

Local & Munl. (1899) Department.

PRINTED.

G.O., No. 124. M.

DATED 27-1-99.

INDEXED. RECEIVED

[Despatch Abstract.]

License fee

Communicating to the Municipal Council of Chingleput advocate General's opinion as to whether the — is a tax within meaning of section 135 of the Indian Railways Act and whether a license is to be taken out by the South Indian Railway Co. for the Cart Stand within the Railway Station Compound at Chingleput.

2807 ✓
2/2/99
Proof
Government (1899) of Madras.
LOCAL AND MUNICIPAL.

Proof for approval.

Strike off
as recorded 11/1/99

Recd.

Enclosures

1899.

Regd.

Spare copies

G.O., No. 124 M., 27th January 1899.

JANUARY.

License-fee.

not/ Communicating to the Municipal Council of Chingleput Advocate-General's opinion as to whether the — is a tax within the meaning of section 135 of the Indian Railways Act and whether that a license is to be taken out by the South Indian Railway Company for the cart-stand within the railway station compound at Chingleput.

Should

2807

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Y/ READ—the following papers:—

From M.R.Ry. P. RAMANUJACHARIAR Avargal, Chairman, Municipal Council, Chingleput, to the Secretary to Government, Local and Municipal Department (through the Sub-Collector and Collector of Chingleput), dated 11th October 1898, Ref. on No. 211-Gl. of 1897.

I have the honour to bring the following facts to the notice of the Government and to request the favour of its advice on the following facts.

2. The South Indian Railway Company has a big compound attached to the railway station at Chingleput. The station and the compound are within the limits of the Chingleput Municipality. The Railway Company uses a portion of the compound as cart-stand and collects Re. 1 per jutka and As. 8 per bullock-cart per mensem month. The provisions of section 188 of the Municipal Act are in force in the town, and, consequently, in September 1897, the Chairman asked the Agent of the Company to take out a license for the use of a portion of the compound as cart-stand and pay the usual and sanctioned license fee, i.e., Rs. 10. The Agent, without complying with the request of the Chairman, wrote to the Collector, requesting him to direct the Chairman not to insist upon the license fee. The matter was under correspondence thus: "Adverting to your letter, No. 211-Gl., dated 18th January last, I have the honour to point out that the tax being newly imposed on the Railway Company, requires the sanction of the Government of India under section 135 of Act IX of 1890. This sanction the Government is unlikely to give (vide Government of India Resolution No. 434-R.T. of the 17th August 1894). The Municipal Council should therefore cancel the demand." On receipt of this communication from the Collector, the Chairman again addressed the Collector, pointing out to him that the fee demanded was not a new tax within the meaning of Act IX of 1890, and that the Municipal Act made a distinction between a tax and a fee and that the amount demanded from the Railway Company was not a tax within the meaning of section 47 of the Municipal Act, but that it is simply a fee collectable under sections 188 and 267 of the Municipal Act. The Collector again wrote to the Chairman on the 17th July 1898, informing him that he is unable to alter the previous order. Thereupon the whole subject was placed before the Municipal Council and the Council by Resolution No. 1 of 30th August 1898 has resolved to refer the whole matter for the opinion of the Government.

3. The contention of the Council is that the taxes to be levied under the Municipal Act are all detailed in section 47 of the Act, and that the Municipal Council cannot levy any tax not detailed or described in section 47. But apart from taxes, the Council is empowered by various provisions of the Act to levy certain fees from persons who are prohibited from doing certain things without the license of the Council. Section 188 of the Act lays down some of the Acts which have to be done only with the license of the Council and section 267 lays down that a fee may be collected for the granting of the license. The Railway Company has to take a license for the use of a portion of its ground as a cart-stand and consequently has to pay money therefor.

4. A true extract of the resolution of the Council is herewith submitted.

ENCLOSURE.

No. 5 of 1898-99.

EXTRACT from the Proceedings of the general meeting of the Municipal Council, Chingleput, passed at its meeting held in the Municipal office, Chingleput, on Tuesday the 30th August 1898, at 7-30 A.M.

