M.R.O. 14—18,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No.	219	Press ~~Mis.~~
	434-435	
Dated	31-1-19 1863	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 31st January 1863.

No. 431. Read the following Proceedings of the Board of Revenue, dated 18th December 1862:—

Read again Board's Proceedings, dated 22nd October 1862, No. 7,021.

Read the following letter from B. CUNLIFFE, Esq., Collector of Madras, dated 12th November 1862, No. 45.

(In Cons. 14th November 1862, No. 7,266.)

1. Ordered, with reference to the last paragraph of the letter recorded above, that a copy of Mr. Cunliffe's letter, with copy of the Board's Proceedings previously recorded, be submitted to Government for such notice as they may consider fit.

2. These Proceedings relate to an appeal preferred to the Board of Revenue by G. Lutcheenarasu Chetty and C. Venkatakistnamah Naidoo, surviving Executors to the last Will of C. V. Conniah Chetty, deceased, from orders passed by Mr. Cunliffe, assessing the income derived from the Shrotriem village of Enadoor, the property of the late C. V. Conniah Chetty, to the Income Tax.

3. Two questions are discussed in the Proceedings:—First, the liability of the Petitioners to be charged with Income Tax in respect to the said village; secondly, whether the Petitioners, who are Native gentlemen residing at Madras, had received on the occasion the treatment they had a right to expect.

4. With regard to the first question, the Board are satisfied that the Petitioners' claim to have the proceeds of the village exempted from the Income Tax, on the ground that the village was granted for the support of a Choultry at Canjeveram, is not supported by any thing to be found in the "Purvanah" or Deed, on which the village is held. It is apparent from the correspondence referred to in paragraph 8 of the Board's Proceedings, dated 22nd October last, No. 7,021, that the Government of the day intended to confer the village on the original grantee for charitable purposes only; but the Deed itself contains no actual stipulation to that effect. The Petitioners have, therefore, no legal claim to have any portion of the income exempted, for they have not proved that the income formed an actual endowment to the Choultry. The Board were, in the first instance, misled chiefly by Mr. Cunliffe having allowed exemption in respect to a portion of the income, in partial compliance with the Petitioners' application, that the whole income of the village might be exempted.

5. Mr. Cunliffe was requested, in paragraph 2 of the Board's Proceedings, dated 22nd October, to explain under what authority he had acted in allowing any exemption in such a case, but he has failed to give a direct answer to that question. He merely remarks that he ought, strictly speaking, to have obtained the sanction of Government to the deduction; and that it has been his practice to reduce the demand on income, when he "found that the latter had been expended upon charity so essentially public as a Choultry dispensing food to beggars and wayfarers." The only recognized rule is that income solely employed for or dedicated to charitable institutions may be exempted, but not the private income of individuals though expended on charitable purposes; and that no exemption on the former ground can be allowed without the express sanction of Government (Section 133 of the Act).

6. The Board must also remark that the loss which the Government sustain, through the reduction erroneously made by Mr. Cunliffe in the Petitioners' assessment, is not owing, as Mr. Cunliffe's remarks would imply, to his having failed to give the Petitioners a hearing, but to his erroneous administration of the Act, and his having failed to see, though the facts essential to a right judgment were before him, that the Petitioners' claim to exemption was inadmissible. Mr. Cunliffe should also understand that he has no authority to make deductions as a matter of *indulgence*.* The Petitioners' claim to deduction was one that had a legal foundation or not, and should have been admitted or rejected, as the evidence required.

* Paragraph 5 of his letter.

7. With regard to the second question, the one on which Mr. Cunliffe prefers an appeal to the Government, the Board in paragraphs 4, 5 and 6 of their Proceedings dated 22nd October, briefly recapitulated the several grounds on which they term Mr. Cunliffe's treatment of the

Petitioners, "discourteous, if not harsh." They see no reason to change their opinion on this point from any thing Mr. Cunliffe has now advanced. They did not describe his proceedings as "harsh," with any reference to the amount at which the Petitioners were assessed. This term, as was clearly explained, had reference to the fact that compulsory process was threatened before the Petitioners had received any definite reply to their complaint.

