

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

DEPARTMENT

Press
Miscellaneous
Routine

No. 128, dated 08.2.96

Date taken out.	FOR WHAT PURPOSE.			Initials of clerk taking the paper or of attender.	Date returned.	Initials of attender.
	Department.	C. No.	Year.			
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58

Gobt. of (1876) Madras.

PUBLIC WORKS.

Marine.

Deled

Recd.

Encl.

G.O. 2/189 No. 128-Mar

Loading chaps. at the
Madras Harbour

Decline to express any
opinion or make any de-
claration in connection with
the question of certain
ruined by the harbour trust
and for the Madras
Charter Company

80
4

28/2

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following papers:—

From the Agent and Manager, Madras Railway, to the Consulting Engineer for Railways, dated 11th December 1895, No. 7922 B./1085

I have the honour to inform you that the Chairman, Harbour Trust Board, submitted to me bills for loading sundry stores, received from England in December 1893 and January and February 1894. These charges I objected to pay as they were apparently levied without the authority of Government. The result of my refusal was a reference to the Government for the requisite authority *vide* G.O. No. 193, Marine, dated 30th May 1894, and sanction to levy a loading charge was given in G.O. No. 465, Marine, dated 5th December 1894. After this sanction had been accorded, the Chairman, Harbour Trust Board, resubmitted the bills, but I again refused to accept them stating that I was not prepared to pay loading fees on any stores received prior to the date of the Government Order authorizing the charge. The Chairman, however, continues to press me for payment, his last contention being that the bye-laws of the Trust confer the legal right to levy the charge. I am doubtful if this is the case as, if it is, there would have been no necessity for an application being made by him to the Government in the matter.

I beg to request that I may be informed whether the scale of rates was intended to have retrospective effect, or if I am in order in declining to pay the bills submitted for December 1893 and January and February 1894.

I gather that any rates sanctioned are not operative until they have been notified in the *Fort St. George Gazette*.

From the Consulting Engineer for Railways, to the Government Solicitor, Madras, dated 8th January 1896, No. 59.

The Agent, Madras Railway, has objected to pay certain bills (for loading English stores) submitted by the Chairman, Harbour Trust Board, on the ground that they are not legally leviable.

The papers on which the Agent bases his objections are—

- (1) G.O. No. 287, Marine, of 5th August 1892, in which it is laid down that a revised scale cannot have retrospective effect since.
- (2) Section 45 of Act II of 1856 provides that rates shall be leviable on publication in the *Fort St. George Gazette* and not till then.
- (3) G.O. No. 465, Marine, of 5th December 1894, which contains a charge of two annas per ton for loading goods into railway vehicles and which was published in the *Fort St. George Gazette* of 18th December 1894. Part I, page 1471, appears to be the first Government Order in which such a charge appears.

The Harbour Trust Board apparently contend that the bye-laws of the Trust over-ride the section 45 of Act II of 1856.

An opinion is requested as to whether the Agent is in order in declining to pay the bill.

From E. BARCLAY, Esq., Government Solicitor, Madras, to the Consulting Engineer for Railways, dated 24th January 1896, No. 45.

I have to acknowledge receipt of your letter of the 8th instant, No. 59, with its enclosures.

2. I beg to point out that the Harbour Trust Board have their own Solicitors, Messrs. Wilson and King, who can advise them on the question put in your letter, and that the Madras Railway Company has its solicitors, my own firm, who have already advised the Company on the same question. I do not therefore see why the question, which is one between the Board and the Company, should be referred to me for opinion as they can respectively act upon any opinion the Board or the Company may obtain from their respective solicitors.

3. Further, as my firm has already advised the Company on the question, I cannot well give an opinion on it without committing a breach of professional confidence, and I would therefore suggest that the matter be referred to the Advocate-General for his opinion if Government considers that either the Board or the Company is entitled to that opinion.

4. Pending receipt of your reply I retain the enclosures to your letter.

From the Agent and Manager, Madras Railway, to the Consulting Engineer for Railways, dated 30th January 1896, No. 7922 B./83.

