

[L. & M.
2,000-18-4-1897]

Local & Munl. (1898) Department.

MISCELLANEOUS.

G.O., No. 1581 M

DATED 9-9-98.

INDEXED. DESPATCHED

[Despatch Abstract.]

Calicut Tramways Order, 1897.

Communicating to the Munl. Council of
Calicut, L.D. P.W.D. approving the amendment of
clause 9 of — and forwarding copy of the proceedings
to the Government of India for information.

V. C. M.

BACK PAPERS.

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

FURTHER PAPERS.

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

RAILWAY.

Government {1898} of Madras. PUBLIC WORKS.

Recd.

Enclosures

Regd.

1898.

Spare copies

6 AUG 1898

G.O., No. 978 Ry., 29th July 1898.

LOCAL & MUNICIPAL DEPT.

CURRENT NO. 2639M

JULY.

By *order* No. 1581 *new*
nic 9-9-98
Communicated to the Municipal
Council of Calicut.

to *3/7/98* *6/9/98*
The Chairman, M.C. Calicut
copy 12/9/98

Calicut Tramways Order, 1897

The amendment of clause 9 of —, approved and copy of the proceedings forwarded to the Government of India for information.

12/16 a 26/8

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Railway.

Read again the following papers :—

G.O., No. 902 R., dated 4th November 1897.

Telegram from A. Brown, Esq.,

To—The Consulting Engineer for Railways, Madras.
Dated—30th October 1897.

Revised tramway notification, clause nine, shall feel much obliged by explanation of words "then value."

Telegram to A. Brown, Esq.,

From—The Consulting Engineer for Railways, Madras.
Dated—1st November 1897.

Term "then value" quoted from clause 22, Tramways Act, for interpretation of which consult your lawyer.

Order—No. 902 R., dated 4th November 1897.

The Government of India will be addressed.

From—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.
To—The Secretary to the Government of India, Public Works Department.
Dated—Madras, 4th November 1897, No. 903 R.

Upon the publication in the *Fort St. George Gazette* of the 26th October 1897 of the draft of the order proposed to be issued by this Government under the provisions of the Tramways Act of 1886 for the construction of the Calicut single rail tramway, referred to in the correspondence ending with your No. 1422 R.C., dated the 31st August 1897, an enquiry was received from the Promoter as to the meaning of the term "then value" in clause 9, the purchase clause of the draft order.

2. As suggested in paragraph 2 of your letter above referred to, clause 9 of the draft order was modelled upon clause 22 of the Tramways Act. But this Government is uncertain as to the exact significance of the term "then value," viz., whether it means the market value as shown by the market price, on the date of sale, of the Tramway Company's shares and debentures, or the value of the property as arrived at by a valuation and if necessary by arbitration, or the par value of the actual authorized capital outlay as incurred by the Company.

3. This Government is inclined to believe that it was the intention of the framers of the Tramways Act that the term "then value" should have some such meaning as the average market value for a reasonable period, or the actual market value on the date of sale, of the Company's authorized issue of stock and debentures. I am directed to enquire whether this interpretation is or is not correct; and, if not, to beg that I may be informed what was intended to be the meaning of the term.

G.O., No. 1133 R., dated 14th December 1897.

Read also the following papers :—

From—The Secretary to the Government of India, Public Works Department.
To—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.
Dated—Calcutta, 14th December 1897, No. 1997 R.C.

I am directed to acknowledge the receipt of your letter, No. 903 R., dated 4th November 1897, enquiring, with reference to the purchase clause (9) of the draft of the proposed order authorising the construction of the Calicut single rail tramway, what interpretation should be placed on the expression "then value" as used in clause 22 of the Indian Tramways Act XI of 1886.

2. In reply I am to inform you that it is understood that the term "then value" has been interpreted to mean the actual value of the railway and rolling-stock at the time of purchase and that it has no reference to the earnings of the concern.

