

Public Works (1898) Department.

RAILWAY BRANCH.

SERIAL

No. 89

G.O., No. 751. Ry
DATED 20th May 1898.

Includes

G.O. No. 903 Ry 27-4-11-97

No. 133 R.M. 23-3-98.

[Despatch Abstract.]

Calicut Tramway

Ordered that the promoter of the —
be suggested by the Chairman, Municipal
Council to put in an application with the
Consent of the Council for the amendment
of the purchase clause of the draft order
authorising the construction of the tramway
as advised by the Eof I

BACK PAPERS.

FURTHER PAPERS.

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

P. w Depre
Rybach

Proceedings of the Madras Government.

Read the following: —

Telegram from A-Brown Esq d 30th Oct 1897.

Revised tramway notification clause
nine shall feel much obliged by ex-
planation of words then value.

Telegram to A Brown Esq of 1st Nov 1897

Term "then value" quoted from clause
22 tramway act for interpretation of
which consult your lawyer.

Order No 902 R of 4. 11. 97

The Government of India will be addressed.

Government of Madras.

PUBLIC WORKS DEPARTMENT,
RAILWAY BRANCH.

To

THE SECY. TO THE GOVT. OF INDIA,

P. W. DEPARTMENT.

Calcutta

Madras, the 4th Nov 1897.

SIR,

Upon the publication in the Fort St George Gazette of the 26th Oct 97 of the draft of the order proposed to be issued by this Government under the provisions of the Tramway Act of 1886, for the construction of the Calicut single rail tramway, referred to in the correspondence ending with your No. 1422 R-C dated the 31st August 97, an enquiry was received from the promoter as to the meaning of the term "then value" in clause 9 the purchase clause of the draft order.

2. As suggested in para 2 of your letter above referred to, clause 9 of the draft order was modelled upon clause 22 of the Tramway Act.

What is to explain that clause 22 of the

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But this Government is uncertain as to the exact significance of the term "then value", viz whether it means the market value as shown by the market price, on the date of sale, of the tramway company's shares and debentures, or the value of the property as arrived at by a valuation and if necessary by arbitration, or the par value of the actual authorized capital outlay as incurred by the Company.

3. This Government is inclined to believe that it was the intention of the framers of the Tramway Act that the term "then value" should have some such meaning as the average market value for a reasonable period, or the actual market value on the date of sale, of the Company's authorized issue of stock and debentures. I am directed to enquire whether this interpretation is or is not correct; and, if not, to beg that I may be informed what was intended to be the meaning of the term.

I have &c.

(Signed) F. J. E. S

2/11/97

Public Works (1897) Department.

Railway
CURRENT No. 246

From The Government of India

Order

~~Being the~~
~~Letter to the~~
~~Secretary, which is the~~
~~subject of the letter, dated 14-12-97~~
Inform the Govt of India with a request
that in this Govt opinion that no alteration
of Clause 9 of the Order is necessary

F.V.S.

9/3/98

No. 1997 R.C.

Dated 14-12-97

Received 20-12-97

Registered

Enclosures nil

Spare copies nil

SUBJECT.

Calcutta Tramway

Furnishing explanation as to the interpretation of the expression "then value" referred to in the purchase clause (9) of the draft order authorizing the construction of the

What is to explain that clause 22 of the



6KV18XWORKS.X

RAILWAY CONSTRUCTION.

The Joint Secretary to the Government of Madras,
Public Works Department, Railway Branch.

Calcutta, the 14th December 1897.

W. SN 78
CASH 20
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Sir,
I am directed to acknowledge the receipt of your letter No.903 R., dated 4th November 1897, enquiring, with reference to the purchase clause (9) of the draft of the proposed order authorising the construction of the Calicut single rail tramway, what interpretation should be placed on the expression "then value" as used in clause 22 of the Indian Tramways Act XI of 1886.

