

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 4028

DATED 8th Oct. 98

[Despatch Abstract.]

Communicating G. O. Judicial Deptt., directing with reference to Messrs. Meyer's proposals for decentralization, the continuance of the existing practice in regard to the disposal of unclaimed personal property, approving the proposal to amend the Towns Nuisances Act, and stating that steps will be taken to give effect to it when the Act is next brought under revision.

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GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

Read—again the following paper:—

G.O., No. 884, Judicial, dated 7th June 1898.

Read—also the following paper:—

Read—G.O., No. 438, Revenue, dated 6th August 1898.

Read—the following Proceedings of the Board of Revenue (Land Revenue), No. 384, dated 11th November 1897:—

FULL BOARD.

Read—the following letter from W. S. MEYER, Esq., I.C.S., on Special duty, to the Secretary to the Commissioners of Land Revenue, dated Madras, 29th October 1897, No. 30:—

With reference to G.O., No. 955, Judicial, dated 5th July 1897, and to paragraph 7 of G.O., No. 1243, Judicial, dated 27th August 1897, I have the honour to bring to the notice of the Board that certain administrative powers which might well, under present circumstances, be delegated by Government to the Board of Revenue or some other subordinate authority must, owing to the wording of some of our local Acts and Regulations, be kept, as the law now stands, in the hands of the Governor in Council.

A.

2. For example, it will, I think, be readily admitted that the Board might, under ordinary circumstances, be allowed full power in respect of writing off *irrecoverable arrears* under heads of revenue which are under its control.

The most important of these are, of course, Land Revenue and Cesses, and the irrecoverable arrears under these heads form a very small proportion of the total demand (·076 per cent. for fasli 1305).

	Average for last five years. Rs.	
Irrecoverable arrears written off ...	69,015	They are, in fact, of much less importance
Season remissions	14,05,376	than the seasonal remissions which Collec-

tors and Divisional officers are authorised to make at jamabandi. Recommendations for writing them off are made, and have to be fully justified in each individual case by the Tahsildar in the first instance, and are then subjected to the careful scrutiny of the Divisional officer and the Collector at jamabandi and otherwise. A double check at head-quarters is therefore unnecessary, and I think I may say that the Government as a matter of fact simply accepts the statements which the Board sends up to it.

Similarly in regard to abkari arrears which are likewise subjected to very careful scrutiny before they are classed as irrecoverable by the Collector.

3. But in section 55 of Regulation I of 1803 it is written that “where the Board of Revenue may consider . . . a remission of balances to be conducive to the public good, they shall submit the circumstances of the case, and the amount of the remission, to the consideration of the Governor in Council,” and this provision led to the rejection by Government in 1883 of a proposal then made by the Board that it should be able to remit irrecoverable arrears on its own authority—*vide* G.O., No. 1485, Revenue, dated 29th November 1883, in Board's Proceedings, No. 3889, dated 22nd December 1883 (*cf.* also paragraph 12 of Board's Proceedings, No. 121, of 26th January 1887, and paragraph 5 of G.O., No. 162, Revenue, of 12th February 1887, printed in Board's Proceedings, No. 332, dated 24th February 1887).

4. I may note in this connection that in the Draft Bill to amend Act II of 1864 circulated with G.O., No. 845, dated 6th October 1897, it is already proposed (section 8 of the Bill) to give the Board full power to remit the interest on irrecoverable arrears.

5. I would indeed go even further than the proposal in paragraph 2 and would allow Collectors to deal with the smaller irrecoverable items of land revenue arrears on their own authority, *i.e.*, when an individual arrear does not exceed say Rs. 50. I owe this suggestion to Mr. Thomson, Collector of Madras, who quotes as a precedent G.O., No. 490, Revenue Department, dated 25th June 1897, in Board's Proceedings, No. 301, Separate Revenue, dated 19th July 1897, under which Collectors can themselves write off irrecoverable amounts of stamp duty and penalty not exceeding Rs. 10 in each case.

B.

