Revenue (1898) Department.

PRESS SERIES.

12/5

G.O., No. 205 & 206

DATED 15th April 1898.

[Despatch Abstract.]

Enclosing that the Govt. of India has addressed us the subject of the restrictive conditions imposed upon the grant or transfer of mining leases to registered companies.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
G.O. 2682			24.6.98				
Cir.	3459/91						

Government (1898) of Madras.

REVENUE.

Recd. } 1898. *Enclosures*

Regd. *Spare copies*

G.O., No. 205, 15th April 1898.

APRIL.

Ordered that the Government of India be addressed on the subject of the restrictive conditions imposed upon the grant or transfer of mining leases to registered companies.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—again G.O., No. 955, Revenue, dated 15th November 1897.

Abstract.—Communicating to the Board of Revenue, with remarks, letter from the Government of India declining to sanction in advance an application from Messrs. Holmes and Bakewell to transfer their gold mining leases to a company, and informing Mr. W. T. Hamilton-Holmes of this decision.

Read—also the following Proceedings of the Board of Revenue (Land Revenue), Mis. No. 10, dated 4th January 1898:—

Read—G.O., No. 955, Revenue, dated 15th November 1897.

Resolution—Mis. No. 10, dated 4th January 1898.

Recorded.

2. The Board has no remarks to offer.

(True Extract.)

(Signed) R. C. C. CARR,
Secretary.

To the Secretary to Government, Revenue Department.

Order—No. 205, Revenue, dated 15th April 1898.

Miscellaneous.

The following letter will be despatched to the Government of India.

(True Extract.)

(Signed) G. S. FORBES,
Ag. Secretary to Government.

To the Board of Revenue (Land Revenue).

Exd. A. F. Ecclestone.

30 Copies.

1898.

REVENUE AND AGRICULTURAL DEPARTMENT.

From

The Government of Fort St. George.

Recd. } 1898. *Enclosures*

Regd. *Spare copies*

Letter No. 206, 15th April 1898.

APRIL.

Addressing the Government of India on the subject of the restrictive conditions imposed upon the grant or transfer of mining leases to registered companies.

REVENUE DEPARTMENT.

From

The Hon'ble Mr. G. S. FORBES, I.C.S.,
Acting Secretary to the Government of Madras,

To

The SECRETARY to the GOVERNMENT OF INDIA,
Revenue and Agricultural Department,

Dated Fort St. George, 15th April 1898.

Sir,

Miscellaneous.

I am directed to acknowledge the receipt of your letter, No. 3036—82-2, dated 13th October 1897, in which the object of the Government of India in imposing restrictions on the transfer of mining leases to registered companies is set forth and the circumstances are indicated in which the Government of India will ordinarily be prepared to sanction such transfers.

2. As desired in the concluding paragraph of your letter, Messrs. Holmes and Bakewell have been informed that the Government of India are unable to grant in advance the general permission sought by them to transfer to a company to be formed in London their mining leases. The conditions prescribed in paragraph 8 of your letter have been communicated to them.

3. After careful consideration of the facts and arguments set forth in your letter, His Excellency the Governor in Council is compelled to express his great regret that the Government of India has not been able to abandon the restrictive conditions imposed by the rules on the transfer of mining leases. His Excellency in Council feels strongly that these restrictions are likely to constitute a serious obstacle to the development of mining enterprise in this country by deterring capitalists from investing money in such projects. The total abandonment of the restrictions having, however, been pronounced inexpedient, His Excellency in Council would venture to suggest certain modifications of the rules with a view of minimising their effect in this respect.

4. I am in the first place to suggest that the power of sanctioning transfers of mining leases, subject to the fulfilment of the conditions formulated in paragraph 8 of your letter, may be delegated to the Local Government. The Local Government would, it is believed, be in a better position than the Supreme Government for forming a correct opinion as to whether or not the conditions have been satisfied in any particular case. Great delay and consequent loss and discouragement to intending

investors might result, if a reference to the Supreme Government were insisted on in every case.

Secondly, it is observed that condition (*d*) requires the promoters to retain for eighteen months after the transfer of the lease or the registration of the company any shares allotted to them as part payment in excess of what represents the actual recoupment of their expenditure in proving the concession. His Excellency in Council doubts the necessity of insisting upon this condition, if the other conditions are satisfied. Moreover, it is not clear how the restriction is to be enforced, what consequences are to ensue if the undertaking is violated, and whether it is proposed that the transfer of the shares is to be made legally inalienable or non-negotiable during the period. Circumstances may easily arise in which it would be improper to impress such a character upon them. Apart from the fact that the shares must, it is presumed, remain liable to attachment in satisfaction of a decree of Court against the promoter in whose name they stand or in the event of his bankruptcy or in such like cases, it seems right that he should be left free to dispose of them in payment, for instance, of his just debts; and it would also be an unnecessary hardship to require him to lock up his property in the manner intended, for so long a period, if another opening for more profitable investment should meantime present itself. Further, there can be little doubt that methods of evading the condition would be readily discovered by persons who desired to do so. His Excellency in Council is, therefore, of opinion that condition (*d*) is impracticable and would suggest its abandonment, since the other conditions appear to be sufficiently stringent for the purpose in view, while the ordinary law also provides certain remedies against fraud and imposition.

5. In paragraphs 10 and 11 of your letter under reply, it is pointed out that among the considerations that weigh strongly with the Government of India in imposing restrictive conditions is the difficulty of dealing with mining enterprise in Native States on different, and therefore invidious, lines from those adopted for British India. His Excellency in Council readily acknowledges that on a matter of this sort the Government of India is in a more favourable position for arriving at a correct decision than a Local Government. At the same time His Excellency in Council would venture to suggest whether, having regard to the British interests at stake and to the preeminent importance of developing the mineral resources of the Empire, there is not a disposition to show a somewhat undue deference to what is assumed to be the feelings of the Native States in this matter. The peculiar circumstances of Native States call for differential treatment in many respects, and this policy being of long continuance is not necessarily regarded as invidious. The statutory prohibitions contained in 37 Geo. III, C. 142, S. 28, make it illegal for British subjects to lend money or to be concerned directly or indirectly in raising loans for a Native State without the sanction in writing of the Secretary of State or the Governor in Council, and this statutory interference already goes far to control direct transactions between Native States and European capitalists. Further, the Supreme Government has large powers by treaty or otherwise in respect of controlling the residence of Europeans within a Native State. There are other important matters in which the liberty of the Native States is regulated and controlled by the Supreme Government on imperial grounds. His Excellency in Council fully admits that it is most important not to exercise powers of this kind where it can possibly be avoided. But the supervision over the mining industry in Native States in its relation with European capitalist which the Government of India feels bound to exercise is to be maintained entirely for the commercial and industrial benefit of the State and with no other object. The Native Chiefs may be expected to have the intelligence to recognize that they do not command the same means or the same ability as the Government of India for protecting themselves against the European speculator, and that any restrictions that they may be asked to accept even if these have "the appearance of hindering the development of their resources" do not really do so, but are designed to prevent the undue aggrandizement of the speculator and to secure to themselves the largest possible share in the mineral wealth of their own territories. Such restrictions should appear no more antagonistic to their interests and no more invidious than the provisions of the Statute Geo. III, C. 142, S. 28, which has been operative for so many years.