2. In reply I am to inform you that it is understood that the term "then value" has been interpreted to mean the actual value of the railway and rolling stock at the time of purchase and that it has no reference to the earnings of the concern.

3. As, however, a doubt has been raised as to the meaning of the phrase, it may perhaps be preferable to specify certain defined terms of purchase which shall not be open to the objection taken to the purchase clause as originally drafted, and I am to suggest that a provision that the purchase price should be 25 times the average net earnings of the tramway for the 5 years immediately preceding the date of purchase, would be suitable, giving a reasonable purchase rate without

involving

went on to explain the clause 22 of the

GOVERNMENT OF INDIA
PUBLIC WORKS DEPARTMENT
BOMBAY

involving the necessity for any scrutiny on the part of Government
in regard to the capital expenditure.

I have the honour to be,
Sir,
Your most obedient servant.

Spicer Colonel R.E.,
Secretary.

Documents accompanying :-
Nil.

J.B.M.

I.W. Reg. Current No. 246

SERIAL
No. 86

Client Tramway

H. S. The Governor

The Hon. Li H. Blin K.C.S.

The Hon. Mr. Jinn C.I.S.

*When, with our No. 549.B. of the 12th Aug. 97,
we sent up the Client Tramway draft order
for the Govt. of India's approval. They replied
by wire dated 24th Aug. expressing approval generally
but recommending a cancellation of clause 9 of
the draft. The purchase clause, and the substitution
in place of it of a reference to clause 22, the
purchase clause of the Tramway Act.*

*In clause 9 as first drafted by us it
was provided that in the event of the local
authority desiring to purchase the Tramway, after
an agreed period, the price to be paid for it
was to be "the amount of nominal capital, in
shares or debentures actually issued or raised on
mortgage of the property and expended" up to the
date of purchase, plus one fourth for engineering
purchase.*

*In a letter, which followed the above quoted
telegram, No. 1422. B.C. dated the 31st Aug. 97,
the Govt. of India explained that clause 9
as above drafted "leaves it open to the promoters
to water the capital to any extent, and then
enable them to call for Govt." (By? Local Authority)
in the event of purchase to pay up the watered
capital and not the real capital value. They
went on to explain that clause 22 of the*

*HE + WMM
27.1.98
R
2.2.98*

Indian Tramways act had been carefully
drawn, and ought to be "unobjectionable to any one
intending honest business".

Clause 22 of the Tramways Act says that
a local authority, if it desires to purchase or the
amount of the purchase price, shall pay "the
then value of the undertaking exclusive of any
allowance for past or future profit or any
compensation for compulsory sale or other
consideration whatever."

In compliance with the Govt. of India
advice we instructed our Solicitors to redraft
the purchase clause of the draft order. As
then redrafted the clause enables the local
authority, at certain agreed intervals or on
the occurrence of certain agreed incidents, to
compulsorily buy the tramway, paying for it
"the then value of the undertaking exclusive of
any allowance for past or future profit &c."
precisely as worded in the Act.

On the appearance in the Gazette of
the draft order the promoter enquired what
we meant by the term "then value". We
referred the matter to the Govt. of India, asking
whether "then value" meant (a) market price of
shares; (b) then value as per valuation by experts;
(c) or per value of actual authorised capital only;

J.B.M. average market value of shares for a

period of years. We asked India to
let them mean by "then value".

Meanwhile, before a reply had been received
from the Govt. of India, we had informed the
Promoter that we had practically taken the
newly drafted purchase clause out of the
Tramway Act, and that his lawyer was the
person to consult as to its meaning. Then when
all this reference caused delay in the publication
of the final order, the promoter anxiously
asked what the delay meant, and we told him
that we were waiting for the solution of the doubt
raised by his own enquiry. The promoter replied
that on learning from us that "then value"
had been quoted from the Tramway Act he
thought that further reference was unnecessary.

We therefore finally published the order,
and put the promoter in a position to raise
his Company.

