

Legislative (1898) Department.

ORDINARY MS.

G.O., No. 79

DATED 5-12-88

RECEIVED

[Despatch Abstract.]

Referring to the Public the Director
General for Early Remarks, a
Draft Bill is annexed the 1st Jan-
-uary Act

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

[illegible]

Government (1898) of Madras.
LOCAL AND MUNICIPAL

Referred At the March 14, 1954, meeting of the
for Bureau of Early education. HTS-127
Instruction 5 (1) (c)
HT

[illegible]

File
2/10/98 G.O., No. 1991 M., 25th November 1898.

NOVEMBER.

District Municipalities Act.

Communicating to the Municipal Council of Guelph 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 Cochin Municipal Council 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.

Encl. No. 447 M.

Forwarded.

(Signed) F. C. PARSONS,
Ag. Collector.

20th July 1898.

No. 936 M.

Referred to the Advocate-General for opinion.

(Signed) H. TREMENDIERE,
Secretary to Government.

17th August 1898.

To the Government Solicitor.

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

AGREED.—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,

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

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.

"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 Thammaya 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.)

A. Polington
for Secretary to Government.

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

Bd. F. Sethuram.

Appendix.

When given for copying _____
When copied _____
When examined _____
When signed _____

READ AGAIN G. O., No. 79, DATED 1897

APPENDIX.

No. of 1888.

Amended 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, those 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 his purview is desirable on the grounds of public health.

CURRENT No.

ENCLOSURES TO G. O. No.

OFFICE OF GOVERNMENT

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OFFICE OF GOVERNMENT

REPLYMENT WITH DITTO

NOT FILED UP, BEING MEANT FOR DISPATCH BY ORIGINAL.

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