Local & Munl. (1898) Departmen.

MISCELLANEOUS.

G.O., No. 1813 M1.

DATED 25-10-98

DESPATCH INDEXED.

[Despatch Abstract.]

Petition.

Informing G. Dorsisuami ai
of Kumbakonam that the Govt can
interfere in the levy of his Profes
tax by the Kumbakonam Mu

BACK PAPERS.

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

FURTHER PAPERS.

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

Local & Munl. (189) Department.

CURRENT No. 2376 A

From V. Dorasawmi Aujar
Kumbakonam

Refce. 891
Order 5/8/98

The Petitioner is requested to submit copies of judgments including that of the High Court, in the suit brought by him against the Municipality.

No.

Dated 9th July 1898

Received 14th July 1898

Registered

Enclosures

Spare copies.

1.R
6/7/98

do
28/7/98

Govt P.T.O

The Petitioner
Dup 5/8/98

SUBJECT.

Bringing to notice the e
and improper levy of p
tion tax from the peti
by the Municipal Cou
Kumbakonam, and p
for exemption there of
reasons set forth th

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

C.P. 2376 & 2891 M/98

Misc

order No. 1813 Mis 25/10/98 20/10/98

The Government Cannot interfere in the manner requested by the petitioner.

V.R 13/10/98

H.T. 14/10/98

To

The Petitioner (with enclosure returned)
The Chairman, M.C. Kumbakonam.

[illegible] 27/10/98

[G. 25]
250—18-2-98.

LOCAL AND MUNICIPAL DEPARTMENT.

C. Nos 2376 & 2891 M of 1898.

SUBJECT.

Procession for the refund of Profession tax levied by the Municipality of Kumbakonam.

FOR ORDERS.

C.P. 2891 M

H.M.

With the second letter read above the Petitioner forwards copies of judgments, including that of the High Court in the suit brought by him against the Municipality of Kumbakonam for the refund of the profession tax wrongfully collected from him by the said Municipality for the half year ending 31st March 1894.

2. The facts of the case may be briefly stated as follows:—

The Petitioner is a retired Deputy Collector resident at Kumbakonam. He is in receipt of a pension of Rs 194 per mensem, and according to his own statement, has invested some money on landed securities.

The Chairman of the Municipal Council of Kumbakonam assessed the Petitioner in Fasli 1897, when notwithstanding

C.P. 2376 M

vide paragraph of the petition flagged Z.

a profession tax of Rs 12-8-0. for the second half of the year 1892-93, placing him under class IV of Schedule A appended to the District Municipalities Act 1884, as a money lender; but on the Petitioner appealing to the Council that money lending was not his profession, he was exempted from taxation. Notwithstanding this, Petitioner was assessed by the Chairman to a tax of Rs 50 for the year 1893-94, but as the Council rejected his appeal and confirmed the Chairmans assessment the Petitioner paid the tax and filed a civil suit for the recovery of the tax viz, Rs 25, wrongfully collected from him for the second half of the year 1893-94. The District Munsif of Kumbakonam upheld the Petitioners contention that he was not a money lender, banker, or Sowcar, within the meaning of Schedule A, and decreed the payment to him by the Municipality of the amount claimed with costs. On appeal by the Municipal Council, however, the Subordinate Court of Negapatam

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been brought on the Small Cause Side and not on the original side as had been done, and directed the re-presentation of the original plaint in the District Munsif's Court of Kumbakonam on the Small Cause Side; but it was rejected as time-barred by the District Munsif, to whom it was presented the very next day, after the order of the Subordinate Judge, ~~directed~~ and this order was confirmed by the High Court on revision. In the meantime, the Petitioner was assessed to a profession tax of Rs 50 for the year 1894-95, but the disposal of his appeal to the Council was postponed at the Petitioners request until 1896-97, when on the termination of the litigation above referred to, Petitioner was given notice of the hearing of his appeal to the Council. But although the Petitioner appeared before the Council in response to this and the several subsequent notices, the petition was not taken up for final disposal until the 6th October 1897, when notwithstanding Petitioner's request [illegible]