Then after much delay we got a
reply from the Govt. of India, No. 1497-P.C.,
dated the 14th Dec. 97. (Current Reg. 296)
to the effect that they understood that the
term "then value" has been interpreted to mean
the actual value of railway and rolling stock
at time of purchase without reference to earnings.

But they go on to say that as a doubt
has been raised as to the meaning of "then value"
it might perhaps be preferable to specify certain
terms which would not be open to the objection
which they had raised to the first draft.
They then go on to suggest that reasonable

would be 25 ^{times} the average net earnings
of the tramway for the 5 years immediately
preceding the date of its purchase. They say
that this would give a reasonable rate without
involving any scrutiny on the part of Government
in regard to capital expenditure.

Now I seek for advice as to what we are to
do about this suggestion of the Govt. of India, i.e.
whether we had better now let things stand as
they are, or communicate Indian suggestion to the
President District Board Madras, for consideration
by his Board (the 'local authority' concerned) in
consultation if necessary with the promoters.

Considering the very small prospect of the
local authority desiring to buy the tramway, and
the risk of the loss of the small company
being soon or later purchased for the purpose
of scrutiny to ascertain their net earnings, I
think it unlikely that the District Board will
desire to reopen the question of the wording of
the purchase clause. Neither they nor the
promoters have so far objected to it though
they have had ample opportunity.

I think however that it would be right to
give them the option, and that we ought to
communicate to them the contents of the Govt. of
India's letter. I have drafted to this

Letter for H.S.'s and Hon. Member's approval.
President District Board (to be) I think be addressed
via Com. Eng. and not to the Govt.
26/1/98

But what has the Dist. Bd.
to do with the matter? It
is a burnt question - The
draft must be corrected

AS
1/2/98 JG

Appd. ASH
28.1.98 JG

The chairman and of the Calcutta
Municipality. JG

Form No. 10.

Railway Department

OFFICE OF THE CONSULTING ENGINEER FOR RAILWAYS,

Madras,

5 Feb

1898.

To

Chairman of the Calcutta Municipality.
The ~~Municipality~~ Board Madras.
Calcutta.

No. 371 Reply No. $\frac{226}{98}$, dated 1.3.98

SIR,

With reference to the Calcutta Tramway

Order, No. 3. 1897, which was published in

H. St. George Gazette dated Dec 14th 1897.

Pages 1551 to 1559 inclusive, I have the honour
to inform you that when the "Order" was first drafted
clause 9, the purchase clause, provided that in the event of
the purchase of the tramway by the local authority, the
price to be paid for it was to be "the amount of nominal
capital in shares or debentures actually issued or paid on
mortgage of the property and equipment" up to date of purchase
plus one fourth for engineering purchase.

2. - On this clause coming to the notice of the
Govt. of India they objected to the wording of it
because it is left open to the promoters to value the
capital to any extent and then to call upon the
purchaser to pay up the valued capital and
not the real capital value.

On the advice of the Govt of India the phraseology of the purchase clause in the draft order was altered as to bring it into consonance with clause 22 of the Indian Tramway Act, which enacts that the purchaser shall pay "the true value of the undertaking exclusive of any allowance for past or future profit or any compensation for compulsory sale or other consideration whatever."

On this revised wording coming to the notice of the Promoter he enquired as to the meaning of true value, and in reply was referred to the Tramway Act and to his legal advisers. It was subsequently ascertained from the Promoter that he was quite satisfied with the reference to the Tramway Act, and the Order was therefore published in the Gazette forthwith, as no objection to it had been received from any quarter.

Subsequently however the Government of India, in reply to a reference on the subject, wrote the letter of which I enclose a copy. No. 1997. R.L. dated the 14th Dec. 97. and the question arises whether it would not be right that the ^{Municipality} ~~Government~~ and the Promoter should now have the option of applying to Govt. for a fresh draft of para 9 in the shape of a revised order. The matter seems to be one which most nearly concerns the interest of the ^{Municipality} ~~Government~~, as they may possibly at the expiry of the agreed period desire to purchase the Tramway, and may possibly wish the terms of purchase to be stated beforehand more explicitly than is done in the Tramway Act or in the Order which is now in force. It may be known that the ^{Municipality} ~~Government~~ are still satisfied with this Order as it stands.

