[L & M. 1,000—24-6-98.]

Local & Munl. (189) Departmen

PRINTED.

G.O., No. 1891
1848 M

DATED 25th November
3/10/98

INDEXED. DESPATCHED

[Despatch Abstract.]

District Municipalities Act.

Communicating to the Municipal Council of Keeshin the Advocate Generals opinion on the question whether "Salt fish" comes within the terms of section 191(2) of the ——— & forwarding to the Legislative Asst. draft of a bill to amend Section 191(2) of the Act.

BACK PAPERS.

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

FURTHER PAPERS.

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

Government {1898} of Madras.

LOCAL AND MUNICIPAL.

Recd. *Egd.* } 1898. *Enclosures* *Spare copies*

G.O., No. 1991 M., 25th November 1898.

NOVEMBER.

District Municipalities Act.

Communicating to the Municipal Council of Cochin the Advocate-General's opinion on the question whether "salt fish" comes within the terms of section 191 (2) of the — and forwarding to the Legislative Department the draft of a Bill to amend that Act.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

From A. G. GOVER, Esq., Chairman, Municipal Council, Cochin, to the Secretary to Government, Local and Municipal Department (through the Collector of Malabar), dated 13th July 1898, No. 441.

In reference to G.O., No. 1067 M., dated 11th June 1898, I have the honour to submit that the opinion of the Advocate-General does not seem to me to embrace the question which was the real one in issue, viz., whether "salt fish" comes within the term of section 191 (2) of the Municipal Act. The opinion is simply that "salt fish" comes within the terms used in the *Notification* issued by the Ootacamund Municipality without saying whether the notification was a valid one though he does point out that it departs from the language of the Statute. I would also ask you to note that the section comes under the heading Slaughter-houses and would therefore seem to refer to the flesh of animals usually slaughtered which would exclude Fish. It is also to be noted that section 193 A which comes under the next heading, viz., Markets, &c., expressly uses the word Fish. The old English term "Flesher" certainly did not connote Fish.

Endt. No. 447 M.

Forwarded.

20*th July* 1898. (Signed) F. C. PARSONS,
Ag. Collector.

No. 936 M.

Referred to the Advocate-General for opinion.

17*th August* 1898. (Signed) H. TREMENHEERE,
Secretary to Government.

To the Government Solicitor.

From the Government Solicitor, Madras, dated 10th September 1898, No. 390.

Abstract.—Forwarding the following opinion of the Advocate-General, dated Madras, 9th September 1898 :—

Opinion.

1. On reference to my opinion of May 11th it will be seen that in paragraph 4 I deal with the point raised by Mr. Gover in his letter of July 13th, 1898. For some reason paragraphs 4 and 5 of my opinion were omitted in the printed papers which were before Mr. Gover. Consequently Mr. Gover not unnaturally concluded that I had not dealt with the principal difficulty in the case.

Paragraphs 4 and 5 of my opinion of May 11th were as follows :—

"4. There is, however, a further question for consideration. It might be contended that the notification, in so far as it applies to *fish* at all, is *ultra vires* the terms of the section. The section only refers to 'flesh intended for food.' For the purposes of construing these words, evidence as to the intention of the select committee on the amending Bill would be inadmissible. The side-note, moreover (although it cannot be referred to for the purpose of construing the section), is '*Slaughter-houses and butchers' shops* to be licensed.' It might be argued with some force that inasmuch as the earlier provisions of the sub-section as to slaughter-houses and the slaughtering of animals are not applicable to *fish*, the section ought not to be construed as applying to places for selling or storing fish.

See I.L.R., 22 Cal., 788.

"5. I am of opinion that the Sub-Magistrate was wrong in the view he took as to the meaning of the word 'fish' as used in the notification; and I am also of opinion, though not without some doubt, that section 191 (2) may be construed as applying to places for selling or storing fish, and that, consequently, a license may be required in respect of a place so used."

2. The Sub-Magistrate appears to have decided the case on the ground that "salt fish" was not included in the word "fish," and in so holding I think he was wrong. But, as I intimated, in my opinion of May 11th, I have doubts as to the validity of the notification. The notification purports to be issued under section 191 (2) of the Act; but whereas the words of the section are "flesh intended for food," the notification refers to "mutton, beef or fish"—see the case of *Queen-Empress* versus *Thunmaya Chetty*, 17 Madras, 397, where certain rules which purported to have been made and issued by the Local Government under the powers conferred by section 6 (K) of the Indian Ports Act, 1889 (Act X of 1889), were held to be *ultra vires*.

