L. & M.
2,000-5-8-96.

Local & Munl: (1895) Department.

MISCELLANEOUS.

G.O., No. 250m

DATED 16th February 1895

[Despatch Abstract.]

Tax.

Informing the Chairman, Municipal Council, Chicacole, with remarks, that Government is not prepared to advise the Council in regard to the assessment of profession tax for grain selling in the Municipality, and stating that the council should take the best advice available and act on its own responsibility.

BACK PAPERS.

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

FURTHER PAPERS.

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

INDEXED.

Miscellaneous.

LOCAL AND MUNICIPAL DEPT.
G.O., DATED 16-2-95
No.
250m

When given for copying.

[Despatch Abstract.] extract for

Tax

Informing the Chairman Municipal Council Chicacole with remarks that Govt is not prepared to advise the Council in regard to the assessment of profession tax for grain selling in the municipality and stating that the Council should take the best advice available & act on its own responsibility

READ AGAIN ORDER OF GOVERNMENT, DATED
189 , No. , MISCELLANEOUS.

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO

ORDER OF GOVERNMENT

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL (not paged).

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

BACK PAPER, No.

OF 189

FURTHER PAPER, No.

OF 189

Copied by

Examined by

Local & Municipal Dept.

CURRENT No. 137 / 95

Municipal Office,
CHICACOLE.

No 27.

Dated, 19th January 1895.

FROM

A Wells Esq.
CHAIRMAN,
MUNICIPAL COUNCIL, CHICACOLE.

To

THE Chief Secretary to Government,
Fort St George.

SIR,

I have the honor to forward the enclosed extract from the Proceedings of the Municipal Council, Chicacole, at its meeting held at 7.30 A.M. on the 19th January 1895.

2. M R Ry. B. Lakshmisivarao Pantulu, a local pleader and land holder was litterto taxed Rs 12 per annum as a pleader only, but as he in addition obtained about 25 garces of paddy from his lands and after deducting about 5 garces, which will be the reasonable house consumption for a large family, he was taxed by me in aggregate Rs 25 per annum since he sold for profit about 20 garces of paddy annually.

3. This man petitioned against the assessment on

on the ground that he received only 15 garces of paddy and consumed 7 to 8 garces and sold only about 7 to 8 garces to pay his Government kist which amounted to Rs 200 per annum. Provided he received only 15 garces, it is not likely that he used for house consumption more than 5 garces and hence if he sold the balance 10 garces at the average lowest rate, viz Rs 45 per garce he would realise Rs 450, per annum, out of which if he paid Rs 200 per annum as kist, he still derived a clear profit of Rs 250 per annum. It is however a matter of doubt if he actually received only 15 garces and not more. He is said to sell the grain from his lands at his house after storing the same in godowns specially built for the purpose in his house. Hence his place of business is his house.

3. This is the first case of its kind that had appealed against the taxation and the first one decided by the Municipal Council. The copies of the judgment of the High Court and also of the Full Bench of the High Court and G.O. dated 2nd October 1894, No 1362 Mr. Mio, were read. The late Chairman M.R.Ry T.V. Sivarao Pantulu gave, now a councillor and one who has been taxed for the first time Rs 50 per annum as a grain dealer opposed the tax levied on the above B. Sambasivarao Pantulu on the ground that in the judgment of the Full Bench of the High Court, the proviso made viz "provided the sales are conducted in a shop or place of business as in this case" did not authorise the classification as traders of those who sold grain from their lands in their own houses, but only in cases similar to the one decided by the High Court viz. when the appellant lived in Chicacole, and had a place of business in Parlakemidi to sell his grain. He was strongly supported by another councillor M. R Ry. M. Venkataramaniah Chetti garu who has also been taxed as a grain dealer for the first time.

4. After a great deal of discussion on the meaning of the proviso above noted, a ballot was taken as to whether the tax on B. Sambasivarao Pantulu should be confirmed or not. Three councillors viz Rev. T.C. Archibald, Mr. C.V. Kaish and M.R.Ry. G. Mukundarao Naidu garu and I as Chairman voted for confirmation, and the remainder excepting M.R.Ry. G. Venkappa

Venkappah chetty garu (who had left the meeting before this subject had come up) voted for reduction to the original tax Rs 12 per annum as pleader only, since in their opinion the selling of grain at his own house was not trading. As the latter were in the majority the tax was reduced to Rs 12 per annum.