I shall be glad to be informed what conclusion they have arrived at, after discussion, if necessary, with the Promoter, as to any alteration of the order.

Res -
BS
5/2/98

Res BS
7/1/98
26/1/98

Print

Extract from the proceedings of the municipal council of the present passed at its meeting held on the 26th of February 1898

15) Read letter dated 5th February 1898 No. 371 from the Consulting Engineer for Railways addressed requesting to be informed whether it would not be right that the Municipality and the promoter should now have the option of applying to Government for a fresh draft of para 9 (the purchase clause) of the tramway notification.

The Council does not think of any alteration in the wording of para 9 as it now stands in the order.

(sd) Ghelal Dhanu
Chairman
(Jame Lal Dhanu)
J. Dhanu
Chairman
Proposed

On the advice of the Govt of India the proceedings of the Council

ENG. NO. 1107 OF 1898
LETTER NO. 98 1. 3. 98
FROM Chairman Mun Council
Calicut

R. F.

RECEIVED MUNICIPAL
5 MAR. 1898
MADRAS.

226
98
200.

RECEIVED MUNICIPAL
5 MAR. 1898
Calicut 18. March 98

1107
5.3.98

M. J. L. Saldhana
Chairman, Municipal Council
Calicut

2.

The Consulting Engineer for Railways
Madras

Sir,
In reply to your letter
No. 371 dated 5th ^{ultimo} instant, I have
the honor to forward herewith copy
of a resolution of the Municipal
Council passed at its meeting
held on the 26th instant from which
it will be observed that the
Council does not think that any
alteration in para 9 of the tramway
notification is necessary.

I have the honor to be,
Sir,
Your most obedient servant

See order in Council
N. Lab. Deptt.
H. J. put up. FWS
1/3/98

File
W. J. S. S.

M. J. L. Saldhana
Chairman

See
W. J. S. S.

would be 2-11-11

R. Form No. 12.

P.W. Ry Current No 246 dy 4.12.97 A
Consq Engrs Current No 1107 dy 5.3.98 P
P.W. Ry Current No 566 dy 4.5.98 C
No.

15

Government of Madras.

PUBLIC WORKS DEPARTMENT,
RAILWAY BRANCH.

H. S. The Governor.

To

THE SECY. TO THE GOVT. OF INDIA,

P. W. DEPARTMENT.

189

SIR,

In reply to your letter No. 1997.

It would be proper to insert upon
the alterations proposed by the
Govt. of India being made.
It is always well to clear up
indefinite phrases or
terms, and whatever the
collected Council of the
may think, their successors
in office may have come
to wish that the doubtful
phrases had been cleared up.

R.C. on the subject of a suggested alteration
of the terms of Clause 9 of the Calicut
Tramway Order, which was published in Fort St.
George Gazette dated 14th Dec. 97. I am instructed
to inform you that on it being ascertained from
the Chairman of the Calicut Municipality, who are
really the public body who are interested in
the clause referred to, that no alteration of the
clause is considered necessary, it has been
decided by this Government that it shall
stand.

I have &
F. W.
9/3/98

148
9-3-98

12
18-3-98

no: 133 R. no 423.3.98.

Secretary L & M Dept.

I shall be glad if L & M. Dept
will advise me how to give effect to
the wish of H.E. the Governor is
expressed in H.E.'s note dated 17-3-98.

Can Govt now issue a G.O. sending
all the correspondence and ordering the
Chief Municipality to alter the clause
so that it may accord with the Govt.
of India's suggestion? Apparently the
Municipality must obtain the Promoter's
consent to the alteration.

