

EAST AFR. PROT.
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393

U.S. 241
Series
Date.
1912
April
Previous Paper.
6048

COMMUNICATIVE REGULATORY ORDINANCE

This Petition from large number of members of British Indian Community of Mombasa protesting against the indiscriminate application of the Ordinance proposed to reply that it has been carefully considered and that no amendment is seen to make the amendments to the Bill which has been proposed.

~~Mr. G. F. Fisher~~
Mr. Wainwright approves the proposed reply to the petition. It comes out to the petitioners same points viz. that the Indians are to be taxed although they have no representative on the Legislative Council. You will remember that Mr. J. G. G. represented them for a couple of years, but that the experiment was so far from being a success that the S. of C. decided not to re-appoint him, and not at present at any rate to fill his place.

to alia, could not be done. H-38

Subsequent Paper

by another Indian. In fact, the
here was no one else who could be
approved. In these circumstances it
is perhaps wise to let this point in the
petition go unnoticed.

The bill is at present submitted
for the S & B's approval, but it seems
necessary to call attention to the fact
that all grading is now dropped, a
uniform tax of 15 Rs. being imposed.
In para 4 of our despatch on Govt the
S & B expressed stipulated that if
a poll tax were imposed, some graduation
should be introduced. The only graduation
which the Govt (or any of us for that
matter) could propose was the very poor
attempt referred to in para 4 of this
despatch. The view of the meeting which this
proposal met with in the minutes on
the subject is perhaps need not be mentioned.

Rs 15
European
Rs 10
non-E

... in the bill as it
stands

354
May 10

H J R
10/12
P. 11

Since it is in working order let us send
them up to some graduation.

as proposed
Ch 11.5

£ 13.5

GOVERNMENT HOUSE,
NAIROBI, K. M. A. 12
BRITISH EAST AFRICA.

EAST AFRICA PROTECTORATE.

April 6th 1912

No. 241

395

Sir,

At the request of the President of the Mombasa Indian Association, I have the honour to forward a copy of a Petition addressed to me by a large number of the members of the British Indian Community resident in Mombasa protesting against the indiscriminate application of the proposed Non-native Poll Tax Ordinance.

2. I enclose a copy of the Bill in question as it at present stands, after having passed the Committee stage in the Legislative Council, together with extracts from the minutes of the last session of the Legislative Council bearing thereon. You will observe that it is not proposed to enforce the Ordinance before January 1st 1913, and the third reading of the Bill has been postponed intentionally in order to allow of further expression of public opinion before it is finally passed into law.

3. There is no argument in the petition which was not fully realised and dealt with in the Legislative Council except perhaps that relating

THE RIGHT HONOURABLE

LEWIS HARCOURT, F.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

Petition
Bill*
Extracts from
Leg. Council Mi-
minutes

to non-representation. This, as you are aware, is not because we refuse to admit the principle of Indian representation but because no suitable member of the British Indian community is available.

4. I may state that a proposal to fix the tax at Rs.15 for Europeans and at Rs.10 for other non-natives was at one time considered, but was dismissed as it was felt that such a discrimination was undesirable for the reason that a considerable number of members of the latter community are far wealthier than a number of the European residents, and any possible lack of equity in the incidence of the tax would be increased rather than decreased by the adoption of the suggestion.

5. I propose therefore, subject to your approval, to reply to the petitioners to the effect that the petition has been carefully considered but that Government sees no reason to make the amendments to the Bill which they have proposed, the interests of the poorer classes being sufficiently safeguarded by the provisions of section 14 which enable the Governor (and not the collecting officer as stated in the petition) to remit the tax wholly or in part on the ground of poverty of the person liable to pay the same or on the ground that the tax is oppressive.

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

ACTING GOVERNOR.

DUPLICATE

INCLOSURE No. 387

In Despatch No. 2476 of 6/11/12

To

His Excellency,
Charles Calvert Bowring, Esquire,

C. M. O.

Acting Governor British East Africa Protectorate.

May it please Your Excellency.

We the undersigned members of the British Indian Community resident in Mombasa respectfully venture to submit to Your Excellency the following grounds and reasons why the proposed poll tax should not be imposed indiscriminately upon all the non-native population in the Protectorate.

In the first place we would state that His Most Gracious Majesty King George rules over no subjects more dutiful more faithful or more law abiding than us your humble petitioners, and that we fully recognise that it is a duty incumbent upon us to bear a fair share in the cost of the administration of the Government of this Protectorate. In times past we and our fathers before us have done our duty in opening up and developing the country and thus it is not now our desire to shirk responsibility in the future.