6. Again under section 56 of Regulation I of 1803, the Board cannot order the *suspension of kists* beyond the end of the fasli without reference to Government. Now that in the majority of districts there are kists extending up to April, and sometimes up to May also, it seems clear that to delay collections beyond the end of a fasli is a power which the Board might well be permitted to exercise in times of distress such as those from which we are now happily emerging. There will still be ample time to realize the amounts in regard to which this respite is given within the financial year.

C.

7. Under section 16, clause 7, of Regulation III of 1802, District Judges are required to submit, for the orders of Government, a report regarding *unclaimed personal property* dealt with by them under this clause. They might be given full power to credit such property to Government of their own motion.

D.

8. The *final notification of reserved forests* under section 16 of the Forest Act V of 1882 is a power which might well be exercised by the Board. The desirability of the reserve, and any objections which may exist thereto, will come before Government in dealing with the preliminary notification under section 4, while the record of individual claims and rights enjoyed is made out in the Forest Settlement-officer's enquiry and with reference to the disposal of such appeals as may be made therefrom. The final notification is a question of declaring boundaries which have been carefully fixed by the District Forest-officer and Settlement-officer, and have been checked in the Collector's office and again by the Board. A further check by Government seems unnecessary.

9. Other powers now vested in Government under the *Forest Act* which might well be exercised by the Board, but do not come within the scope of the delegations permitted by section 65 of the Act, are the following:—

(a) *Section 7*.—Grant of patta under special circumstances for land notified for reservation under section 4.

(b) *Section 18*.—Similar power to grant patta for land included within a finally notified reserved forest.

(c) *Section 35*.—Power to make rules under clauses (c) and (f), and to issue the subsidiary rules contemplated at the commencement of the section.

E.

10. The Board ought to be competent to deal with the establishment of mere *local ferries*; the fixing of the fees leviable thereat; the assignment of their management, where desirable, to Local Boards or Municipalities, &c. But at present, under sections 8, 10, 11 and 12 of Madras Act II of 1890, all these powers have to be exercised by the Governor in Council.

F.

11. The power to temporarily extend some or all of the provisions of the *Madras Towns Nuisances Act III* of 1889 to a village or villages for the period of a fair or festival or during the prevalence of an epidemic might be given to District Magistrates. They now have to go up to Government under section 1 (2) of the Act.

12. The legislative fetters which now exist in cases A and B above might be removed in amending Act II of 1864, and the necessary provision embodied in the Draft Bill for this purpose now under consideration (G.O., No. 845, Revenue Department, dated 6th October 1897).

In regard to the other matters mentioned, though it might not be worth while to embark on legislation for the sake of any one item, I submit for consideration whether it would not be advisable to deal with them collectively in a "*Decentralization Act*" which should recite that "the Governor in Council shall hereafter have power to delegate by notification the powers vested in himself by such and such sections of such and such Acts to such subordinate authority as he may deem fit to empower in that behalf, and to modify or cancel such notification." Such an enactment would in fact only follow the precedent, to mention the first instances that occur to me, set in section 165 of the Local Boards Act, section 288 of the District Municipalities Act, and section 4 (g) of the Abkari Act, 1886.

Such an Act might further include cases in which powers now vested by local enactments in the Supreme Government could, with advantage, be delegated to His Excellency the Governor in Council. For example, under section 24 of the Madras Forest Act (V of 1882), any case of "disafforestation," however trifling it may be, must now be referred to the Government of India.

13. I need hardly say that the list of matters I have quoted as suitable for legislation of the character proposed does not profess to be an exhaustive one. It deals merely with cases which have occurred or been suggested to me; but if my general proposal be accepted, the Board and Government would no doubt be able to considerably supplement it before putting the "Decentralization Bill" before the Legislative Council.

14. In the event of such a Bill being introduced, I would suggest that *section 6 of Regulation VII of 1817* should also be included within its scope. According to that section the Board is supposed to report to Government in regard to the disposal of

Paragraph 4 of G.O., No. 1071, Revenue, dated 16th June 1871, and G.O., No. 142, Revenue, dated 24th March 1896. escheats and obtain the orders of the Governor in Council thereon. The Board has, it is true, been permitted under the orders quoted in the margin to dispose finally of minor real property escheats, not exceeding at first Rs. 50 and now Rs. 500 in value; but under the section above quoted the legality of these orders seems open to question.