1. Read letter from the Collector of Chingleput, informing that he is unable to interfere with Mr. Robertson's order requesting him to cancel the demand to take out license for the cart-stand within the railway premises and that his order should be carried out without further delay.

Resolution.—The matter will be placed before the Governor in Council for favour of orders.

No. 2084.

Forwarded.

2. The correspondence quoted herein did not pass through this office.

(Signed) J. A. ROBERTSON,
Ag. Sub-Collector.

13th October 1898.

Cur. No. 177-Magl.

Forwarded.

2. Mr. Robertson when acting as Collector passed the order that the Council now seeks to have set aside. I am inclined to agree with the Council, but the question raised appears to be one on which a lawyer's opinion should be obtained.

SAIDAPET,
2nd November 1898.

(Signed) D. W. G. COWIE,
Ag. Collector.

Endt. No. 1340.

Referred to the Advocate-General for favour of opinion.

(Signed) H. TREMENHEERE,
Secretary to Government.

3rd December 1898.

From the Government Solicitor of Madras, dated 4th January 1899, No. 5.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 4th January 1899:—

OPINION.

1. In my opinion the fee chargeable under section 267 of Madras Act IV of 1884, as amended by Madras Act III of 1897, in respect of a license for the use of a place as a cart-stand (see section 188 of the Act) is not a "tax" within the meaning of section 135 of the Indian Railways Act, 1890 (Act IX of 1890), and the Notifications of the Government of India issued thereunder, and that, consequently, the sanction of the Governor-General in Council is not a condition precedent to the liability of a railway administration for the payment of such fee.

2. Section 135 of the Indian Railways Act, 1890, lays down certain rules which are to regulate "the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities." I think the words "in respect of railways and from railway administrations" show that it was the intention of the legislature to limit the application of the section to the levy of taxes in respect of railway works in the ordinary acceptance of the term. The fee chargeable under

sections 188 and 267 of Madras Act IV of 1884 (even assuming it to be a "tax") is not a "tax" in respect of a railway, but in respect of a cart-stand, and it seems to me that if a railway administration chooses to use a portion of its premises as a cart-stand and to make charges therefor, it stands in the same position as a private individual, and cannot claim the benefit of section 135 of the Indian Railways Act, 1890, and the notifications issued thereunder.

3. In my view, the South Indian Railway Company are liable to pay the fee in question for the reasons stated above. I think they are also liable on the grounds stated in the Chairman's letter of 11th October 1898.

4. I am accordingly of opinion that the South Indian Railway Company are under the obligation of obtaining a license from the Municipality for the use of the place in question for the purpose of a cart-stand and of paying the prescribed fee in respect of such license.

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

ORDER—No. 124 M., dated 27th January 1899.

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

(True Extract.)

for Secretary to Government.

To the Chairman, Municipal Council, Chingleput,
through the Collector.

- " all other Chairmen of Municipal Councils.
- " all Collectors.
- " the President, Municipal Commission, Madras.
- " Public Works (Railway) Department.

Exd. C. M. Thambuswamy.

OPINION.

In my opinion the fee chargeable under Section 267 of Madras Act IV of 1884, as amended by Madras Act III of 1897, in respect of a license for the use of a place as a cart stand (see section 188 of the Act) is not a 'tax' within the meaning of section 135 of the Indian Railways Act, 1890 (Act IX of 1890) and the Notifications of the Government of India issued thereunder, and that, consequently, the sanction of the Governor-General-in-Council is not a condition precedent to the liability of a Railway administration for the payment of such fee.

2. Section 135 of the Indian Railways Act, 1890, lays down certain rules which are to regulate "the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities". I think the words "in respect of railways and from railway administrations" show that it was the intention of the Legislature to limit the application of the Section to the levy of taxes in respect of railway works in the ordinary acceptation of the term. The fee chargeable under Sections 188 and 267 of Madras Act IV of 1884 (even assuming it to be a "tax") is not a "tax" in respect of a railway but in respect of a cart-stand and it seems to me that if a Railway administration chooses to use a portion of its premises as a cart-stand and to make charges therefor, it stands in the same position as a private individual, and cannot claim the benefit of Section 135 of the Indian Railways Act, 1890, and the Notifications issued thereunder.