Our humble submission to Your Excellency is therefore not on the ground, that there should be no taxation of British Indians, but rather because we believe the present proposal to be neither fair nor reasonable and that it would press with undue severity upon our community the greater number of whom being labourers and artisans would be utterly unable to bear such a burden.

Your Excellency needs not be informed that the British Indian community is at least ten times more numerous than the European population combined, so that consequently our fellow country men would have to pay a greatly heavier percentage of the proposed tax and this although denied equal rights and privileges as enjoyed by other communities.

If wealth were equally distributed among all the members of the non-native population this might not be inequitable but it is unnecessary to argue that such is not the case for it is a fact well known to Your Excellency, that the large majority of British Indians in the Protectorate are drawn from the poorest classes consisting of labourers and artisans, a class of the greatest importance at this time to the country, while on the other hand among European population few are to be found belonging to this class.

A further reason why we consider this proposed tax will press unfairly upon and to the detriment of the British Indians at Mombasa and within the area

subject to Treaty rights with His Highness the Sultan of Malabar, is, that within this area subjects of foreign powers, already our formidable competitors, will be exempt from this tax, and thus be given an advantage over us.

If therefore the Government is resolved on the imposition of a poll tax, we humbly pray that at least all residents within the coast area be exempt, in the same manner as the subjects of foreign powers, and further that all persons whose income does not exceed Rs. 50 per month be released from paying this tax, or we cannot regard as satisfactory, that the remission of the tax should be in the discretion of the collecting officer.

We would further respectfully urge upon Your Excellency another important reason why at the present time we object to the imposition of this tax.

Although the British Indians form such a very great majority of the non-native population and although their existence is of such importance to the Protectorate yet there is no Indian member at present upon the Legislative Council by whom this tax is proposed and passed.

We humbly submit that it is inequitable and not consonant with the principles of British justice that, we who shall have to pay practically the whole of the proposed tax should not be allowed a proportionate voice in the passing of the measure, or an opportunity given to us of discussing or amending the proposal.

Your Petitioners therefore humbly pray that before the proposed poll tax be finally made law, the privilege be accorded to us of having representative adequate in proportion to our population upon the Legislative Council that thus our views may be properly advanced and considered.

And your Petitioners beg to subscribe as

YOUR EXCELLENCY'S

Most Obedient Servants.

(Sd.) A.M. Jeevanjee & Co.

PRESIDENT MOMBASA INDIAN ASSOCIATION

(Sd.) A. Allidina Visram

VICE PRESIDENT MOMBASA INDIAN ASSOCIATION

(Sd.) Sheriff Jaffer & Co.

TREASURER MOMBASA INDIAN ASSOCIATION

(Sd.) BY 622 OTHER INDIAN RESIDENTS OF

MOMBASA

In Des: *no. 2*
2011 *6.11* *1914*
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A Bill

introduced

An Ordinance to make provision for the Payment of a Poll Tax
 by Non-Natives.

PRINTED AT THE GOVERNMENT PRINTER, NAIROBI

A Bill

399

Intituled

An Ordinance to make Provision for the Payment of a Poll Tax by non-natives.

1. This Ordinance may be cited as "The Non-Native Poll Tax Ordinance Short Title, 1912."

2. In this Ordinance unless inconsistent with the context:—

"The Tax" means the Non-Native Poll Tax prescribed by this Ordinance. Definitions.

"District Commissioner" includes an Assistant District Commissioner.

"Non-Native" means a male person other than a Native within the meaning

of "The Native Hut and Poll Tax Ordinance, 1910."

"Magistrate" means a Magistrate holding a Subordinate Court of the first, second or third class, and the powers conferred upon a Magistrate by this Ordinance may be exercised by any such Magistrate notwithstanding any law limiting the jurisdiction of such Magistrate over Europeans, or other Non-Natives.

"Year" means each period from the 1st day of April to the 31st day of March following.

3. From and after the first day of ^{January 1912} April, 1912, there shall be paid in every year by every Non-Native a tax of fifteen rupees, to be called the Non-Native Poll Tax.

Date of Commencement of Tax and amount of Tax.

4. The tax payable in any year shall be paid between the first and thirty-first day of April in each year. Provided, however, that in the case of any Non-Native who is not residing in the Protectorate on the first day of April or who although residing in the Protectorate on such date leaves the Protectorate during the month of April without having paid the tax payable in the year, such Non-Native shall pay the tax within one month of his coming or returning to the Protectorate, as the case may be. And provided further that any Non-Native who shall come to the Protectorate after the 30th day of September in any year and who shall not have previously resided in the Protectorate in the same year shall pay a tax of seven rupees and fifty cents in lieu of the tax before prescribed.

