M.R.O. 1—77,006—8-5-37.

(1) Number of pages 14

(2) Date of repair 6-3-40

(3) Initials of the Referencer Q

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 692	Press / Mis.
281-282.	
Dated 31-3- 1875.	

8/9

Not to be folded or roughly handled

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 nstance 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 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.)

Chief Secretary.

To the President of the Municipal Commission, Bellary.
" Advocate-General.

Exd. F. C. Shunker.

Govt. of 1875 Madras.

FINANCIAL.

To THE PRESIDENT OF THE MUNICIPAL COMMISSION, *Bellary*.

&c., &c., &c.

Dated March 31*st*.

Issued

Recd.

Encl.

G.O., 31*st 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.

5/1

BELLARY COLLECTOR'S OFFICE.

No. 21

Dated { 3d March 1875.

From The President, Municipal Commission

THE COLLECTOR OF BELLARY.

To, The Chief Secretary to Government.

Madras.

Sir, I am directed in my letter embodied in the Proceedings of Government, Financial, No. 233 dated the 4th Ultimo, that the question of the legality of certain convictions under the Municipal bye-laws has been referred to the High Court at the instance of the Local Government 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-laws examined 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 relieve the most hot

which

which they have themselves proceeded under Section 124.

I have the honor to be,

Sir,

Your most obedient Servant,

J. Master

Colonial Secretary.

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 reporting 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, 516, 538, 541, 542, 544 and 563 to 566 of 1874, As Contrary to Law.

(Here enter H.C. 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 fruits 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-laws 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 Highcourt 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 has not been passed by the Municipal Commissioners & 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.

9

The Highcourt 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 127) and with such previous 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

laws

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)

1891 J. Weir

Acting Registrar

Appellate Side.

(True Copy)

R. Master

Collector & Pres.

M. C.

Municipal - Bye laws

4 11

Financial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from

the Collector and President

Municipal Commission, Bellary

dated 3rd March 1895 No. 21.

Order thereon 31st March 1895 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.

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

interfering with trade.

E.H. H.
E.H. 25/3

To
The Collector and President Municipal Commission Bellary &c &c
Advocate General &c

Govt. of {1875} Madras.

Fuit D

~~No.~~

Dated 31st Dec. } Recd 1875 No. 692

Nos. 281-282

Munc.— Bye-laws.

Re advocate Genl's opinion to be obtained as to what steps can be taken, to bring under the consideration of a Court, the question regarding the legality of certain convictions under a bye-law ~~framed~~ framed by the Municipal Comrs. of Bellary.

Legality of certain convictions under the Municipal Bye-laws

6/10

Ex 27/3