6. His Excellency the Governor in Council will be glad if the foregoing considerations have any weight with the Government of India in determining them upon a policy in respect of mining enterprise in British India less restrictive than they feel themselves obliged to impose in the case of the Native States.

I have the honour to be,
Sir,
Your most obedient servant,

(Signed) G. S. FORBES,
Ag. Secretary to Government.

Exd. A. F. Eccleston.

80 Copies.

Revenue Department.

NOTES CONNECTED WITH G.O., Nos. 205-206, REVENUE, DATED 15th APRIL 1898.

[Subject.—*Grant or transfer of mining leases to registered companies.*]

From the Board of Revenue (Land Revenue), Mis. No. 10, *dated 4th January* 1898.

To Secretary—

The rules for regulating the grant of licenses to explore and prospect for minerals and the grant of mining leases finally promulgated by the Government of India will be found in G.O., No. 75, dated 10th January 1895.

2. These rules contain *inter alia* the following restrictive conditions:—

(1) No prospecting license or mining lease shall be granted to any company or to any syndicate on behalf of a proposed company without the previous sanction of the Governor-General in Council [Rules 10 (2) and 18 (3)].

(2) No holder of a prospecting license or a mining lease shall assign his interests in the license or the lease to a company without the previous sanction of the Governor-General in Council [Rules 16 VII and 23 VII].

3. The history of this restriction as far as this Presidency is concerned is as follows:—

In 1880 with the approval of the Government of India certain rules regarding mining leases in the Nilgiris and Wynaad were promulgated by this Government. One of the conditions* of these rules was "that the lease shall not be sublet "or assigned without the consent of Government being previously obtained."

* Memorial in G.O., No. 818, dated 21st May 1881.

4. The planters and others interested in mining petitioned the Government against this rule and two others † which had the same object, viz., checking speculation and guaranteeing *bonâ fide* mining. With reference to this rule, the petitioners said, "The object of this "condition the petitioners fail to discern as the result can only be to put a stop to "all mining operations on Government land. With such conditions, it is useless "for private persons to prospect seeing that the right to transfer their claims is "uncertain. No private individual can risk or afford the capital necessary to work "a mine and no company will purchase concessions where the right to transfer has "first to receive the sanction of Government."

† (1) Limit of individual grant to 30 acres.
(2) The requirement to employ regularly five labourers per acre within three months from date of execution of the lease.

5. This Government acknowledged ‡ the force of these arguments. This condition had been introduced by the Local Government of its own accord and therefore the Government cancelled it, remarking that the provisions of the Registration Act and the requirements of the Revenue Regulations would suffice to protect the public and the State.

‡ Paragraph 5 of G.O., No. 818, dated 21st May 1881.

6. The other concessions * asked for required reference to the Government of India and Secretary of State and were accordingly referred to † that Government. The Government of India in addressing ‡ the Secretary of State upon the subject remarked upon the question of the transfer of mining lots as follows:—

* *i.e.*, as to the 30 acres rule and the labour requirement.

† Letter No. 819, dated 21st May 1881.

‡ *Vide* Despatch (paragraph 10 iv) in G.O., No. 132, dated 1st February 1882.

"We are of opinion that the argument justly urged against the system of "speculation in land which follows unchecked license of transfer is more advisedly "met by precautions made at the initial stage of the conferment of grants than by "restriction applied to the sale of grants at any period subsequent to their original "conferment on grantees. Under this view we consider that the following conditions "should in the conferment of leases be carefully prescribed:—

"(1) a restriction of area to the limited extent of 100 or 150 acres according "to the discretion of the Madras Government;

"(2) the requirement of a test sufficiently stringent to secure continuous proof "of *bonâ fide* intention to carry out the objects for which the grant is made;

"(3) the continuance to any transferee of the same obligations under which "the original grantee was from the date of the original grant himself bound.

"If these restrictions are carefully secured at the time of initial sale we are of "opinion that the clause in the notification of October 1880, which was issued by the "Madras Government itself without any reference to us and which prohibited the sub-"lease or assignment of the grant without the previous consent of Government, may "be cancelled."

7. The Secretary of State agreed § that there was no necessity for placing restrictions on sub-leasing or assignment, provided a sufficiently stringent test was imposed to secure continuous proof of *bonâ fide* intention to carry out the objects for which the grant was made and provision included in the lease for the continuance of the same obligation to the transferee. The form of the guarantee for *bonâ fide* mining operations was left to the Madras Government to decide, *i.e.*, whether it should be required that the means for properly carrying out mining operations should be provided or that a certain minimum quantity of rock should be crushed or other mining work continuously performed. This Government decided ‖ to leave the test as to the *bonâ fide* intentions of the applicant to the Collector subject to appeal to the Government and to amend the lease so as to make it obligatory on the lessee to furnish when required satisfactory proof of operations having been effectually and properly carried on.

§ Despatch (paragraphs 5 and 6) in G.O., No. 132, dated 1st February 1882.

‖ Paragraphs 3 and 5 of G.O., No. 132, dated 1st February 1882.

8. There the matter rested till 1891, when from Sir E. Buck's letter, No. 96-M.—13-1, paragraph 6, dated 15th January 1891 (regarding the grant of a mining lease for coal to Messrs. Binny & Co.), it appeared that the Government of India had the strongest possible objection to making any grant to a private firm or syndicate which intends to promote the formation of a company for the purpose of buying the concession. In the draft mining rules ¶ therefore which were circulated for this Government's remarks in March 1891, the restrictive conditions, as to transfer to a company referred to at the head of this note, appear. The Board of Revenue to whom the rules were referred for report commented at length on the change of policy—*vide* paragraphs 2 to 7 of Board's Proceedings, No. 3406, dated 15th May 1891, in G.O., No. 556, Revenue, dated 18th June 1891. The Board pointed out that in Mysore the proper fulfilment of the object of the grant was secured by levying a dead-rent of Rs. 5 per acre, in lieu of the royalty, and surface assessment in the years in which the amount of the royalty payable to the State is less than the dead rent in consequence of the unsatisfactory state of the working or of the results. The Government entirely concurred in the views of the Board.

¶ G.O., No. 2225, dated 8th April 1891.

** *i.e.* (1) no grant of a prospecting license or mining lease to company or to a syndicate *on behalf* of another company without sanction of Governor-General in Council, nor (2) of a transfer of such license or lease without similar sanction.

G.S.F.

Paragraph 2 of G.O., No. 556, Revenue, dated 18th June 1891.