8. Mr. Cunliffe again urges the fact that under the provisions of Section 48 of the Act, the Petitioners had no right to a further hearing. He therefore considers that the enquiry made by his Assessor was "a mere act of grace." The Board adhere to their opinion that Mr. Cunliffe, having once allowed the correctness of the assessment to be reconsidered (consequent on representations made by one of the Petitioners on the 12th of June), it was incumbent on him, on general principles of equity, to let the Petitioners produce the best evidence that the case admitted of. He might have refused, under Section 48 of the Act, to reopen the question; but having seen reason to make further enquiry, he should have conducted it in the way best calculated to elicit the real facts. The extensive powers conferred by the Income Tax Act were not conferred merely to sanction an arbitrary exercise of authority, nor should any Officer who has to administer the Act interpret its provisions in a needlessly severe, or an inequitable spirit.

9. The Board regret that Mr. Cunliffe has thought it proper on so slight an occasion to appeal from their Proceedings, and that he has permitted himself to write in so objectionable a style. They refer on this latter point, to the general tone of his letter, and especially to the way in which, in paragraph 6, he parades his feelings of unconcern at any circumstances in the case, but his having missed the opportunity of placing the Petitioners in a worse position than they at present occupy. The Board can only understand Mr. Cunliffe's remarks on this point as intended to show them that he is indifferent to their opinion on the subject of the Petitioners' complaint. They however leave it to Government to deal with the style as well as the subject of Mr. Cunliffe's communication.

(A true Extract.)

(Signed.) W. HUDLESTON, *Secretary.*

No. 435. ORDER THEREON, 31st January 1863, No. 219.

1. The Governor in Council is of opinion that the Collector was clearly wrong in altering the assessment at all. He ought to have at once informed L. Venkatakisnama Naidoo that as no returns had been made, the assessment was final. The Governor in Council is also of opinion that Mr. Cunliffe was wanting in courtesy in not informing L. Venkatakisnama Naidoo of the result of his interview, and disapproves altogether of the tone of his letters to the Board. The Governor in Council sees no reason to impute any "harshness" to Mr. Cunliffe, and the fact of his having reduced the assessment leads to the inference that the discourtesy above admitted was unintentional.

2. For the delay in the final official decision of the matter and the communication of the decision to the parties concerned, the Sub-Collector appears, so far as Government can gather, to have been the blameable party.

3. But while noticing the Collector's actual, though apparently unintentional want of courtesy to the Trustees and disapproving the style of his communications to the Board, the Governor in Council must express his regret that the Board did not reserve their censure until the case was fully before them. The claim of the Trustees ultimately proved to be invalid and the parties who advanced it could scarcely have been ignorant of this fact, seeing that one of them is himself an Income Tax Commissioner.

4. The Board's judgment would have carried more weight with it had it been reserved until the Collector had had an opportunity of fully explaining his conduct

(Signed) J. D. SIM,

Secretary to Government.

No. 7,021.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 22nd October 1862.

Read the following letter from B. CUNLIFFE, Esq., Collector of Madras, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Sadras, 25th September 1862, No. 45:—

1. I have the honor to acknowledge the receipt of the Board's Proceedings of the 12th instant, No. 6,095, and as my conduct towards certain parties in carrying out the provisions of the Income Tax Act, has been severely commented upon by the Board, I beg to offer the following justification of it.

2. I made but a short report upon the case in my letter of the 17th May last, as the circumstances appeared to me simple enough, viz., that of a Shrotriem, whose proprietor had made no return, was charged without an hearing at a certain rate, but which rate had subsequently been reduced on finding that a portion of the Shrotriem revenues had been appropriated for a public purpose.

3. The Board, proceeding on the wrong assumption that the Shrotriem was granted for the support of a Choultry at Conjeveram, have directed a re-investigation of the disposal of the revenues, and have declared that my conduct was "discourteous and harsh" towards the Executors of the deceased proprietor.