3. As, however, a doubt has been raised as to the meaning of the phrase, it may perhaps be preferable to specify certain defined terms of purchase which shall not be open to the objection taken to the purchase clause as originally drafted, and I am to suggest that a provision that the purchase price should be 25 times the average net earnings of the tramway for the five years immediately preceding the date of purchase, would be suitable, giving a reasonable purchase rate without involving the necessity for any scrutiny on the part of Government in regard to the capital expenditure.

G.O., No. 751 Ry., dated 20th May 1898.

From—The Consulting Engineer for Railways, Madras.
To—The Chairman of the Calicut Municipality.
Dated—Madras, 5th February 1898, No. 371.

With reference to the Calicut Tramways Order No. 3 of 1897, which was published in *Fort St. George Gazette*, dated 14th December 1897, pages 1551 to 1559 inclusive, I have the honour to inform you that when the "Order" was first drafted clause 9, the purchase clause, provided that in the event of the purchase of the tramway by the Local Authority, the price to be paid for it was to be "the amount of nominal capital in shares or debentures actually issued or raised on mortgage of the property and expended" up to date of purchase plus one-fourth for compulsory purchase.

2. On this clause coming to the notice of the Government of India, they objected to the wording of it because it is left up to the Promoters to water the capital to any extent and then to call upon the purchaser to pay up the watered capital and not the real capital value.

On the advice of the Government of India, the phraseology of the purchase clause in the draft order was altered so as to bring it into consonance with clause 22 of the Indian Tramways Act, which enacts that the purchaser shall pay "the then value of the undertaking exclusive of any allowance for past or future profit or any compensation for compulsory sale or other consideration whatever."

On this revised wording coming to the notice of the Promoter, he enquired as to the meaning of *then value*, and in reply was referred to the Tramways Act and to his legal advisers. It was subsequently ascertained from the Promoter that he was quite satisfied with the reference to the Tramways Act, and the order was therefore published in the *Gazette* forthwith, as no objection to it had been received from any quarter.

Subsequently, however, the Government of India, in reply to a reference on the subject, wrote the letter of which I enclose a copy No. 1997 R.C., dated the 14th December 1897, and the question arises whether it would not be right that the Municipality and the Promoter should now have the option of applying to Government for a fresh draft of paragraph 9 in the shape of a revised order. The matter seems to be one which most nearly concerns the interests of the Municipality, as they may possibly at the expiry of the agreed period desire to purchase the tramway, and may

possibly wish the terms of purchase to be stated beforehand more explicitly than is done in the Tramways Act or in the order which is now in force. It may be, however, that the Municipality are still satisfied with the order as it stands.

I shall be glad to be informed what conclusion they have arrived at, after discussion, if necessary, with the Promoter, so that I may take the orders of Government.

From—The Chairman, Municipal Council, Calicut.
To—The Consulting Engineer for Railways, Madras.
Dated—Calicut, 1st March 1898, No. 226/98.

In reply to your letter, No. 371, dated 5th ultimo, I have the honour to forward herewith copy of a resolution of the Municipal Council passed at its meeting held on the 26th instant from which it will be observed that the Council does not think that any alteration in paragraph 9 of the Tramway notification is necessary.

ENCLOSURE.

EXTRACT from the Proceedings of the Municipal Council Calicut passed at its meeting held on the 26th February 1898.

15. Read letter, dated 5th February 1898, No. 371, from the Consulting Engineer for Railways, Madras, requesting to be informed whether it would not be right that the Municipality and the Promoter should now have the option of applying to Government for a fresh draft of paragraph 9 (the purchase clause) of the Tramway notification.

The council does not think any alteration in the wording of paragraph 9 as it now stands is necessary.

Order—No. 751 Ry., dated 20th May 1898.

As it is advisable, whenever possible to do so, to clear up the meaning of indefinite terms and phrases, it would be well if the Purchase Clause of the Calicut Tramway Order, dated 14th December 1897, could be altered upon the lines of the Government of India's advice.

