

(1) Number of pages 16(2) Date of repair 30.12.15(3) Initials of the Referencer G

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. <u>233</u>	Press Mis.
<u>55-56</u>	<u>55-56</u>
Dated <u>4-2-</u>	<u>1875</u>

55/89Not to be folded or roughly handled

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*Proceedings of the Madras Government, Financial Department,
4th February 1875.*

Municipal—Bye-laws.

No. 55. Read the following letter from J. H. MASTER, Esq., President of the Municipal Commission, Bellary, to the Hon. D. F. CARMICHAEL, Acting Chief Secretary to Government, Fort St. George, dated Tadpatry, 16th January 1875, No. 7:—

In G.O., No. 1388, dated the 5th November 1867, forty-three bye-laws were sanctioned for the Bellary Municipality, the last of which ran as follows:—

“Breaches of the above to be punishable as provided in Section 143 of Act X. of 1865.”

2. Subsequently a number of bye-laws have been sanctioned by Government, some of them without any penal clause being expressly attached. However in reprinting the bye-laws, the (originally) last bye-law has always been placed at the end of all.

3. The Cantonment Magistrate now argues that the last bye-law can only apply to those above No. 43, and that convictions under such of the subsequent ones as do not contain penal clauses are illegal.

4. The question has been submitted for the consideration of the High Court. In the meantime, the Commissioners request that Government will be pleased to sanction the adoption of a bye-law to be numbered 55 (not 54), to run as follows:—

“Breaches of all Municipal bye-laws not expressly provided for to be punishable as provided in Section 163 of Act III. of 1871.”

5. I enclose copy of a resolution of the Commissioners on the subject.

EXTRACT from Proceedings of the Bellary Municipal Commission, dated 5th January 1875.

* * *

IV. Read copy of Proceedings of the Cantonment Magistrate of Bellary expressing his opinion that convictions under bye-laws enacted subsequently to G.O., No. 1388, of 5th November 1867, and with no penal clause attached are illegal, on the ground that the last of the bye-laws sanctioned in the above order which provides that breaches of the above are punishable under Section 143 of Act X. of 1865 (now Section 163 of Act III. of 1871) cannot be made to apply to bye-laws subsequently enacted.

Resolved in anticipation of the High Court's ruling on the point, and to prevent all doubt as to the legality of convictions under the latter bye-laws which have on penal clause attached, that Government be moved through the President to sanction the alteration of Bye-law No. 54, as follows:—“Breaches of all Municipal bye-laws not expressly provided for to be punishable as provided in Section 163 of Act III. of 1871.”

(True Copy.)

(Signed) J. H. MASTER,
President.

No. 56.

ORDER THEREON, 4th February 1875, No. 233.

The amended bye-law is sanctioned.

(True Extract.)

To the President of the Municipal Commission, Bellary.

Exd. J. Wright.

Acting Chief Secretary.

Municipal—Bye-laws.

No. 281. Read the following letter from J. H. MASTER, Esq., President of the Municipal Commission, Bellary, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Hoolikera, 3rd March 1875, No. 21 :—

I mentioned in my letter embodied in the Proceedings of Government, Financial, No. 233, dated the 4th ultimo, that the question as to the legality of certain convictions under a Municipal Bye-law had been referred to the High Court at the instance of the Cantonment Magistrate.

2. I have the honor now to forward copy of their Proceedings on the subject for the information of Government.

3. It is useless for me to address the High Court again, but the bye-law sanctioned by Government on the subject of vegetables and fruit did not specify that licenses were to be taken out for the purpose of selling such things.

4. It was simply to enable the Commissioners to utilize the market which they have themselves provided under Section 124.

No. 380.

Proceedings of the High Court of Judicature at Madras, 17th February 1875.

Read again letter, dated the 9th January 1875, No. 17, from the Magistrate of Bellary, referring at the instance of the Cantonment Magistrate for the orders of the High Court, under Section 296 of the Code of Criminal Procedure, the proceedings of the Assistant Cantonment Magistrate of Bellary in Cases Nos. 488 to 494, 498 to 501, 504, 515, 538, 541, 542, 544 and 563 to 565 of 1874, as contrary to law.

(Here enter High Court No. 351 of 1875.)

Read also copies of the bye-laws of the Bellary Municipality published in 1868 and 1874.

In the letter recorded above the District Magistrate submits, at the instance of the Cantonment Magistrate, the proceedings of the Assistant Cantonment Magistrate in certain cases in which the defendants have been sentenced to pay fines for a breach of a bye-law of the Municipality. The bye-law under which the defendants have been punished runs as follows :—

“No vegetables or fruit shall be sold except in such places as may be appointed by the Municipal Commissioners.”