9. In the rules ultimately sanctioned and communicated to this Government with Mr. Ibbetson's circular No. 16-27, dated 13th December 1894 (G.O., No. 75, dated 10th January 1895), the restrictive conditions as to transfer were retained as noted above, but the suggestion to charge only dead-rent or royalty whichever was greater and not both, was given effect to (*vide* rule 23 ii). In July 1896, Messrs. Hamilton Holmes and Bakewell applied for permission in advance to transfer to a company to be formed in London such of their mining leases as related to lands which were proved to the satisfaction of Government to contain payable auriferous lodes.

10. The Government decided to forward the application with a strong recommendation. This was done in Mr. Arundel's letter No. 365, dated 27th July 1896. In this letter it was pointed out that no reasons appeared in the correspondence forwarded to this Government to explain the departure from the policy affirmed by the Government of India and Secretary of State in 1881. The Government of India replied in October last—*vide* Mr. Ibbetson's letter No. 3036—82-2, dated 13th October 1897 (G.O., No. 955, dated 15th November 1897). The Government of India considers that it is necessary to ensure, as far as may be possible, that before a prospector is allowed to offer a mining lease to the public he shall have taken all reasonable measures to assure himself of the value of the property, and secondly to demand that the prospector shall show the *bonâ fides* of his belief in that value.

Paragraph 7 of Mr. Ibbetson's letter.

11. The conditions which the Government think would ensure these objects are detailed in paragraph 8 of Mr. Ibbetson's letter. Briefly, they are (1) that a full investigation should be made into the project and the result put before the public, subject to the right to Government to object to any statement made in doing this; (2) that the promoters should be bound to retain for 18 months any shares in the company they may have allotted to them as part of the price of the concession and the value of which is in excess of the amount spent by them in proving the concession.

12. The Government of India consider that the above restrictions cannot fairly be objected to as hindering the proper development of the mineral resources of the country. They admit that it is important that, as the increase of population tends to exceed the capacity of the great agricultural industry to support the people, they should have other occupations upon which to fall back; but state that the aim should be not so much to enrich English promoters and capitalists as to gradually induce the native of India to interest himself in the development of its varied resources.

Paragraph 9 of Mr. Ibbetson's letter.

The Government of India further pointed out that the necessity for these restrictions had been demonstrated by scandals in Native States and that it felt bound to enforce the same restriction in British Territory when demanding such regulation in Native States.

Paragraphs 10 and 11 of Mr. Ibbetson's letter.

The Government of India declined to comply with Messrs. Holmes and Bakewell's request, but desired that the conditions formulated in paragraph 8 of Mr. Ibbetson's letter should be communicated to them. This has been done—*vide* G.O., No. 955, dated 15th November 1897.

13. His Excellency noted that he would like to see the views of the Board before deciding whether to acquiesce in, or to differ from, the views of the Government of India. In G.O., No. 955, dated 15th November 1897, the Board was accordingly invited to offer any remarks it might desire with reference to the Government of India's arguments. The Board has, however, now reported that it has no remarks to offer.

14. I submit that the Government of India's view is not one easily assailable. It would, I submit, undoubtedly be one of the strongest guarantees for the future prosperity and contentment of the country if the natives of India, particularly the more wealthy (and therefore influential), among them could be induced by investments in industrial enterprises to hold a greater stake in the continuance of that prosperity. At present they nearly all invest in land and land will always retain its value whatever Governments come and go. Industrial enterprises of all kinds would however be infinitely more liable to ruin through civil commotion. Tilaks would write with more thought, reflection and wholesome sobriety, were their worldly wealth and that of their class invested in mines or factories which a day's rioting might destroy.

And it is quite certain that no native would invest in mining companies unless they were hedged about with guarantees such as the Government of India have prescribed. These restrictions may delay the opening up of the resources of the country, but, it is submitted, cannot prevent it, if there are any resources to be opened up, for the competition of capital yearly becomes more keen. Meantime, the natives of India may be encouraged to step in where the European speculator at present disdains to tread.

15. With regard to the political argument as to Native States used by the Government of India, this Government has, I submit, no means of judging of its adequacy or of criticising it in any way.

N. E. MARJORIBANKS.
8-1-98.

To His Excellency the Governor—

To the Hon'ble Mr. Grose—

One general consideration which weighs much with the Government of India is the fact that the mineral property being dealt with is public property or the property of the Crown, towards which, therefore, the Government is in a position of peculiar responsibility. The public interests must not be sacrificed: the good name of the Government must not be discredited: nor must the Government place itself in a position in which they may be too readily assailed by appeals *ad misericordiam* which, to the disadvantage of the public purse, a Government is not so well able to resist as a private owner. Finally pure concession-mongering must be stopped, for any profits derived in that way should go into the public treasury and not into the pockets of a bare licensee.

2. So far as the prospecting stage is concerned, the position of the Government of India, as explained in paragraph 5 of the resolution, seems sound. The prohibition applies to a registered joint stock company, not to a syndicate, for there is no objection to any association of persons risking their own money. The objection is to a registered company, who offer shares to the public in an undertaking which at that stage is purely speculative—concession mongering. Moreover, "if the bare license to explore or prospect has value it is the Government and not the licensee to whom that value properly belongs."

3. Once money has been substantially expended and the mineral prospects have been discovered, the objection to the transfer to a company of a mining lease is gone —because, for effective working, capital is required in larger amount than private persons will risk.

4. But, before a prospector is allowed to offer a mining lease to a registered company, *i.e.*, to the public, the Government of India desire to insure (1) that an adequate and *bonâ fide* investigation into the value of the property has been made, and (2) that the prospector with the mining lease shall manifest the *bonâ fides* of his belief in that value. The rules in paragraph 8 are designed to meet those conditions. These seem all fair enough except (*d*); and as to that condition, which requires the promoters to retain for 18 months any shares allotted to them as part of the price in excess of what represents the *actual* recoupment of what has been spent by them in proving the concession, I do not quite see the necessity of it, if the other conditions are satisfied. Moreover, what does it mean and how is it to be enforced? It cannot mean that the retained shares are to be legally inalienable during the period, for no such law would pass. The promoter is to give an undertaking to retain them; but suppose

he violates the undertaking what consequences are to ensue; is the new company to have in that event the right to repudiate and rescind the contract and throw back the lease on the promoter's hands? Alienation by the promoters might possibly be accepted as some evidence of misrepresentation in an action by a shareholder for loss sustained by him; but to make this alone a ground of action would be going too far. Besides circumstances may readily arise in which it would be right that the promoter should dispose of his shares, *e.g.*, to pay his just debts. And it would also be hard to require him to lock up his property in this way if another opening for more profitable investment should present itself. In any case the attempt to render surplus shares non-negotiable for 18 months would be defeated by the promoter's (*a*) death, (*b*) bankruptcy, (*c*) property being sold under decree of Court, &c.

5. I think therefore that condition (*d*) is impracticable; and it would effectually choke off enterprise. The other conditions give all the guarantee that the purchasers of a mining lease can reasonably expect to obtain. The promoter is under the ordinary law liable for misrepresentation or fraud.