Tax when payable.

5. The tax shall be paid by a person liable to pay the same to a District Commissioner at the office or the Officer to whom payment is made.

When and to whom tax to be paid.

6. A District Commissioner shall give to the person paying the tax a receipt in the prescribed form.

Receipt to be given to the person paying tax.

7. Every person paying the tax shall furnish the Officer to whom payment is made with such information as may be required by him in preparing a receipt in the prescribed form, and shall, if required by such Officer, attend personally at the office of such Officer for such purpose.

Person paying tax to provide information required in preparing the receipt, and if required shall attend at the office for such purpose.

8. Any person, who shall wilfully furnish a District Commissioner with false particulars as to any of the information required by such Officer in preparing a receipt, or who, on being required to attend at the Office of a District Commissioner, shall neglect or refuse to attend, or attending shall neglect or refuse to furnish any information required as aforesaid, shall, on conviction, be liable to a fine not exceeding one hundred and fifty rupees or to imprisonment for a term not exceeding two months.

Penalty for furnishing false particulars or refusing to attend or give information when required.

9. Whenever any person shall make default in the payment of the tax due and payable by him any Magistrate having jurisdiction in the district or place in which the person in default is for the time being staying or residing, may issue a summons directing the defaulter to attend before him, at a time to be named in the summons, to show cause why he should not be ordered to pay the amount due as a judgment debt.

Magistrate may call on defaulter to appear and show cause why he should not pay the tax.

10. If a summons for compelling a defaulter to show cause as mentioned in the last preceding Section is issued, it shall be lawful for the Magistrate on

Magistrate may order defaulter to show cause why he should not pay the tax.

the date named in the summons or at any other date to which the hearing may be adjourned, to order him to pay into Court the payment of the unpaid tax and such costs and expenses as are for this purpose from time to time fixed by the Governor, or to order him to pay into Court any part of such amount which the Magistrate may deem the defaulter able to pay or arrange for paying, within seven days of the order or within such extended time as may be determined by the Magistrate, and either in a lump sum or by instalments.

11. (1) If the person summoned as aforesaid fails to comply with the summons without lawful excuse or if he makes default in payment into Court in the manner aforesaid, it shall be lawful for the Magistrate to commit such person to prison, without hard labour, for a term not exceeding six weeks or until payment of the sum ordered to be paid (if paid before the expiration of such term): Provided that no such committal shall be ordered for default in payment as aforesaid unless it be proved to the satisfaction of the Magistrate that the person making default either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses and neglects, to pay the same.
- (2) Proof of the means of the person making default may be given in such manner as the Magistrate thinks just, and, for the purpose of such proof, the debtor and any witnesses may be summoned and their attendance enforced by the same processes as in cases in which the Magistrate has jurisdiction in criminal matters, and such debtor and witnesses may be examined on oath.
- (3) Every order of committal under this Section shall be issued, obeyed, and executed in manner similar to commitments by Magistrates in the exercise of jurisdiction in criminal cases.
- (4) Imprisonment under this Section shall not operate as a satisfaction or extinguishment of the judgment debt.
- (5) The amount of any tax due and unpaid, and the sum (if any) ordered to be paid for costs and expenses under Section 10, may, at any time, be levied by the attachment and sale, under the orders of a Magistrate, of the moveable property of the defaulter in like manner as if the same were payable under a decree of a Civil Court, and a Magistrate is hereby empowered to issue such order either on his own motion or on the application of any District Commissioner.

12. In the event of the defaulter paying the whole amount ordered to be paid as aforesaid and the cost and expenses of or in connection with any attachment ordered, the Magistrate, if a District Commissioner, shall grant to the person paying a receipt in the prescribed form for the amount of the tax paid, or, if not a District Commissioner, shall remit to a District Commissioner the amount so paid after deducting therefrom such part thereof as may represent the Court costs, and the District Commissioner on the receipt of such sum shall grant to the person who shall have paid the same a receipt in the prescribed form.

13. (1) A District Commissioner may, at any time, require any Non-Native to produce the receipt granted to such Non-Native for the payment of the tax last payable and a District Commissioner may retain any receipt produced for such time as he may consider necessary for the purpose of identifying the person named therein with the person producing the same.
- (2) A District Commissioner may require any Non-Native who refuses or neglects to produce his receipt when requested to furnish him with information as to the office at which he has paid his tax last payable, and with such further information as the District Commissioner may require for the purpose of ascertaining whether such Non-Native has paid such tax.
- (3) Any Non-Native, who, without lawful excuse, shall neglect or refuse to produce his receipt when required as aforesaid, or who, having failed or refused to produce his receipt, shall fail to furnish the information which may be required of him under the preceding Sub-section, shall, on conviction, be liable to a fine not exceeding seventy-five rupees or to imprisonment for a term not exceeding one month.