4. Copies of both documents being before them, as enclosures to Petition No. 1,318, the Board have omitted to quote the conditions of the Perwana ruling the grant, and have given an extract from a letter of the Board of Revenue, of no force whatever, for no such clause was inserted in the Deed, as it is plain that the Perwana was the title referred to in the Board's letter of the 3rd January 1806, from the Collector, as endorsed upon it, having delivered it at Conjeveram on the 6th of June 1806.

5. The Perwana shows that the village was granted to "Collah Ravanuppa Chetty and his heirs in perpetuity," in consequence of his having constructed a charity choultry at Conjeveram, on conditions of paying an annual quit-rent of 350 Rupees, and on bearing allegiance as a British subject, and that no reference whatever is made in the stipulations to the Choultry.

6. It is clearly then a personal grant to the family, that it is optional with them to spend all or none of the village revenues on the Choultry, and that having enfranchized the village under the Inam rules, they may next day sell the village, unburdened with the maintenance of the Choultry.

7. The Executors must be aware of this, and yet have the boldness to come forward and declare that the village is a service grant, and that its terms having been fulfilled, it is exempt from tax under Act XXXII of 1860.

8. They also declare, and the Board repeat the assertion, that I have admitted the grant to have been for the support of the Choultry.

9. I cannot see where this admission is made. In paragraph 2 of my letter of the 17th May last, I merely state the representation made to me by the Executors. I have an indistinct recollection of one of them visiting me, and I may have admitted that the village was Shrotriem, but I must deny having acknowledged that it was Shrotriem to the Choultry, for, if as I am declared to have done, I read the Purwana, such an acknowledgment would have been in direct opposition to the terms of the grant.

10. It has not been regarded as a charity grant by the District authorities, who have never inquired into the disbursement of the proceeds, as they would have done, had the village been conferred on a public charity.

11. I then inquired of the Taluk Assessor whether the entire revenues had been expended on the Choultry, as in that case I was prepared to forego the charge imposed.

7. With regard to paragraph 18 of Mr. Cunliffe's letter, the Board observe that they described the Ameen's after inquiry as "valueless," on the ground that the inquiry, if one was to be made at all should have been made according to law; that is to say, that the Collector, having admitted on the Petitioners' explanations that there was ground for further inquiry, was bound to follow the procedure laid down in paragraph 56 of the Act.

8. When the Board communicated their opinion to Mr. Cunliffe that a further investigation was necessary, they did it under the impression that the village under the terms of the grant, was resumable if the entire proceeds were not expended in charitable purposes connected with the Conjeveram Choultry. It is clear that the Shrotrium was obtained for the support of the charity, for it is stated in paragraph 22 of the Chief Secretary's letter dated 9th November 1805, conveying the authority of Government for the grant, "that the Governor in Council has accordingly desired "a Sunnud to be prepared for that village providing for its resumption on the appropriation of "the funds arising from it to any other purpose than the support of the charity." The Board therefore before they record any final orders in the matter, request the Collector will obtain and send them the original Sunnud, or Purwanah.

9. The Board cannot join with Mr. Cunliffe in assuming that the Petitioners (the Executors under the will) in protesting that the grant was made for the support of the Choultry were aware that such a claim to exemption was not tenable; for their view of the case was in keeping with the Government orders; and, most probably, those orders, and the way in which the produce of the village had been expended, led them to overlook the discrepancy which, it is stated, exists between the Orders of Government and the actual conditions set forth in the Purwanah. All the circumstances of the case, including the Petitioners' position in life, and the fact that they, as mere Executors, have no personal interest in the matter, are inconsistent with the idea that the Petitioners have been actuated by fraudulent motives on the occasion.

10. With regard to paragraphs 21 and 22 of Mr. Cunliffe's letter, the Board observe that their previous orders in the case were not passed under Clause 2nd, Section 56 of the Act. They have no doubt that it was within the sphere of their duty to receive the complaint made by the Petitioners, impugning as it did Mr. Cunliffe's general mode of administering the Act; but if Mr. Cunliffe, after these present Proceedings have been communicated to him, should be of opinion that the Board had no proper authority to receive the Petitioners' complaint, or to pass the orders he has already received in the case, they will have no objection to submit all the particulars for the consideration of Government.