6. The final consideration which weighs with the Government of India in imposing restrictive conditions is the difficulty of dealing with mining enterprise in Native States on different and invidious lines from those adopted for British India. I am inclined to think the Government of India makes too much of this difficulty, considering the variety of restrictions that do exist. Closely connected with this very subject is the statutory prohibitions which make it illegal for British subjects to lend money or be concerned directly or indirectly in raising loans for a Native State, without the consent in writing of the Secretary of State or the Governor in Council. The prohibition is contained in 37 Geo. III. C. 142, section 28; and any person contravening the provisions of the statute is guilty of a misdemeanour and all "bonds, notes, assignments or securities" affected are declared null and void for all intents and purposes. As direct transactions between Native States and European capitalists are apt to be attended with misunderstanding and other inconveniences, the Act is useful in preventing such. Under this statute, I remember that the sanction of the Secretary of State was given for raising a loan in London for the Hyderabad State Railway.

7. If statutory interference already goes so far, it is not quite clear why the Government should hesitate in laying down, if need be, a different mining policy for Native States. It is also to be remembered that the Government of India exercises the right of requiring the removal from a Native State of any European who may be there; the right of requiring jurisdiction to be ceded within the railway fences of through railway lines in Native States; of regulating or controlling telegraph and telephone lines; and of doing other things which are essential on imperial grounds. No doubt it is most important not to exercise powers of that kind where it can possibly be avoided. But if the Government of India is to exercise a closer supervision over the mining industry in Native States in its relation with European capitalists, it is doing so entirely for the commercial and industrial benefit of the State and for no ulterior objects of its own, and if rightly explained Native States would see that if the restrictions have "the appearance of hindering the development of their resources" (paragraph 11) they do not really do so, and are no more antagonistic to their interests than the provisions of 37. Geo. III. If different treatment therefore is required, I do not quite see why there should be hesitation in avowing it.

8. I indicate the above arguments as grounds which this Government may take if they desire to dissent from the position taken up by the Government of India.

9. Personally, I am inclined to think that the conditions proposed by the Government of India for British India—except condition (*d*) as explained above—are not unduly restrictive and are in the right direction for maintaining mining enterprise in this country on a sound basis.

G. S. FORBES.
28-2-98.

I have reason to believe that these Regulations are under consideration at the India Office. My information is private and should not be used officially.

I still heartily concur in the opinion expressed by this Government that the restrictions referred to in paragraph 7 of the Government of India letter of the 13th October 1897, on the transfer of mining leases, are calculated to stifle mining enterprise by deterring capitalists from investing. But, as the Governor-General in Council says that he cannot consent to abandon them,—all that I can say is that I regret his decision. I think, however, we might usefully criticize certain of the conditions laid down in paragraph 8.

The Government of India is made the controlling authority. We might observe that this might cause great delay in launching mining enterprises, which delay might be obviated if the duty of control were delegated to the Local Government. It might be added that under ordinary circumstances, the Local Government would be in a better position than the Supreme Government to form a just opinion as to whether or not the conditions are fulfilled. The arguments against condition (*d*) are well stated by the Secretary in the office-note, pages 4 and 5. These arguments might be urged.

A. E. H[AVELOCK].
11-3-98.

N.B.—The sense of Mr. Forbes's remarks at page 5 as to the difficulty of dealing with mining enterprise in Native States on different lines from those adopted in British India, might be given.

A.E.H.
11-3-98.

I agree with His Exellency.

J. G[ROSE].
14-3-98.

To Honourable Member and circulate—

Draft for approval.

G.S.F.
28-3-98.

J.G.
2-4-98.

A.E.H.
4-4-98.

H. W. B[LISS].
13-4-98.

Revenue (189 8) Department.

CURRENT No. 43

From The Board of Revenue,
Land Revenue.

Order

No. 10 Miscellaneous.
REV. DEPT.

Dated 4th January 1898.

Received 5

Registered 6

Enclosures

Spare copies

SUBJECT.

Recording G.O. communicating to the Board letter from the Government of India declining to sanction in advance an application from Messrs. Holmes & Bakewell to transfer their gold mining leases to a Company and informing Mr.W.T.Hamilton Holmes of this decision.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

3,000
10-12-96.

REVENUE BOARD OFFICE. MADRAS.

220

Proceedings of the Board of Revenue

(Land Revenue)

No: 10 Miscellaneous, dated, 4th January 1898.

Read Proceedings of the Madras Government, Revenue Department, No: 955 dated, 15th November 1897.

Resolution

Recorded.

2. The Board has no remarks to offer.

(True Extract)

Secretary.

To

The Secretary to Government,

Revenue Department.

Mining Rules in India.

(From a Correspondent.)

THE RECENT NOTIFICATION BY THE GOVERNMENT of Mysore of revised rules for the acquisition of mining lands in that province, should draw public attention not only to that part of the country, but to mining over the whole of India. Although the industry is thriving in a small portion of Mysore, it seems strange that greater strides have not been made in the development of the mineral resources of India generally. That minerals do exist is unquestionable, but why they are not worked for on a larger scale is not such an undisputed point. Capital and enterprise are not wanting, in England at any rate, and it is curious that British capital should flow readily to other parts of the world, in many of which the facilities for transport of material and the cost of labour, not to speak of the advantages of a settled country, cannot compare with those existing here, while the same enterprise and capital should be so conspicuous by its scarcity in Britain's finest dependency. It is not easy to account for this anomaly, but there are points of objection in the mining rules, which present themselves to the lay mind, and which, doubtless, have not been overlooked by those who take a direct interest in mining speculations.

A glance at the British India mining rules shows first that for the more precious minerals, such as gold, the area which may be acquired by a single individual or interest for mining purposes is limited to a quarter of a square mile, and again, that a quarter of a mile must intervene between each block. Larger areas are, of course, granted for prospecting purposes, but it is not likely that a man will spend time and money in discovering and proving an extensive tract of mineral country with the prospect before him of being entitled to acquire for mining purposes no larger area than that which any other individual, who may never have spent a pice on the land previously, has a right to apply for and acquire. It may be argued that it is possible for a man to be allowed to acquire, under special circumstances, more than one such block ; but this does not go far enough. The pioneer should have some definite assurance that he will receive more favourable terms and larger grants of land than those who may come in his wake, perhaps on a brain-picking mission. It may also be said that it is possible for a pioneer to arrange with several of his friends to apply for some of the blocks of land included in his discovery, and then to amalgamate them ; but here again there are difficulties. Firstly, there are the intermediate quarter-mile gaps above-mentioned, which break into the continuity of the area intended to be acquired, and the reason for which is inexplicable, unless it is to enable Government to dispose of these pieces later on at greatly enhanced prices, in the event of the area proving a profitable one. Secondly, and more important still, there is the section in the rules which insists on the sanction of the Local Government being obtained before any transfer of a lease can be effected, even among individuals, and the sanction of the Government of India before a sale or transfer can be effected to a Company. And, finally, it may not always be possible or convenient for a pioneer to arrange the acquisition of blocks in this manner, not to speak of the attempt to hoodwink Government.