15. I would, I may here say, allow Collectors to deal with *escheats* not exceeding Rs. 100 in value. The Board declined to recommend a similar proposal (in which, however, the proposed money limit was only Rs. 50) in 1895—*vide* item 21 in appendix B to Board's Proceedings, No. 459, dated 16th December 1895, on the ground that, as escheats give rise to suits, the present practice of reporting them all for the orders of the Board and Government should continue. I now venture to ask for a reconsideration of the matter on the grounds that the suit objection might be applied to many orders of Collectors on other subjects; that I have recently suggested (*vide* paragraph 2 of my letter, No. 22, dated 21st September 1897), the grant to Collectors of power to defend the less important suits on their own motion; and that in regard to small escheats, the Board must, as a rule, accept the facts and recommendations which the Collector puts before it.

16. Again all questions in regard to the *resumption of charitable inams* for default of the service for which they were instituted, and the transfer of the proceeds of such inams to Local Boards for charitable objects are now dealt with by Government on the principle that such lapsed endowments are escheats within the meaning of section 6 of Regulation VII of 1817. The Board said in item I of Appendix A to Board's Proceedings, No. 459, dated 16th December 1895, that granting this to be the case, the power of dealing with them might be made over to it, to be exercised in accordance with the provisions in G.O., No. 1159, Revenue Department, dated 2nd August 1875. The Government (paragraph 2 I (a) of G.O., No. 142, Revenue Department, dated 24th March 1896), postponed dealing with the suggestion pending

a question which had been raised by the Government of India regarding the competence of the Local Government itself to act in this matter. But from G.O., No. 567, Revenue, dated 26th October 1896, and the connected papers to which I have had access in the Government office, it appears that the Government of India has now disclaimed any desire to interfere in the matter. I submit therefore that the delegation proposed by the Board might now be made.

The powers vested in the Governor in Council by section 51 (2) of the Local Boards Act V of 1884 can, I may note, be already delegated by him under section 160 of the same.

17. The *amendment of Act II of 1864* referred to above might, I submit, be taken advantage of to decentralize in the following instances also:—

(1) *Section 57 of the Act* might be modified so as to carry out the simplification in procedure suggested in my letter No. 29 of 26th October 1897, paragraph 23, which I here quote for convenience of reference.

"Under section 57 of Act II of 1864, when a defaulter in respect of the general land revenue, or of any other item of revenue which is realisable under this Act, owes his arrears in one district but owns property which it is desirable to proceed against in respect thereto in another, it is necessary that the matter should pass through the hands of the two Collectors. I would allow the Tahsildar of the taluk in which the arrear has accrued (including under this term Deputy Tahsildars in independent charge) to send a notice direct to the Tahsildar of the taluk in which coercive process is to be taken. The Collectors are merely post offices in such a case, and as the amendment of the Act is now under contemplation * the present is a fitting opportunity for pressing upon Government the necessary alteration in section 57"

* G.O., No. 845, Revenue, dated 6th October 1897.

(2) *Section 46 of Act II of 1864 and section 2 of Act I of 1876* require that the Board's sanction should be obtained for the apportionment of peishchash made in respect of portions of estates alienated by the proprietors thereof or to be sold for arrears of revenue.

In the case of subdivisions made under Act I of 1876, an appeal to the Board of Revenue against the Collector's apportionment is allowed by section 7; and the Government can also re-adjust the assessment in special cases under section 8. In these circumstances, the sanction required to be obtained from the Board before the Collector declares the assessment payable on the new subdivision (*vide* concluding clause of section 2 and section 3 of the Act) appears to be unnecessary.

Again when the subdivision of an estate has to be made in view to sale of a portion for arrears of revenue, the Collector might be authorized to carry it out on his own authority and make the necessary apportionment of peishchash subject to appeal to the Board if the zamindar was not satisfied. See in this connection what is declared by section 17 of Regulation II of 1803 to be the responsibility of Collectors in regard to the matter under discussion. I propose to make that responsibility a real one, subject to the general power of control which the Board must always exercise.

