

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 2675

DATED 26th May

[Despatch Abstract.]

Approving the recommendation of the Board of Rev that Collectors may be authorized to delegate the power of issuing special permits under Sec 11 of the Abkari Act to Managers of Wholesale Vendors whenever requisitioned by the licensees, and requesting the Board to submit the necessary notification.

BACK PAPERS.

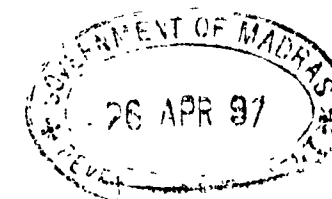
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
				90	~~382~~ 3836	Two	24/7/17

Revenue (1897) Department.

CURRENT No. 3418



From The Secretary to the Commission,
Salt, alkali and Separate Revenue

His No. 1436

Dated 6th April 1897.

Received

Registered

Enclosures /

Spare copies

Order

SUBJECT.

Reporting for the orders of Government the particulars of the prosecution of a gumasta of an arrack wholesale depotkeeper for issuing transport permits signed by himself without holding a power of attorney from the licensee and recommending to Government that Collector may be authorized to delegate the power of issuing special permits under Section II of the alkali Act to the managers of wholesale vendors whenever requisitioned by the licensee.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

BOARD OF REVENUE (SEPARATE REVENUE), 8TH JULY 1892, No. 368.

PROCEEDINGS OF THE BOARD OF REVENUE (SEPARATE REVENUE).

C. S. CROLE, Esq., C.S.

READ—the following letter from W. O. HORNE, Esq., C.S., Acting Deputy Commissioner of Salt and Abkari Revenue, Southern Division, to the Secretary to the Commissioner of Salt, Abkari and Separate Revenue, dated 20th June 1892, No. 2362 :—

With reference to Board's Proceedings, No. 2225, dated 9th June 1892, I beg to be furnished with the Board's clear orders as to whether the words "permits signed and granted by you when issuing," which occur in the condition of the wholesale vend depôt-keeper's license referred to by the Board, are to be taken to prohibit the practice of issuing permits with signatures printed or otherwise executed prior to the time of issue, and whether it is to be taken that agents employed by firms, who hold such licenses, must either have a power of attorney to sign for the firm, or must have the license in their own names.

RESOLUTION—dated 8th July 1892, No. 368.

The Deputy Commissioner is informed that the expression "permits signed and granted by you when issuing the spirits" occurring in condition 11 of the wholesale vend depôt-keeper's license should be taken as prohibiting the practice of issuing permits with signature printed or otherwise executed prior to the time of issue, and that permits are not valid unless they are signed by the licensee or his duly empowered agent. It follows that, in the absence of a power of attorney, permits must be signed by the person in whose name the depôt license stands, and that at the time of, and not prior to, the issue of the spirits which they cover.

(A true Copy and Extract.)

(Signed) W. O. HORNE,
Acting Secretary.

(True Copy.)

(Signed) EDMUND MILLETT,
Assistant Secretary.

to the Deputy Commissioner of Salt and Abkari Revenue,
Southern Division.
Copy to other Deputy Commissioners of Salt and Abkari Revenue.
" to Assistant Commissioners of Salt and Abkari Revenue.
" to Collectors.
" to the Inspector, Madras Town Circle.

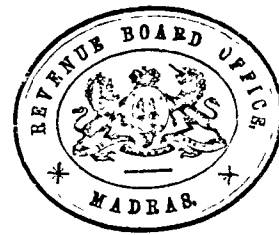
Exd. W. J. Lewis.

1892.
Board of Revenue
(Separate Revenue),
MADRAS.

Printed August 5th.

Proceedings, 8th July 1892, No. 368.

Passing orders on a letter from the Deputy Commissioner, Southern Division, as to the meaning of the words "permits signed and granted by you when issuing the spirits" in condition 11 of the wholesale vend depot-keeper's license, and as to whether the agents employed by firms should have a power of attorney to sign for the firm or have the license issued in their own names.



Proceedings of the Board of Revenue
(Separate Revenue.)