3. In my view the South Indian Railway Company are liable to pay the fee in question for the reasons stated above. I think they are also liable on the grounds stated in the Chairman's letter of October 11th 1898.

2.

4. I am accordingly of opinion that the South Indian Railway Company are under the obligation of obtaining a license from the Municipality for the use of the place in question for the purpose of a cart-stand, and of paying the prescribed fee in respect of such license.

Madras,)
4th January 1899)

(Signed) C. ARNOLD WHITE,
ADVOCATE GENERAL.

True copy.

H. M. Small
Government Solicitor.
30/11/38.



Local Administration Department.



MEMORANDUM NO. 36110-1.A.2.L.A, dated 13th December 1938.

REF: From the Curator, Madras Record Office, No. 839-D-III/38-1, dated 29-7-1938.
From the Government Solicitor, Madras, No. 2838, dated 9-11-38, No. 3053, dated 30-11-1938.

SUB: Records - G.O. No. 124-M, dated 27-1-1899 - Advocate-General's Opinion, dated 4-1-1899.

The Curator, Madras Record Office is informed that the original of the Advocate General's Opinion No. 5 dated 4-1-1899 is not traceable. A true copy of the opinion obtained from the Government Solicitor is furnished herewith.

To the Curator, Madras Record Office (with Advocate-General's opinion).

Forwarded.
(By Order).

Memorandum
14.12.38

Superintendent.

T.P.N.

Local & Munl. (1898.) Department.

CURRENT No. 3398 M

From The A. g Collector
Chingleput.

No 1340 of 3-12-98

Order

Referred to the Advocate.

General for favour of opinion.

No. 177

J. T. M. M. M. M. M.

Secretary to Govt

Dated 2-11-98

Received 4-11-98

Registered

Enclosures 2

Spare copies.

SUBJECT.

Forwarding with remarks
letter from the bharinar,
M. C. Chingleput ^{Engineering} requesting to
know whether a license is to be
taken out for the Cart-stand
within the Railway ^{Station} compound
at Chingleput, and whether the license fee
is far within the meaning of the
Sec 135 of Act IX of 1890.

The Govt. Solicitor.

10th Nov 1890 1074 M. D. 21st July 1890
" " 1887 M. D. 28th Jan 1892
" " 6587 M. D. 25th May 1894
" " 1917 M. D. 27th Sept 1894.

P.T. 618

14/11

Cur. 3398m. of 98+34m. of 99.



Secretary No 124m
P.S.

Order

The Advocate-general's
opinion read alone, will be
communicated to the Municipal
Council of Chingleput.

V.R.
21/1/99

W. 199
27

BACK PAPERS.

G.O.	No.	Department.	Date

FURTHER PAPERS

G.O.	No.	Department.	Date

To the Public Works Department
for ~~consideration~~ initials.
favour of remarks.

W. 199
28

No remarks. I agree with the Account General.

W. 199
26/1/99

The Chairman, m.c. Chingleput
The Collector.
All other chairmen of m.c. Councils.
All Collectors.
The President, m.c. Madras
Public Works (Railway) Dept. 31

27-2-08
 29-3-15
 23 9 20
 13-11-20
 18-4-21
 4-4-38
 22-11-38

11-5-09

C.F. 73.

DEPARTMENT.

Paper taken out of the Records from the charge of the Referencer.

Press
 Miscellaneous No. 124, dated 27/1/39 193
 Routine

Date taken out.	FOR WHAT PURPOSE.			Initials of clerk taking the paper or of attender.	Date returned.	Initials of attender.
	Department.	C. No.	Year.			
4/4/38	BSM	4353/38		JS	2-8-38	JS
22-11-38	BSM	13970/38		JS	23-11-38	JS

25-7-39