18. If the principle of a local "*Decentralization Act*" as above proposed be approved, a suggestion might be made to the Government of India in regard to the passing of a similar Act in respect of sections of *Imperial enactments* which involve superfluous references to head-quarters.

19. For instance, under sections 5 and 6 of the *Registration Act* (III of 1877), alterations in the limits of registration sub-districts and appointments of Sub-registrars, both matters which the Inspector-General of Registration might well be empowered to deal with must go to the Local Government.

20. Again, under section 31 (3) of the recent *Land Acquisition Act*, a Collector can, instead of awarding money compensation for land taken up for public purposes, "make any arrangement with a person having a limited interest in such land either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned"; but he can do so only "with the

sanction of the local Government" So far as "decentralization" is concerned the effect of the sub-section has been distinctly retrogressive, for under the orders noted in the margin the powers in question had gradually been vested in the Board and finally been delegated *en bloc* to Collectors. But now in respect to persons having a "limited interest" as defined in G.O., No. 3875, Revenue, dated 6th October 1894 (Board's Proceedings, No. 476 of 6th November 1894), the Collector must, under the Government Pleader's case for the orders of the Board and Government.

The "free hand" which he formerly enjoyed might, I think, be restored.

21. These are again only instances of matters which might be made the subject of an Imperial Decentralization Act. The departments of the Government Secretariat will no doubt be able to supply other similar cases.

22. Lastly, I would submit that, in addition to the already existing legal restrictions, Government unnecessarily ties its own hands and those of its subordinates by including in the rules which it is empowered to issue for the purpose of carrying out the policy and provisions of Administrative Enactments, matters of petty detail which ought to be left to departmental discretion. I will take as a typical example the Rules for carrying out the new policy in regard to hemp drugs notified under G.O., No. 142, Revenue, dated 6th March 1897, a copy of which accompanies this letter (*vide* pages 11 *et seq.* of the Government Order). Under Nos. 3, 4, 8, 23 and 25 of these rules, applications for licenses to cultivate the hemp plant, to harvest the crop thereof and manufacture drugs therefrom, and to obtain delivery of drugs from a storehouse as well as the license, permit or letter of advice issued on any such application, must all be in particular forms (I-D 1, 2, and so forth), each of which is appended to the Rules. Similarly in regard to receipts issued for intoxicating drugs lodged in a public storehouse, notice of transfer of possession of such drugs while in store and the storehouse registers (Rules 10, 11 and 14). So, again, with the accounts to be maintained by licensed vendors (Rule 29) and the manner in which they must obtain drugs from a storehouse (Rule 22).

23. The result is that if in any of these cases it be found by experience that some of the numerous forms prescribed require some modification, nothing can be done without the formal alteration of the Rules by Government. Surely it would be much better in all such cases to say that any application, permit, register, account or return required "shall be in such form as the Board of Revenue (or other suitable controlling authority) shall from time to time determine." Such purely technical administrative minutiae were never, I submit, intended to figure as part of Rules having the force of law (section 69 of the Abkari Act) and which must therefore be issued or modified by the Government itself.

And where, as under the Opium Act, the Rules require the further sanction of the Governor-General in Council, the mischief of making them so unnecessarily elaborate is of course still greater, for in this case no part of them can be modified without a reference to the Government of India.

In future when such rules have to be dealt with it ought, I submit, to be considered not only, as is now done, whether they are legal, equitable and expedient, but also how far the matters to which each relates might not with advantage be left to administrative and departmental discretion.

Resolution—No. 384, dated 11th November 1897.

Submitted for the orders of Government. The Board has discussed these proposals with Mr. Meyer and resolves to support his recommendations.

2. The Board has no objection to the proposed delegation of powers under the Forest Act (V of 1882), but it must not be overlooked that the effect of the change will be to take away from Government all power of detailed control over forest reservation. The notification under section 4 is indeed submitted to Government after the locality has been carefully inspected by the District Forest-officer, and the arguments for and against conservancy are duly considered; but in practice it is frequently found that the real objections to the reservation of a block do not come to notice until the section 4 notification has issued and the enquiry by the Forest Settlement-officer has begun. It will, however, be understood that the orders of Government will be taken on any important question of principle, and the Board considers that on this understanding the issue of section 16 notifications may well be left in the Board's hands.