Even if a pioneer succeeded in having several blocks taken up in this manner, it would necessitate his sharing the fruits of his industry with men who may have done little more than lend their names to a questionable transaction. And even then he is not out of his difficulties; in fact he has to face the greatest of all, namely, the sale or transfer to a working or prospecting Company. Here, the application for making the transfer has first to go to the Local Government, and through it to the Supreme Government, which insists on having full particulars as to the constitution of the proposed Company, and certain other information. Now, it is well-known among all those who have had to do with Company promotion, that when a Company is first registered in London, the seven signatories insisted on under the Joint Stock Companies' Acts are usually men of straw, chiefly clerks and minor employees, the real men remaining in the background till such time as the Company is ripe to be brought out before the public. If these signatories are the people whom the Government of India is so anxious to become acquainted with, doubtless the introductions would be numerous; but precious little good they would do. On the other hand, if Government insists on knowing all about the real men, then a dead-lock is a certainty. These men will not allow themselves to be put forward till the business is far advanced, and for Government to insist on having their names is not only idle but useless. What good does Government think it is likely to do by insisting on a condition which it is in most cases impossible for the pioneer to comply with? Let it by all means press for a minimum working capital so as to ensure efficient development, and also let it insist on work of each class, exploration or winning, being commenced within a reasonable time of the lease having been granted; but to press for such information as indicated above means nothing but the closing of the country to all efficient mining. People in England will not look at business of this sort unless it is plain that the leases are in order, and that there are not likely to be any hitches after they have taken it in hand. This absurd condition on the part of Government has proved one of the greatest stumbling blocks to the development of mining in British India, and the sooner it is withdrawn, the sooner will there be a prospect of the mineral resources of India being given a fair trial.

The rules in Mysore are far more liberal than those in British India, but even in Mysore the proportion of land allowed for mining as compared with the area which may be acquired for prospecting is far too small. The fact seems to be lost sight of by both the Government of India and the Government of Mysore that prospecting means only the scratching of the surface, and that though the results of prospecting may be the proving of a certain area to be promising, it is next to impossible at such an early stage to select the richest portion of any given area. Yet this is what the pioneer is virtually asked to do by both Governments. It is only after mining has been carried on to a depth of several hundred feet that the true value of the ground can be even fairly ascertained, and deep mining is beyond the means of most individuals. It has been argued that the famous Mysore Mine at Kolar found its area too large for its own resources, and had to sell a portion to the Champion Reef Company, and that if such were the case there, what reason can there be for granting mining leases of a

greater area than the Mysore Company's present property? Those who put forward this argument, however, forget that the original Kolar concession amounted to 20 square miles, of which the present paying mines are only a small fraction, and also that the Mysore Mine did not break up its block till after it had been proved at great depth and by numerous shafts. The present policy of throwing open the land to the greatest number appears to have been based on the plan adopted in Australia; but the fact seems to be lost sight of that the conditions of the two countries differ considerably, and in respects too numerous to refer to here. What is wanted is a liberal grant of five or six square miles to each pioneer, with special terms to him as to the time within which working Companies should be floated, no questions as to who may be backing him up, or who will eventually form the Boards of Direction of Companies that may be floated; and, lastly, expedition in the transaction of mining correspondence and the granting of leases.

The Government of Mysore has now got its own Geological Department, and this is a move in the right direction; but the services of this Department should not be devoted, as is now the case, to the opening up of mineral deposits, with the object of eventually putting these properties on the market. This competing of a Government Department with private individuals has always been decried, and it cannot fail to do harm to the mining industry in Mysore. Another mistake is the latest ruling of that Government regarding the leasing of certain tracts of land. It not only expects to obtain the terms that have held good for the last ten years, but a clumsy effort is made to put the lands up to public tender, by asking applicants to state what consideration they will be prepared to pay in addition to that provided for by the rules. Only ten years ago, the attempt to dispose of auriferous lands in Mysore by inviting tenders proved a dismal failure, and it is surprising that the attempt should again be made. This policy of frequent changes and additions in its rules must lead to a want of confidence in the Government, and stifle an industry which gives every indication of becoming the backbone of the territory. If the Government of India were to follow the lead of Mysore, and the latter were to try a little more liberality in its dealings with speculators, there is reason to believe that Southern India would before long be studded with many such prosperous spots as the present Kolar Gold Fields.

[illegible] or other security or instrument [illegible] to be granted to any [illegible] Native Princes, after the [illegible] for the [illegible] or for the [illegible] without the consent and approbation of the Court of Directors of the East India Company or the consent and approbation of the [illegible] in Council of one of the said Company's Governments in India first had and obtained in writing; and [illegible] or [illegible] contrary to [illegible] s, [illegible] jurisdiction; [illegible] of money of what kind or [illegible], either directly or indirectly [illegible] subject [illegible] of this Act [illegible], and the [illegible], and [illegible] all intents and purposes.

Mining Rule.

$\frac{D}{4}$ 1,000—8(4-97.

REVENUE DEPARTMENT.

C No. 73

From the Board of Revenue (N.-W. P.)

Memo 10 Dated 4th January 1898.

(1) H. G.
(2) H. E.

Hon. Mr. Ross
Sir H. Bliss

FOR ORDERS.

The rules for regulating the grant of licenses to explore and prospect for minerals and the grant of mining leases finally promulgated by the Govt. of India with Dr. formed in G.O. 75 of 10 Jany 95.

2. These rules contain inter alia the following restrictive conditions:—

(1) No prospecting license or mining lease shall be granted to any company or to any syndicate on behalf of a proposed company without the previous sanction of the Governor General in Council (Rules 10(c) & 18)

(2) No holder of a prospecting license or a

(6)

(Apparently this has been sent to me by mistake) H.B. 5/3/98

Done accordingly 7/3/98

A

I have reason to believe that these Regulations are under consid. at the India Office. My information is private and should not be used officially.

I still heartily concur in the opinion expressed by this Govt. that the restrictions referred to in para. 7 of the G. of I. letter of the 1st Oct. 1897, on the transfer of mining leases, are calculated to stifle the mining enterprise by deterring capitalists from investing. But, as the Govt. of I.

C.H. 6/3/98

mining lease shall assign his interests in the licence or the lease to a company without the previous sanction of the Governor General in Council. (Rule 16 VII & 23 VII).

3. The history of this restriction as far as this Presidency is concerned is as follows.

In 1880 with the approval of the Govt of India certain rules regarding mining leases in the Nilgiris & Wynaad were promulgated by this Govt. One of the conditions of these rules was "that "the lease shall not be "sublet or assigned without "the consent of Government "being previously obtained."

The planters & others interested in mining petitioned the Govt against this rule & two others + had the same object in shewing the genuineness & bonafide working & With reference to this rule the petitioners said, "The

FOR ORDERS.

in Council says that he cannot consent to abandon this rule - all that I can say is that I request his decision. I think, however, we might usefully criticize certain of the conditions laid down in para 5 of the Govt. of India Note. These arguments might be urged.