5. I consider the procedure of the majority of the Council to be erroneous, and since the tax on grain dealers affects principally the influential persons of the town, I am of opinion that the majority of the Council do not wish to clash with them and hence, I request you will kindly after perusing the judgment of the Full Bench of the High Court (copy herewith forwarded) favor me with an opinion on the following points:—

(a) Whether land owners who sell grain in their houses or in store houses set apart for the purpose are "traders".

(b) Whether land owners who after storing their grain for more than 60 days in any half year with a view of selling to advantage sell all their grain in a few days after the expiry of 60 days are "traders" or not

(c) Whether land owners who obtain a small quantity of grain and consume a major portion and sell the balance to cover Government kist are "traders"

6. As there are a large number of appeals against tax on grain dealers and I have postponed the hearing of appeals until the reply above requested is received, I request that early orders may be passed at an early date. As the exemption or not from this tax in a measure directly affects the two Councillors Rao Bdr. V. Suryarao Pantulu garu and Mr. Venkataramaraju chetti garu, I solicit orders as to whether they should have a voice in future in deciding appeal cases against the tax on land owners who sell grain.

I have the honor to be,

Sir,

Your most obedient servant,

A. Wells

Chairman

G.O. 155 Mun. Dt. 31-10-94
Land yet to be Confirmed

An extract from the Proceedings of the meeting of the Municipal Council Chicacole dated the 19th January 1895.

Present.

A. Watts Esqre. Chairman

Councillors

M.R.Ry. J.V. SivaRao Pantulu Garu
" " T. SuryaprakasaRao noidu Garu
" " G. Mukunda Rao noidu Garu
" " C. Appayya noidu Garu
" " Ch. Hoosman Khan Sahib Garu
" " Mur Abdur Razak Sahib Garu
" " M.V. Ramaniah Chetty Garu
" " Ch. Subbiah noidu Garu
" " M. Goviah noidu Garu
" " G. Venkatappah Chetty Garu

C.W. Traish Esquire

Revd. I.C. Archibald.

x x x

12. Read the following appeals against Tax on Arts for the half year ending 31st March 1895:

x x x

5. B. SambaSivaRao Pantulu Garu.

For confirmation

Messrs. C.W. Traish
" G. Mukunda Rao noidu Garu
" I.C. Archibald and Chairman

For reduction on ground that he is not a grain dealer.

M.R.Ry. T.V. SivaRao P. Garu
" T.S. PrakasaRao N. "
" C. Appiah N. Garu
" Ch. Hoosman Khan Sahib "
" Mur abdur Razak Sahib "
" M.V. Ramanayya Chetty Garu
" Ch. Subbiah noidu Garu
" M. Surayya "

x x x

(Signed)

/Sgnd/ A. Walls
Chairman

(True extract)

A. Walls
Chairman

XVII - Page 100 of 1893.

Page 100.

Appellate civil

21st August 1893.

Before Mr. Justice Muttuswami Ayyar and Mr. Justice Best.

Venkatareddi (Petitioner) Appellant.

Versus.

W. Taylor (Counter Petitioner) Respondent.

Letters Patent of the High Court, S.15 - Appeal - District Municipalities Act (Madras) - Act IV of 1884 S.S. 53. 59. 60.

Profession tax - Trader - Provincial Small Cause Courts Act - Act IX of 1887, S.S. 25. 27.

A petition for revision preferred under Provincial Small Cause Courts Act, S. 25 was heard and dismissed by one of the Judges of the High Court acting under the rules of Court framed under S. 13 of the Charter Act.

The petitioner preferred an appeal under Letters Patent S. 15.

Held that the appeal was not barred under Provincial Small Cause Courts Act S. 27 and was maintainable.

One who makes it his business to sell the produce of his own land for profit is a trader within the meaning of the Madras Act IV of 1884, provided the sales are conducted in a shop or place of business.

Held by Parker J. that one who has paid profession tax as a Shristadar in one Municipality is not on that account exempted from paying a further tax in respect of a trade carried on by him in another Municipality under Act IV of 1884, Madras.

