C№ 7294

Govt. of [1894] Madras.

PUBLIC WORKS.

Instrd

Febry - to October 94

Recd. Encl.

G.O. 10/10 1894 No. 2504

Court Fees act VII of 1870

Govt: Rev: Dept, on
ruling of the Govt: of India
as to what classes of
communications from the
general public to Govt:
are liable to the duty
leviable under — comm:
to officers of the P.W.D,
with remarks.

2/2/14

required.

Contd. 5/8/94

DESPATCHED
19 OCT 94

C. Esq. Irrigation
C. Esq. Railways
Supt. Engineer
Consg. Architect
Supt. of Works P. Project
Ex. P.W. Accts.
Ex. Ry. Accts.
Estimate

137
21
8
17
200

No: 2510 W. dt 10 October 1894.

PUBLIC WORKS DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following

Proceedings Revenue dept. (R.) No. 650 dt 7/9/94)

Communicated to officers of the P.W.D.

2. The form of application prescribed in G.O. No. 803 W dated 17 June 1892 will be amended so as to omit the words "Here affix an eight anna Court fee label." No stamps on these applications will in future be

(40—1,000—22-2-94.)

P. R. CURRENT No. 7294

Govt. of {1894} Madras.

REVENUE.

No. 1803 W dt/17-6-92
771 C dt/20-2-93
1756 C dt/16-8-92

Issued 10/9/94

Recd. 1-10-94 Encl.

G.O., 7th September 1894, No. 650.

SEPTEMBER.

Court Fees Act VII of 1870.

Ruling of the Government of India as to what classes of communications from the general public to Government are liable to the duty leviable under —, communicated to the Board of Revenue with remarks.

O.L.S. 392

No: 2510 L. dy

PROCEEDINGS OF T

Proceedings Revenue dept

Cir 7294

CAW

apparently it must now be considered whether the rule requiring an eight-anna court fee label to be attached to application for employment in the P.W. Dept. should not be cancelled —

CR

Wyer

C.H. 1895
5/10/94
W

2510

P. R. CURRENT No. 7294

Govt. of {1894} Madras.

REVENUE.

10 1803 W dy 17-6-92
771 C dy 20-2-93
1756 C dy 16-4-92

Issued 10/9 C

Recd. 1-16-94 *Encl.*

G.O., 7th September 1894, No. 650.

SEPTEMBER.

Court Fees Act VII of 1870.

Ruling of the Government of India as to what classes of communications from the general public to Government are liable to the duty leviable under —, communicated to the Board of Revenue with remarks.

(40—1,000—22-2-94.)

O.L.S. 392

Rs: 2510 L. dy

PROCEEDINGS OF

Proceedings Revenue dept.

Cir 7294

CAW

apparently it must now be considered whether the rule requiring an eight-anna court fee label to be attached to application for employment in the P.W. dept. should not be cancelled —

CR

2/10/94

Copies
5/10/94
W

2510

(10—1,000—22-2-94.)

7TH SEPTEMBER 1894, No. 650, REVENUE.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following letter from J. E. O'CONOR, Esq., Assistant Secretary to the Government of India, Finance and Commerce Department (Separate Revenue—Stamps, Judicial, &c., Amendment and Interpretation, &c.), to the Chief Commissioner of Burma, dated Simla, the 27th July 1894, No. 3790-S.R. :—

I am directed to acknowledge the receipt of your letter, No. 313-2 S.—10, dated the 16th April 1894, requesting, in connection with an application to the Financial Commissioner from a lessee of certain lead mines in Burma to dispose of his interest in them to another party, that it may be authoritatively ruled what are the classes of communications from the general public to Government which are liable to the duty leviable under the Court Fees Act VII of 1870.

2. I am to say that in the opinion of the Governor-General in Council the law does not require, and was not intended to require, that applications of every description to a Chief Commissioner or other Chief Revenue or Executive authority should be stamped under clause (*c*) of Article 1 of Schedule II of the Court Fees Act VII of 1870. That clause applies only to petitions and applications in connection with a proceeding which is being taken before a Chief Commissioner or other authority specified therein, with a view to the exercise or non-exercise of some power or authority conferred upon him by some law or rule having the force of law.