Dated 6th April 1897.
His No. 1436.

Read again Board's Proceedings His No. 5157 S.P. dated 16th December 1896. requesting the Government Solicitor to report whether an anark wholesale vend license can delegate the power conferred on him by Government of issuing transport permits to his agent, and requiring the Collector of Bellary to obtain and forward a copy of the Madagalli Tahsildar Magistrate's judgment in a certain abkari case tried by him.

Read also the following letter from the Government Solicitor, Madras, dated 9th January 1897 No. 14.

1. I beg to acknowledge receipt of
Extract

Extract from the Board's Proceedings
dated 16th December 1896. N^o 5157. This
requesting my opinion whether licensed
wholesale vendors of Country spirits can
legally delegate the powers conferred
on them to their Agents even though
the latter have been duly constituted
as such by Power of Attorney
executed in their favour.

2. Section 4 (b) of the Madras Abkai
Act 1. of 1886, provides that the
Governor in Council may, from
time to time, by Notification,
appoint any person other than the
Collector of Land Revenue to
exercise all or any of the powers
and to perform all or any of the
duties of a Collector in respect
of the Abkai Revenue, either
concurrently with or in exclusion
of

of the Collector of Land Revenue,
subject to such control as the Governor
in Council may from time to time
direct.

3. Under the above Section all licensed
wholesale vendors of Country spirits,
have by Notification N^o 57, been
appointed by the Governor in Council
to exercise, within the area specified
in their licenses, all or any of the
powers and perform all or any of
the duties of a Collector in respect
of the issue of special permits
under Section 11 of the Act for
the transport of such spirits sold
by themselves, concurrently with
and subject to the control of the
Collector.

4. Section 11 of the Act provides
that permits for the transport
of liquor or intoxicating drugs
may

may be issued by the Collector or
by any person duly empowered
on that behalf, and the licensed
Wholesale Vendors of Country Spirits
have by notification No. 57 been
appointed by the Governor in Council
to exercise the powers and perform
the duties of a Collector in respect
of the issue of special permits
for the transport of such Spirits
so to say themselves.

5. It therefore follows that
licensed Wholesale Vendors of
Country Spirits can authorize
their Agents, by power of Attorney,
to issue permits for the transport
of such Spirits within the areas
specified in the licenses of such
vendors. The word used in Section 4
(4) of the Act is "appointed" while
the

the words used in Section 11 are "duly em-
powered." The licensed wholesale vendors
of Country Spirits are "appointed" by No-
tification No. 57 while their agents are "duly
empowered" by Power of Attorney, and
I think that if it had been intended
that permits for the transport of liquor
should be issued only by the Collector
and persons appointed under Section
4 (4) Section 11 would have said so.

6. The notification No. 57 does not seem
to affect the question. Under Section
5 (2) of the Act, the Governor in Council
is empowered to, from time to time,
make

2 make rules for regulating the delegation
by the Board of Revenue, by the Commis-
sioner or by Collectors of any powers
conferred by the Act or exercised in res-
pect of Alkari Revenue and all this
notification does is to declare to whom
the Commissioners and Collectors may
delegate certain of their powers."

Resolution

The Board begs to report the following

Case for the orders of Government

2. The gumasta of an arrack whole-
sale depot keeper was charged before the
Sub-Magistrate of Badagalli in the
Bellary district for issuing permits
for the transport of liquor signed by
himself

himself without holding a power of
attorney from the licensee. The Sub-Magis-
trate acquitted the accused on the ground
that no offence had been committed under
sections 56 or 63 of the alkari Act. The
Collector, therefore, recommends that,
in order to meet the requirements of
such cases in future, Condition No 11 of
the wholesale depot keepers' license may
be modified so as to make it clear
that permits shall not be signed or issued
by a gumasta unless he holds a power
of attorney from the licensee.
3. The Board agrees with the Collector
in considering that the case was
rightly

