Archives I - 10,006—16-8 77.

(1) Number of pages_____

15 (2) Date of repair_____

(3) Initials of the Referencer_____ Leng

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

FINANCIAL DEPARTMENT

G.O. No. / B.P. No.	1055	Press. / Mis.	

Dated 9. 6. 1881. 197 .

20/21

1.8.m

Not to be folded or roughly handled

19

1055
1

GOVERNMENT OF MADRAS.

FINANCIAL DEPARTMENT.

9th June 1881, No. 1055.

Municipal—Bye-laws.

Read the following papers:—

From J. B. PENNINGTON, Esq., President of the Municipal Commission, Tinnevelly, to the Chief Secretary to Government, dated Trichendur, 10th March 1881, *No.* 434 [*Current No.* 664].

In forwarding herewith letter, No. 43, dated the 26th ultimo, from the Vice-President of the Tuticorin Municipality and its enclosures, I have the honor to request you will be good enough to obtain the sanction of Government to modify Section 41 of the Revised Bye-laws as recommended by the Commissioners.

ENCLOSURE No. 1.

From E. TURNER, Esq., Vice-President of the Tuticorin Municipality, to the President of the Municipal Commission, Tinnevelly, dated Tuticorin, 26th February 1881, No. 43.

With reference to Revenue Appeal No. 244 of 1880, transferred to me by the Sub-Collector from one Manuel Louis Motha Bupalrayen of Tuticorin regarding the monopoly of the importation of coral stones, I have the honor to enclose copy of a Resolution of the Municipal Commissioners and request that you will be good enough to get Section 41 of the Revised Bye-laws modified by Government as proposed in the enclosed draft.

Appeal petition enclosed.

EXTRACT from the Proceedings of the Municipal Commissioners of Tuticorin in their Meeting held on the 14th January 1881.

* * * *

6. Read Petition No. 244 of 1880 of Manuel Louis Motha Bupalrayen to the Collector for the leasing of the monopoly of importing coral stones.

Read also endorsement of the Collector in the same.

Resolved that Section 41 of the Revised Bye-laws be modified, and sanction of Government be obtained for the same.

* * * *

(Signed) E. TURNER,
Vice-President.

Bye-law Section 41 *as it stands at present.*

No bones, coral or any other offensive thing shall be landed or embarked on or from the beach or beach-road or deposited on the beach above low-water mark, or on any road or public place except on places specially set apart.

(Signed) E. TURNER,
Vice-President.

Govt. of [1881] Madras.

FINANCIAL.

To

THE PRESIDENT OF THE
MUNICIPAL COMMISSION,
Tinnevelly.

Dated June, 9th.

Issued

Recd.

Encl.

G.O., 9th *June* 1881, *No.* 1055.

JUNE.

Municipal—Bye-laws.—The proposed and original Bye-law, Section 41 of the Tuticorin Municipality considered *ultra vires*, and the Commissioners requested to submit amended bye-laws for sanction.

Office of the President Municipal
Commission Tinnevelly 10
Camp Terichendur 1st March 1881

No 434

From

No 664
1055/31

N. S. Pennington Esquire

President
Municipal Commission
Tinnevelly

To

The Honourable R. Davidson C.S.I
Chief Secretary to Government
Fort Saint George

Sir,

I forwarding herewith, letter No 43 dated the 26th ultimo from the Vice President of the Tuticorin Municipality and its enclosures, I have the honour to request you will be good enough to obtain the sanction of Government to modify section 41 of the revised Bye-laws as recommended by the Commissioners.

I have the honour to be
Sir
Your most Obedient Servant

DISPOSED OF
9 JUNE
BY G.O. No

J. S. Pennington
President

Comptr. & Dft.
HC

3

No. 43 — Municipal Commissioners Office
Tuticorin 26th February 1880

From The Vice President of
Tuticorin Municipality

To The President of
Municipal Commissioners
Tinnevelly

Sir,

With reference to Revenue
appeal No 244 of 1880 transferred
to me by the Sub Collector from one
Manuel Louis of the Rapalayam
of Tuticorin, regarding the monopoly
of the importation of Coral stones,
I have the honor to enclose Copy of a
Resolution of the Municipal Commissioners
and request that you will be good enough
to get section 41 of the revised bye-Laws
modified by Government as proposed in
the enclosed draft.
Appeal petition enclosed

I have &c
[signed] E. Turner
President

Extract from the Proceedings of the Municipal Commissioners of Tuticorin in their meeting held on the 14th January 1881.

