

Revenue (1896) Department.

MISCELLANEOUS SERIES.

G.O., No. 4128

DATED 19th October 1896

[Despatch Abstract.]

County White Bd of Rev (L. R) the opinion of
the Advocate General in regard to the draft
rules under sec 20 of the Madras Hereditary
Village Officers Act, IV of 95.

BACK PAPERS.

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Revenue (1896) Department.

CURRENT No. 7198

Issue 19/10/96

From

Order misc. No. 4128 dt 19th October 1896. The Genl. Solicitor
Madras.

No. 537

Communicated to the Board of Revenue with the request that the remarks and suggestions of the Hon. the Advocate-General may be taken into consideration when revising the draft rules.

17/10/96

Dated 7-10-96
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Registered 9-10-96
Enclosures .
Spare copies .

SUBJECT.

Forwarding the opinion of the Adv. Genl. in regard to the draft rules under Sec. 20 of the Madras Hereditary Village Officers Act 1875.

C.P.
13 Oct. 96.

To the Bd. of Rev (L.R) Sec. 23-10

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Re Draft Rules under Section 20 of the Madras Hereditary Village Offices Act, III of 1895.

OPINION.

Rule 1. Proviso. line 1. The words "which will be" seem to be unnecessary.

Rules 8, 9, 10. For the word "should" wherever it occurs, I think "shall" ought to be substituted.

Rule 8 line 1 insert a comma after "servant".

line 2 omit the word "and" at the beginning of the line. Insert a comma after "defence". Omit the words from "should be distinctly down to the end of the sentence, and in lieu of them insert the words "and the statements of the witnesses shall be recorded".

Line 3. Substitute "all" for "the" before "witnesses".

Lines 4 & 5 Omit the words "including both those in support of the charges and those for his defence and the accused should be allowed to", substitute "who may".

Line 6 Omit "them", substitute "all witnesses examined in support of the charges"

Rule 9. Line 1. Begin with the words "in passing orders on the case". After "proprietor" insert "as the case may be".

Line 2. Insert a comma after "charges". Omit "and"

Line 3. after "each" insert "charge"

Line 4. for "grounds on which" to the end of the Rule substitute "reasons therefor, and the sentence passed on conviction".

Rule 11 Line 1 Before "an" insert "When". After "Appeal" insert "is preferred". After "or 8" insert "the Memorandum of Appeal".

Rule 12 Line 1. For "petition" read "memorandum". Why should the Memorandum of Appeal be forwarded through the Officer or proprietor

passed the order? Unless there is a very good reason for this provision

I think that it should be omitted. If it be omitted, then

Rule 13 is unnecessary. If a further enquiry is necessary in the opinion of the Appellate authority such enquiry may be ordered. If the Appellant is not to be allowed to add to his Memorandum of Appeal, or to amend it so as to meet the "report" referred to he may be prejudiced in his Appeal without having an opportunity of being heard upon the allegations or reasons contained in the report.

Rule 14. For this Rule as framed, I think that the following should be substituted: "When a Memorandum of Appeal is admitted, the Appellate authority shall fix a date for the hearing of the Appeal, and shall give due notice thereof to the Appellant."

"14(a) When the Appeal is from an order passed under Section 6, due notice thereof and of the date of hearing, shall be served upon the person whose appointment is objected to, who shall be the respondent in the said Appeal. Such notice shall declare that if he does not appear on the day so fixed, the Appeal will be heard ex parte."

"14(b) On the day so fixed, or on any other day to which the hearing may be adjourned, the Appellant shall be heard in support of the Appeal. When the Appeal is from an order passed under Section 6, the respondent shall also be heard if present".

"14(c) When an Appeal is heard ex parte in the absence of the respondent, and decision be given against him, he may apply to the Appellate authority to re-hear the Appeal, if he prove that the notice was not served upon him, or that he was prevented by sufficient cause from attending when the Appeal was called on for hearing".

Rule 15. For this Rule as framed substitute the following:-

"If the Appellate authority consider that further evidence is necessary, it may take such evidence itself or may direct the officer

whose order is Appealed against to take the additional evidence and to transmit the record thereof to the Appellate authority by a specified date".

"15 (a) In all cases where additional evidence is directed or allowed to be taken, the Appellate authority shall specify the points to which the evidence is to be confined".

Rule 16. line 2. after "and" insert "shall".

Rule 18. I think that this Rule should be thus worded:-

"On and after 1st January 1898 no person shall be appointed to the Office of Karnam, headman, or monigar who has not qualified according to the following educational tests, unless specially exempted by the Collector for reasons to be recorded by that Officer".