3. The point raised appears to me to be so doubtful that I think an early opportunity should be taken of amending the Act by inserting the words "or fish" after the words "any flesh" in section 191 (2).

(Signed) C. ARNOLD WHITE,
Advocate-General.

Order—No. 1991 M., dated 25th November 1898.

The Advocate-General's opinion will be communicated to the Municipal Council of Cochin.

2. As suggested by the Advocate-General, section 191 (2) of the Act will be amended by the insertion of the words "or fish" after "any flesh." Advantage will also be taken of this opportunity to repeal the proviso to sub-section (1) of section 17, and sub-section (2) of section 20, as these provisions which were inserted by the amending Act III of 1897, with a view to introduce into this Presidency the system of general elections, will now be unnecessary, the introduction of that system having been abandoned as impracticable.

3. The accompanying draft of a Bill to amend the Madras District Municipalities Act will be forwarded to the Legislative Department.

(True Extract.)

H. TREMENHEERE,
Secretary to Government.

To the Chairman, Municipal Council, Cochin.
" all other Chairmen of Municipal Councils.
" all Collectors.
" the Legislative Department.

[Appendix.

Rkd. P. Seetharam.

APPENDIX.

No. of 1888.

A Bill to amend Act IV of 1884.

Whereas it is expedient to amend Act IV of 1884 (the Madras District Municipalities Act). It is hereby enacted as follows:—

(1) The proviso to sub-section (1) of section 17 and sub-section (2) of section 20 shall be omitted.

(2) In sub-section (2) of section 191, the words "or fish" shall be inserted after "any flesh," and the following shall be added as a proviso to the same:—

"Provided that no license shall be required for a place used for the sale or storage for sale of preserved flesh or fish contained in airtight and hermetically sealed receptacles.

Statement of Objects and Reasons.

Section 1 *of the Bill.*—The proposed introduction into this Presidency of the system of general elections having been abandoned as impracticable, these provisions which were inserted in the Act in view to the adoption of that system, are now unnecessary.

Section 2.—The object of this amendment is to prohibit the use of any place for sale or storage for sale of fish, without a license from the Chairman. The Advocate-General thinks that the section, as it stands, does not cover the case of places used for this purpose and the amendment of the section so as to bring such places within its purview is desirable on the grounds of public health.

Government {1898} of Madras.

LOCAL AND MUNICIPAL.

Proof for approval of the Secretary

The order and the Bill have been modified with reference to the notes and orders in Fo. No. 1954 M 97 22nd November 1898. Flagged K.

24/11/98

Recd.	1898.	*Enclosures*
Legd.		*Spare copies*

G.O., No. ~~1848~~ M., 31st ~~October~~ November 1898.

OCTOBER.

District Municipalities Act.

Communicating to the Municipal Council of Cochin the Advocate-General's opinion on the question whether "salt fish" comes within the terms of section 191 (2) of the — and forwarding to the Legislative Department draft of a Bill to amend ~~section 191 (2) of the Act.~~ that Act.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers:—

From A. G. GOVER, Esq., Chairman, Municipal Council, Cochin, to the Secretary to Government, Local and Municipal Department (through the Collector of Malabar), dated 13th July 1898, No. 441.

In reference to G.O., No. 1067 M., dated 11th June 1898, I have the honour to submit that the opinion of the Advocate-General does not seem to me to embrace the question which was the real one in issue, viz., whether "salt fish" comes within the term of section 191 (2) of the Municipal Act. The opinion is simply that "salt fish" comes within the terms used in the *Notification* issued by the Ootacamund Municipality without saying whether the notification was a valid one though he does point out that it departs from the language of the Statute. I would also ask you to note that the section comes under the heading Slaughter-houses and would therefore seem to refer to the flesh of animals usually slaughtered which would exclude Fish. It is also to be noted that section 193 A which comes under the next heading, viz., Markets, &c., expressly uses the word Fish. The old English term "Flesher" certainly did not connote Fish.

No. 936 M., dated 17th August 1898.

Referred to the Advocate-General for opinion.

(Signed) H. TREMENHEERE,
Secretary to Government.

To the Government Solicitor.

