

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 3836

DATED 24th July

[Despatch Abstract.]

approving the draft modification
in the Fort St. George Gazette draft modification
regarding the delegation by collectors of
their powers in respect of the grant of
special permits under Sec: 11 of the Madras
Alcohol Act 1856, to managers or proprietors
of wholesale vendors of country spirits.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
				2.0	2675	Am	26/7/97

FURTHER PAPERS.

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

1897.

Board of Revenue

(Separate Revenue),

MADRAS.



Printed July 8th.

Proceedings, No. 242, 16th June 1897.

G.O. Ind. no. 3836 of 24th July 97

The draft Notification is approved and will be published in the Fort Saint George Gazette.

11/7/97

JUNE.

Published at p. 949, Part I of the 7.5.97. 27th July 97

To the Bd of Rev., S.R. } Dec. 28. 7.97
 " the Sub E Govt Secy }
 Note: In order that the wording may be uniform with the wording of para III (e), f & (g) of No. 1260 of 15th Jan 90 "to" may be substituted for "of" in the draft Notification.

Submitting to Government, for approval and publication in the Fort St. George Gazette, draft notification regarding the delegation by Collectors of their powers in respect of the grant of special permits under section 11 of the Madras Abkari Act, 1886, to managers or gumastahs of wholesale vendors of country spirits.

Approved at 27/7/97

27/7/97

X vrote sent to P.O. on 26.7.97

PROCEEDINGS OF THE BOARD OF REVENUE
(SEPARATE REVENUE).

Read—the following G.O., Mis. No. 2675, Revenue, dated 26th May 1897 :—

Read—again the following Proceedings of the Board of Revenue (Separate Revenue), Mis. No. 1436, dated 6th April 1897 :—

Read—Proceedings of the Board of Revenue (Separate Revenue), Mis. No. 5157, dated 16th December 1896.

ABSTRACT.—Requesting the Government Solicitor to report whether an arrack wholesale vend licensee 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 Hadagalli Tahsildar Magistrate's judgment in a certain abkari case tried by him.

Read—the following letter from ERNEST BARCLAY, Esq., Government Solicitor, to the Secretary to the Board of Revenue (Separate Revenue), dated Madras, 9th January 1897, No. 14 :—

I beg to acknowledge receipt of extract from the Board's Proceedings, dated 16th December 1896, Mis. No. 5157, requesting my opinion whether licensed wholesale vendors of country spirits can legally delegate the power 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 Abkari Act, I 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 Abkari revenue, either concurrently with, or in exclusion 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 No. 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 be issued by the Collector or by any person duly empowered in 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 transport of such spirits sold by 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 (b) of the Act is "appoint" while the words used in section 11 are "duly empowered." The licensed wholesale vendors of country spirits are "appointed" by notification 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 (b) section 11 would have said so.

6. The notification No. 60 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 rules for regulating the delegation by the Board of Revenue, by the Commissioner or revenue, and all this notification does is to declare to whom the Commissioner and Collectors may delegate certain of their powers.

Resolution—Mis. No. 1436, dated 6th April 1897.

The Board begs to report the following case for the orders of Government.

2. The gumastah of an arrack wholesale depôt-keeper was charged before the Sub-Magistrate of Hadagalli in the Bellary district for issuing permits for the transport of liquor signed by himself without holding a power of attorney from the licensee. The Sub-Magistrate acquitted the accused on the ground that no offence had been committed under sections 56 or 63 of the Abkari Act. The Collector, therefore, recommends that, in order to meet the requirements of such cases in future, condition No. 11 of the wholesale depôt-keeper's license may be modified so as to make it clear that permits shall not be signed or issued by a gumastah unless he holds a power of attorney from the licensee.

3. The Board agrees with the Collector in considering that the case was rightly acquitted (the Inspector showed great want of discretion in prosecuting it at all) and that the only legal effect of the accused's conduct was to make the permits issued by him invalid so that the transporters might have been prosecuted for transporting liquor without a license. It does not, however, consider that the amendment proposed by him in the depôt-keeper's license can be approved. In Board's Proceedings, dated 8th July 1892, No. 368, it is true, it has been ruled that permits are not valid unless they are signed by the licensee or his duly empowered agent. The Board, as at present constituted, is, however, doubtful as to whether a depôt-keeper has authority to delegate the powers conferred on him by means of a power of attorney. Under section 11 of the Abkari 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 (b) 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 St. George Gazette* dated 4th February 1890. Under notification No. 60, dated 15th January 1890, issued under section 5 (2) of the Act and published on pages 100-101 of the *Fort St. 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.

4. The point being one of some difficulty was referred to the Government Solicitor for his opinion which is contained in the letter read above. He considers that, under section 11 of the Act, licensed wholesale vendors of country spirits having been admittedly appointed 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 (b) 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, &c., 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 wholesale 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 notification 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 of the case, the Board considers that the present system of granting permits requires some modification. 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 requiring them to grant a power of attorney every time they change their managers or gumastahs are considerable 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 whenever requisitioned by the licensees.

(True Copy and Extract.)

(Signed) N. S. BRODIE,
Acting Secretary.

To the Secretary to Government, Revenue Department
(with a copy of Board's Proceedings, No. 368, dated 8th July 1892.)
Copy to the Collector of Bellary.

Order—Mis. No. 2625, Revenue, dated 26th May 1897.

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

(True Extract.)

(Signed) A. R. KNAPP,
for Ag. Secretary to Government.

To the Board of Revenue (Separate Revenue).

RESOLUTION—No. 242, dated 16th June 1897.

As directed in the Government Order read above, the Board begs to submit the appended draft notification for approval and publication in the *Fort St. George Gazette*.

(True Copy and Extract.)

(Signed) C. G. TODHUNTER,
Acting Secretary.

(True Copy.)

To the Secretary to Government, Revenue Department
(with notification).

Copy to all Collectors.
" all Deputy Commissioners and Assistant Commissioners.
" the Inspector, Madras Town Circle.

APPENDIX

Notification.

Under section 5 (2) of the Madras Abkari Act, 1886, His Excellency the Governor in Council is pleased to make the following rule in continuation of notification No. 60, dated 15th January 1890, published on pages 100 to 101 of the *Fort St. George Gazette*, dated 4th February 1890, Part I, as amended by notifications No. 571, dated 12th December 1892, published on page 1557 of the *Fort St. George Gazette*, dated 13th December 1892, Part I, No. 475, dated 30th August 1895, published on page 1022 of the *Fort St. George Gazette*, dated 10th September 1895, Part I, No. 420, dated 19th August 1896, published on page 1075 of the *Fort St. George Gazette*, dated 25th August 1896, Part I, No. 2, dated 23rd January 1897, published on page 178 of the *Fort St. George Gazette*, dated 16th February 1897, Part II, and No. 155, dated 6th March 1897, the erratum published on page 365 of the *Fort St. George Gazette*, dated 28th March 1893, Part I:—

(i) To the manager or gumastah of a licensed wholesale vendor of country spirits at the request of the licensee—

All or any of their powers in respect of the grant of special permits under section 11 of the Act for the transport of country spirits sold by him.

Ed. A. F. Eccleston.

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

READ AGAIN G.O., No. 189

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATUTE WITH DITTO.

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