

Local & Munl. (1895) Department.

MISCELLANEOUS.

G.O., No. 1854 M

DATED 7th November 1895

B. (XIX) + Schedule A

[Despatch Abstract.]

Bill to amend Act IV of 1884 (The Madras District Municipalities Act).

Recording G.O., Legislative Department, stating that in view of the Hon'ble the Advocate-General's opinion as to the meaning to be attached to the word "trading" used in schedule A of the-----, as revised by the Select Committee, the words "carrying on business" should be substituted for the word "trading" wherever it occurs in that schedule.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

No. 110, LEGISLATIVE, 28TH OCTOBER 1895.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following papers:—

From F. B. HEBBERT, Esq., Under Secretary to the Government of India, Public Works Department (Railway Traffic), to the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, dated Simla, the 31st July 1895, No. 396-R.T.

I am directed to forward, for information, copy of Government of India memorandum, No. 293-R.T., dated 19th June 1895, and enclosure, containing the opinion of the Honourable the Advocate-General of Bengal on the question of liability of the East Coast Railway to pay professional tax to Municipal bodies in the Madras Presidency.

ENCLOSURE.

EXTRACT from opinion by the Honourable the Advocate-General, Bengal, dated 9th March 1895.

A State railway would not be liable to pay the tax under section 53, schedule A of Madras Act IV of 1884, inasmuch as the Secretary of State for India in Council is not a "person" within the meaning of section 3 (XXIX) of that Act.

No. 870-D.

Forwarded to the Honourable the Advocate-General, Madras, for favour of opinion as to whether the Secretary of State for India falls within the terms of schedule A of (Madras) Act IV of 1884.

28th August 1895.

(Signed) F. R. UPCOTT,
Joint Secy. to Govt., P.W.D.,
Railway Branch.

From the Honourable J. H. SPRING-BRANSON, Advocate-General, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 30th August 1895.

With reference to the order of Government, No. 870-D, dated the 28th instant, I have the honour to state that the Secretary of State for India does not fall within the terms of schedule A of Madras Act IV of 1884.

2. I return the papers sent to me.

Proceedings Public Works Department No. 971-D, dated 12th September 1895.

From the Honourable J. H. SPRING-BRANSON, Advocate-General, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 17th September 1895.

With reference to the order of Government, No. 971-D, dated the 12th instant, I have the honour to forward, herewith, my further opinion as to whether the Secretary of State for India falls within the terms of schedule A of Madras Act IV of 1884 and to return the papers sent to me.

ENCLOSURE.
OPINION.

1. I understand the opinion of the Advocate-General of Bengal to mean that the Secretary of State for India in Council is neither a "natural person" nor a "person in law" * within the meaning of section 3 (XXIX) of Madras Act IV of 1884, and therefore that State railways owned by him cannot be taxed under section 53 of the Act.
2. I based my previous opinion † upon a different ground, viz., that "the Secretary of State for India in Council does not fall within the terms of schedule A of the Act." I see no reason to doubt the correctness of that opinion.
3. The word "trade" has the technical meaning of "buying and selling." ‡ I think the Legislature used the word "trader" in Madras Act IV of 1884, schedule A, as meaning only one who "trades," i.e., buys and sells. That is the meaning of the words "merchant," "wholesale trader," "trader," and "whole-sale" and "retail dealers," though they may have acquired a slight difference of meaning relating to the nature and magnitude of the "trade" carried on. The "Chambers of Commerce" composed of merchants, and the "Trades Associations" composed of other "traders" illustrate this difference.
4. In relation to his carrying business as the proprietor of State railways, the Secretary of State for India is not a common carrier, but even if he were, that would not make him a "trader." As a bailee for hire he would not be a "trader," and I fail to see how he can be brought within any of the other classes of "persons" specifically mentioned in schedule A.

MADRAS,
17th September 1895.

(Signed) J. H. SPRING-BRANSON,
Advocate-General.

Proceedings Public Works Department No. 1115-D, dated 2nd October 1895.

ORDER—No. 110, Legislative, dated 28th October 1895.

In view of the Honourable the Advocate-General's opinion as to meaning to be attached to the word "trading" as used in schedule A to Madras Act IV of 1884, the Government considers that the following amendment should be made in the amending Bill as revised by the Select Committee:—

For the word "trading" wherever it occurs in Schedule A, substitute the words "carrying on business."

2. This amendment will render Railway Companies obnoxious to profession tax, though State railways will be exempt in view of the fact that the Secretary of State in Council is not a "person."

(True Extract.)

Ag. Under Secy. to Govt.

To the Hon'ble Members of the Legislative Council.
" Local and Municipal Department.
" Public Works Department.

Exd. T. K. Narayana Iyengar.

Local & Municipal
 CURRENT No. 3393 M
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 LEGISLATIVE.

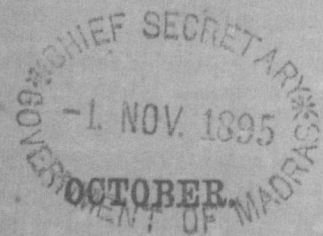
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G.O., No. 110, 28th October 1895.



Bill to amend Act IV of 1884 (The Madras District Municipalities Act).

Stating that in view of the Hon'ble the Advocate-General's opinion as to the meaning to be attached to the word "trading" used in Schedule A of the —, as revised by the Select Committee, the words "carrying on business" should be substituted for the word "trading" wherever it occurs in that schedule.

in case Order No 1854 dated 7-11-95
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DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

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