A.S.H. 11.3.98

N.B. The gist of Mr. Fuller's remarks at pages 20, 21 & 22 ante as to the difficulty of dealing with mining enterprise in Native States as to Limit of individual grant to 50 acres (2) the requirement to employ regularly 6 labourers per acre within 2 months from date of execution of the lease.

different claims from those adopted in British Territory, might be given. A.S.H. 11.3.98

D 1,000—8-4-97.

REVENUE DEPARTMENT.

No.

From

Dated 189 .

FOR ORDERS.

Para 5 of G.O. 18 Rev. dated 1881

Sgnd with H.E.
14/3/98

"object of this condition
"the petitioners fail to
"discern as the result
"can only be to put a
"stop to all mining
"operations on Govt land
"with such conditions,
"it is useless for pros
"persons to prospect
"seeing that the right
"to transfer their claim
"is uncertain. No privat
"individual can risk o
"afford the capital
"necessary to work a min
"and no Company will
"purchase concessions
"where the right to trans
"has first to receive the
"sanction of Govt."

This Govt acknowl
the force of these argumen

This condition had been introduced by the Local Govt of its own accord & therefore the Govt cancelled it, remarking that the provisions of the Registration Act & the requirements of the Revenue Regulations would suffice to protect the public and the State.

3. Whether concessions asked for required reference to the Govt of India & were according referred to that Govt. The Govt of India in addressing the Secretary of State cast upon the subject remarked upon the [illegible] of the transfer of mining lots, as follows:-

"We are of opinion
"that the argument justly
"urged against the system
"of speculation in land
"which follows inevitably
"upon grant of transfer is
"more advisedly met by
"precautions made at the
"initial stage of the enjoyment

FOR ORDERS.

× as to the 80 acres rule & the Cubam requirement

Letter No 819 dd 21st May 1881

Vide Despatch (para 10 & 12) from G.O. 132 dd 15th Feb 1882

D/4 1,000—8-4-97.

REVENUE DEPARTMENT.

No.

From

Dated 189

FOR ORDERS.

"of grants than by rest
"applied to the sale of g
"at any period subseq
"to their original conf
"ment or grantees.
"this view we consid
"that the following
"conditions should a
"the enjoyment of th
"be carefully prescrib
"(1) a restriction of a
"to the limited extent
"100 or 150 acres accor
"to the discretion of the
"Madras Govt;
"(2) the requirement
"bet sufficiently stri
"become continuous
"of bonafide intent
"to carry out the pu
"for which the gran
"made;
"(3) the continuance

"transferee of the same
"obligations under which
"the original grantee
"was from the date
"of the original grant
"himself bound.

"If these restrictions
"are carefully secured at
"the time of initial sale
"we are of opinion that
"the clause in the Notification
"of Oct. 1880, which was
"issued by the Madras
"Govt itself without any
"reference to us which
"prohibites the sub-lease
"or assignment of the
"grant without the
"previous consent of Govt
"may be cancelled."

1. The Secy of State agreed† that there was no necessity for placing restrictions on sub-leasing & assignment, provided a sufficiently stringent test was imposed to secure continuous proof of bona fide intention to carry out the objects

Despatch paras 5 & 6 in G.O. 132 dd 2.2.82

† Paras 3 & 5 of G.O 132 dd 7th Feb 82

to learn the test as to the bona fide intentions of the applicant to the Collector subject to appeal to the Govt &

for which the grant was made & provision includes in the lease for the continuance of the same obligation to the transferee the form of the guarantee for bona fide mining operations was left to the Madras Govt: to decide viz. whether it should be required that the memorialist properly carrying out mining operations should be provided or that a certain minimum quantity of work should be executed or that mining work continuously performed. The Govt decided‡ to amend the lease so as to make it obligatory on the lessee to furnish when required satisfactory proof of operations having been effectually and properly carried on.

‡

2. Here the matter rested till 1891, when from Sir E. Buck's No 96 M 13-1 para 6 dd 15 Jany,

(re the grant of a mining lease for coal to Messrs Bruning & Co) it appeared that the Govt of India had the strongest possible objection to making any grant to a private firm or syndicate which intends to promote the formation of a company for the purpose of buying the concession. In the Draft Mining rules, thereon which were circulated for the Govts Remarks in March 91 the restrictive conditions as to transfer to a company referred to Flag H at the head of this note, appear. The Board of Revenue to whom the rules were referred for report commented at length on the change of policy vide paras 2 to 7 of their No 3406 of 15th May 1891 to G.O. No 556 Rev of 8 June 91. The Board pointed out that in regard the proper fulfilment of the Govt of

Flag H

12e (1) no grant of a prospecting license or mining lease to Co. or Individual on behalf of another Co. without sanction of Govt in Council; nor
(2) of a transfer of such license or lease without similar sanction

Flag J

Flag K

grant was secured by levying a dead rent of Rs 5 per acre, in lieu of the royalty & surface assessment in the years in which the amount of the royalty payable to the State is less than the dead rent in consequence of the unsatisfactory state of the working or of the results. The Govt in Council concurred in the views of the Board.

Para 2 of G.O. No 556 Rev 8 of 15 June 91

Flag L

9. In the rules ultimately sanctioned & communicated to the Govt with Mr Abelaine's circ No 16/27 of 13 Dec 1894 (G.O. No 75 of 10 Jany 95) the restrictive conditions as to transfer were retained as under above but the suggestion to charge only dead rent or royalty whichever was greater & not both was given effect to (vide Rule 23 ii). In July 1896 the Govt

Hamilton Adams & Bakewell
applies for permission
in advance to transfer
to a company to be formed
in London such of their
mining leases as relate
to lands which were
proved to the satisfaction
of Govt to contain payable
auriferous bodies.

10. The Govt decided to
forward the application
with a strong recommendation.
This was done in Mr
Ormsby's letter No 365
of 27 July 1896. In this
letter it was pointed
out that no reasons
appeared in the correspondence
forwarded to the Govt
to explain the departure
from the policy affirmed
by the Govt of India and
Secy of State in 1881.
The Govt of India replied
in Oct. last (Vide
Mr Chalmers letter
No 3036-52-2 of 13 Oct 97
Rev. No 955 of 15 November 97)

Para 7
of Mr Chalmers
letter

The Govt of India considers
that it is necessary to ensure
as far as may be possible
that before a prospector
is allowed to offer a
mining lease to the
public he shall have
taken all reasonable
measures to ascertain
precisely of the value
of the property & secondly
to demand that the
prospector shall show
the bona fides of his
belief in that value.

11. The conditions
which the Govt think
should ensure these objects
are detailed in para
8 of Mr Chalmers letter.
Briefly they are "that
a full investigation
should be made into the
project and the result
put before the public
subject to the right to
Govt to object to any
statement made in
doing this or that
the promoters should

bound to retain for 18 months
any shares in the Company
they may have allotted
to them as part of the
price of the concession
& which ~~is~~ in excess
of the amount spent
& them in procuring the
concession.