(A true Copy and Extract.)

(Signed) C. G. MASTER,
Acting Sub-Secretary.

To B. Cunliffe, Esq., Collector of Madras.

Exd. J. Wright.

Passing further orders and observations on the mode of levying the Income Tax on the Shotriem Village of Yanadur, and requesting further information on the subject.

No. 7,021.

Dated 22nd October 1862.

1862. Department.

No.

PROCEEDINGS OF THE BOARD OF REVENUE,

From B. Cunliffe Esq
Collector of Madras.

To W. Budleston Esq
Secretary to the Board of Revenue
Government House
Madras.

Sir,

As directed in Para 8 of the Board's Proceedings of the 22d Ultimo, received on the 29th idem, I have the honor to forward the Purwannah of the Shrotrium Village of Yenadur, and should have sent it with my letter of the 25th September, had the Petitioners produced it, as directed by me, but in this and other instances connected with this case, they have paid no attention to the orders of the authorities.

2. The Board ask under what authority I admitted the claim to exemption to the extent of a moiety of the demand.

3. I have already admitted that my final assessment was too low, and I believe that strictly I should have obtained the sanction of Government to this deduction, but it has been my practice to reduce the demand on income, when I found that the latter had been expended upon a charity so essentially public, as a choultry dispensing food to beggars and wayfarers.

Para 15

4. My Assessor having informed me, as it turns out wrongly, that about half of the revenues had been so expended, I reduced the original demand in the same proportion.

5. I must still differ from what the Board assert in the early part of Para 4. I must still submit that the parties not having made a return, and not having appealed within the period allowed against

against the Assessment imposed, and not having sa-
=tisfied me as to this default they were not entitled
to an hearing, and that my having made certain en-
=quiries of my Assessor, and having as an act of grace,
and without presume of law or otherwise, reduced the
demand, does not constitute an hearing the first step
in which would have been to call the parties before
me, and examined their books, a course which I did
not pursue.

6. My only regret in the matter is that I did not give them an hearing, as it must have resulted in the confirmation of the charge first made, the Perwannah showing that the grant was not to the Choultry, and the amounts proving that the merest trifle of the receipts had been spent on that Institution. I regret that by not giving them an hearing and by inadvertently lower-ing my demand upon erroneous information, I have unduly relieved the Petitioners, and have subjected the Government to a loss of 120 Rupees in the 3 years for which the Act is to run.

7. For this mistake I think that my pro-ceeding is open to reproof, but I cannot conceive how it can be rightly designated as "harsh".

8. I beg also to submit that I did not act as if the objections of the Petitioners had been well founded. What I did was to charge the Petitioners in the first instance, then on the information of my Assessor to reduce the charge one half, and on the 24th of January to thus inform the Petitioners by an Endorsement to a Petition received on that day from the Sub Collector.

Encl. to Pet.
1313 of 1862

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9. The Petitions of the 31st October and 2d February were addressed to the Sub Collector (and the Board seem to be aware of this as in Para 7 of their Proceedings of the 12th September they state "once more the Pe-=titioners requested the Sub Collector" &c.) and further than that, the first named petition was received by me for orders from the Sub Collector on the 24th January and endorsed by me on the same day. I was not cognizant of subsequent proceed-=ings which all took place in the Sub Division, though I afterwards declined on the 24th April to reopen the matter.

10. In their Proceedings however under reply the delay in answering the appeals to the Sub Col-=lector is put down as some of the ingredients of my "discourteous" conduct.