This bye-law having been approved and confirmed by Government under Section 165 of the Towns Improvement Act (III. of 1871) was published with the following bye-law attached to it :—

“Breaches of all Municipal Bye-laws not expressly provided for to be punishable as provided in Section 163 of Act III. of 1871.”

This last bye-law containing a general direction as to penalties is stated to have been sanctioned by Government with reference to certain bye-laws previously framed by the Municipal Commissioners, but not with reference to the particular bye-law to which it was attached on publication.

The sentences of the defendants are now referred as illegal, on the ground that there has been no penalty affixed by the Municipal Commissioners and sanctioned by Government for the infringement of the bye-law under which the defendants have been convicted.

The High Court are of opinion that the convictions are illegal on the ground stated. A mere publication of a bye-law with a penal clause at the end which had not been passed by the

Bot. of 1875

FINANCIAL

To

THE PRESIDENT OF THE

MUNICIPAL COMMISSION,

Bellary.

Dated February, 4th.

Recd.

Encl.

G.O., 4th February 1875, No. 283.

FEBRUARY.
Nos. 55-56.

7-10-929.

Bellary Municipality.—A bye-law providing that breaches of all Municipal bye-laws not expressly provided for shall be punishable under Section 163 of Act III. of 1871, sanctioned.

*Proceedings of the Madras Government, Financial Department,
31st March 1875.*

Municipal Commissioners or approved by the Government as applicable to the bye-law in question though it was so passed and approved in reference to other bye-laws cannot avail to legalize the infliction of the penalty.

The High Court are also of opinion that the sentences are illegal on a further and more serious ground; the bye-law itself is in their opinion illegal because repugnant to a provision of law latent in the Act which gives the power to make bye-laws at all.

The Act has specified certain trades which may not be carried on without license (Section 129), and with such offensive trades the Municipality cannot interfere otherwise than as the next section provides. Section 127, moreover, specifies what the Municipality may do with buildings used for the sale of food, but is silent as to any restriction by license. These provisions would be wholly inoperative if the Municipal body are to have the power to legislate as they may think fit.

The bye-laws requiring license in cases in which the Act by specifying the cases in which they shall be required has implicitly declared that they shall not, are therefore in violation of the Act.

The convictions must be set aside and the fines levied refunded.

Ordered accordingly.

(True Extract.)

(Signed) T. WEIR,
Acting Registrar, Appellate Side.

No. 282. ORDER THEREON, 31st March 1875, No. 692.

As the ruling forwarded with the letter above recorded may very seriously affect the position of Municipalities in which markets have been erected from Municipal Funds, the opinion of the Advocate-General will be obtained as to whether steps can be taken to bring the point under the consideration of a full Court.

2. The Government would observe that this and similar bye-laws have not been framed with the view of restricting or interfering with trade.

(True Extract.)

(Signed) W. HUDLESTON,
Chief Secretary.

To the President of the Municipal Commission, Bellary.

„ Advocate-General.

Note.—Forwarded to all Presidents of Municipalities, with reference to G.O., 1st May 1875, No. 970, Financial.

Municipal Bye-laws.

No. 3. Read the following letter from H. G. PRICHARD, Esq., Government Solicitor, Madras, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 15th April 1875, No. 193, forwarding the following opinion of the Advocate-General:—

OPINION.

With reference to G.O., No. 282, of the 31st March 1875, No. 692, there are no means, as it appears to me, for bringing the Proceedings of the High Court, No. 351, of the 17th February 1875, as to the bye-laws of the Bellary Municipality under the consideration of a Full Court.

2. The Judges have expressed a strong opinion that all communications to them from Government should come through a Secretary to Government, and not through the Advocate-General.

3. Nor do I think that, even if it were possible to have the matter reconsidered by a Full Bench there would be any chance of getting a different ruling, as on both grounds the order is, in my opinion, right. The penalty for breach was not properly sanctioned by Government, and the bye-law itself is beyond the powers conferred by the Act on the Municipal Commissioners. Various restrictions of and regulations as to trade are permitted, but among these there is not the power to prohibit the sale of fruit or vegetables except at places appointed by the Commissioners.

4. I feel no doubt, therefore, that the bye-law is illegal, and that any further consideration of the point by the High Court would result thereby in a repetition of the opinion already expressed by the Judges.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

14th April 1875.

No. 4. ORDER THEREON, 1st May 1875, No. 970.

The decision of the High Court recorded with G.O., dated 31st March 1875, No. 692, will now be communicated to all Presidents of Municipalities for information.