Appeal under Letters Patent S. 15, against the Judgement of Mr. Justice Parker on civil revision petition no. 27 of 1892.

That was a petition under Provincial Small

Small Cause Courts Act IX of 1887, S 25
praying the High Court to revise the proceedings
of K. Sowrayajulu Pantulu, District Munsiff
of Sompeta, in small cause suit no. 133 of 1891.

The Plaintiff was the Taluq Shristadar, and
as such had paid profession tax under Act
IV of 1884 (Madras) to the Municipality
of Chicacole. Subsequently he was assessed
to pay a further tax as a trader in Parla-
kimidy. He paid the amount demanded under
protest and brought the present suit against
the Chairman of the Municipal Council
of Parlakimidy to recover the amount so paid.
The suit was dismissed by the District Munsiff
and the plaintiff preferred the petition
above referred to. The petition was dismissed
by Mr. Justice Parker who delivered judgment
as follows.

Venkatareddi
vs
Taylor.

Parker J. The Petitioner is a Valuk Shristadar
at Chicacole and has paid one Rupee profession
tax in that Municipality. He has now been
assessed as a grain merchant at Parlakimidy
and sues to recover from the Chairman of that
municipal council the amount which has
been levied from him.

It is first urged that Petitioner does not
carry on trade in grain since the paddy which
he sold was grown on his own lands. I am
unable to accede to this contention. The Petitioner
contends that he cannot be said to trade in
grain unless he brought the grain before he
sold it. If this be so, no owner of a tea or coffee
estate could be said to trade. The term "Trade"
is not defined in the Act, but the meaning of
the term as given in Wharton's Law Lexicon
includes the exchange of goods for other goods or for
money. I am of opinion that the petitioner does
trade in grain.

The next contention is that as petitioner has
paid profession tax at Chicacole, he cannot be re
taxed at Parlakimidy for the same year under
Section 60 Madras Act IV of 1884. In support
of this contention I am referred to decisions
in Tuticorin Municipality V. South Indian
Railway (1) and Municipal council of Tellicherry
V Bank of Madras (2). In the first of these
cases it was held that a Railway company
having paid profession tax at Negapatam
was not liable to be assessed for the same
half year at Tuticorin. In the second case
it was held that the Bank of Madras having
paid profession tax at Negapatam was not
liable for the same tax at Tellicherry. But
in both these cases it was the same business
that was carried on, though in two different
places.

In the present case the petitioner carries
on one business at Chicacole and another at
Parlakimidy. He does not carry on grain trade
at Chicacole or his work as Shristadar at
Parlakimidy. He cannot, therefore, be taxed in
either municipality under section 59 upon his
aggregate income from both sources, nor can
he be assessed under section 53 upon more
than one source of income in each Munici-
pality. Section 60 exempts a person from
paying in a second Municipality the tax
which he has been assessed under section
53 in another Municipality. But petitioner
has

has not been assessed, nor could he be assessed as a trader in Jaffna at this time under Section 53, and therefore he is not exempted by Section 60 from paying at Parlakimedy.

The petition is dismissed with costs.

The petitioner preferred the present appeal under Letters Patent S. 15.

Mr. Anderson and Sivagnanasundram for appellant.

The advocate general (Hon. Mr. Spring Branson) for respondent.

Judgment. The preliminary objection is taken that the petitioners remedy is exhausted by the order passed by Mr Justice Parker under section 25 of the Small Cause Court Act, from which it is contended no appeal is allowable by reason of section 27 which declares the decrees or orders of the Small Cause Court to be final subject to the provisions of that act. We observe that the revision contemplated in section 25 is by the "High Court". Mr Justice Parker exercised such revisional jurisdiction under the rules of this court framed under section 43 of the Charter Act. The judgment is therefore subject to the appeal provided by section 15 of the Letters Patent.

The Preliminary objection must consequently be disallowed

Passing on to the merits, we see no reason to differ from the learned Judge in holding that any person who makes it his business to sell for profit is a "trader" within the meaning of the Municipal Act IV of 1884. We do not think the fact of what he sells being the produce of his own land makes him the less a trader, provided the sales are conducted in a shop or place of business as in this case. The other point is not pressed. The appeal fails and is dismissed with costs.