From the Government Solicitor, Madras, dated 10th September 1898, No. 390.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated Madras, 9th September 1898:—

OPINION.

1. On reference to my opinion of May 11th it will be seen that in paragraph 4 I deal with the point raised by Mr. Gover in his letter of July 13th, 1898. For some reason paragraphs 4 and 5 of my opinion were omitted in the printed papers which were before Mr. Gover. Consequently Mr. Gover not unnaturally concluded that I had not dealt with the principal difficulty in the case.

Paragraphs 4 and 5 of my opinion of May 11th were as follows:—

"4. There is, however, a further question for consideration. It might be contended that the notification, in so far as it applies to *fish* at all, is *ultra vires* the terms of the section. The section only refers to 'flesh intended for food.' For the purposes of construing these words, evidence as to the intention of the select committee on the amending Bill would be inadmissible. The side-note, moreover (although it cannot be referred to for the purpose of construing the section), is '*Slaughter-houses and butchers' shops* to be licensed.' It might be argued with some force that inasmuch as the earlier provisions of the sub-section as to slaughter-houses and the slaughtering of animals are not applicable to *fish*, the section ought not to be construed as applying to places for selling or storing fish.

See I.L.R., 22 Cal., 788.

"5. I am of opinion that the Sub-Magistrate was wrong in the view he took as to the meaning of the word 'fish' as used in the notification; and I am also of opinion, though not without some doubt, that section 191 (2) may be construed as applying to places for selling or storing fish, and that, consequently, a license may be required in respect of a place so used."

2. The Sub-Magistrate appears to have decided the case on the ground that "salt-fish" was not included in the word "fish," and in so holding I think he was wrong. But, as I intimated, in my opinion of May 11th, I have doubts as to the validity of the notification. The notification purports to be issued under section 191 (2) of the Act; but whereas the words of the section are "flesh intended for food," the notification refers to "mutton, beef or fish"—see the case of *Queen-Empress* versus *Thunmaya Chetty*, 17 Madras, 397, where certain rules which purported to have been made and issued by the Local Government under the powers conferred by section 6 (K) of the Indian Ports Act, 1889 (Act X of 1889), were held to be *ultra vires*.

3. The point raised appears to me to be so doubtful that I think an early opportunity should be taken of amending the Act by inserting the words "or fish" after the words "any flesh" in section 191 (2).

(Signed) C. ARNOLD WHITE,
Advocate-General.

ORDER—No. 1848 M., dated 31st October 1898.

The Advocate-General's opinion will be communicated to the Municipal Council of Cochin.

2. The accompanying draft of a Bill to amend section 191 (2) of the Act, as suggested by the Advocate-General, will be forwarded to the Legislative Department.

(True Extract.)

for *Secretary to Government.*

To the Chairman, Municipal Council, Cochin.
" all other Chairmen of Municipal Councils.
" all Collectors.
" the Legislative Department.

Exd. P. Seetharam.

Appendix.

1. The Proviso to Subsection (1) of section 17 and Subsection (2) of section 20 shall be omitted.

APPENDIX.

No. of 1888.

A Bill to Amend Act IV of 1884. a/

Whereas it is expedient to amend Act IV of 1884 (the Madras District Municipalities Act). It is hereby enacted as follows:—

1. In sub-section (2) of section 191, the words "or fish" shall be inserted after "any flesh," and the following shall be added as a proviso to the same:—

"Provided that no license shall be required for a place used for the sale or storage for sale of preserved flesh or fish contained in airtight and hermetically sealed receptacles."

Statement of Objects and Reasons.

Section 2. The object of this amendment is to prohibit the use of any place for sale or storage for sale of fish, without a license from the Chairman The Advocate-General thinks that the section, as it stands, does not cover the case of places used for this purpose and the amendment of the section so as to bring such places within its purview is desirable on the grounds of public health.

Section 1 of the Bill. The proposed introduction into this Presidency of the System of general elections having been abandoned as impracticable, these provisions which were inserted in the Act in connection to the adoption of that System, are now unnecessary.

Local & Munl. (189) Department.

CURRENT No. 2509/M

COLLECTOR
10 JUL 1898
MALABAR

TO BE RETURNED WITH REPLY.

From The Chairman
Municipal Council Cochin

No. 936 dy 17-8-98

~~Order.~~

No. 441

Referred to the Advocate General for opinion.