Imprisonment for failure to pay tax.

Process.

Proof of the means of defaulter.

Order of committal.

Imprisonment not to extinguish liability.

Tax etc., unpaid leviable by attachment and sale of moveable property.

Debtor paying whole of amount ordered to be paid.

District Commissioner may require production of receipt for tax.

If receipt not produced information required to be furnished to District Commissioner.

Penalty for refusing to produce receipt or give information.

1. Any person who, being called by a District Commissioner to produce his receipt, shall produce a receipt granted to some other person, or who, having failed or refused to produce his receipt, shall furnish a District Commissioner with any false particulars as to any of the information which may be required of him under Sub-section (2) of this Section, shall, on conviction, be liable to a fine not exceeding four hundred and fifty rupees or to imprisonment of either description for a term not exceeding six months.

14. The Governor may remit, wholly or in part, the tax on the ground of poverty of the person liable to pay the same, or on the ground that the tax is oppressive, and may also, for any cause, refund the tax or any part of the tax.

General power of Governor to remit or refund the tax, or for other good cause.

15. There shall be exempted from the payment of the tax under this Ordinance the persons following:

- (a) Every person under the age of eighteen.
- (b) Any person who, by virtue of any treaty to which the British Government or the Sultan of Zanzibar is a party, is exempted from the payment of the tax throughout the Protectorate or in that part of the Protectorate in which he is residing when payment of the tax is demanded of him.
- (c) A person on a temporary visit to the Protectorate, provided that he is not the owner or lessee of land in the Protectorate, and is not engaged in any employment or business in the Protectorate, and has not any pecuniary interest in any business or enterprise conducted or carried on in the Protectorate.

16. The burden of proof of exemption from the tax shall lie on the party claiming the exemption, and no person shall be entitled to exemption from the tax under paragraph (b) of the last preceding section unless he shall produce a certificate of exemption granted by or under the authority of the Governor.

17. The Governor may, from time to time, make rules prescribing the form of the receipt to be granted under this Ordinance, and generally for the better carrying out of the purposes of this Ordinance, and may attach penalties not exceeding a fine of seventy rupees for the breach of any such rule.

18. The Native Hut and Poll Tax Amendment Ordinance, 1940 is hereby repealed.

C O
13304
1912

Non-Native Poll Tax Ordinance.

THE HON. CHIEF SECRETARY, in pursuance of notice given, introduced and moved the first reading of a Bill intitled "An Ordinance to make provision for the payment of a Poll Tax by Non-Natives." He said it was necessary for him to dwell at some length on the provisions of the measure now put forward by the Government and to draw attention both to the objects of the proposed legislation as well as to the difficulties with which the Government had been faced in attempting to extend the principles of direct taxation, which up to the present had been applied to natives of the Protectorate only, to the remainder of the community.

It was not contended that a Poll Tax was in any way an ideal form of Taxation. That applied not only where non-natives were concerned but to a very great extent to the natives themselves especially to the rich pastoral tribes where individuals possessed of very considerable wealth in the form of cattle paid the same tax as the poorest tribesman who might have to go out and work for the sole purpose of earning the wherewithal to pay the amount demanded of him. Similarly the well-to-do non-native was, under a system of fixed poll tax, called upon to pay no more than his own servant or employee. Still there were precedents for a Poll Tax amongst civilised communities and he (the Hon. Member) would cite Natal and the United States of America as examples.

The obvious alternative to a poll tax was a property and income tax. That form of taxation had been carefully considered by the Government for some time but any idea of adopting it in the East Africa Protectorate had been dismissed owing to the almost insuperable difficulties and great expense attending it, at any rate in the existing conditions of the Colony.

An inhabited house tax had also been under consideration but had been abandoned as being even less equitable in its incidence than a Poll Tax.

He took it for granted that every individual residing in the Protectorate would admit the equity of the principle of contributing to the expenses of the Administration by some form of direct taxation. At present the native collectively contributed a very large proportion of the revenues of the Protectorate both by direct taxation in the form of Hut and Poll Tax and by indirect taxation in the form of Customs duties on the cotton and other imported goods used by them. The non-natives on the other hand were at present subject to no form of direct taxation and the main objects of the Government in introducing the measure now before Council were to extend the principle of direct taxation to the non-native members of the community and to provide some means of increasing the revenues so that they might the more speedily arrive at that stage of the Protectorate's finances when they should no longer have to enlist the assistance of the Imperial Government, but should reap the many benefits of financial independence. On a basis of Rs. 15/- per head the tax was estimated to bring in about £12,000 during the first year of its imposition.