× × × × ×

6. Read petition No 244 of 1880 of Manuel Louis Motha Ratepayer to the Collector for the leasing of the monopoly of importing Coral stones.

Read also endorsement of the Collector in the same.

Resolved that section 41 of the revised Bye-Laws be modified and sanction of Government be obtained for the same.

× × × ×

(Signed) E. Turner
Vice President

(True Extract)

(Signed) E. Turner
Vice President

Bye-law section 44 as it stands at present.

No bones, Coral or any other offensive thing shall be landed or embarked on or from the beach or beach road or deposited on the beach above low water mark or on any road or public place except on places specially set apart.

(Signed) E. Turner
Vice President

Bye-law now proposed

No bones, Coral or any other offensive thing shall be landed or embarked on or from the Beach or beach road or deposited in the beach above low water mark or on any road or public place except on places specially set apart, and on payment of fees as specified below.

(animal matter Sec 160)

Last sentence of Sec 160

3 86
105/5

Not exceeding one anna per ton for coal.
" " two annas per ton for wood
one pie per sheep
one annas per bullock or cow
two annas for other goods.

[Signed] E. Turner
Vice President

(True copy)

Rowcroft
Dy Collector
for
President

1055/6

In Encl 664/31

Complete

29/12/79 Ed. 695–1962
21-12-73 & 2942
30-9-67 & 252 Union

60

Note—This paper should be returned with reply, and should not be marked in any way by the receiving office

No 695

Referred to the Advocate General for opinion as to the legality of the proposed Bye-Law.

F. O'Connor
Chief Secretary

To The Govt. Solicitor

Advocate General
18th April 1880

Encl (1881, Sept
(Mun. Byelaws)

From
The President
R. D.
15 MAR 81
Municipal Commissioners
Lunenburg

To The Chief Secretary
to Government
Fort-St George

Dated 10th March 1881
Received 15

No 664 / No 434
Enclosure 1

Requesting to obtain the sanction of Government to modify Section 41 of the revised Bye-Laws as recommended by the Commissioners of the Tuticorin Municipality

10555/81

Referred
to Fort

50

Opinion CURRENT No. 1009

1055/1

I cannot see how the Municipality of Tuticorin has power to pass the proposed new bye-law. Act III of 1871. authorises the Municipal Commissioners to require fees to be paid for the Registration of Carts (Section 75) and for licenses under the Act (Section 153) but in no other Cases. Section 129. enables the Commissioners to give licenses for the use of premises for the purposes mentioned in the Section which premises include a yard for Wood or Coal, and the Commissioners may charge fees for such licenses. By the proposed bye law the Commissioners propose to set apart places for Coal Wood. Coral and other goods and to charge a fee for liberty to deposit such goods in the places set apart. I cannot find in the Act any power which would warrant this, and it appears to me to be ultra vires. So I also think the existing bye-law No 41. The Commissioners cannot by making bye laws extend their powers under the Act. Unless there is some prohibition in the Act there cannot be a prohibition by means of a bye law. Amongst other purposes power is given by Section 163. to make bye laws for the management of all matters connected with Conservancy, and for carrying out all the purposes of the act; but the provisions of the Act must be looked to for the purpose of ascertaining what is prohibited and what is not. I do not find any thing in the Act which prohibits the landing of bones

Coral.

Coral or any other offensive thing on the beach—
(except Section 100 which prohibits depositing not
landing) and I think the Commissioners cannot
maintain the legality of such a prohibition.

Madras
20th April 1881.

Sd. J. O'Sullivan
Advocate General

/A True Copy/
Ernest Barclay
Government Solicitor

[Office-paper Form.]

Financial 6P
DEPARTMENT.

Papers in hand down to date :— 1055/15

No. 604 of 81 from Secy. Mun Govt.
No. Leticia submitting an
No. Amended Bye law for sanction
Opinion of Advt. Genl 20/4/81

DRAFT ORDER.
~~NOTE FOR ORDERS.~~

Order 9th June 1881.
No 1055

The proposed bye law, read
with the Schedule annexed,
(which it is remarked
is not covered by the
wording of the text) of rules
to prohibit the landing
of cattle goods generally
except at specified
places.