(True Extract.)

D. F. CARMICHAEL,
Officiating Chief Secretary.

To all Presidents of Municipal Commissions.
„ Board of Revenue.

Erd. J. Wright.

Obt. of 1875 Madras.

FINANCIAL.

The PRESIDENT OF THE

MUNICIPAL COMMISSION,

Bellary.

&c., &c., &c.

Dated March, 31st.

Issued

Recd.

Encl.

G.O., 31st March 1875, No. 692.

MARCH.

Nos. 281-282.

Municipal Bye-laws.—The Advocate-General's opinion to be obtained as to whether steps can be taken to bring under the consideration of a full Court the question regarding the legality of certain convictions under a bye-law framed by the Municipal Commissioners of Bellary.

Kealaku 1875

Extract from Proceedings of the Bellary
Municipal Commission dated 5th January 1876.

IV Read copy of Proceedings of the
Municipal Magistrate of Bellary
expressing his opinion that convictions under
under Bye laws enacted subsequently to G.O.
No 1388 of 5th November 1867 and with
no penal clause attached are illegal, on
the ground that the last of the Bye laws
sanctioned in the above order which provides
that breaches of the above are punishable
under Section 143 of Act X of 1865 (now
Section 163 of Act III of 1871) cannot
be made to apply to bye bye laws
subsequently enacted.

Resolved in anticipation of the High Courts
ruling on the ruling on the point and to
prevent all doubt as to the legality of
convictions under the latter Bye-laws which
have in penal clause attached, that Govern-
ment be moved through the President
to sanction the alteration of Bye-law No 54
as follows- "Breaches of all Municipal
Bye laws not expressly provided for to be
punishable as provided in Section 163 of
Act III of 1871."

(True Copy)
W. Maslin
Collector of Bellary

Obdt. of 118751 30/1/76

FINANCIAL.

To
ALL PRESIDENTS OF MUNICIPAL
COMMISSIONS.

cc. cc. cc.

Dated May 1st

Issued

Recd.

G.O., 1st May 1876, No. 970.

MAY.
NO. 34

Municipal Bye-laws.-The decision of the
High Court as to the legality of certain convictions
under a bye-law framed by the Municipal Commis-
sioners of Bellary, recorded with G.O., dated 31st
March 1876, No. 692, communicated to all Presi-
dents of Municipalities for information.

BELLARY COLLECTOR'S OFFICE.

No. 7

Dated

16th January 1876.

From

And President, Municipal Commission
THE COLLECTOR OF
BELLARY.

To,

The Chief Secretary to Government
Madras.

Sir,

In Government Order No 1398 dated
the 5th November 1867, forty three bye laws
were sanctioned for the Bellary Municipality
the last of which ran as follows.

" Breaches of the above to be punishable
as provided in Section 143 of Act X of
1865."

2 Subsequently a number of bye laws
have been sanctioned by Government,
some of them without any penal
clause being expressly attached. However
in reprinting the bye laws, the (original)
last bye law has always been placed
at the end of all.

3. The Honble Magistrate now argues
that the last bye law can only apply
to those above No 43, and that convictions
under such of the subsequent ones

as do not contain penal clauses are
illegal.

4. The question has been submitted for
the consideration of the High Court. In
the meantime, the Commissioners request
that Government will be pleased to
sanction the adoption of a bye law
to be numbered 55 (not 54), to run
as follows.

"Breaches of all Municipal Bye
laws not expressly provided for to
be punishable as provided in Section
163 of Act III of 1871.

5. Enclose copy of a resolution of
the Commissioners on the subject.

I have the honor to be,

Sir,

Your most obedt Servant,

W. Master

Secy. & Pres.

4410 X VII of 1865-1871
Pub. 95463767. Nov 36-27

1870
HUMANITARIAN DEPARTMENT.
BELLARY COLLECTORS OFFICE.
Munich

Dated 16 January 1871 No. 7
Recd 19 January 1871

To,

The

Chief Secretary to
Government

10116

Enclosure.

Enc. 1

Received 22 January 1871

Submitts draft of
a budget - one of the
Bellarly Municipal
for sanction.

~~Handwritten text, mostly illegible due to bleed-through and fading.~~
The above is the draft of a budget for the Bellary Municipality for the year 1871-72. It is submitted for your sanction.

Govt. of 1873 Madras.

Amil

Municipal - Bye laws

G. O. 4 Feb 1873 No. 233

Nos. 55-6

*Relating to the Byelaws
providing that benches of all
Municipal Byelaws and especially pro-
vided for, shall be provided to be
under Sec 183 of Act 3 of 71,
Lancet*