3. The other powers under the Forest Act dealt with in Mr. Meyer's letter hinge upon section 24 which requires the sanction of the Supreme Government to all orders of disafforestation. The provisions of this section were copied from section 26 of the India Act (VII of 1878) and find a place also in the Burma Act (XIX of 1881). They do not seem to have been discussed when the Madras Forest Act was passed through the Legislative Council. The object of requiring the orders of the Government of India in such cases is not apparent. If the Government of India consents to the power of ordering disafforestation being left in the hands of the Local Government, the power of granting a patta under sections 7 and 9 may well be transferred to the Board.

4. As regards section 35 of the Forest Act, it must be noted that the only rules formally made under this section are rules which have the force of law, and it seems right that the sanction of Government should be required.

(True Copy and Extract)

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

To the Secretary to Government, Revenue Department.
Copy to W. S. Meyer, Esq., I.C.S.

Order—No. 438, Revenue, dated 6th August 1898.

Miscellaneous.

With the above Proceedings the Board of Revenue submits, for the orders of Government, Mr. Meyer's proposals for decentralization which require resort to legislation.

2. Before dealing with these proposals the Government will premise that, the question of the relief their adoption may afford in matters of time and correspondence though important is not the primary consideration, which is whether the Government can, in the interest of good administration, divest itself of the specified powers.

3. The proposals are of two classes, (1) those that can be dealt with by the Local Legislature; (2) those that the Imperial Legislature alone can deal with.

4. Some of the proposals falling under the first head as they concern Madras Act II of 1864, the amendment of which is at present under the consideration of the Government, may be conveniently stated and considered together. These proposals are as follows:—

(1) That the Board of Revenue should be allowed full power in respect of writing off irrecoverable arrears of land revenue and cesses and also irrecoverable items of *abhari* arrears.

The Government agrees that this power might be unobjectionably delegated to the Board. The power might be also extended to income-tax arrears which are also recoverable as arrears of land revenue.

As to empowering Collectors to deal on their own authority with small irrecoverable items of land revenue arrears not exceeding Rs. 50, it is observed that the small items under Rs. 50 form the bulk of irrecoverable arrears and the Government considers that the reference to, and supervision of, the Board is necessary to ensure a thorough investigation locally.

(2) *That the Board should be given power to order the suspension of kists beyond the end of the fasti.*

The evils which attend postponement of collections have been frequently pointed out. It appears therefore to the Government inadvisable to relax any of the restrictions on the exercise of this power. Further, as the power should be very sparingly exercised, the relaxation of the law would not give any very material relief by way of curtailing work.

(3) *That, in the matter of the recovery of arrears of revenue from a defaulter residing in a district other than the district in which the arrears accrued, the Tahsildar of the taluk (and also Deputy Tahsildars in independent charge) should be given power to send notices direct to the Tahsildar of the taluk in which the defaulter resides.*

The Government accepts this suggestion, to which effect will be given.

(4) *That, when a portion of an estate is alienated by the proprietor, the Collector should be authorized to apportion the peshkash on his authority, and that similarly where a portion of an estate has to be sold for arrears of revenue, the Collector should be authorised to make the necessary sub-division and to apportion the peshkash on his own authority.*

The Government accepts these proposals.

5. Provision will be made in the draft Bill, now under consideration, to amend Act II of 1864, in view of effect being given to the suggestions approved in the preceding paragraph.

6. The remaining proposals, with which the local legislature is competent to deal are the following:—

(i) *That section 16, clause (7), of Regulation III of 1802, be modified so as to empower District Judges of their own motion to credit unclaimed personal property to Government.*

The proposal will be considered in the Judicial Department.

(ii) *That section 16 of the Madras Forest Act V of 1882 be amended so as to empower the Board of Revenue to notify finally reserved forests.*

The Government considers that the delegation would be inexpedient.

