be beneficial as regards the Scheduled Districts. The Govt of India in the letter quoted above suggested that course, as they considered that considerable doubts must exist as to what Acts are in force and what not in these Acts - vide para 3. of their letter in G.O. 8 Sept 82. No 1245.

The Govt in their letter read in that G.O. said no doubts would probably ever arise again as had arisen in Mr. Sarstons mind, and this was always Mr. Carmichael's opinion. But considering that since

On more than one occasion
doubts have arisen, in the Agent's
mind, in the mind of the Board of
Rev. and in the minds of two
Advocates general as to the exact
effect of the desegregation
Act of 1839. It is a question
whether it would not be better
now for all to call for a Cesh
of Acts, the effect of which there
is any doubt in the Agent's mind
and submit it to the Govt. of India
for notification under § 3. of
Act XIV. of 74. The opportunity
might then be taken to declare
under § 3. Cl. 6. of that Act
that ~~the~~ Act VIII of 65. about
which reasonable doubt exists
is not in force in Vizagapatam
Scheduled tracts, if so thought
advisable.

Where there is a doubt a
declaration under Act XIV of 74 may
issue, vide India's letter to G.O.
29 May 84. 1298. Jndl. and where
the Advocates general, Govt. and
the Agent differ, it may save
the trouble that a reasonable
doubt does exist.

The objection urged by Mr.
Carmichael always was that
no doubt did exist, but although
he never had any doubts upon
it, perhaps other Officers from time
to time have professed that they
had doubts and asked for the
solution the law affords, which has

5 P
Judicial Department.

4 B

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read again G.O. 20th October 1885. also
READ the following

From the Government Solicitor, nos 468 +
501. dated 11th November + 1st Dec.
1885.

Order. 20 August 1865. 2220h.

In paragraph 22 of
the Agency Report for the year 1884-85,
the Agent to the Governor in Vizaga-
patam again raised the question
whether Madras Act VIII of 1865 is
in force in the Vizagapatam Agency
Tracts, & gave it as his own opinion
that the Act in question is not in
force in those tracts, for the reason
that its operation is barred by
section 2 of Act XXIV of 1839, which
the Agent suggested, possesses pro-
spective effect to all acts subsequent
as well as prior, to itself. In G.O.
20th October 1885, no. 2822, the Govt.
resolved to take the opinion of the

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18/8

Advocate General on the point, & this he has submitted in the first of the foregoing papers. The Adv. General rejects the suggestion that section 2 of act XXIV of 1839 has the prospective effect attributed to it by the Agent, but, as regards Act VIII of 1865, he quotes an opinion by the Adv. General in 1879 to the effect that the last named Act would require a declaration to bring it into force in the Scheduled Districts and he adds that he sees no reason to differ from that view.

2. The Government fully concur in the Advocate General's opinion that the prospective effect attributed by the Agent to sec. 2 act XXIV of 1839 cannot be supported. In para. 2 of their letter of the 25th 1882. no. 279, the Govt. of India suggested a view, different indeed to that put forward by the Agent,

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but similar in effect. They remarked that "though act 24 of 1839 only expressly suspends the law relating to civil & criminal justice and to the collection of the revenue, existing at the date of its enactment," (— these words disposing of the Agent's interpretation of section 2 —), yet as sec. 4 of the Act confers power to make rules for the guidance of the Agents & officers subordinate to them, "it might be held to bar by implication the operation of any enactment relating to the above matters which may have been passed after the date on w^{ch} Act XXIV of 1839 came into force. It appears to this Govt. that the prospective effect here attributed to sec. 4 of act XXIV of 1839 is as equally unsustainable as that attributed by the Agent to section 2. In replying to the Govt. of India - 8 Sept 1882. no. 1245 Judd, the Govt.

expressed its inability to accept the argument put forward, and the Govt of India, in its letter no. 1697 dated the 23rd November 1882, which closed the correspondence, observed that it had expressed no decided opinion but had merely made a suggestion on the point. There is, therefore, every reason to think that the view which has always been maintained by this Government is correct, namely, that Act XXIV of 1839 has no prospective effect, and, therefore, all enactments which prima facie apply to the whole of the Madras Presidency apply also to the Agency tracts of Ganjam & Vizagapatam, unless expressly excluded. This view ^{appears to} be in accordance with paragraph 1 of the Adv. Genl's opinion dated the 1st September 1879 and with ~~the~~ ^{the} principle laid down by the Adv. General in November 1885.

and this ~~was~~ accepted by the
advocate genl in November 1861

Acc. Gen. re...

sep.
18/8.

10-8-105 Scheduled Dist.

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20-8-86

not

the Govt. Solicitor

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