until his health, which was then very bad, improved and until he returned to Kumbakonam from which he had been away for several months, the Council confirmed the original assessment and the tax for the second half of that year was also levied from the Petitioner by means of a distraint warrant more than 2½ years after the expiry of the official year without even the usual demand notice. The Petitioner complains that the action of the Council in this matter was improper, seeing that the Municipal decision, that he (Petitioner) was not a money-lender, banker, or sowcar, was before it, and that the interest realized by him in 1894-96 was below the taxable minimum, he having been assessed to an income-tax of Rs 10 for that year, only by adding to the interest realized by him, five-sixths of the rent value of the houses in his occupation.

Again in October 1897, Petitioner who was then residing at Madras was given notice of his having been assessed to a profession tax of Rs 25 for the first half of [illegible] Court of Negapatam

Petitioner claimed ex
the ground of his non-r
the town during nearly
of the half year, and ar
even if he had resided
should have been liable to
only Rs 4 under class VI
rule 4 on his monthly
of Rs 1 9 4; but before the
was disposed of, the Petit
assessed to a tax of Rs 25
second half year, which w
from him by the issue of a
warrant, although soon a
the tax for the first half
reduced to Rs 6. The Peti
complains of the action of
-mans and the Council, in
levied the profession tax f
although he was not liable
-tion, not having resided in
municipality for the mini
period prescribed in Section
the District Municipalities

The Petitioner also me
that he was unnecessarily a
into a prosecution by the pr
Chairman and requests that
-ment may order the refund
the profession tax improperly

cit his
the adjudi
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10/98

Registered 3

from him from the year
until his hea ggregating about Rs 150,
ad, impro been barred all access
Kunhiako of law.
een away In 101 of the Act, says that
Council co ch or demand of any tax
ment and appeal is made as herein
alf of the vided, and the adjudication
e Petition peal by the Municipal
warrant shall be final." The only
the expiry provided by law in the case
ven the p rect assessment of taxes
Petitione fore an appeal to the Munici
of the ncil. With regard to the
improp illegality in assessing him
decision profession tax for the year
money, during nearly the whole of
was be he was absent at Madras,
realized served that under section
below the Act, it is not necessary
havai a person exercising a profession
tax of nunicipal town should re-
adding therein for the prescribed
him, d in order to make himself
of the to taxation. This sufficient
e person "exercises the profes-
tions in the town for the specified
Mad. This is a question of fact
avai an objection on the score of
exp residence having been

raised by the Petitioner in his
appeal to the Council, the adjud
-cation by the Council in the matte
was final. It is therefore sub
-mitted that the Government can
not interfere in the manner
requested by the Petitioner. The
draft order on the current is sub
-mitted for approval.

V.R
13/10/98

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SECRETARY TO GOVERNMENT
12 JUL 1898
LEGAL & MUNICIPAL DEPARTMENT

COURT FEE
ONE RUPEE

LEGAL & M... DEPT.
CURREI... 2376

To

J. H. A. Spencer Esquire
Secretary to Government
Local and Municipal,
Educational & Legislative Dept.

Ootacamund.

The humble petition of
V. Doraswami Ayyar, Pensioned Dy
Collector, resident of 95 Kamatchi
Josier's Street, Kumbakonam.

Most Honored Sir

I most humbly beg to
State that since my retirement
from Service in 1890 I have taken
my fixed residence in Kumbakonam
investing my small Savings on
one or two landed properties for
interest, as the interest in Bank
investments proved too small
and inadequate to meet the
requirements

requirements of my large growing family.

2. For the first time for the second half of 1892-93, I was assessed by the Municipal Council of Kumbakonam to a professional tax of Rs 12-8-". On my objection petition to the said Council depositing the tax as required by law and explaining that money-lending was not my profession and as such I could not be brought under the operation of the Act, I was exempted from taxation once for all.