3. I am to request that this view may be acted upon in future.

Copy, with copy of the letter (and of its enclosures) to which it is a reply, forwarded to other Local Governments and Administrations for information and guidance.

(By order.)

(Signed) J. E. O'CONOR,
Asst. Secy. to the Govt. of India.

ENCLOSURE.

From C. C. LOWIS, Esq., I.C.S., Officiating Revenue Secretary to the Chief Commissioner, Burma, to the Secretary to the Government of India, Finance and Commerce Department, dated 16th April 1894, No. 313-2 S.—10.

I am directed to submit, for the orders of the Government of India, the following question which has arisen in connection with the enforcement of the provisions of the Court Fees Act in the matter of applications made by private individuals to Government.

2. In a recent case the Financial Commissioner was addressed by the legal representatives of the lessee of certain lead mines in a letter in which they asked for permission for their client to dispose of his interest in the mines to another party. The Financial Commissioner returned the application and asked that it might be stamped. To this the lessee's representatives demurred mainly on the ground that previous communications on the same subject had been received by the Financial Commissioner unstamped, and a reference having been made to this office the Chief Commissioner directed that, as the previous correspondence on the subject of the lessee's lease had as a matter of fact been unstamped, the application in question should be received unstamped. The matter was thus disposed of without the issue of final orders on the

general question involved, namely, what classes of communications from the general public to Government should be stamped and what need not be stamped. As, however, it appeared desirable to come to some definite decision on this point, the Chief Commissioner referred the matter to the Government Advocate for his opinion on the general question. I am now to submit a copy of the Officiating Government Advocate's opinion and of the opinion of the Government Advocate, who was consulted subsequently by the Financial Commissioner on the same subject. It appears to the Chief Commissioner that the distinction drawn in these opinions between the kind of documents which should be stamped and the kind which need not be stamped is correct, and Mr. Fryer considers that a definite ruling should be obtained as to what documents fall within the latter category and what within the former. The question is an important one in Burma, for this and the Financial Commissioner's office have a large correspondence with non-officials on mining and other questions in which it seems clear that Government does not exercise sovereign powers, and it is very desirable that it should be definitely laid down whether or not correspondence of this nature should come under the provisions of the Court Fees Act. Unless some such distinction as the above is drawn the mining business, which the local Government conducts with individuals in Europe and in India, will be considerably hampered and restricted, for all letters not bearing the proper court-fee will have to be returned to be stamped—a measure which will cause endless delay and irritation and may be sufficient in itself to deter a capitalist who is willing to undertake mining or other operations in this province from entering into negotiations for that purpose. For the above reasons I am to solicit that definite orders in the matter may be passed in the manner indicated in the concluding paragraph of the Officiating Government Advocate's note.

Opinion of J. LOWIS, Esq., Officiating Government Advocate, Burma, dated the 11th January 1894.

It is not very clear what is intended by the Court Fees Act in cases of this kind, and I know of no authority on the point.

The principle to be applied is, I think, as follows :—

It has been pointed out more than once that the Government of India, besides exercising sovereign powers, enters into undertakings of a nature which might be carried on by private individuals and that there is a clear distinction to be drawn between acts done by Government in one capacity and in the other. And in my opinion it is only when dealing with Government in its sovereign capacity that individuals are bound to communicate with Government by petitions stamped under the Court Fees Act.

But even if I am correct in thinking that this is the principle to be applied, it is not always easy to apply it, for the dealings of Government in one capacity and the other are not kept clearly apart.

In dealing with land Government is, in a sense, acting as the sovereign power. But I think that if Government, instead of acting as a sovereign and levying a tax on the land, chooses to deal with the land as a private individual might and enters into a lease or other contract regarding it, then the Court Fees Act does not apply and no court-fee is payable on the communications addressed to Government on the subject by the individual with whom Government is dealing.

All the papers not being before me I am not able to express any opinion as to whether the present case is within the Act, but probably I have said sufficient to indicate what my view would be.

The question is one of considerable importance and it would be desirable to get some authoritative ruling on the point.

Opinion of C. E. FOX, Esq., Government Advocate, Burma, dated the 16th February 1894.

