M.R.O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	2787	Press ~~Mis.~~
176-72		
Dated	13th October	1969.

Not to be folded or roughly handled

Read again the following letters from the Consulting Engineer for Irrigation and Canal Company, dated 5th and 10th June 1869, Nos. 19 and 32, recorded in G. O., 12th June 1869, No. 1,692.

No. 176. Read also the following Proceedings of the Board of Revenue, dated 2nd August 1869, No. 5,618:—

Read the following Proceedings of the Madras Government, dated 12th June 1869, No. 1,692, Revenue Department.

ABSTRACT.—Forwarding for early report Endorsement of Public Works Department on correspondence from Consulting Engineer, Irrigation Company, regarding License-tax levied on Company in 1867, and refund of Rupees 1,000 improperly retained under cover of Profession-tax of 1868.

WITH the foregoing Proceedings, Government forward, for the Board's report, a correspondence which has passed between the Agent of the Madras Irrigation and Canal Company and the Collector of License-tax, relative to the liability of the Company to pay assessment under Acts XXI. of 1867 and IX. of 1868.

2. It will be seen from the following outline of the circumstances (in which, for the sake of clearness, the correspondence relating to the tax for 1867 and that for 1868 are, as far as possible, kept distinct) that the Agent of the Irrigation Company denies its liability to assessment under either Act, on the ground of its being as yet in receipt of no profits. This is the original cause of the dispute, which, owing to various circumstances, has become somewhat complicated.

3. In June 1867 the Company was assessed, under Schedule B. of Act XXI. of that year, to the amount of Rupees 2,000, as a Company with paid-up capital exceeding ten lacs of Rupees.

4. The Agent claimed exemption and a free license under Section 4 of Act XXIX. of 1867, the profits from the Company's operations in India having been as yet *nil*.

5. The Collector refused to withdraw his assessment, on the ground that the Company were paying a dividend on the paid-up capital, and the amount of the tax (Rupees 2,000) was paid by the Agent (under protest) on the 25th July 1867, and a Petition of Objection was presented on the 7th August, showing, first, that the Company's expenses had exceeded their receipts; and, second, that the guaranteed dividend is merely money lent on the security of anticipated revenue, and re-payable from future earnings.

6. No day was fixed for hearing these objections, pending a reference, made by the Collector, to Calcutta, with a view to learn the practice there followed in respect to guaranteed Companies. Mr. Winscom offered to hear the Agent's appeal at once, but the latter agreed to await the result of the reference to Calcutta, and the hearing was accordingly postponed.

7. On the 30th of October 1868 the Agent called the Collector's attention to the still pending appeal. Mr. Winscom stated in reply that his reference to Calcutta had not been answered, and that the appeal had been consequently overlooked. He also observed that the Act, under which the assessment for 1867 had

been made, had expired, and that the accounts were closed, and suggested that as another appeal from the Agent (against the assessment for 1868 under Act IX. of that year) was pending, the decision in that case should be awaited, before soliciting the instructions of Government on the unheard petition regarding the assessment for 1867.

8. In the course of the correspondence regarding the assessment for 1868, Mr. Henslow (in letter dated 7th May 1869,) again requested a decision on his previous appeal against the assessment of 1867, and a refund of the amount (Rupees 2,000) paid by him under protest.

9. He was informed that the appeal against the assessment for 1868 had been decided against him, and that nothing further could be done in either case, as the decision in principle governed both cases. Mr. Winscom offered to return the petition (regarding the assessment for 1867) with the endorsement that the case had been disposed of by the decision regarding the assessment for 1868.

10. Mr. Henslow objected that the two assessments were made under different Acts, and must be dealt with individually; whereupon Mr. Winscom appointed the 22nd of May 1868 for the hearing of the objections to the assessment of 1867.

11. The Agent, however, declined to prosecute the appeal before the Collector (pointing out that the Act under which the tax had been imposed had ceased to exist), and addressed the Consulting Engineer,* requesting him to lay the case before Government.

* Letter dated 12th June 1867.

12. Mr. Henslow's objections to the taxation of the Company under the Act of 1867 are therefore—

First, that no profits had been realized; and, second, that his appeal had never been heard; and as the Act under which the taxation was made had ceased to exist, could not now be considered, the delay being, as he states, through no fault of his.

13. The Agent's appeal against assessment of the Company under the Act of 1868 has been also referred to Government through the Consulting Engineer.

14. The grounds for this appeal are, as in the former case, the realization of no profits, and further the assessment of the Company as possessing two agencies, namely, Madras and Kurnool; Mr. Henslow contending that the Company has but one place of business, namely, Madras.