Referring to your letter No. 297 of the 28th instant, I have the honour to invite your attention to the last two paragraphs of my letter of the 11th December last, and shall be glad if you will kindly answer my enquiry as to whether the scale of rates was intended to have retrospective effect. The question as to the legality of the charges appears to hinge on this point and our legal advisers will not be in a position to say what was the intention of the Government when sanctioning the introduction of the new scale.

Memo. No. 931 C.

Copies of the above forwarded to the Marine Department, for favour of opinion as to whether it was the intention of Government to make the charges laid down in G.O. No. 465, Marine, dated 5th December 1894, have retrospective effect.

17th February 1896.

(Signed) F. R. UPCOTT,
Joint Secy. to Govt., P.W.D.,
Railway Branch.

ORDER—No. 126, Marine, dated 28th February 1896.

It is observed that the question is a legal one and that neither the intentions nor the wishes of Government can decide it. His Excellency the Governor in Council is therefore not prepared to express any opinion or make any declaration in connection with it.

(True Extract.)

Under Secy. to Government.

To the Chairman, Harbour Trust Board.
„ Consulting Engineer for Railways.

Exd. T. K. Narayana Aiyangar,
Spare Copies

From E. BARCLAY, Esq., Government Solicitor, Madras, to the Consulting Engineer for Railways, dated 24th January 1896, No. 45.

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To the Chairman, Harbour Trust Board.
„ Consulting Engineer for Railways.

Exd. T. K. Narayana Aiyangar,
Spare Copies

Gobt. of {1896} Madras.
MARINE.

Dated February, 28th.

Recd.

Encl.

G.O. No. 126, 28th Feb. 1896.

FEBRUARY.

Loading Charges

Declining to express any opinion or make any declaration in connection with the question of certain —, claimed by the Harbour Trust Board from the Madras Railway Company.

Form No. 69.

COPY of a communication from the
Agent and Manager of Railway
to the Consulting Engineer for Railways, Madras,
No. 7922B / 1085, dated 11th December 1895.

1P
I have the honour to inform you that the Chairman, Harbour Trust Board, submitted to me bills for loading Sundry stores received from England in December 1893 and January and February 1894. These charges I objected to pay as they were apparently levied without the authority of Government. The result of my refusal was a reference to the Government for the requisite authority. Vide G.O. No 193 Marine, dated 30th May 1894 - and sanction to levy a loading charge was given in G.O. No 465 Marine dated 5th December 1894. After this sanction had been accorded the Chairman, Harbour Trust Board, resubmitted the bills but I again refused to accept them stating that I was not prepared to pay loading fees on any stores received prior to the

Heab

the date of the G.O. authorizing the charge. The Chairman, however, continues to press me for payment, his last contention being that the byelaws of the Trust confer the legal right to levy the charge. I am doubtful if this is the case, as if it is there would have been no necessity for an application being made by him to the Government in the matter.

I beg to request that I may be informed whether the scale of rates was intended to have retrospective effect, or if I am in order in declining to pay the bills submitted for December 1893 and January and February 1894.

I gather that any rates sanctioned are not operative until they have been notified in the East St. George Gazette.

Encls 4
Recd 15/8/96

448

Copy of a communication to the Government
Solicitor Madras from

the Consulting Engineer for Railways, Madras,

No. 57, dated 8th January 1895.

28

The Agent Madras Railway has objected to pay certain bills (for loading English Stores) submitted by the Chairman Harbour Trust Board on the ground that they are not legally leviable.

The papers on which the Agent bases his objections are (1) G.O. Marine No 287 of 5th August 1892 in which it is laid down that a revised scale cannot have retrospective effect since (2) Sec 45 of Act II of 1856 provides that rates shall be leviable on publication in the East St. George Gazette and not till then.

(3) G.O. No 465 Marine of 5th Decr. 94 which contains a charge of 2 annas per ton for loading goods into railway vehicles and which was published in the East St. George Gazette of 18th December 1894. Part I page 1471 appears to be the first G.O. in which such a charge appears.

meab

The Harbour Trust Bd. apparently contend that the by-laws of the Trust override the section 45 of Act II of 1886.

An opinion is requested as to whether the Agents is in order in declining to pay the bill.

Encls 3
Decr 158/86

488

Form No. 69.

ERNAMBAI MADRAS

Copy of a communication from Ernest

Barclay, Government Solicitor, Madras,

to the Consulting Engineer for Railways, Madras,

No. 45, dated 24th January 1896.