(iii) *That the following powers under the Forest Act V of 1882 be also delegated to the Board:—*

(a) *Grant of patta under special circumstances for land notified for reservation under section 4 (vide section 7).*

(b) *Grant of patta for land included within a finally notified reserved forest (vide section 18).*

(c) *Power to make rules under clauses (c) and (f) of section 35 and to issue the subsidiary rules contemplated at the commencement of the section.*

The Government considers that the power to grant patta whether in lands notified under section 4 or in lands finally reserved may be delegated to the Board if the patta is merely temporary and revocable with or without notice. The power to grant all permanent pattas should, however, vest in the Government inasmuch as the existence of such pattas in a reserve materially and permanently alters its constitution.

As regards the rules under section 35 of the Act, the Government agrees with the Board that they should be sanctioned by the Government.

(iv) *That section 24 of the Madras Forest Act V of 1882 be amended so as to authorise the local Government to sanction disafforestations.*

The Government are not satisfied of the advisability of the change and see no sufficient reason to address the Government of India on the subject.

(v) *That sections 8, 10, 11 and 12 of the Madras Act II of 1890 (Canals and Public Ferries Act) should be amended so as to entrust the Board of Revenue with the establishment of local ferries, the fixing of fees leviable thereat and the assignment of their management when desirable to Local Boards or Municipalities.*

The present procedure prescribed by the law does not appear to be inconvenient and no sufficient reason for changing it has been made out.

(vi) *That power to extend temporarily some or all of the provisions of the Madras Towns Nuisance Act (III of 1889) to a village or villages for the period of a fair or festival or during the prevalence of an epidemic might be given to District Magistrates.*

The question will be considered in the Judicial Department.

(vii) *That section 6 of Regulation VII of 1817 be amended so as to authorise the Board of Revenue to dispose finally of minor real property escheats not exceeding Rs. 500 in value.*

The Board has been authorised in this respect in G.O., No. 1071, Revenue, dated 16th June 1871, and G.O., No. 142, Revenue, dated 24th March 1896. The section quoted is not very precise and the Government does not consider the Board's action illegal so long as Government formally ratifies the exercise of the delegated power.

7. It is suggested that effect may be given by means of a Decentralization Act to such of the proposals as are approved. The need for such an Act has not however been sufficiently demonstrated. As stated above some of the delegations proposed are inadvisable and for others such a remedy, not being urgently called for, would be unwieldy. The more important of the amendments accepted by the Government will, as already stated, be carried out in amending Act II of 1864. The other approved amendments will be effected on the occurrence of a suitable opportunity.

With regard to those proposals which require the intervention of the Imperial Legislature, the Government, for similar reasons, does not consider that sufficient reason has been shown for addressing the Government of India on the subject. On any amendment of Imperial Acts, the possibility of further delegation will be borne in mind.

8. Two minor suggestions remain to be noticed.

It is suggested that Collectors may be empowered to deal with real property escheats not exceeding Rs. 100 in value. The Government is inclined to think, however, that the existing practice by which the Board disposes of such cases where the value does not exceed Rs. 500 [vide paragraph 5 (7) above] should be maintained. Collectors should have the benefit of the Board's advice in such cases.

It is also suggested that the Board of Revenue may be authorized to deal with all questions in regard to the resumption of charitable inams for default of the service for which they were instituted, and the transfer of the proceeds of such inams to Local Boards for charitable objects.

The Government considers that, in the case of private endowments, the Board may proceed under section 13 of Regulation VII of 1817 to make such arrangement as to the appropriation of the income as to it seems right and fit. But in the case of assignments of public revenue, the Board has no power to resume even *pro forma*, and the Government considers that for this reason, and also on general grounds, the devolution of such endowments should be reserved for the decision of the Government itself.

(True Extract.)

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

To the Board of Revenue (Land Revenue).
„ the Judicial Department.
„ W. S. Meyer, Esq., L.C.S.

ORDER—No. 1462, Judicial, dated 19th September 1898.

The Government considers it desirable that the existing practice in regard to the disposal of unclaimed personal property should continue. The proposal to amend the Towns Nuisances Act, however, is approved, and steps will be taken to give effect to it when the Act is next brought under revision.

(True Extract.)

H. S. S.
for Chief Secretary.

To the Revenue Department.
„ W. S. Meyer, Esq., I.C.S.

Exd. C. M. Thambaswamy.

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189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DUTY

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