15. With regard to the first point, the Board consider that the Agent is right, and that as it is certain that the Company have made no profits, they are not liable to taxation. Under Section 20 of Act. IX. of 1868, the Manager of a Company may, at his option, either pay Rupees 500 for a Certificate, with a further sum of Rupees 500 for each branch and agency, or pay one per cent on the dividend declared by the Company during the year ending on the 31st March, in the year of assessment. In that year the Irrigation Company could certainly declare no real dividend, for they had no profits.

16. With regard to the question concerning the number of agencies for which the Company should be taxed, the Board observe that Government may probably decline to pass orders, pending the result of the reference made on this subject to the Government of India, in Proceedings of Government, dated 14th

12. Mr. Henslow's objections to the taxation of the Company under the Act of 1867, are therefore:—

1st. That no profits had been realised, and 2nd, that his appeal had never been heard, and as the Act under which the taxation was made had ceased to exist, could not now be considered, the delay being, as he states, through no fault of his.

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16. With regard to the question concerning the number of Agencies for which the Company should be taxed, the Board observe that Government may probably decline to pass orders, pending the result of the reference made on this subject to the Government of India, in Proceedings of Government, dated 14th December 1868, No. 3,111. The Board are of opinion, however, that Madras is the sole place of business of the Company under Section 33 of Act IX. of 1868, and that therefore they consider that if the Company is held to be taxable at all, a refund of the amount (Rupees 500) paid on account of Kurnool, should be made.

17. With regard to Mr. Henslow's claim to refund of the assessment paid for 1867, on the ground that his appeal against the Collector's decision has never been heard, the Board do not consider that, after due notice had been given to Mr. Henslow, and a date fixed for hearing his appeal, it was competent for him to refuse to appear. As he did not appear, his appeal has fallen to the ground.

18. The Board regret that they are unable to conclude without remarking both on what appears to them to have been neglect on the part of Mr. Winscom in leaving Mr. Henslow's first appeal unnoticed for so long a time, and also on the unusual, and as they consider improper tone of some of Mr. Henslow's letters, especially that dated 9th May 1869.

(A true Extract.)

A Grote
Acting Secretary.

To the Acting Secretary to Government, Revenue Department,
with two enclosures returned.

Exd. G. A. Turton.

Rec'd 18 June 1869. Pp. 328-29

Rec'd 23 Sept. 1869. P.C. 29 Sept.

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Rev. 1869. Board of Revenue, MADRAS.

P. 2654.

PROCEEDINGS, 2ND AUGUST 1869, No. 5,618.

Pup'r Engr. 1869. Encl. 2 P.C.
Received 9 Dec.
Chief Engr. Engr.

P. No 2787. 13 Oct. 1869

AUGUST.
No. 5,618.

License Tax—under Acts No XXI of 1867 and IX of 1868,—Opinion submitted to Government regarding liability of Madras Irrigation and Canal Company to payment of, and regarding their claim to a refund of amount paid by them under former Act.

176

No. 5,618.

Proceedings of the Board of Revenue, dated 2nd August 1869.

Read the following Proceedings of the Madras Government, dated 12th June 1869, No. 1,692, Revenue Department:—

Abstract.—Forwarding for early report, Endorsement of Public Works Department on correspondence from Consulting Engineer, Irrigation Company, regarding License-tax levied on Company in 1867, and refund of Rupees 1,000 improperly retained under cover of Profession-tax of 1868.

With the foregoing Proceedings, Government forward for the Board's report, a correspondence which has passed between the Agent of the Madras Irrigation and Canal Company and the Collector of License-tax, relative to the liability of the Company to pay assessment under Acts No. XXI. of 1867 and IX. of 1868.

2. It will be seen from the following outline of the circumstances (in which, for the sake of clearness, the correspondence relating to the tax for 1867, and that for 1868 are as far as possible kept distinct) that the Agent of the Irrigation Company denies its liability to assessment under either Act, on the ground of its being as yet in receipt of no profits. This is the original cause of the dispute, which owing to various circumstances has become somewhat complicated.

3. In June 1867, the Company was assessed under Schedule B. of Act XXI. of that year, to the amount of Rupees 2,000, as a Company with paid up capital exceeding ten lacs of Rupees.

4. The Agent claimed exemption and a free License under Section 4 of Act XXIX. of 1867, the profits from the Companys' operations in India having been as yet *nil*.