It had not been thought advisable to attempt any graduated form of Poll Tax on non-natives. It was proposed that the community should be divided into two sections, viz: the natives who paid Rs. 3/- per head and the non-natives who would pay such sum as might be determined when the Bill had become law.

He might state that although in the Bill now before Council the tax was put at Rs. 15/-, the Government was quite prepared to consider the substitution of a smaller amount should good cause be shown, or to adopt the principle provided in the first native hut tax regulations where the maximum of the tax was fixed by law and the actual amount left to be determined by Proclamation.

For the consideration of that matter as well as of the other provision of the Bill he would on the second reading ask that it be referred to a Special Committee.

"Your Excellency,

I beg to submit the following report of the Special Committee appointed to consider the provisions of the Non-Native Poll Tax Bill:—

- (a) It is considered advisable to give ample and sufficient notice of the imposition of the tax, and on this ground the Committee recommend that the date on which the Ordinance shall come into operation shall be the 1st January, 1918, and that the tax should become due on the 1st day of January, in each year. Amendments are accordingly proposed in Clauses 2, 3, and 4 of the Bill.
- (b) The Special Committee after carefully considering Clause 3 of the Bill, have come to the conclusion that for many reasons it is undesirable to reduce the amount of the Poll Tax below that stated in the Bill, viz: Rs. 15. They realise that the retention of the amount of Rs. 15 may adversely affect the labour supply as far as non-natives are concerned but consider that this is a matter which should be left to be settled by mutual agreement between employers and employees. They further draw attention to Clause 14 which enables the Governor to reduce or remit the tax in cases where it appears to be oppressive.
- (c) It has been represented that the powers as laid down in the Bill do not give the Governor sufficient authority to deal with certain circumstances which cannot be classed under the category of poverty or oppression, but which may still have an adverse effect on the welfare of the community, and amendments in Clause 14 are accordingly recommended.
- (d) With regard to Clause 15 (c) the Committee after full consideration, find themselves unable to come to an unanimous decision and therefore recommend that the question be settled in Council.

C. C. BOWRING,

Chief Secretary, Chairman.

THE HON. CHIEF SECRETAR accordingly moved that Council go into Committee to consider the provisions of the Bill.

THE HON. CHIEF SECRETAR seconded.

The question was put and carried.

The Council resolved itself into a Committee of the Whole Council, His Excellency the Governor presiding.

IN COMMITTEE.

The Bill was read clause by clause and it was agreed to make the following amendments:—

Clause 2. Delete last paragraph.

Clause 3. Substitute the words "January, 1913" for the words "April 1912".

Clause 4—line 2. Substitute the word "each" for the word "such".

Substitute the word "January" for the word "April"

throughout the paragraph.

—line 8. For "September" read "June".

Clause 14—line 3. After "oppressive" insert the words "or for other good cause."

—line 3. Delete the words "for good cause" and substitute the words "for like reason".

Clause 15. (a) For "persons" read "person".

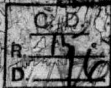
THE HON. MR. J. H. WILSON, referring to clause 15 of the Bill, said that Hon. Members must all agree that it was extraordinary and most unfair that, in a British Protectorate, British subjects should have to pay taxes which could

not be collected from subjects of certain other nationalities. His only reason for voting for the Bill was that it would be still more unfair that British subjects outside the 10 mile limit should have to pay a tax which British subjects at the Coast would not have to pay. Nevertheless he was supporting the Bill; but he would urge on Government that steps should be taken to enable Government, when levying taxes, to make them payable by all nationalities who found it worth their while to dwell within the walls of the Protectorate.

The Council Resumed its Sitting.

THE HON. CHIEF SECRETARY, reported the Bill as amended to Council and gave notice that he would move the third reading at the next Session of Council.

The Council adjourned *sine die*.



DRAFT Encl. No. 275

oag.

7 May 1911

For Mr. [Name]

Recd 14/15
No. 15 of 3

Thank you for a well: the
receipt of your despatch No. 241

of the 6th of April and to inform you that I approve the
writing a copy of the
draft which you propose to make to the
Petition addressed by you

by a large number of
the members of the
British Indian Community
resident in Malabar
on the subject
protesting against the
indiscriminate

application of the
proposed Non-native
Poll-tax & to inform
you that I approve of

I have the honor to be, Sir,
Your obedient servant,