Line 11 Omit "be required to".

Rule 20 Insert "Every" at the commencement of the Rule, and for "Suit" read "Suit". I think that this Rule might with advantage be arranged in a manner similar to Section 50 of the Code of Civil Procedure. I suppose these Plaints are to be verified; if so, the following Rule should be added.

"Rule 21 (a) The plaint shall be signed and verified at the foot by the plaintiff".

Rule 21 It is possible that plaintiff may wish for the production of documents which are not in his possession or power, and which he, therefore, cannot file with his plaint. Following the provisions of the

Code of Civil Procedure, this Rule should, I think, run thus:-

"21. A plaintiff must file with his plaint all documents in his possession or power upon which he relies as evidence in support of his claim"

The effect of non production of documents by the parties should be dealt with in a general Section such as that herein suggested

as Rule 25 (a).

I think that this Rule should come after those relating to the rejection, return and amendment of plaints. If this suggestion be carried out, Rules 21 and 23 will change places.

Rule 22. When the Collector is of opinion that a plaint does not comply with the requirements of Rule 20, he may either return it to the plaintiff, or may permit the plaintiff to amend it.

Rule 23. This will be 21 if my suggestion be carried out.

I think that this Rule should be made similar in form to Section 54 of the Code of Civil Procedure thus-

"The plaint shall be rejected in the following cases:-

"(a) if the plaintiff is not eligible for appointment under Sub-sec -

-tion (1) of Section 10 of the Madras Proprietary Estates Village

Service Act, 1894; or under Sub-section (1) of Section 10. or

sub-section (1) of Section 11 of the Madras Hereditary Village

Offices Act, 1895".

"(b) if the suit appears from the statement in the plaint to be barred

under Section 14 of the Madras Hereditary Village Officers' Act,

1895; or by any positive rule of law".

"(c) if the relief prayed for is a mere declaratory decree"

"(d) if the plaint, having been returned for amendment within a -

specified time is not amended within that time".

"When a plaint is rejected by the Collector he shall record the

reason for his order".

Rule 24 Line 1. for "suit" read "plaint". After "admitted" insert "and the necessary process fee is paid by the plaintiff". Omit "written" before "summons". For "the" at the end of the line read "each".

Line 2. Insert a comma after "defendant". Omit the words "on - payment of the necessary process fee by the plaintiff".

Line 3 For "of the nature of the claim made" read "mentioned in Rule 20".

Rule 25. line 2 after "fixed" insert "and to" for "bringing" read "bring"; for "any" read "all".

line 3 begin the line with the words "in his possession or - power"; for "and all documents" read "or upon"; for "may" at the end of the line read "intends".

line 4. Omit "desire"; for "produce in his defence" read "rely in support of his case".

Omit the concluding paragraph and add the following Rule:-

"No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of Rules 21 and 25, shall be received at any subsequent stage of the proceedings unless good cause be shown to the satisfaction of the Collector for the non-production thereof, The Collector receiving such evidence shall record his reasons for so doing".

Rule 26. After "case" add "or who are required to produce documents".

Rule 29. line 2 for "of the parties appear" read "party appears".

Rule 30. line 1. Omit "only" after "defendant" after "appears" insert

"and the plaintiff does not appear"; for "pass judgment against the plaintiff by default", read "dismiss the suit".

Line 2. Omit the word "plaintiffs" before "claim": Omit "wholly" and "in", after "part" insert "thereof".

Line 3 after "judgment" insert "against the defendant".

Rule 31 line 1. Omit "only" after "plaintiff".

After "appear" insert "and the defendant does not appear".

line 2. for "proceed to examine the plaintiff and his evidence" read "hear the case".

line 3 omit "for or".

*(present numbering)

Rule 34 line 2. Omit the words "for the plaintiff and the defendant".

Rule 37 I think this Rule should come in before Rule 30.

Rule 54.(d) line 3. Omit the words "or pretending to exercise".

J. H. Spring Branson
Advocate General

Madras

2nd October 1896.

True copy
Wm. B. Branson
Govt. Printer

(1896) Department

From Ernest Barclay
Government Solicitor
Madras

To
The Secretary to Government
Revenue Department
Cotacamund

N° 537.

Dated 7th October 1896
Recd.

Forwarded with reference to
the Order of Government
N° 402 dated 11 August
1896. Revenue.

Ernest Barclay
Government Solicitor

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