rightly acquitted (The Inspector showed
great want of discretion in prose-
cuting it ^{all}) and that the only legal
effect of the accused's conduct was to
make the permits issued by him in-
valid so that the transporters might
have been prosecuted for transporting
liquor without a license. It does not,
however, consider that the amend-
ment proposed by him in the depot
keepers license can be approved. In
Board's Proceedings No 368 dated 8th July
1892, it is true, it has been ruled that
permits are not valid unless they are
signed by the licensee or his duly em-
powered agent. The Board as at present
constituted, is however, doubtful

as to whether a depot keeper has authority
to delegate the powers conferred on him
by means of a power of attorney.
Under Section 11 of the alkali Act
permits for the transport of liquor
or intoxicating drugs may be issued
by the Collector or by any person duly
empowered in that behalf, and under
Section 4 (4) all licensed wholesale vendors
of Country spirits have been appointed
Collectors for the issue of permits under
Section 11 in Government notification
No 57 dated 15th January 1890 published
on pages 97-99 of the Fort Saint George
Gazette dated 4th February 1890.
Under

Under notification no 60 dated 15th
January 1890 issued under Section
5(2) of the Act and published on pages
100 to 101 of the Fort Saint George Gazette
dated 4th February 1890, the extent
to which the Commissioner and
Collectors may delegate their powers is
laid down and defined. It will
be observed that there is nothing in
this notification which could be
held to authorize the delegation of
powers to a private individual
by any one holding the position of
Collector for the purpose of the Act.
The point being one of some
difficulty.

difficulty was referred to the Government
Solicitor for his opinion which is con-
tained in the letter read above. He con-
siders that under Section 11 of the Act,
licensed wholesale vendors of Country
spirits having been admittedly appoint-
ed Collectors for the purposes of that
Section can authorize their agents,
by power of attorney, to issue permits
for the transport of such spirits
within the areas specified in the licenses
of such vendors. He points out that
the word used in Section 4(h) of the
Act is 'appoint' and those in Section
11

"are "duly empowered" from which
he concludes that the words "duly
empowered in that behalf" in the
latter section mean "duly empowered
by the Collector" and not "duly appointed
by Government". He apparently
takes the word "empowered" to necessarily
mean "empowered by a power of attorney"
and holds, therefore, that Notification
No. 60, referred to above which deals
only with the delegation of the powers
of collectors etc otherwise than by power
of attorney has nothing to do with
the point. This view is supported by
the fact that notification No. 60
is issued under Section 5(2) of

the Act which authorizes the Governor
in Council to make rules regulating
the delegation by collectors, of the powers
conferred on them by the Act, but whole-
sale vendors of Country spirits are not
collectors for the purposes of Section 5(2)
having been appointed only for the purposes
of Section 11. On the other hand, the Board
cannot accept the view that collectors in
the Land Revenue sense are authorized
by Section 11 to delegate their powers by
power of attorney irrespective of noti-
fication No. 60 as necessarily follows
from the adoption of the Government
solicitor's opinion. It considers that
in the absence of an express legal
provision a collector can no more
delegate the power of issuing a special
permit to a private individual
than he could to perform any of his other
numerous revenue duties.

5- Apart, however, from the legal
aspect

aspect of the case, the Board considers
that the present system of granting
permits requires some modifications.
The wholesale vend depôts are a most
essential portion of the Excise System
and those who keep them should be freed
from all unnecessary restrictions
as to their management. The expense
and inconvenience caused by re-
quiring them to grant a power of
attorney every time they change their
managers or gunastas are con-
siderable and the Board would,
therefore, recommend, in order to
obviate the difficulty, that Collectors
may be authorized to delegate
the power of issuing special
permits under Section 11
to the managers of wholesale
vendors

vendors whenever requisitioned
by the licensees.

(True Copy and Extract)

Examination

Assistant Secretary

To the Secretary to Government
Revenue Department

(with Copy of B.P. No 368 dated 8th July 1892)

Copy .. Collector of Bellary.

Dr
22/7/97

For orders:-

The Hon. Mr. Bliss C.J.E.

27/5/97

The question raised for consideration is whether under the Abkari Act, I of 1886, and the rules framed thereunder wholesale vendors of country spirits can authorize their agents to grant special permits for the transport of liquor under section 11 of the Act.