2. The Chairman of the Calicut Municipal Council will therefore suggest to the Promoter that he should put in an application, with the consent of the Municipal Council, for the amendment of clause 9 of the Calicut Tramway Order in the following manner, *i.e.*, that in lieu of the words beginning "*paying the then value*" and ending "*or any consideration whatever*," shall be inserted the words "*being paid 25 times the average net earnings of the tramway for the last five years immediately preceding the date of purchase*."

3. The application for revision if agreed to should be made under the provisions of clause 8 of the Tramways Act.

From—The Chairman, Municipal Council, Calicut.
To—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.
Dated—Calicut, 6th July 1898, No. 715.

With reference to G.O., No. 751 Ry., dated 20th May 1898, I have the honour to forward herewith copy of a resolution of the Municipal Council passed at its meeting held on the 5th instant on the subject of the amendment of clause 9 of the Calicut Tramway Order on the lines suggested by Government and to request that, under clause 8 of the Tramways Act, Government will be pleased to approve of the proposed amendment.

A copy of letter No. F. 2529, dated 9th June 1898, from Mr. A. Brown, Calicut, the Promoter, is herewith submitted for the information of Government.

ENCLOSURE.

EXTRACT from the Proceedings of the Municipal Council, Calicut, passed at a meeting held on the 5th July 1898.

12. Read G.O., No. 751 Ry., dated 20th May 1898, directing the Chairman of the Calicut Municipal Council to suggest to the Promoter of the Calicut Tramways that he should put in an application with the consent of the Municipal Council for the amendment of clause 9 of the Calicut Tramway Order in the following manner, *i.e.*, that in lieu of the words beginning "*paying the then value*" and ending "*or any consideration whatever*" shall be inserted the words "*being paid 25 times the average net earnings of the tramway for the last five years immediately preceding the date of purchase*."

Read also letter dated 9th June 1898, No. F. 2529, from Mr. A. Brown, Calicut, stating that an application under clause 8 of the Tramways Act may be made for the amendment of clause 9 of the Calicut Tramway Order on the lines suggested by Government.

The council consents to the amendment.

From—A. Brown, Esq.,
To—The Chairman, Municipal Council, Calicut.
Dated—Kallai, Malabar Coast, 9th June 1898, No. F. 2529.

I have the honour to own receipt of your No. 266/98 of 28th ultimo and in accordance therewith to request that Government may be approached and an application made with a view to having the wording of the Government Order published in the *Fort St. George Gazette* of December 14th, 1897, and known as "*The Calicut Tramways Order*" 1897, No. 3, altered in paragraph 9 (the purchase clause) so as to read in lieu of the words beginning "*paying the then value*" and ending "*other consideration whatsoever*" as follows "*being paid 25 (twenty-five) times the average net earnings of the tramway for the last five years immediately preceding the date of purchase*."

The application should be made under clause 8 of the Tramways Act.

ORDER—No. 778 Ry., dated 29^d July 1898.

The Promoter and the Municipal Council, Calicut, having in accordance with section 8 (4) of the Indian Tramways Act, 1886, consented in writing to the amendment of clause 9 of "*The Calicut Tramways Order*," 1897, No. 3, as proposed in G.O., No. 751 Ry., dated 20th May 1898, His Excellency the Governor in Council is pleased, under the provisions of section 8 of Act XI of 1886 to amend clause 9 of "*The Calicut Tramways Order*," 1897, No. 3, in the following manner, *i.e.*, in lieu of the words beginning "*paying the then value*" and ending "*or any consideration whatever*" substitute the words "*being paid 25 times the average net earnings of the tramway for the last five years immediately preceding the date of purchase*."

2. The Government of India will be addressed.

[Here enter No. 778 Ry., dated 29^d July 1898.]

(True Extract.)

Under Secretary.

To the Collector of Malabar.
" Local and Municipal Department.
" Malayalam Translator to Government.
" Superintendent, Government Press.
" Consulting Engineer for Railways.
" Examiner of Railway Accounts.

Exd. Md. Pahlivan.

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189 .

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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