11. Adverting to the Board's remarks in Para 13 of Proceedings of the 12th September, I must con-=tend that even had Petitioners rightly supposed that the Shrotrium was exempt from the provisions of the Act, it was their duty to make a return stating the circumstance, but they had not even the excuse of such a supposition, for one of the Petitioners, as an Income Tax Commissioner for Ma-=dras, is constantly interpreting the Act and enforcing its provisions, and yet he put forth a claim which he knew to be worthless for two reasons 1st That the Village was not granted to the Choultry, and 2dly that if it was, its revenues had not been expended in the support of that object, but in feeding Brahmins and in Pago-=da ceremonies. The Boards argument in their favor in Para 9 seems to me of no force, for

assuming

assuming that Petitioners supposed that the Village was granted to the Chivalry, they knew that its ex=cepts had not been expended upon it.

12. I presume that the Board have now no wish that I should reinvestigate the matter, and therefore I have no desire to go to Government on that point, or to put an hypothetical case before them, but as in their Proceedings under reply they consider that they were "fully justified" in declaring my conduct to Petitioners to have been "harsh and discourteous", although they must have been then satisfied that Petitioners had no claim to any exemption, much less to the indulgence I had shown them, I beg that the papers may be forwarded for the con=sideration of the Government, in the hope that I shall be relieved from the reflections cast upon me.

Madras Collr's Office
Saidapet 12th November
1862.

Shaw & Co
pp Signed W. Cumbliffe
Collector

Shaw Wallace & Co
Merchants

Endd
Copy W. Collr to Govt.

6 The fore

1852 Despatch

No 2

Enclosure in Proceedings of the Board of Revenue to the Secretary to Government dated 18th December 1852 No

E. I. Co's

Rec'd 31/95 p 2.

Letter from the Collector of Madras to the Board of Revenue dated 12th November 1852 No 51 forwarding Cowramah of Vara Shro. Vadrem Village of Ganadoor

Copies of Papers relative to Inams.

Pro:9th Nov. 1805 on:
9 p. 243-

Pg 11 - 1862 Depart.
Pro: of Govt. for Jany. 63.
N° - 3496.

Proceedings of the Board of Revenue

Dated 18th
Desp. 18 } December 1862
Rec. 19th
C.2 with 1 Enclosure & 2 Cs.

No.
11 Encls. 9 Returned
& C. No. 219. 31 Jany.

Submitting to Government for such notice as they may consider fit comespondence relative to Mr. Cunliffe's proceedings in the matter of assessing the income derived from the Srotriem Village of Enadoor the property of the late D. Connah Reilly to the Income Tax -

No 434.

Ch. Jany 1863

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For the delays in the final official decision of the matter & the communication of the decision to the parties concerned, the Settlers appear so far as first came better & have been responsible.

But while concurring the Settlers for their actual high apparently unintentional discourtesy to the Trustees & the Navy

the respectful style of his communications to the 18th, the first must express his regret that the 18th did not receive more than censure until the case was fully before them. The claim which they took under their advocate ultimately proved to be invalid and the further advanced it could scarcely have been ignorant of this fact seeing that one of them is himself an Imperial Law Officer. [illegible] Since the 18th proceedings would have carried more weight with the

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had an opportunity
to fully Explaining
his conduct.

J. W. S

Revenue Department

No. 219

Proceedings of the Madras Government

Under date the 31st January 1863

Read the following Pro-
ceedings of the Board of
Revenue.

Submitting to Govt. for such
notice as they may consider fit,
correspondence relative to Mr. Cunliffe's
proceedings in the matter of assessing
the income derived from the Chintrieum
Village of Enadoo the property of the
late C. V. Conniah Chetty to the
Income Tax.

(Here enter 18th Dec. 1862 No.)

The Governor in Council
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101

14 Copies Tollet Pond Revel Capt. Jr with 9 Enclosures

Revenue 1863 Sept.
Pro: of Govt. for January.

No 219.

Pro: of the Madras Govt.
dated 31st January 1863.

From Sy Income Comm.
No/1863/pt/161, C No: 1007

Pro: Board of Revenue
regarding the imposition of
Income Tax by the Collector
of Madras, on the Shrotriem
Village of Puradom the
property of the late C.V.
Cunniah Chetty, with
orders thereon.

Pp 434 & 435.

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