3 Nevertheless I was again assessed to the said tax in the amount of Rs 50 for the following year 1893-94 and asked to pay the first instalment of 25 Rs, or show cause within 15 days of the notice why I should not be

II

assessed

assessed. I presented my objection petition putting forth the same ground as before which however did not meet with the approval of the Council and the tax was confirmed.

4. I thereupon filed a regular suit in 1894 in the District Munsif's Court of Kumbakonam for the recovery of the 2nd" half yearly tax of 25 Rs as the prescribed period of 6 months had expired before I could decide to lodge legal notice to sue in the Office of Municipal Council for the recovery of the 1st" half yearly tax. In this suit the Munsif gave decree with costs in my favour upholding my contention that I was no professional money-lender nor a Banker nor a Sowkar falling within the definition of Class 2 attached to the "A" schedule of Act IV of 1884 under which I

was

was classified. Against this decision the Municipality appealed to the District Court of Tanjore which appeal was referred for disposal to the Sub-Court of Negapatam wherein on the argument of Counsel on behalf of Municipality that the suit was wrongly lodged as an original suit instead of as a Small Cause one, the amount of claim falling below 50, and that by a certain ruling of the Local High Court opposed to those of the other Presidency High Courts that the suit against the levy of tax was not entertainable against the Municipality in any Civil Court, the Sub-Judge in an elaborate judgment discussing the merits of the case referred the original plaint to be represented before

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before the Munsif's Court of Kumbakonam as the Small Cause side. On this being done the very next day of the date of the Sub-Judge's judgment the present District Munsif threw out the suit as time-barred and also held that the ruling of the Local High Court was the one that should guide him and if precluded him from entertaining the suit. Thereupon I caused a revision petition to be presented to the High Court praying for the redress of my grievances, but their Lordships of the High Court refused to admit my revision petition on the ground as my Counsel informed me that such a procedure would lead to endless suits against Municipalities resulting in revisions before High Court and that their Lordships object was to discourage

as

as much as possible such a Course.

5. In the meanwhile, the Municipality chose to tax me again to a profession in the amount of Rs 50 for the next following year 1894-95. To which I again objected by petition which was allowed to staind over till the termination of the suit filed by me. In the course of the year 1896-97 by which time the litigation had terminated the Council sent me notice of hearing of the petition on three different occasions and as often I presented myself before the Commissioners to urge my arguments. On the 1st occasion I was sent away by the present Chairman who informed me that he would take up the enquiry at his leisure giving me previous notice.

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notice. On the 2nd occasion I met with a similar answer from him on the plea of no quorum having been formed at the hour of my presence. For the last and third time that I appeared I was told by the same Chairman that some of the Commissioners then present not having gone through the papers connected with the aforesaid litigation the hearing would be postponed to some future date. This was before the last Mahamagam festival in February. Till the following April 1897 I continued to reside at Kumbakonam and no notice of my objection was taken. In May an affection setin in my right eye, for the treatment of which I had to go to Dr. Pope the Superintendent of the Eye Infirmary in Madras and remain under

under his treatment. On its blinding the vision of both my eyes, I had to come away on his advice for a change in the middle of October last. Ever since I have resided at Tiruturaipundi on the Muthupet Railway line coming direct from Madras and without ever going back to my Home and residence at Kumbakonam.