12. The Govt of India
consider that the above
restrictions cannot fairly
be objected to as hindering
the proper development
of the mineral resources
of the country. They admit
that it is important
that, as the increase
of population tends to
exceed the capacity of
the soil for great agri-
cultural industry to
support the people, they
should have other occupations
upon which to fall back;
but state that the
~~and~~ ~~mines~~ ~~should~~ ~~not~~ ~~be~~ ~~so~~ ~~much~~ ~~to~~ ~~which~~
English promoters and
capitalists are to gradually

Para 9 of Mr Chamberlain's letter.

Paras 10 & 11 Mr Chamberlain's letter

The Govt of India further
point out that the
necessity for these restrictions
had been demonstrated by
scandals in native states
and that it felt bound to
enforce the same restriction
in British Territory when
legislating such regulations
in native states.

Tel 7

to interest himself in
development of its own
resources.

The Govt of India
declined to comply with
Messrs Holmes & Baker's
request but desired them
the conditions formulated
in para 5 of Mr Cobbold's
letter should be communicated
to them. This has been
done vide G.O. 955-D dated
15 Nov 97.

13. His Excellency
asks that he would
like to see the views
of the Bd before deciding
whether to acquiesce in
or to differ with the views
of the Govt of India. Tel
G.O. No 955-D dated 15 Nov 97
the Bd was accordingly
invited to make any
remarks it might desire
with reference to the
Govt of India's argument
The Bd has, however, not
reported that it has no
remarks to offer.

Tel 7

Tel 7

I submit that the Govt of India's view is not one easily assailable. It would, I submit undoubtedly be one of the strongest guarantees for the future prosperity & contentment of the country if the natives of India could be induced particularly the more wealthy (& influential) among them could be induced by investments in industrial enterprises to hold a greater stake in the continuance of that prosperity. At present they read all invest in land & land with always within its value whatever Governments come & go. Civil commotion however destroys. Industrial enterprises of all kinds as however is infinitely more liable to ruin thro' civil commotion. Tilak would write with more thought, reflection, & wholesome sobriety, were their worldly wealth & that of their sons invested in mines or factories

which a days rioting might destroy.

And it is quite certain that no native would invest in mining companies unless they were hedged about with guarantees such as the Govt of India have prescribed. Such restrictions may delay the opening up of the resources of the country but, it is submitted, cannot prevent it, if there are any resources to be opened up, for the competition of becomes capital with years more keen. Meantime the natives of India may be encouraged to take in where the European speculator at present disdains to tread.

15. With regard to the political argument as to Native States would the East-India, this Govt

has submit no means of judging of its adequacy, or of criticising it in any way.

17.

One general consideration which weighs much with the Govt of India is the fact that the mineral property being dealt with is public property or the property of the Crown, & the Govt is in a position of peculiar responsibility. The public interests must not be sacrificed: the good name of the Govt must not be discredited: nor must the Govt place itself in a position in which they may be too readily assailed by appeals ad misericordiam Suits, to the disadvantage of the public purse, a Govt is not so well able to resist as a private owner. Finally

2. So far as the prospecting stage is concerned, the position of the Govt of India, as explained

pure concession-mongering must be stopped, for any profits derived in that way sh^d go into the public treasury not into the pockets of a bare licensee.

pass. The promoter in para 5 of the taking to retain seems sound. In the [illegible] the applies to a registered business Stock Company, not to a new for there is no objection to any association of persons risking their own money: the objection is to a Company who offer shares to the public in an undertaking which at that stage is purely speculative:— concession mongering. Moreover "if the "bare licensee to explore or "prospect has value it is the "Govt & not the licensee to "whom that value properly "belongs".

One money has been expended & the mineral prospects have been discovered the objection to the grant to a Co of a mining lease is gone - because, for effective working, capital is required on a larger amount than private persons will risk

has ~~to limit~~ no mere prospector in judging offer a mining or of unregistered Company was. in public the part of Mora to insure (1) that an adequate bona fide investigation into the value of the property has been made, & (2) that the prospector with the mining lease shall share the bona fides of his belief in that value. The rules in para 8 are designed to meet those conditions. These seem all fair enough except (d); & as to that condition, which requires the promoters to retain for 18 mo. any shares allotted to them as part of the price, in excess of what represents the actual recompense of what has been spent by them in procuring the concession, I don't quite see the necessity of it, if the other conditions are satisfied. Moreover what does it mean & how is it to be enforced? It cannot mean that the retained shares are to be legally unalienable during the period, for

(the attempt to render surplus shares non-negotiable for 18 mo: would be defeated by the promoter's (a) death, (b) bankruptcy, (c) property being sold under decree of Court &c

no such law would pass. The promoter is to give an undertaking to retain them; but suppose he violates the undertaking what consequences are to ensue; is the new Company to have in that event the right to repudiate & rescind the contract & turn back the lease on the promoter's hands? ~~Alienation~~ by the promoters ~~for~~ might possibly be accepted as some evidence of misrepresentation in an action by a shareholder for loss sustained thereby; but to make it alone a ground of action, would be going too far. Besides circumstances may readily arise in which it would be right that the promoter should dispose of his shares — e.g. to pay his just debts; and it would also be hard to require him to lock up his property in this way if another opening for more profitable investment should present itself. In any case I think therefore that condition (d) is impracticable; & it would effectually choke off enterprise. The other conditions give all the guarantee that the purchasers

20/10

of a mining lease can reasonably expect to obtain. The promisor is under the law as it is liable for misrepresentation or fraud.

The final consideration which weighs with the Govt of India in imposing restrictive conditions is the difficulty of dealing with mining enterprise in Native States on different & unidious lines from those adopted in British India.

I am inclined to think the G. of I. makes too much of this difficulty, considering the variety of restrictions that do exist. Closely connected with this very object is the statutory prohibitions which make it illegal for British subjects to lend money or be concerned directly or indirectly in raising loans for a Native State, without the consent in writing of the Secretary of State or the Governor in Council. The prohibition is contained in 37 Geo III. c. 142, s 28; & any

[x copy of the Rules applicable]

person contravening the provisions of the Statute is guilty of a misdemeanour & all bonds Notes, assignments & securities affected are declared null & void for all intents & purposes As direct transactions between Native States & European capitalists are apt to be attended with misunderstandings & other inconveniences the Act is useful in preventing such. Under this Statute I remember that the sanction of the G. of India was given for raising a loan in London for the Hyderabad State Railway.

7. If statutory interference does go so far, it is not quite clear why the Govt should hesitate in laying down, if need be, a different mining policy for Native States. It is also to be remembered that the Govt of India exercises the right of requiring the removal from a Native State of any European who may be there; the right of requiring

20/5/11

of jurisdiction to be ceded within the
railway fences of through
railway lines in Native
States, of regulating or
controlling telegraph telephone
lines, & of doing other things
which are essential on
Imperial grounds. No doubt
it is most important not
to exercise powers of that
kind ~~except~~ where it
can possibly be avoided.
But if the Govt of I. is to
exercise a closer supervision
over the mining industry in
Native States in its relation
with European capitalists,
it is doing so entirely for
the commercial & industrial
benefit of the States & for
no ulterior objects of its
own. If different treatment
therefore is required, I do not
quite see why there shd be
hesitation in assuming it.