5. The Collector refused to withdraw his assessment on the ground that the Company were paying a dividend on the paid up capital, and the amount of the tax (Rupees 2,000) was paid by the Agent (under protest) on the 25th July 1867, and a Petition of Objection was presented on the 7th August, showing 1st, that the Company's expenses had exceeded their receipts, and 2nd, that the guaranteed dividend is merely money lent on the security of anticipated revenue, and repayable from future earnings.

6. No day was fixed for hearing these objections, pending a reference made by the Collector to Calcutta, with a view to learn the practice there followed in respect to guaranteed Companies. Mr. Winscom offered to hear the Agent's appeal at once, but the latter agreed to await the result of the reference to Calcutta, and the hearing was accordingly postponed.

7. On the 30th of October 1868, the Agent called the Collector's attention to the still pending appeal. Mr. Winscom stated in reply, that his reference to Calcutta had not been answered, and that the appeal had been consequently overlooked. He also observed that the Act, under which the assessment for 1867 had been made, had expired, and that the accounts were closed, and suggested that as another appeal from the Agent (against the assessment for 1868, under Act IX. of that year) was pending, the decision in that case should be awaited, before soliciting the instructions of Government on the unheard petition regarding the assessment for 1867.

8. In the course of the correspondence regarding the assessment for 1868, Mr. Henslow (in letter, dated 7th May 1869) again requested a decision on his previous appeal against the assessment of 1867, and a refund of the amount (Rupees 2,000) paid by him under protest.

9. He was informed that the appeal against the assessment for 1868 had been decided against him, and that nothing further could be done in either case as the decision in principle governed both cases. Mr. Winscom offered to return the petition (regarding the assessment for 1867) with the endorsement that the case had been disposed of by the decision regarding the assessment for 1868.

10. Mr. Henslow objected that the two assessments were made under different Acts, and must be dealt with individually; whereupon Mr. Winscom appointed the 22nd of May 1868, for the hearing of the objections to the assessment of 1867.

11. The Agent however declined to prosecute the appeal before the Collector (pointing out that the Act under which the tax had been imposed had ceased to exist) and addressed the Consulting Engineer,* requesting him to lay the case before Government.

* Letter, dated 12th June 1867.

December 1868, No. 3,111. The Board are of opinion, however, that Madras is the sole place of business of the Company under Section 33 of Act IX. of 1868, and therefore they consider that if the Company is held to be taxable at all, a refund of the amount (Rupees 500) paid on account of Kurnool, should be made.

17. With regard to Mr. Henslow's claim to refund of the assessment paid for 1867, on the ground that his appeal against the Collector's decision has never been heard, the Board do not consider that, after due notice had been given to Mr. Henslow, and a date fixed for hearing his appeal, it was competent for him to refuse to appear. As he did not appear, his appeal has fallen to the ground.

18. The Board regret that they are unable to conclude without remarking both on what appears to them to have been neglect on the part of Mr. Winscom in leaving Mr. Henslow's first appeal unnoticed for so long a time, and also on the unusual and, as they consider, improper tone of some of Mr. Henslow's letters, especially that dated 9th May 1869.

No. 177. **Order thereon**, 13th October 1869, No. 2,787.

Miscellaneous.

With reference to the assessment of the Irrigation Company under Act. XXI. of 1867, the Government consider that, under the circumstances detailed by the Board, Mr. Winscom was wrong in not deciding Mr. Henslow's appeal in due course. They therefore resolve to direct him to hear and dispose of it now. From Mr. Winscom's decision, a further appeal will lie to the Commissioner as laid down in the Act.

2. As regards the operation of Act IX. of 1868, the Government observe that Mr. Henslow's appeal appears to have been already settled strictly according to law, as the enactment gives no power either to the Board or Government to revise the decision of the Commissioner; but they resolve, as an act of grace, to sanction the refund of Rupees 500 to the Company.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Consulting Engineer for Irrigation and Canal Company.
,, the Public Works Department.
,, the Accountant-General.

Exd. F. R. Bantleman.

Govt. of [1869] Madras.

REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated October 1869.

G.O. ... October 1869, No. 2587.

OCTOBER

Nos. 173-177.

Revenue Dep[ar]t[men]t

Orders on No. 2654

High Court House Madras
3rd February 1870

My dear Mr MacGregor

I have just seen Mr Scotson writing reference to your demi-official of the 28th Ulto, but he does not think that section 6 of Act I of 1868 can be held to apply to the present case — but even if it did, we do not think that the appeal can still be heard by Mr Minson as he is no longer the Collector of Licenses under Act No XXI of 1867, his appointment having been abolished by the repeal of the Act.

Believe me
Yours sincerely
H. G. Prichard

A. W. MacGregor Esq
Acty Secretary
Board of Revenue.

"c Mr Munsleveand a date

"fixed

Revenue Dept.