(True copy)

A. Wills

Chairman.

Local & Municipal Dept.

CURRENT No. 251/M

18.95

1765 Mar 11-94
1558 May 11-94
1439 Mar 11-94
1863 Mar 11-94
1703 Mar 11-12-89

From

A. Wells Esq.

~~THE~~ CHAIRMAN

MUNICIPAL COUNCIL

CHICACOLE.

To

The Chief Secretary to Govermt.

Fort St George.

No. 27

Dated. Chicacole. 19th January 1895

Despatched. 20th " 00

Encls. Three.

Subject,

CHIEF SECRETARY'S GOVERNMENT OF MADRAS

Soliciting orders as to the disposal of appeals against tax on land owners in the Chicacole Municipality

25/1

Code Class. 5

INDIAN TELEGRAPHS. Monthly Number. 6

To (Office) Madras Fort St. Geo. From (Office) Chicacole

Words. 31 | Day. 25 | Hour. 12 | Minutes. 40 | Official Instructions. 6

Local & Municipal Dept. CURRENT No. 251/M

To (Person) The Chief Secretary Govt of Madras

From (Person) Chairman Municipal Council

32 Word Form. F. C.

Submitted memorial protesting against Municipal Chairman's assessment on landholders praying disposal Chairman's reference after memorial received

Recd. from LN. At Hrs. Mts. by

Sent to LN. At Hrs. Mts by MADRAS FORT 25-1-95

Telegraph Master.

G. S. P. Co.—No. 868 T—6-2-93—40,00,000

Con 235 & 95

LOCAL AND MUNICIPAL DEPARTMENT.

Local & Municipal Dept.
CURRENT No. 235/95

Telegram

From

Chinta Jagannatha Rao
Chicacole

No.

Dated 25-1-95.

Received 25-1-95.

Enclosures

SUBJECT.

Stating that a memorial protesting against Chicacole municipal Chairman's assessment on land holders has been submitted and praying that the Chairman's letter may be disposed of after the receipt of the memorial.

C.N. 235 & 257 M

To lie over pending receipt of the memorial

Recd. 28/1/95

28/1 Acd

To,

His Excellency The Right Honorable

Beilby Lawley Baron Wenlock,

G.C.I.E.,

Governor of Fort St George.

CHIEF SECRETARY
29 JAN 1895
GOVERNMENT OF MADRAS
Local & Municipal Dept.
CURRENT No. 235/95

The humble memorial of the Landholders residing at Chicacole, Ganjam District,

Most Respectfully showeth,—

(1) That the memorialists beg to represent that they have been put to much hardship by the recent assessment of the Chairman of the Municipal Council, Chicacole, as profession tax for grain-selling.

(2) That the memorialists, for a long time immemorial have been in the practice of receiving their share of paddy from their ryots at their dwelling houses at Chicacole, and it is but essential to domestic economy and management

management that some quantity of the same should be disposed of for the purpose of defraying all the necessary expenses such as domestic expenses, cost to Government &c.

(3) That they have been never taxed before now under the Municipal Act of IV of 1884 (Madras) inasmuchas the Schedule A of the act does not include the selling of the paddy of one's own lands, under the circumstances mentioned above, under trade, calling, profession, or art.

(4) That the memorialists have been erroneously assessed by the Chairman for the current half year on the strength of the decision of the Madras High Court dated 21st August 1893 which is not at all applicable to the memorialists for the reason that the

memorialists

memorialists do not sell their paddy for profit in a shop or place of business as stated in the decision.

(5.) That the memorialists beg to submit that they are obliged to store their grain at their houses for want of demand but not with the view of selling it for profit; and such motive cannot be attributed especially when the prices of grain are invariably the same in these parts and especially in our town throughout the year from one harvest season to another except in famine years which seldom occur and in which generally the memorialists can hardly get even a fourth of what they do in other years from their lands.

(6.) That the memorialists beg to venture also

to

to represent that in some years the grain in these parts is sold far cheaper both in the middle and the end of the year than immediately after the harvest season, and the account kept by the memorialists in regular course of business bear testimony to the above facts.