I agree with Mr. Lowis' opinion on this matter. The Court Fees Act is in many respects as indefinite as the Stamp Act, and it is very desirable that they should both be made clearer.

As they stand, however, they must be construed reasonably, and it is obvious that it could never have been intended that every application of any description whatever to a Chief Commissioner or other Chief Revenue or Executive authority should be stamped under the Court Fees Act, Schedule II, No. 1, clause (*c*). In my opinion the Act was intended to make liable to stamp-duty only such applications or petitions as request the authorities to do something which can only be done in the exercise of powers given to them by legislative enactment, *i.e.*, sovereign powers, which they would not have unless conferred upon them by statute. It could not have been intended to put applications to Revenue and Executive authorities on any other footing than applications to a High Court for instance. Applications to the latter which ask it to exercise any of its powers given by an Act are of course liable to stamp-duty, but an application to it by a person seeking employment, for instance, to be appointed to some post would certainly not be liable to duty.

ORDER—dated 7th September 1894, No. 650, Revenue.

Separate Revenue, No. 76.
Stamps.

Communicated to the Board of Revenue for information and guidance.

2. The rulings contained in the papers noted below should be cancelled in accordance with the foregoing instructions of the Government of India :—

(i) *Board's Proceedings, dated 16th November* 1878, *No.* 3062.—(G.O., dated 9th April 1879, No. 821, Revenue), directing that applications for appointments in the Revenue Department should bear a stamp of 8 annas.

(ii) *Board's Proceedings, dated 24th April* 1884, *No.* 1399.—(G.O., dated 19th May 1884, No. 2089, Revenue), intimating that a request for information addressed to a Collector requires a court-fee stamp of 8 annas.

(iii) *Board's Proceedings, dated 19th February* 1892, *No.* 109.—(G.O., dated 29th March 1892, No. 1680, Revenue), directing that applications for promotion from persons already in Government service should bear a stamp of 8 annas as in the case of applications for employment.

(True Extract.)

F. W. Richards

for Ag. Secretary to Government.

To the Board of Revenue (all departments).
" Inam Commissioner.
" Superintendent, Revenue Survey.
" Superintendent, Government Central Museum.
" Government Botanist.
" Departments of the Secretariat.
4 Public Works Dept

Exd. Shaik Kurim.

150 Copies.

1040

P. R. CURRENT No. 7294

Govt. of {1894} Madras.

REVENUE.

No 1803 in cd/17-6-92
771 cd/20-2-93
1756 cd/16-11-92

Issued

Recd. 1-10-94 *Encl.*

G.O., 7th September 1894, No. 650.

SEPTEMBER.

Court Fees Act VII of 1870.

Ruling of the Government of India as to what classes of communications from the general public to Government are liable to the duty leviable under —, communicated to the Board of Revenue with remarks.

O.L.S.392

GENERAL.
ESTABLISHMENT.

Govt. of {1894} Madras.

PUBLIC WORKS.

Dated October, 10th.

Recd. *Encl.*

G.O., 10th Oct. 1894, No. 2510 W.

OCTOBER.

Court Fees Act VII of 1870

Proceedings, Revenue Department, on ruling of the Government of India as to what classes of communications from the general public to Government are liable to the duty leviable under —, communicated to officers of the Public Works Department with remarks.

P. C. CURRENT No. 7294

Govt. of {1894} Madras.

REVENUE.

No 1803 W dy 17-6-92
771 C dy 20-2-93
1756 C dy 16-4-92

Issued 10 SEP

Recd. 1-10-94 *Encl.*

G.O., 7th September 1894, No. 650.

SEPTEMBER.

Court Fees Act VII of 1870.

Ruling of the Government of India as to what classes of communications from the general public to Government are liable to the duty leviable under —, communicated to the Board of Revenue with remarks.

O.L.S. 392

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Establishment.

READ—the following paper :—

G.O., dated 7th September 1894, No. 650, Revenue.