Memo for Orders on No. 2654

4

High Court House, Madras,
27th January 1870.

My dear Mr. Mac Gregor,

I have recently had brought to my notice as a Member of the firm of Prichard and Barclay the Order of Government of the 13th of October 1869 No. 2787 — Revenue Department directing Mr. Winscow to hear an appeal under Act XXI of 1867 of the Agent & Manager of the Madras Irrigation and Canal Company Limited against an assessment of the Company made by Mr. Winscow under the provisions of such Act. The proceedings of Government together with all the papers connected with the case were sent to my firm with a view to our appearing before Mr. Winscow on behalf of the Irrigation and Canal Company on the hearing of the appeal directed by the above mentioned Order of Government. Upon looking however into the matter it appeared to me that a mistake had been made by Government in ordering Mr. Winscow to hear the appeal in question seeing that Act XXI of [illegible], the Act under which the appeal had been preferred, was absolutely repealed by Section 2 of Act No. IX of 1868 and has not since been re-enacted. And consequently it would be illegal for Mr. Winscow now to hear the proposed

"Mr. Henderson and a Date

"fixed

Revenue Dept.

Memo for Order in Council 2654

1. The Board in their Proceedings of 2nd August 1869 now before Council have summarised this case. There are however previous two points on which their views appear to be open to criticism -

2nd. In para 4 they state as follows "With regard to "Mr. Henderson's claim to "refund of the assessment "paid for 1867, on the ground "that his appeal against the "Collector's decision has never "been heard, the Board do not "consider that, after due "notice had been given to "Mr. Henderson and a date "fixed

proposed Appeal - Wherefore cancelled Mr. Norton on the subject and he evidently agrees with the view taken by me, and as it would certainly not be for the interests of Government that the appeal should be proceeded with and an objection raised as to Mr. Henderson's power to hear it, I shall feel obliged by your bringing the matter to the attention of the Board of Revenue and in order that it may be brought to the notice of Government should the Board deem it advisable to do so -

I remain,
Dear Sir,
Yours faithfully,
A. Richard

A. Mac Gregor Esqre
Actg. Secretary
Board of Revenue. -

"Texts for hearing his appeal
"it was complained for him
"he refuse to appear: As he
"did not appear his appeal
"was dismissed on the ground."

3. This is altogether a
misstatement of the case.
The real facts are as follows.

4. On Augst 1st 1867 Mr
Newbery Agent of Harrington
M. P. & C. C. submitted
an Affidavit to the Commissioners
the Collector of Licenses
against the operation of
Act XXI of 1867, on the
ground that the Certificate
which he represented had
in receipt of the profits, on
the 29th of August he
wrote again requesting to hear
the result of the appeal. On
Augst 30th Mr Commissioner

replied

replied informing him that
the hearing of his Appeal had
been delayed pending the re-
sult of a reference to
Calcutta with the object
of ascertaining whether
there was any precedent
in such a case which could
be followed. He should
inform Said Mr Commissioner,
"waiting for an answer, but
"if you wish the matter
"to be decided without further
"delay I shall be happy to
"hear the case next Wednesday
"at 12 O'Clock"

Mr Newbery replied
"that he should be most happy
"to wait Mr Commissioner's con-
venience as to the period
"of hearing the appeal"

On

6. On 30 Oct 1868 Mr. Hensloe addressed Mr. Linsecomb again requesting to be informed of the result of the reference to Calcutta.

7. Mr. Linsecomb on a reply of 2nd Nov. 1868 replied to state that he answer had been received from Calcutta & that in consequence the hearing of Mr. Hensloe's petition had been entirely overlooked. He further stated that it was impossible to hear the petition then as the Act under which it would have been argued had no longer an existence, but he offered to lay the case before Govt. with the view of gaining permission to refund the assessment levied of the Apt. per Cathcart & Mr. Winslow had preferred on the same grounds against the operation of Act IX of 1868 was decided in his favor

Mr

8. Mr. Hensloe did not reply till May 7th 1869 when he sent a notice of Mr. Kindersley's last communication stated that the contents of his (Mr. Hensloe's) former letter

9. Mr. Linsecomb then stated that as Mr. Hensloe had not replied to his letter of November 2nd he imagined that the proposition thereunto annexed had been accepted. He declined to admit the case to appeal.