38

1. I have to acknowledge receipt of your letter of the 8th instant No. 59 with its enclosures.

2. I beg to point out that the Harbour Trust Board have their own Solicitors, Messrs. Wilson and King, who can advise them on the question put in your letter and that the Madras Railway Company has its Solicitors, my own firm, who have already advised the Company on the same question. I do not therefore see why the question, which is one between the Board and the Company, should be referred to me for opinion as they can respectively act upon any opinion the Board or the Company may obtain from their respective Solicitors.

3. Further, as my firm has already advised the Company on the question, I cannot well give an opinion on it without committing a breach of professional confidence and I would therefore suggest that the matter be referred to the Advocate General for his opinion if Government considers

that

Form No. 69.

Copy of a communication from the

Agent & Manager Madras Ry.

to the Consulting Engineer for Railways, Madras,

No. 7922^a, dated 30th January 1896.
83

48

Referring to your letter No 297 of the 28th instant, I have the honour to invite your attention to the last two paras of my letter of the 11th December last and shall be glad if you will kindly answer my enquiry as to whether the scale of rates was intended to have retrospective effect. The question as to the legality of the charges appears to hinge on this point and our legal advisers will not be in a position to say what was the intention of the Government when sanctioning the introduction of the new scale.

that either the Board or the Company is entitled to that opinion.

4. Pending receipt of your reply I retain the enclosures to your letter.

Sub 2

Mar 158/56

710

Dated 17th February 1896.

No. 931C

MEMORANDUM.

1. Letter from the Agent and Manager
Madras Railway No. 7922 B dated
1085
11 December 1895.

2. Letter to the Government Solicitor
Madras. No. 59 dated 8 January 1895.

3. Letter from the Government Solicitor
Madras. No. 45 dated 24 January 1896.

4. Letter from the Agent and Manager
Madras Railway No. 7922 B dated 30th
83
January 1896.

SP

Copies of the above forwarded
to the Marine Department, for
favor of opinion as to whether it
was the intention of Government
to make the charges, laid down
in G.O. No. 465 Marine, dated 5th

December

20/2/96

20/2/96

Encls 1
Mar 18/8/96

December 1894. have retrospective effect.

J. N. Prescott
J. T. Under Secretary
Railway Branch.

Encls 4
Dues: 17.2.96

No 126 Marine of 28th P. W. DEPARTMENT.
February 1896. (Marine)

Read the following:—

Memo: by the Joint Secy to the Railway Branch, No. 931 C dated 17th February 1896.

FOR ORDERS.

This is a legal question, and nobody's intentions or wishes can decide the matter. Even if we gave our view as to what was meant, I do not think that it would be binding on either party, and if we went to law, and the Courts decided in a sense contrary to the opinion expressed by you, we should look rather foolish.

I agree with the note.

W
21 Feb
22/2/96
JG
25/2/96

It is submitted that this is a matter which should be settled between the Harbour Trust Board and the Railway Company. The Board consider they have a legal claim to be paid for certain services rendered. The Railway Company are of the contrary opinion. If the Railway persist in their refusal to pay, they will no doubt be put into Court, where the claim will be decided one way or the other. Meanwhile it is not for the Government to express any opinion or to make any declaration on a matter which the Courts are alone competent to decide. Both parties to the dispute are doubtless acting under legal advice.

20/2/96

20/2/96

2

FOR ORDERS.

Dispute between the Harbour
Trust Board & the M. R. Co.
regarding loading charges at
the Harbour

FOR ORDERS

126 Marine
filed
No 240 of 96

Marine
PUBLIC WORKS DEPARTMENT.

No 126 Marine of 28 February 1896

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following

Memorandum by the Joint Secretary to Government P.W.D. Railway Branch,

No. 931 C dated 17th February 1896.

60

It is observed that the question
is a legal one and that neither the
intentions nor the wishes of Govt.
can decide it. His Excellency the
Governor in Council is therefore not
prepared to express any opinion or
make any declaration in connection
with it.

27/2/96

cross
26.2.96

DESPATCHED
7-MAR-96

The Chairman H.T. Board.

,, C.E. for Railways.