2 Act III of 1871, sec 100, clause

expressly
"prohibits" the deposit (not
landing, which however in
most cases it will necessarily
embrace) of any "animal
matter" on any landing place
or road except in such
places as may be fixed.
In respect therefore of the
enumerated articles "bones"
& "coal" the bylaw is un-
necessary, the matter being already pro-
vided for. The Comrs have
only to notify the places
where alone deposit shall
be permitted.

By sec. 163 the Comrs
are empowered to make
bylaws for the manage-
ment of all matters con-
nected with conservancy,
including therein the regulation
of thoroughfares & public places

1055/10.78

and in virtue of this provision
there seems no objection to
a bylaw prohibiting the deposit
of "coal" or of goods, or the
stanching of cattle landed at
the Port, except in specified
spots. In other parts of the
town, where proximity to the
port render special regulation
uncalled for, any obstruction
of the roadway by goods or
cattle is punishable in the
ordinary manner, as a
common nuisance.

3 The Bylaw is however
chiefly objectionable in the fees
which it purports to impose.
The schedule would virtually
levy an import & export
tax upon all seaborne
traffic, which is
manifestly ultra vires.

1 It is the duty of the Boat &c.
To preserve the limits within
which goods are to be landed
or shipped on the beach vide
Boat Rules No XI (Ct. 30th
Sept 1867 No 252 Mar.)

9

The Act authorizes fees being charged in two cases only (a) for the registration of (575) carts, (b) where licences for the use of premises are required by the law. Under the latter provision the Corpn may realize fees for coal, wood & cattle. Under Sec 129 a yard or depot in which coal or wood is deposited requires to be licensed. It is hereby that in the sanctioned Byelaw (G.O. 29th Sept 79. no. 505) no fee is prescribed for a coal depot. This may be rectified & a fee per ton or ~~square~~ square foot fixed. ~~to the Corpn~~.

Cattle detained in the town waiting shipment or removal may be made to yield fees if the provisions of Secs. 136 & 137 regarding public & private halting places be properly worked.

105/17 80

Beyond this the Corpn are not legally incompetent to levy the fees proposed.

4. As the Port thus consists not only the proposed ~~amended Byelaws~~ but also the original Byelaw & the ~~alterations~~, the Corpn will draw up amended Byelaws with reference to the foregoing Remarks & submit them for sanction.

5. ~~It is deemed advisable~~ ~~that the Port~~ ~~Municipal~~ limits of the 50 yards above High water mark ~~which~~ by the Ports Act XII of 1875 and that this area in ~~Port limits~~ under Port Rules ~~the President will submit~~ ~~draft Notification~~

To The Secretary Municipal Commrs Tinnevelly

Dear Sir

I have the honour to acknowledge the receipt of your letter No. 2256 dated 30th ult. forwarding a copy of the Proceedings of the Municipal Council of Tinnevelly, dated 27th ult. regarding the levy of fees for the registration of carts, and for the use of premises required by the Law to be licensed, and the fixing of limits for the Port of Tuticorin.

2. In reply I am directed to state that the Government are not legally competent to sanction the levy of the fees proposed.

3. As the Port thus consists not only of the proposed, but also of the original Byelaw & the alterations, the Corpn will draw up amended Byelaws with reference to the foregoing Remarks & submit them for sanction.

4. It is deemed advisable that the Port Municipal limits of Tuticorin should extend to the 50 yards above High water mark and that this area in Port limits should be under Port Rules.

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

1055/8

Fin[l] (1881) Department

~~G.O.~~ Bye Laws

Trans Municipal

Ernest Barclay

Government Solicitor

Madras

To

The Chief Secretary

to Government

Ootacamund

No 1055/81

7/2174

Dated 21st } April 1881

Recd 25 }

CURRENT No. 1009

No.

Forwarded with enclosure with reference to Order of Government dated 15th April 1881. No. 695

Ernest Barclay

Government Solicitor

U.S.

C.W.

[Office-paper Form.]

Financial Department.

Papers in hand down to date:—

1055/9

No. 664 of 81

No. of

No. of

~~Draft Order.~~

Note for Orders.