If L. & M. Dept will be good
enough to draft I shall be obliged.
as I do not quite know what central Govt.
has in such matters. Moreover I cannot
say how far the Promoter may have committed
himself to shareholders, and whether therefore
it is open or not now to Govt. to alter the
clause.

F.H.
21/3/98

Despatched on 23/3/98

Mr. C. 2463 14/12/97
with draft L. & letters to
Ludri.

Noting R of 26/1/98
Eh. no. 371 of 5/2/98 to the
Chairman C. Municipality

Frischenge Lander page 1536-1571
of 14/12/97

Ep. 1133 R 3- 14.12-97
902.3 R 3 4/11/97 incl

Ep. 742 R 3 20/9/97.
Ludri Framp Act 1886.

[G
73
200-13-10-97.

Local & Municipal DEPARTMENT.

OFFICE NOTE No. 17

Dated 3rd May 1898.

P.W. Ry C no 566

Recd 4.5.98

From

THE ^{Ag} SECRETARY TO GOVERNMENT,
Local & mun. dept.

To

THE SECRETARY Public Works DEPARTMENT.

Railway Branch.

Your Office Note N^o 133.
Q.M. dated 23rd March 1898.

The Calicut Tramways
order having been confirmed
by the notification of the
14th December 1897, the amend-
ment proposed by the Govern-
ment of India can be made
only by a further order
under Section 8 of the Indian
Tramways Act of 1886.
Such further order, however,
cannot issue except on the
application of the pro-
moter and the consent of
the local authority. The under-
signed would therefore advise
that the wishes of the
Government of India be com-
municated to the promoter,
with

ER.
We have letter Act 300 below to
(1) Recharge Lander 9 or
(2) draft an application to Lander 9
& send to Municipal Council
+ promoter O.M. 5/-

Papers please
FM
7/5/98

46.
7
11

Papers to be read in Proceedings:—

Again G.O., dated 4th November 1897, No. 902-3 R.
 Again G.O., dated 189 , No. (A) Q

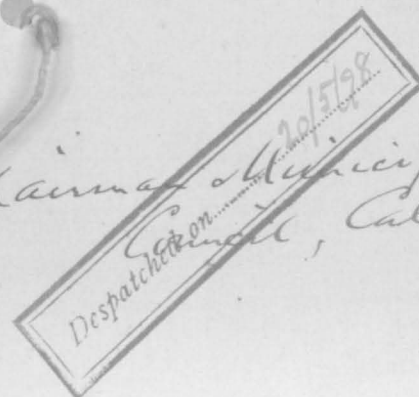
Plot Current No. 246 of 1897, dated 14 12 97, from the Govt. of India.
 Letter to the Chairman Calicut Municipality No. 371, dated 5. 2. 98 (B)
 " " " 189 , " " " (P)
 " " 1107 " 1898, " 5. 3. 98, " the Chairman Municipal Council Calicut.

H. R. The Governor

Revised draft for approval

FMS
17/5/982.14
17.5.98mm
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185

To The Chairman Municipal Council, Calicut



ORDER.

No. 75-1. R. dated 20/5/98

As it is advisable, whenever possible to do so, to clear up the meaning of indefinite terms and phrases, it would be well if the Purchase Clause of the Calicut Tramway Order, dated 14th December 1897, could be altered upon the lines of the Government of India's advice.

2. The Chairman of the Calicut Municipal Council will therefore suggest to the Promoter that he should put in an application, with the consent of the Municipal Council, for the amendment of Clause 9 of the Calicut Tramway Order in the following manner, i.e., that in lieu of the words beginning "paying the then value", and ending "or any consideration whatever" shall be inserted the words "being paid 25 times the average net earnings of the tramway for the last 5 years immediately preceding the date of purchase."

3. The application for revision if agreed should be made under the provisions of Clause 8 of the Tramway Act.

FMS
17/5/98
R.14/5/98
17/5/98