Dated 13-7-98.

J. Trenchard
Secretary to Govt.

Received 23 JUL 1898
Registered — do —
Enclosures — " —
Spare copies

V.R. 13/7/98

SUBJECT.

Expressing certain opinion with reference to G.O. No. 1067 dated 11th June 1898.

To The Govt Solicitor
with a copy of G.O. No. 1067 dy 11th June 1898.

P.T.O

9/12/8

B

D.
C.No. 25092 29034/98

P.S.

order H.M. 27/9/98

The Advocate Generals' opinion will be Communicated to the municipal Council of Cochin.

2. The question of amending section 191(2) of the Act, as suggested by the Advocate General, will be noted for Consideration when the act is amended at the next opportunity.

V.R. 21/7/98

The point is one of some importance to the public health - I incline to think a short amending Act dealing with this point alone had better be run through at once.

HS 27/9/98

Cur.

Hon'ble Arundel.

H.E. The Lor.

H.T. 29.9.98

I agree but in framing the new law care must be taken that tinned flesh & fish are not included or Oakes & Spencer will have to take out licenses for their shops like butchers & fishmongers.

H.T. 30.9.98

F.A. Please take necy steps, at once

H.T. 30.9.98.

To
The Chairman M.C. Cochin.
All other Chairmen of municipal Councils.
" Collectors. Sd/- 2/11/98

Later.

I see this has not come to His Excellency, though so marked. Send it at once H.T.

BACK PAPERS.

G.O.	No.	Department.	Date.
Jo	1067	L	11-6-98

FURTHER PAPERS.

G.O.	No.	Department.	Date.

18

Municipal Office
Cochin 13th July 1898.

LOCAL & MUNICIPAL DEPT
CURRENT No. 2509dt

No. 441

From,

A. G. Gover Esqre
Chairman, Municipal Council
Cochin

To,

The Secretary to Government
Local and Municipal Department.
Thro' The Collector of Malabar
Calicut.

Sir,

In reference to G.O. No. 1067 Mlk dated 11th June 1898 I have the honour to submit that the opinion of the Advocate General does not seem to me to embrace the question which was the real one in issue viz: whether "salt fish" comes within the term of section 191(2) of the Municipal Act. The opinion is simply that "salt fish" comes within the terms used in the Notification issued by the Ootacamund Municipality without saying whether the Notification was a valid one though he does point out that it departs from the language of the Statute. I would also ask you to note that the section comes under the Heading "Slaughter Houses and would therefore

therefore seem to refer to the flesh of animals usually slaughtered which would exclude Fish. It is also to be noted that section 192A which comes under the next Heading viz: Markets &c. expressly uses the word Fish. The old English term "Flesher" certainly did not connote Fish.

I have the honour to be,

Sir,

Your Most obed.t Servant

Alfred P. Dover

Chairman

Enc. No. 447/m/98 Forwarded.

Cal. 1
20.7.98 3
3 Cos.

P. Wagenen
ag. Collector

1/2903/m/98

Local & Munl. (189) Department.

CURRENT No. 2903/M

From The Govt. Solicitor Madras

Order

No. 390

Dated 10-9-98

Received 12-9-98

Registered

Enclosures 2

Spare copies.

SUBJECT.

Forwarding with reference to Govt. Endt. No. 936 d/17th Aug 98 Legal & Munl. the Advocate General's opinion as to the question whether "salt fish" comes within the term of Section 191(2) of the Municipal Act.

1915.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

LOCKED 2903 M 4B

O P I N I O N

1. On reference to my opinion of May 11th it will be seen that in paragraph 4 I deal with the point raised by Mr. Gover in his letter of July 13th 1898. For some reason paragraphs 4 and 5 of my opinion were omitted in the printed papers which were before Mr. Gover. Consequently Mr. Gover not unnaturally concluded that I had not dealt with the principal difficulty in the case.

Paragraphs 4 and 5 of my Opinion of May 11th were as follows:

" 4. There is, however, a further question for consideration. It might be contended that the Notification, in so far as it applies to fish at all, is ultra vires the terms of the Section. The Section only refers to "flesh intended for food". For the purposes of construing these words, evidence as to the intention of the Select Committee on the amending Bill would be inadmissible. The side-note, moreover, (although it cannot be referred to for the purpose of construing the section) is "Slaughter houses and butchers shops to be licensed". It might be argued with some force that inasmuch as the earlier provisions of the Sub-section as to slaughter houses and the slaughtering of animals are not applicable to fish, the Section ought not to be construed as applying to places for selling or storing fish"

See I.L.R. 22, Cal:788.