Should this be

appointed by advocate

general or Public

or is he eligible? If

it is a new tax.

C.W.

25. 3. 81

Submitted that

this should be done

C.W.

Dep[t] 13/4/81 Referred to the A.G.

Govt. for opinion as

to the legality of the

12

Proposed Bylaw

11/4

1055
10

Financial Department.

Municipal
Bye-Laws

Under Disposal Docket.

Papers to be read in Proceedings:—

× No. 664 of 1887

No. of

No. of

Please put up Book Rec
9/1887 EH

L.O. tele to Sol for Cert
Obtained
10/x

M 20/3 R 1/4

From Resident Intercom. Inmty
Requesting Sanction to Bye law
Opinion of Advocate General

1055/11

20h

The Advocate General is of opinion that the proposed amended Bye law as well as the original bye law itself are ultra vires

(1) because they seek to prohibit the Landing of Coals & other goods, while Sec: 100 refers to the deposit of certain offensive substances, rubbish &c.

(2) because the former [illegible] purports to authorize the levy of fees, not warranted by the Act.

The Object of the Comm^rs may however, it is submitted, may be, to a certain extent, effected in the following manner.

Sec: 100 itself prohibits the deposit (which in most cases necessarily includes "landing" & "Embarking") of any animal matter "(e.g. bones" & "coral") on any landing place or road &c except in such places as may be fixed. As to these things therefore there is an express prohibition; & the Comm^rs have nothing to do but notify the places where alone deposit shall be permitted.

1055/12

The deposit of "coal" or the collection of cattle on the road or other public place so as to cause obstruction would seem also to be punishable within the first words of the same section (100) as involving the commission of a nuisance

Or it might be specially prohibited by Bye laws under s. 163, which empowers the Comm^rs to make regulations for the management of all matters connected with Conservancy, including therefore the regulation of thoroughfares.

As to the levy of the fees mentioned in the

Schedule annexed to the proposed Byelaw, it may be observed that as it stands the schedule is weak on all fours with the rest of the bye law. Cattle, fæcal, are scarcely either "animal" or "offensive matter" - nor is "coal". The schedule would practically levy an import export tax on all seaborne goods, which is manifestly ultra vires.

Of the things enumerated the following alone may be made liable to fees.

Under Sec. 129 a coal or wood yard or depôt must be licensed.

In the table of Fees embodied in the sanctioned Byelaws (G.O 29th Sept 79 No 805) the license for a wood depôt is fixed at 2s. Under Sec. 153 such premises may be licensed, & a fee at the proposed rate of 1an per ton of coal & of 2an. per ton of wood may be levied: & the necessary amendments & additions made.

Cattle may also, under Secs. 136 & 137, be made to produce fees. Cattle detained in the town awaiting shipment must be kept in a public baiting place - if in one belonging to the Municipality, who of course are

at liberty to reach as many pens as they please, a fee per head may be levied; — if in a private yard, a license fee (£1 3 6) is due.

Bye laws may be framed fixing such fees.

FB

The landing of goods generally may be restricted to specified limits by arrangement with the Conservator of the Port vide Rule XI of Port Rules (Ct. O. 30 Sept. (867)

FB

The above list was referred for the opinion

Note
This seems to be right in all respects
J Wallis
23rd May 1881.

Very well.
Draft in accordance herewith.
Put the Minute

after add: Signal, for Shore Port side marks
F.B.
Mar 5/81 1055/14

limits must be restricted to the 50 yards above High Water mark of the Port Limits within Port Limits under Port Rules —

J.W.
25/5/81.

1055/18

See within

P Sullivan

23rd May 88.

GO (Jud) 1055/81.

In 23-5
R 26-3

18

the seaward boundary
of the Mag. accretions

From Kogluktuk

E.J.L.

1055
19

From Atkinson

Arc to
Hon the Jr.

m.b.6

19

Rajapalli

Govt. of 1881 Madras.

Final

DISPOSED OF (19)

9 JUN 81

BY G.O. No. 1055

H Rs 3140/81

Final Bye-Laws The
proposed and original bye-
laws Section 41 of the Fisheries
Act, considered ultra
vires; and the Collector requested
to submit amended bye-laws
for sanction.