

J.M. Supp
Secy of the Madras Govt
Read the following
Revenue Dept
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BOARD OF REVENUE, 15TH MAY 1885, No. 1435.

PROCEEDINGS OF THE BOARD OF REVENUE.

READ—the following letter from H. W. BLISS, Esq., Commissioner of Salt and Abkari Revenue, to the Secretary to the Board of Revenue, dated 11th April 1885, No. 3458 :—

I have the honor to request that the following circumstances may be laid before Government for orders.

2. In January last, I had to ship some salt to Pondicherry for the use of the French Government, the railway and the roads leading to that place having been so damaged by the recent floods that no other means were possible of meeting an urgent indent which had been received. An officer was required on the beach to tally the salt into the boats, as it was carted down from the dépôt; and the Chingleput Assistant Commissioner therefore ordered the Inspector of the Ennore Circle to come into Madras for this duty and to bring with him his tents to shelter him while engaged on it. The Inspector accordingly embarked in a six-ton boat, No. 212, the property of Government in this department, in which he placed his tents, and came into Madras accompanied by a petty officer and eight peons, who were required to navigate the boat and to pitch the tents and otherwise assist, on arrival, in supervising the shipment of the salt.

3. On the boat passing the Shadiankuppam lock, the Lock Superintendent took exception to the peons being in the boat, on the ground that she was registered as a cargo-boat.

4. This was reported; and the Assistant Commissioner thereon wrote to the Executive Engineer, Buckingham Canal, asking whether the Lock Superintendent was empowered to raise any such objections, or whether his objections were not frivolous and vexatious (copy of letter, No. 636, dated 17th February 1885, enclosed).

5. The Executive Engineer replied that the toll-keeper was quite in order in his objections "to a cargo-boat being used for carrying passengers. Any cargo-boat so doing is liable to pay for the whole year the higher rate of license fees laid down in paragraph 7 of the rules or to be suspended *impromptu* for infringing the rules" (copy of letter, No. 2755, dated 27th February 1885, enclosed).

6. The Assistant Commissioner, in reply, thanked the Executive Engineer for the information given, and asked for twenty copies of the canal rules for distribution among his subordinates, on receipt of which he would be in a position to enforce respect for them.

7. The copies of the rules were accordingly furnished and distributed. I enclose one of them for ready reference.

8. On the 19th ultimo, as Mr. Merriman and I were proceeding on duty to Ennore, the same boat was sent into Madras to convey our baggage to Ennore. On arrival at the basin, it was seized and detained by the Wharf Superintendent, who handed to the peon in charge the notice of which I enclose a copy, in which it is stated that the license is suspended for infringement of Rule 7 under a circular memorandum of the Executive Engineer, which appears from its date to have been issued *pro hac vice*.

9. No hint, it will be observed, had previously been given by the Executive Engineer, in his correspondence with the Assistant Commissioner, that there was any intention summarily to suspend the license of a boat belonging to another department of Government (and the best customer of the canal), nor was any communication on the subject made to me. I will leave it to Government to say whether such action, so taken, was consistent with ordinary official courtesy and with the duty of reciprocal assistance which Government departments are bound to render one another.

10. Assuming, however, that the Executive Engineer's procedure was in such respects all that which I venture to think it was not, the next question is as to its legality. A perusal of Rule 7 fails to show me that its provisions were in any way infringed. It is perfectly clear that that rule applies to boats in which passengers are carried for hire, and that, whatever the intention of the rules may be—and, being penal, they must be construed strictly—there is in them no prohibition of cargo-boats carrying passengers. Moreover, it is a misuse of terms to say that a boat, which contains only the owner's agents and its crew in addition to cargo, is carrying passengers. Furthermore, it goes without saying that it cannot have been the intention of Government that the Executive Engineer should exercise punitive powers without explanation asked for. It is also clear that, supposing that the suspension of the license was right, the rules give no power to detain the boat. A boat with its license suspended is in the same position as an unlicensed boat, that is, it has a right to navigate the canal on payment of tolls under Rule 15. No tolls were, however, asked for. And, finally, it only needs a reference to Section 22 of (Madras) Act I of 1870, to show that the provision of the rules that the Executive Engineer may suspend licenses is altogether *ultra vires*. That section empowers Government to make rules and to affix fines (no doubt, to be imposed on conviction by a Magistrate) as penalties for the infringement of such rules, but there is nothing about the cancellation of licenses or detention of boats. I venture, therefore, to think that the Executive Engineer's action was such as would subject him, if the boat had been private property, to an action for damages, even if it has not rendered him liable to prosecution under Section 25 of the Act for a seizure and retention, the illegality of which is apparent.

ENCLOSURE No. 1.—Copy of Assistant Commissioner's letter.

ENCLOSURE No. 2.—Copy of Executive Engineer's letter.

ENCLOSURE No. 3.—Copy of Revised Navigation Rules.

ENCLOSURE No. 4.—Copy of Notice.

RESOLUTION—dated 15th May 1885, No. 1435.

Submitted for the consideration and orders of Government.

2. The Board are of opinion that the action of the Executive Engineer in charge of the Buckingham Canal, complained of by the Commissioner of Salt Revenue, was *ultra vires*, and further, that Rule 7 of the Canal Navigation Rules, which he considered to have been infringed, in no way prohibits Government subordinates from travelling in a boat the property of Government, along with cargo of any description.

(A true Copy and Extract.)

(Signed) E. GIBSON,
Secretary.

To the Secretary to Government, Revenue Department,
with four enclosures, to be returned.
Copy to the Commissioner of Salt and Abkari Revenue.

Order thereon 5th June 1885 No. 2851

Exd. A. Raitt.

*The action of the Executive Engineer was in the opinion of
Govt in this Dept unjustifiable and will be noted in
the Dept Public Works.*

(Incl. Extract)

(Signed) W. Wilson

By Secy to Govt

P. W. D.

REVENUE DEPARTMENT.

1885.

Board of Revenue,
MADRAS.

Printed May 21st.

Proceedings, 15th May 1885, No. 1435.

No. 1481 Wd 25-6-85

Submitting for the orders of Government, with remarks, letter from the Commissioner of Salt and Abkari Revenue, requesting to place before Government, for orders, the question of the propriety of the action of the Executive Engineer, Buckingham Canal, in suspending summarily the license of a boat belonging to the Salt Department and in causing its detention.

With order

To
The Chief Eng. for Irrigation
Super Engineer II Circle
Rev Depto

Order thereon. No. 1481 Wd 25 June 1885

On Major Drake Brockman's
return from privilege leave, he
will be asked for any explanation
he may desire to offer

(Incl. Extract)

(sd) J. S. D.