"5. I am of opinion that the Sub-Magistrate was wrong in the view he took as to the meaning of the word "fish" as used in the Notification; and I am also of opinion, though not without some doubt, that Section 191 (2) may be construed as applying to places for selling or storing fish, and that, consequently, a license may be required in respect of a place so used".

2. The Sub-Magistrate appears to have decided the case on the ground that "salt-fish" was not included in the word "fish", and in so holding I think he was wrong . But, as I intimated, in my opinion of May 11th, I have doubts as to the validity of the Notification. The Notification purports to be issued under Section 191 (2) of the Act; but whereas the words of the Section are "flesh intended for food", the Notification refers to "Mutton, beef or fish" - See the case of Queen Empress vs Thunmaya Chetty, 17 Madras, 397, where certain rules

which purported to have been made and issued by the Local - Government under the powers conferred by section 6 (K) of - the Indian Ports Act, 1889, (Act X of 1889) were held to be ultra vires.

3. The point raised appears to me to be so doubtful - that I think an early opportunity should be taken of amend - -ing the Act by inserting the words "or fish" after the words "any flesh" in Section 191.(2).

C. Arnold White

Advocate General

Madras)
)
9th September 1898)

(True copy)

Government Solicitor

(1898) Department

From

Ernest Barclay
Government Solicitor
Madras

To

The Secretary to Government
Local & Municipal Department
Madras

No 390

Dated 10th September 1898
Recd

Enclos 4

Forwarded with enclosures with reference to the Endorsement of Government No 936 dated 17th August 1898. Local Municipal

Ernest Barclay
Government Solicitor

28

No. of 1898.

A Bill to amend Act IV of 1884 [illegible] of 1897.

Whereas it is expedient to amend Act IV of 1884 (the Madras District Municipalities Act). It is hereby enacted as follows:—

1. In subsection (2) of section 191, the words "or fish" shall be inserted after "any flesh", and the following shall be added as a proviso to the same:—

"Provided that no license shall be required for a place used for the sale or storage for sale of preserved flesh or fish contained in airtight and hermetically sealed receptacles.

Statement of Objects and reasons

The object of this amendment is to prohibit the use of any

place for sale or storage for sale of fish, without a license from the Chairman. The Advocate General thinks that the section, as it stands, does not cover the case of places used for this purpose and the amendment of the section so as to bring such places within its purview is desirable on the grounds of public health.

V.R. 21/10/98

28 10 98

(Order complete. 2.30

[L. & M. 300-16-2-98.]

LOCAL AND MUNICIPAL DEPARTMENT.

Licensing of places used for the sale or storage for sale of fish

Papers to be read in Proceedings:—

58

Again G.O., No. dated 189,

Again G.O., No. dated 189,

Current No. 2509M of 1898, dated 13-7-98, from the Chairman, M.C. Cochin.

" " 2903M " 1898, " 10-9-98, " the Govt. Solicitor, Madras.

" " " 189, " , "

P.S. ORDER. No. 1848 dated 31.10.98

H.A.

See notes on the treatending - Take the Hon'ble Mr. Arundel's opinion.

28/10/98

Hon'ble Mr. Arundel.

28 10 98

The Advocate General's opinion will be communicated to the Municipal Council of Cochin

2. The accompanying draft of a Bill to amend section 191(2) of the Act, as suggested by the Advocate General, will be forwarded to the Legislative Department.

(From Orders)

V.R. 12/10/98

17 10 98

To The Chairman, M.C. Cochin
All other Chairmen of Munl. Councils
" Collectors. ✓ typed 4/11/98
The Legislative Department ✓ typed 1/12/98

sent to Press. 2-11-98

for signature. 29-11-98

ed in print. 1-12-98
2-12-98
3-12-98
DATES

NUMBER OF COPIES REQUIRED. { Order complete. 2.50
Letter only.
Order complete with Letter. 6

G.O., No.
189 .

2509m42903.M — A.

Short proof please
CR
31/10/98

ES TO C. No.

OF GOVERNMENT

OF GOVERNMENT.

MENT WITH DITTO.

S NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

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