Read—the following letter from J. E. O'CONOR, Esq., Assistant Secretary to the Government of India, Finance and Commerce Department (Separate Revenue—Stamps, Judicial, &c., Amendment and Interpretation, &c.), to the Chief Commissioner of Burma, dated Simla, the 27th July 1894, No. 3790-S.R. :—

I am directed to acknowledge the receipt of your letter, No. 313-2 S.—10, dated the 16th April 1894, requesting, in connection with an application to the Financial Commissioner from a lessee of certain lead mines in Burma to dispose of his interest in them to another party, that it may be authoritatively ruled what are the classes of communications from the general public to Government which are liable to the duty leviable under the Court Fees Act VII of 1870.

2. I am to say that in the opinion of the Governor-General in Council the law does not require, and was not intended to require, that applications of every description to a Chief Commissioner or other Chief Revenue or Executive authority should be stamped under clause (*c*) of Article 1 of Schedule II of the Court Fees Act VII of 1870. That clause applies only to petitions and applications in connection with a proceeding which is being taken before a Chief Commissioner or other authority specified therein, with a view to the exercise or non-exercise of some power or authority conferred upon him by some law or rule having the force of law.

3. I am to request that this view may be acted upon in future.

Copy, with copy of the letter (and of its enclosures) to which it is a reply, forwarded to other Local Governments and Administrations for information and guidance.

(By order.)

(Signed) J. E. O'CONOR,
Asst. Secy. to the Govt. of India.

ENCLOSURES.

From C. C. LOWIS, Esq., I.C.S., Officiating Revenue Secretary to the Chief Commissioner, Burma, to the Secretary to the Government of India, Finance and Commerce Department, dated 16th April 1894, No. 313-2 S.—10.

I am directed to submit, for the orders of the Government of India, the following question which has arisen in connection with the enforcement of the provisions of the Court Fees Act in the matter of applications made by private individuals to Government.

2. In a recent case the Financial Commissioner was addressed by the legal representatives of the lessee of certain lead mines in a letter in which they asked for permission for their client to dispose of his interest in the mines to another party. The Financial Commissioner returned

the application and asked that it might be stamped. To this the lessee's representatives demurred mainly on the ground that previous communications on the same subject had been received by the Financial Commissioner unstamped, and a reference having been made to this office the Chief Commissioner directed that, as the previous correspondence on the subject of the lessee's lease had as a matter of fact been unstamped, the application in question should be received unstamped. The matter was thus disposed of without the issue of final orders on the general question involved, namely, what classes of communications from the general public to Government should be stamped and what need not be stamped. As, however, it appeared desirable to come to some definite decision on this point, the Chief Commissioner referred the matter to the Government Advocate for his opinion on the general question. I am now to submit a copy of the Officiating Government Advocate's opinion and of the opinion of the Government Advocate, who was consulted subsequently by the Financial Commissioner on the same subject. It appears to the Chief Commissioner that the distinction drawn in these opinions between the kind of documents which should be stamped and the kind which need not be stamped is correct, and Mr. Fryer considers that a definite ruling should be obtained as to what documents fall within the latter category and what within the former. The question is an important one in Burma, for this and the Financial Commissioner's office have a large correspondence with non-officials on mining and other questions in which it seems clear that Government does not exercise sovereign powers, and it is very desirable that it should be definitely laid down whether or not correspondence of this nature should come under the provisions of the Court Fees Act. Unless some such distinction as the above is drawn the mining business, which the local Government conducts with individuals in Europe and in India, will be considerably hampered and restricted, for all letters not bearing the proper court-fee will have to be returned to be stamped—a measure which will cause endless delay and irritation and may be sufficient in itself to deter a capitalist who is willing to undertake mining or other operations in this province from entering into negotiations for that purpose. For the above reasons I am to solicit that definite orders in the matter may be passed in the manner indicated in the concluding paragraph of the Officiating Government Advocate's note.

Opinion of J. LOWIS, Esq., Officiating Government Advocate, Burma, dated the 11th January 1894.

It is not very clear what is intended by the Court Fees Act in cases of this kind, and I know of no authority on the point.

The principle to be applied is, I think, as follows:—

It has been pointed out more than once that the Government of India, besides exercising sovereign powers, enters into undertakings of a nature which might be carried on by private individuals and that there is a clear distinction to be drawn between acts done by Government in one capacity and in the other. And in my opinion it is only when dealing with Government in its sovereign capacity that individuals are bound to communicate with Government by petitions stamped under the Court Fees Act.