5. I indicate the above
arguments as grounds which
the Govt may take if they desire

& if rightly explained & native States will see that if the restrictions have the appearance of hindering the development of their resources (para 71) they do not really do so, & are no more antagonistic to their interests than the provisions of 37 Geo III.

the position taken up by the Govt of India.

6. Personally I am inclined to think that the conditions proposed by the Govt of India for British India — except under (d) as explained above — are not unduly restrictive & are in the right direction for maintaining the mining enterprise in this country on a sound basis.

S.T. 28/2/98

Pisces
Proof sheets 11th and 12th with
at pp. 1-3 above.

9 I have see draft Order & letter put up below.

9 6th 22/3/98
To Hr. and circulate.
Draft for approval
G.S.T. 21/3/98

J.G. 2-4-98
A.E.H. 4-4-98
H.W.B. [illegible]
13.4.98

6 12
VOS 12/11

Hm & enc

Draft for approval

[illegible]/4/98

With the Premier's
Col Hon'ble H. Blair

Read again G.O. No. 966, dated
16th November 1897.

Read C.No. 76 of 1898 (Proceedings
of the Board of Revenue, Land Revenue,
No. 10 dated 4th January 1898).

----§----

30

G.O. No. 205 G/ 15th April 1898.

The following letter will be
despatched to the Government of India.

(Intld.) G. S. F.

25/3/98.

To the Board of Revenue, Land Revenue.

2/4/98

Letter No. 206
15-4-98.

To

The Secy. to the Govt. of India,
Rev. & Agri. Department.

Sir,

I am directed to acknowledge the
receipt of your letter No. 1045 -82-2,
dated 16th October 1897, in which the
object of the Government of India in
imposing restrictions on the transfer
of mining leases to registered compa-
nies is set forth and the circumstan-
ces are indicated in which the Govern-

ment of India will ordinarily be prepared to sanction such transfers.

2. As desired in the concluding paragraph of your letter, Messrs. Holmes and Bakewell have been informed that the Government of India are unable to grant in advance the general permission sought by them to transfer to a company to be formed in London their mining leases.. The conditions prescribed in para 8 of your letter have been communicated to them.

3. After careful consideration of the facts and arguments set forth in your letter, His Excellency the Governor in Council is compelled to express his great regret that the Government of India has not been able to abandon the restrictive conditions imposed by the rules on the transfer of mining leases. His Excellency in Council feels strongly that these restrictions are likely to constitute a serious obstacle to the development of mining enterprise in this country by deterring capitalists from investing money in such projects. The total abandonment of the restrictions may, however, be pronounced inexpedient His Excellency in Council would venture to suggest certain modifications of the rules with a view of minimising their effect in this respect.

4. I am in the first place to suggest that the power of sanctioning transfers of mining leases, subject to the fulfilment of the conditions formulated in para 8 of your letter, may be delegated to the Local Government. The Local Government would, it is believed, be in a better position than the Supreme Government for forming a correct opinion as to whether or not the conditions have been satisfied in any particular case. Great delay and consequent loss and discouragement to intending investors might result, if a reference to the Supreme Government were insisted on in every case.

Secondly, it is observed that condition (a) requires the promoters to retain for eighteen months after the transfer of the lease or the registration of the company any shares allotted to them as part payment in excess of what represents the actual recoupment of their expenditure in proving the concession. His Excellency in Council doubts the necessity of insisting upon this condition, if the other conditions are satisfied. Moreover it is not clear how the restriction is to be enforced, what consequences are to ensue if the undertaking is violated, and whether it is proposed that the transfer of the shares is to be made legally inalienable or non-negotiable during the period. Circumstances may easily arise in which it would be improper to impress such a character upon them. Apar-

rom the fact that the shares must, it
s presumed, remain liable to attach-
ent in satisfaction of a decree of
ourt against the promoter in whose
ame they stand or in the event of his
ankruptcy or in such like cases, it
eems right that he should be left free
o dispose of them in payment, for in-
-stance, of his just debts; and it
would also be an unnecessary hardship
to require him to lock up his property
in the manner intended, for so long a
period, if another opening for more
profitable investment should meantime
present itself. Further there can be
little doubt that methods of evading
the condition would be readily dis-
covered by persons who desired to do
so. His Excellency in Council is there-
for of opinion that condition (8) is
impracticable and would suggest its
abandonment, since the other condi-
tions appear to be sufficiently strin-
gent for the purpose in view, while
the ordinary law also provides certain re-
medies against fraud and imposition.

6. In paras 10 and 11 of your let-
ter under reply, it is pointed out
that among the considerations that
weigh strongly with the Government of
India in imposing restrictive condi-
tions
is the difficulty of dealing with
mining enterprise in Native States on

different and therefore invidious,
lines from those adopted for British
India. His Excellency in Council
readily acknowledges that on a matter
of this sort the Government of India
is in a more favourable position for
arriving at a correct decision than
a Local Government. At the same time
His Excellency in Council would ven-
ture to suggest whether having regard
to the British interests at stake and
to the preeminent importance of develo
-ing the mineral resources of the Em-
pire there is not a disposition to
show somewhat undue deference to what
is assumed to be the feelings of the
Native States in this matter. The pe-
culiar circumstances of Native States
call for differential treatment in
many respects and this policy being
of long continuance is not necessarily
regarded as invidious. The statutory
prohibitions contained in 37 Geo. III
C. 142, S. 23, make it illegal for
British subjects to lend money or
to be concerned directly or indirect-
ly in raising loans for a Native State
without the sanction in writing of the
Secretary of State or the Governor in
Council, and this statutory interfer-
ence already goes far to control di-
rect transactions between Native State
and European capitalists. Further the
Supreme Government has large powers b
treaty or otherwise in respect of con

trolling the residence of Europeans within a Native State. There are other important matters in which the liberty of the Native States is regulated and controlled by the Supreme Government on imperial grounds. His Excellency in Council fully admits that it is most important not to exercise powers of this kind where it can possibly be avoided. But the supervision over the mining industry in Native States in its relation with European capitalist which the Government of India feels bound to exercise is to be maintained entirely for the commercial and industrial benefit of the State and with no other object. The Native Chiefs may be expected to have the intelligence to recognize that they do not command the same means or the same ability as the Government of India for protecting themselves against the European speculator, and that any restrictions that they may be asked to accept even if these have "the appearance of hinder-"ing the development of their re-"sources" do not really do so, but are designed to prevent the undue aggrandizement of the speculator and to secure to themselves the largest possible share in the mineral wealth of their own territories. Such restrictions should appear no more antagonistic to their interests and no more invidious than the provisions of the Statute Geo. III C. 142, S. 28, which has been operative for so many years.

6. His Excellency the Governor in Council will be glad if the foregoing ~~considerations~~ considerations have any weight with the Government of India in determining the upon a policy in respect of mining enterprise in British India less restrictive than they feel themselves obliged to impose in the case of the Native States.

(Intld.) G. S. F.

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