10. To the matter rests. It is clear that Mr. Linsecomb's primarily to blame for the non-hearing of

was appointed to them under Mutiny

of the Appeal. The latter was formally closed. Its hearing was postponed by Mr. Wilcox's request, and he certainly ought to have informed Mr. Heudebourck apparently from motives of courtesy consented to its postponement, before he carried it from the Appeal. It is therefore doubtful that the best course would be to order Mr. Wilcox to dispose of the appeal now. It is true that Act XXI of 1864 is no longer in force, but this apparently is only a minor objection. ..... No. 11. As to Mr. Heudebourck's Appeal from Act IX of

of 1868, it is concluded that Government will not interfere. Mr. Wilcox's decision has already been confirmed by the Collector of Madras, whose decision is final. But as is pointed out by the Board in para 15, it certainly does not seem that the Company should have been taxed, inasmuch as they have made no profits.

[signature]

[signature]

[signature]

was appealed to them under the Act

As Agent & Manager of the Kurnool Canal Company, Mr. Benstone has been twice appealed under the license Acts Nos 21 of 1867 and No 9 of 1868. — He appealed on each occasion, and to facilitate them, his appeals were fixed for regular hearing by the Collector, Mr. Swinscow. One of these only viz: that against an assessment of Rs. 1000 under Act 9 of 1868 has been formally entered of, first by the rejection of the appeal by Mr Swinscow, and then by Mr Thornhill Bentinck as Commissioner of Revenue under the Rules published in conformity with the Act, a second appeal was preferred. It may be contended by Mr Benstone, that this appeal was not heard, save the work in a strictly judicial sense; but there is nothing in the Act, or in the Rules published by order of the Govt General, which appears to that all the steps taken in a judicial appeal, should be followed. — Mr Thornhill must have had before him all the papers bearing on the matter in which are the arguments against the assessment urged by Mr Benstone. On these, apparently, he adopted Mr Swinscow's conclusion that Mr Benstone's Company were liable for 500 Rs annually for two stations, Madras & Kurnool. — Neither the Govt of Fort St George nor the Govt of India had assigned to them under the Act

in question, any corrective power for dealing with the errors of the Collector or the Commissioner. If, therefore, it be thought, with reference to a late order of the Lieut: Gov^r., that the Court should not have been appealed to in two places of business, it would be an act of grace to order the refund of the appeal-stamp levied on one of them — Kurnool.

There can be no doubt, I think, that the double appeal was an error. I would therefore propose the repayment of 500 Rupees to Mr Newsome.

As regards the appeal by Mr Newsome against the assessment of Rs. 2000 under Act 21 of 1867, the papers show clearly & beyond doubt, that that appeal has never been heard at all.

Mr Newsom's own sworn statement admits that because Act 21 has ceased to be, he may abstain from disposing of such appeals hereafter as remained undisposed of when the Act was in operation. The idea is surely absurd. Such would be a matter impossible to settle. All matters arising under an Act within the date of that Act — as expected, being removed from the Statute Book. — Mr Newsom is also in error in deeming his later appeal by virtue of a similar mode of proceeding in regard to the earlier appeal under a different Act —

As suggested by the Master in the accompanying Memo., I am of opinion that Mr Newsom should now be instructed to take up Mr Newsome's appeal

vide Act 21/67 and determine it, & further address to Mr Thornhill, & inform Newsom of both assessment originally appealed

11 Sept 69.

A.J.A.

A. Rajahmundry

9l-2787. Revenue Depart.t

Proceedings of the Madras Government
under date the 13th Octr 69.

Read the following letter
from the Commr in C. for A.C. No
No 710 dated 19th & 32 record=
=ed in G.O. 12th June 69 No 1692.

Read also the following
Mo: of the 18th & 19th Currt.

Submitting opi=
=nion regarding liability of
Madras Irrigation & Canal
Company to payment of
License Tax under Acts No
XXI of 1867 & IX of 1868 &c.

W.C. 2nd Augt 69 No 5618.

With reference to
the assessment of the Irri=
=gation Company under
Act XXI of 1867, the Govt
consider that under the
circumstances detailed by
the Board, Mr Newcom
was wrong in not deciding
Mr Newlove's appeal
in due course. They therefore
resolve

resolve to direct him to hear and dispose of it now. From Mr Williamson's decision, a further appeal will lie to the Commissioners as laid down in the Act.

2. As regards the operation of Act IX of 1868, the Govt observe that Mr Hawtrey's appeal appears to have been already settled strictly according to law, as the enactment gives no power either to the Board or Govt to reverse the decision of the Commissioners but they resolve as an act of grace to sanction the refund of Rupees 500 to the Company.

To the Board of Revenue Des Mr Orlebar
The Commissioner Ganjam & Company Mr Campbell
The Collector Do Mr Ogilvie
The Secretary Land Revenue

E

Mr Ogilvie