2. Under Section 4 (b), the Governor in Council may appoint any person other than the Collector of Land Revenue to exercise all or any of the powers and to perform all or any of the duties of a Collector in respect of the Abkari revenue either concurrently with or in exclusion of the Collector of Land Revenue, subject to such control as the Govt. in Council may from time to time direct". Under Notification No 57 in G.O. No 39 of 15.1.1890 "All wholesale vendors of country spirits" have been appointed "to exercise all the powers and to perform all the duties of a Collector in respect of the issue of special permits

22/5/97

permits under Section 11 for the transport of such spirits sold by themselves concurrently with the Collector and subject to the control of the Collector". So that wholesale vendors of country spirits have been appointed collectors in respect of the issue of special permits under Section 11.

3. Section 11 enacts that "Permits for the transport of liquor or intoxicating drugs may be issued by the Collector or by any persons duly empowered in that behalf".

4. The Government Solicitor, who was asked by the Board to give his opinion on the subject, is of opinion that licensed wholesale vendors can authorize their Agents by Power of Attorney to issue permits for the transport of such spirits within the areas specified in the licences of such vendors. He arrives at this conclusion ^{by no} reading of sections 4 and 11. ^{together} Under the former section, the Governor in Council appoints certain persons as Collectors, while under the latter permits can be issued by the

*. The Governor in Council may from time to time make rules

(2) regulating the delegation by the Board of Revenue, by the Commissioner or by Collectors of any powers conferred by this Act or exercised in respect of Abkari Revenue under any Act for the time being in force.

the Collector (persons appointed as such under section 4) or by any person duly empowered in that behalf. The Govt. Solicitor considers that under this Agents duly empowered by power of attorney can issue the permits.

5. The Board of Revenue is doubtful whether the above interpretation is correct. Under notification No. 1 issued under Section 5(2), the extent to which the Commissioners and Collectors may delegate their powers is laid down. The Board points out that there is nothing in this notification which could be held to authorize the delegation of powers to a private individual by any one holding the position of a Collector under the Act. As pointed out by the Govt. Solicitor, the above notification does not seem to affect the question. The Board admits the force of this argument, but states that it cannot accept the view that Collectors in the land Revenue are authorized by section 11 to delegate their powers by power of attorney irrespective of the power

power of delegation conferred on them by the notification above referred to.

6. It is submitted that the view taken by the Government Officer is correct and that Collectors (appointed as such under Section 4) can empower their agents by means of a power of attorney to issue special permits under Section 11.

7. Apart from this question the Board is of opinion that the expense and inconvenience caused by requiring the wholesale vendors to have a power of attorney every time they change their agents is considerable; and as wholesale vendors are a most essential portion of the revenue system the Board recommends that Collectors may be authorized to delegate the power of issuing special permits under Section 11 to managers of wholesale vendors whenever requested by the licensees.

8. If the Board's proposal is approved, the following draft G.O. may issue

11/15/77.

G.O.

I submit that the Government Officer's opinion is wrong and the reasons on which it is based are set out in para 5 of his letter of the 11th inst. & are sound. As pointed out by the Hon. Secy. the undoubted fact that within a few hours a person appointed as such can delegate their powers under the Act is fatal to the contention that they can do so by a Power of Attorney. The Hon. Secy. has proposed that a simple solution of this difficulty be authorized by authorizing wholesale vendors to delegate their powers to their agents. This I submit may be approved.

11/15/77.

G.O. No. 2875 of 28th May 77.

The Board's recommendation is approved. The necessary draft notification should be submitted to Govt for approval and publication in the Fort Saint George Gazette.

11/15/77.

The B. of Rev. (S. Rev.).

No. 28-5-77

The B. of Rev. is as shown in end note, not as first

When given for copying _____
 When copied _____ } 189
 When examined _____
 When signed _____

READ AGAIN G.O., No _____ DATED _____
 189 .

ENCLOSURE TO O. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT, DITTO.

PAPERS NOT FOUND UP, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

N.B.—
 A = Copy in full.
 B = Not to be copied.
 P = Copy abstract only
 Q = Copy heading only