6. On the 4th of November 1897 I received information from Kumbakonam that notice was given in my residence there that my above said objection would be taken up for hearing on the 6th. I instantly despatched a petition which was filed in the Municipal office on the 5th asking for an adjournment of the hearing till recovery of my health as I was then in much suffering on account of inflammation having set in in both the

the eyes and the consequent throbbing nervous pain in the head which prostrated my system; that I could not then bring to my recollection the facts of the case nor think of where I might have laid the Connected papers to enable me to instruct others to appear on my behalf and that the consideration of the same convenience that induced the Commissioners to so long post-pone the enquiry might be held available for me to admit of my personal appearance. This petition failed to meet with their approval and was rejected, the tax being confirmed without any hearing from me. The 2nd half yearly tax of 25 Rs was also levied on the 26th November more than 2½ years after the lapse of the offical year without the prescribed notice being

being given me as required by the Act for such levy by dint of distraint warrant presented to my people at home, and it was paid under protest. The Commissioners had before them for guide the original decision of the District Munsif holding that I was neither a Banker, Sowkar nor a professional money-lender to subject me to taxation in the manner they had done. Nor was the amount of interest realized by me in 1894-95 a significant figure. It fell below the taxable minimum and was rendered taxable to an incometax of Rs 10 only by the addition of five-sixths of the rent value of houses in my personal occupation. Thus it will be seen that the action of the Chairman and the

Councillors

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Councillors who sided with him indicated a persistent determination to subject me to an yearly loss in the large sum of 50 Rs without regard to equity, justice and principle. This is not all.

7. Again for the 1st half of the year 1897-98 I was given notice in October 1897 while I was in Madras of my having been assessed to professional tax on money-lending in the sum of Rs 25 for the half year. I lodged my objection petition that my continuous abstinence from residence within the Municipal limits of Kumbakonam from May of last year consecutively up to the present time rendered me not liable to any professional tax, and I claimed exemption under Section 55 of Act IV of 1884 as amended by Act III of 1897 - Madras, adding that

that even if I should have resided within the Municipal limits for the half year I should have been liable to a tax of 4 Rs only on my monthly pension of Rs 194, under class VII of Schedule "A" attached to the amended Act. Before this objection petition was brought for hearing, the Chairman appears to have lodged notice in my residence at Kumbakonam, of which I was not aware, of an imposition of professional tax of Rs 25 for the second half of the year followed some 2 months after by a distraint warrant enforcing the levy as I was afterwards told. This illegal and improper procedure of subjecting me to the 2nd half yearly tax before the objection for the 1st half was heard and disposed of and without

without a personal service of the no required under section 56 of the A was brought to the notice of the Council by my authorized agent the time of the hearing of the objection petition for the first half-yearly tax which came on the 17th March last. But the Council lent a deaf ear to all my representations and insisted on the levy by distraint of the 2 half-yearly tax (which was paid on protest on 19th idem) on the plea that I presented no objection petition on the notice for the 2nd half year, and they reduced the tax for the 1st half to Rs 6 for which however there is no ~~Cl~~ justification. Section 55 of the Amended Act distinctly lays down the law that non-residence of the assessee for a period of 60 days in any half year exempts him

The Council was quite explicit here.

V.de Cro. 2871/M.

him from liability to professional tax. I have not only not resided for the minimum period of 60 days in the 1st half of the year but was wholly absent and have been absent for the whole of the 2nd half of that year as explained before.

8. The conduct of the present Chairman in dragging me to a vexatious criminal prosecution for an extension of "Karada" (Street pavement) sanctioned by a license of the previous Chairman the late lamented Thambu Swami Mudaliar to whom the present Chairman was opposed in the Council as will appear in their recorded proceedings and the evidence of both the Chairmen as well as the order of the Magistrate calling upon the

8/ the present Chairman to show cause why he should not be fined in the sum of 50 Rs to compensate me for the maliciously vexatious complaint and the Chairman's written apology asking for permission to withdraw the complaint, would be found in the records of the Calendar file of 1896 of the Station-ary Sub-Magistrate of Kumbakonam the trial of which was transferred on my motion to the Joint Magis-trate from the file of the Bench Magistrate to which the Chairman and the Divisional Commissioner reporting the so-called encroachment being themselves Bench Magistrates, arranged the complaint to come on for trial. This Divisional Commissioner was once charged by his fellow Commissioners with tampering with Vote Registers

Kept

kept in the Municipal Office when he stood a candidate for re-election. Both these individuals were known as staunch opponents of the late lamented Chairman who appears to have resigned the Chairmanship in consequence of a party split which arose in the Commission.