But even if I am correct in thinking that this is the principle to be applied, it is not always easy to apply it, for the dealings of Government in one capacity and the other are not kept clearly apart.

In dealing with land Government is, in a sense, acting as the sovereign power. But I think that if Government, instead of acting as a sovereign and levying a tax on the land, chooses to deal with the land as a private individual might and enters into a lease or other contract regarding it, then the Court Fees Act does not apply and no court-fee is payable on the communications addressed to Government on the subject by the individual with whom Government is dealing.

All the papers not being before me I am not able to express any opinion as to whether the present case is within the Act, but probably I have said sufficient to indicate what my view would be.

The question is one of considerable importance and it would be desirable to get some authoritative ruling on the point.

Opinion of C. E. FOX, Esq., Government Advocate, Burma, dated the 16th February 1894.

I agree with Mr. Lowis' opinion on this matter. The Court Fees Act is in many respects as indefinite as the Stamp Act, and it is very desirable that they should both be made clearer.

As they stand, however, they must be construed reasonably, and it is obvious that it could never have been intended that every application of any description whatever to a Chief Commissioner or other Chief Revenue or Executive authority should be stamped under the Court Fees Act, Schedule II, No. 1, clause (*c*). In my opinion the Act was intended to make liable to stamp-duty only such applications or petitions as request the authorities to do something which can only be done in the exercise of powers given to them by legislative enactment, *i.e.*,

sovereign powers, which they would not have unless conferred upon them by statute. It could not have been intended to put applications to Revenue and Executive authorities on any other footing than applications to a High Court for instance. Applications to the latter which ask it to exercise any of its powers given by an Act are of course liable to stamp-duty, but an application to it by a person seeking employment, for instance, to be appointed to some post would certainly not be liable to duty.

Order—dated 7th September 1894, No. 650, Revenue.

Separate Revenue No. 76.
Stamps.

Communicated to the Board of Revenue for information and guidance.

2. The rulings contained in the papers noted below should be cancelled in accordance with the foregoing instructions of the Government of India:—

(i) *Board's Proceedings, dated 16th November* 1878, *No.* 3062.—(G.O., dated 9th April 1879, No. 821, Revenue), directing that applications for appointments in the Revenue Department should bear a stamp of 8 annas.

(ii) *Board's Proceedings, dated 24th April* 1884, *No.* 1399.—(G.O., dated 19th May 1884, No. 2089, Revenue), intimating that a request for information addressed to a Collector requires a court-fee stamp of 8 annas.

(iii) *Board's Proceedings, dated 19th February* 1892, *No.* 109.—(G.O., dated 29th March 1892, No. 1680, Revenue), directing that applications for promotion from persons already in Government service should bear a stamp of 8 annas as in the case of applications for employment.

(True Extract.)

(Signed) E. GIBSON,
Ag. Secretary to Government.

ORDER—dated 10th October 1894, No. 2510 W., Public Works.

Communicated to officers of the Public Works Department.

2. The form of application prescribed in G.O., No. 1803 W., dated 17th June 1892, will be amended so as to omit the words "here affix an eight-anna Court-fee label." No stamps on these applications will in future be required.

(True Extract.)

Under Secy. to Govt., P.W.D.

To the Chief Engineer for Irrigation.
„ the Consulting Engineer for Railways.
„ Superintending Engineers.
„ the Consulting Architect to Government.
„ the Superintendent of Works, Periyár Project.
„ the Examiner, Public Works Accounts.
„ the Examiner, Railway Accounts.

Exd. C. A. Munisawmy.
Spare Copies

GENERAL.
ESTABLISHMENT.

Govt. of {1894} Madras.

PUBLIC WORKS.

Dated October, 10th.

Recd.

Encl.

G.O., 10th Oct. 1894, No. 2510 W.

OCTOBER.

Court Fees Act VII of 1870

Proceedings, Revenue Department, on ruling of the Government of India as to what classes of communications from the general public to Government are liable to the duty leviable under —, communicated to officers of the Public Works Department with remarks.