(7.) That the major portion of the memorialists would get an yearly income of only less than fifteen garees of paddy of which at least a third is absolutely necessary for consumption for an ordinary family whose living is of a moderate standard; and the disposal of at least two more garees is indispensable for the payment of the Kist due to the Government in the case of enfranchised Inam lands and nearly double that quantity

in

in the case of Jirayat lands; and the remaining quantity is sold for their other expenses not to speak of the necessary and important item of expenditure, viz,— repairs of their lands and their irrigation sources.

(8.) That the memorialists respectfully crave permission to quote the following few lines from the Judgment of the High Court in question,—

"Passing on to the merits, we see no reason to differ from the learned Judge in holding that any person who makes it his business to sell for profit is a 'trader' within the meaning of the Municipal Act IV of 1884. We do not think the fact of what

what he sells being the produce of his own land makes him the less a trader, provided the sales are conducted in a shop or place of business as in this case."

The proviso clearly suggests the inference that the High Court were led to believe that the appellant was carrying on business for profit from the admitted fact that the sales of his grain were conducted in a shop or place of business in a different municipal town from the place of his residence.

(9.) That the memorialists further crave permission

to

to represent that the landowners are rightly exempted from paying incometax as they have been sufficiently burdened with taxes on lands, and for the foregoing reasons they do not come under traders within the meaning of the Municipal Act.

(10) That before concluding their humble memorial the memorialists feel it their duty to bring to the notice of your Excellency that the Chairman expressed in the Municipal Council held on the 19th January 1895 that, Contrary to the longstanding custom in vogue in accordance with reason and equity, he would not give notice to the appellants to be present before the Council

at

at the time of hearing their appeals;

and this step on the part of the

Chairman deprives the appellants of

their right of making a fair representation

of their case to the Council. And —

(11.) That the memorialists, having come to

understand that a reference on the subject

has been made to the Government by

the Chairman, pray your Excellency to

pass such orders as your Excellency may

be pleased to deem ~~fit~~ just and proper

on the perusal of this humble memorial

and relieve the humble memorialists from

the

the unnecessary and unjust hardship

which they are put to by the abovementioned

assessment of the Chairman of the

Municipal Council, Chicacole.

We humbly and respectfully
beg to subscribe ourselves
your Excellency's
most obedient and
humble Servants.

P. Venkata Ramanah

V. Gurvaraiah

M. V. Ramanayya

B. Dasulukamulu

Jagannadas.

Venkanna

Bhaswanji

A. Lakshmanarayana.

G. V. Narayanayya

Chintazaganasho[illegible]

T. J. Narayanamurty

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

A. Venkataramanayya

J. Venkatarow.

[illegible]

[illegible]

[illegible]

[illegible]

A. Markandeyya

[illegible]

[illegible]

[illegible]

Mahajanam Srinivasarao

[illegible]

[illegible]

J. T. Ramanayyah –

[illegible]

LOCAL AND MUNICIPAL DEPARTMENT.

Local & Municipal Dep

CURRENT No. 327 M.

Petition
From

P. Venkataramayya &
other landholders
Chicacole.

No.

Dated

Received 30.1.95

Enclosures

SUBJECT.

Praying that favourable orders may be passed on the letter from the Chairman, M.C., Chicacole regarding the assessment of profession tax for grain selling.

(with an order)

C.No. 235.251 & 327 M/95

C.S.
Misc.

Order 16-2-1895 N.O.S.D.

The Government is not prepared to advise the municipal council on legal points such as those specified in para. 6 of the Chairman's letter. It should take the best advice available & act on its own responsibility.

2. With reference to the concluding portion of para. 6 of the Chairman's letter, he will be informed that there is nothing in the rules, as they stand at present, prohibiting the councillors in question from voting in the disposal of appeals of the kind referred to, provided the question is not one involving remission of taxation to themselves.

13/2/95 12-2-95 15/2/95

To,
The Chairman, M.C. Chicacole.
Disp. 16/2/95

When given for copying
When copied
When examined
When signed
} 189

READ AGAIN G.O., No. DATED
189 ,

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A
LETTER OF GOVERNMENT.							
STATEMENT WITH DITTO.							
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.							

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.