9. Thus I have no other alternative left but to lay bare the naked facts in connection with my case and to submit for the generous and favourable consideration of His Excellency the Right Honourable the Governor-in-Council the question whether the constitution of the Local Self-Government in Kumbakonam has proved to be one of use or abuse in protecting the interests of the peaceful and

and lawabiding tax-payers. I pray that complete redress may be given me by a paternal Government by ordering the refund of the whole of the professional taxes improperly and illegally levied from me from the year 1893-94 down to the present time aggregating an amount of Rs 150 minus the trifling sum reduced on appeal considering that I have been barred all access to Courts of Law for a rectification of the proceedings of the Commissioners and a redress of wrongs they have heaped on my head.

For this act of benevolence, I shall as in duty bound ever pray.

I beg to remain
Most Honored Sir
Your most obedient servant

V. Doraiswamy Iyer

Tirutturaipundi
9th July 1898

Kept in the Municipal Office when

To

The Secretary to Government
Local & Municipal
Educational & Legislative
Departments

Madras.

Petition of V. Dora-
-swami Ayar of Kumba
-konam.

Bringing to notice the illegal and improper levy of professional tax from the petitioner by the Municipal Council of Kumba-konam and praying for ~~exp~~ exemption thereof for the reasons set-forth therein.

Local & Muni. (189) Department.

CURRENT No. 2891/M

From V. Doraswamy Iyer
Kumbakonam

Order

No.

Dated 5-9-98

Received 10-9-98

Registered

Enclosures ~ 5.

Spare copies.

SUBJECT.

Submitting copies of all judgment including that of the High Court in his suit against the Municipality as directed in G.O. No. 891 dated 5th August 98 and praying that the enclosures may be ordered to be returned when no longer required.

1619

kept in the Municipal Office when

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

J. N. A. Tremenheere Esquire
Secretary to Government
Local and Municipal Dep

LOCAL & MUNICIPAL
RENT No. 2891/98

Most Honoured Sir.

Ent[d] As directed in G.O. No. 891 dated 5th August 1898 passed on my petition dated 9th July last I beg to Submit herewith Copies of the judgements including that of the High Court in the Suit brought by me against the Municipality.

2. Subjoined is the discription of papers Submitted

(1) Certified Copy of judgement in C. S. No. 527/1894 on the file of the District Munsif of Kumbakonam

(2) Ditto in A. S. 173/1896 on the file of the Sub. Court of Negapatam

(3) Ditto in Small Cause Suit No. 1501/1896 on the file of the Dist. Munsif of Kumbakonam.

(4) Ditto judgement of the High Court and revision petition presented against the last named judgement in S.C.S. 1501/1896

3. I beg to ~~regret~~ express my regret for the delay occupied in obtainin afresh, Copies of judgements from the High and District Courts in lieu of those lost with the Vakil of the High Court.

4. I take this opportunity for correcting an error in the phrase "for which however there is no classification" in para 7 of my petition of 9th July last. The word "justification" may, I beg, be substituted for "classifications".

5. I beg further that the enclosures may be ordered to be returned to me when no longer required.

I beg to be
Most Honoured Sir
Your most obedient Servant

Tiruturaipundy
5th Sep. 98

V. Muruvamy Iyer

BACK PAPERS

No.

The Secretary to Govt.
Local and Muncipal Dept
Cotacamund.

No of Enclos

INTERSELY TO GOVT
SEP 98

Submitting, by
V. Doraswamy Iyer of
Kumbakonum, Copies
of all gudgements inclu-
-ding that of the High
Court in his Suit against
the Municipality as
directed in G.O. No. 891
dated 5. August 1898. ex-
-pressing regret for unavoid-
-able Delay and praying
that the enclosures may be
ordered to be returned when
no longer required

When given for copying
When copied 5-10-98
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.