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MADRAS RECORD OFFICE.

Government of Madras.

Finance DEPARTMENT.

G.O. No.	214	Press
		Mis.
Dated	1-2-	1876.

Not to be folded or roughly handled

Municipal—Bye-laws.

No. 1. Read the following letter from T. WEIR, Esq., Acting Registrar of the High Court of Judicature at Madras, Appellate Side, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 27th January 1876, No. 310:—

I am directed to forward, for the information of Government, copies of the High Court's Proceedings, dated 15th October 1875, No. 2412. High Court Proceedings marginally noted, in which the Court holds that certain Municipal Bye-laws for the breach of which persons have been convicted and punished are illegal in being beyond the scope of the powers conferred in Section 163 of the Madras Towns Improvement Act III. of 1871.

2. That Section was, in the opinion of the High Court, intended to confer upon Municipalities the power of making bye-laws for purposes ancillary to the main purposes (inclusive of conservancy) especially provided for by certain preceding Sections of the Act.

3. A large proportion, however, of the bye-laws of Municipalities which happen to have come under the notice of the Court deal with matters many of which are already sufficiently provided for by the Penal Code or by Act XXIV. of 1859, Sections 48 and 49, and a large proportion of them are matters to which the authority of the Act to make bye-laws does not, in the opinion of the High Court, extend. Some even of the bye-laws are not only unauthorized by law in the sense already indicated, but are in themselves such as no system of law should countenance, as, for example, the two following bye-laws of the Salem Municipality:—

Bye-law No. 2.—"All pigs found straying may be at once destroyed."

Bye-law No. 20.—"Any buffalo, pig or other animal or poultry found feeding within a public latrine or any place resorted to as a latrine shall be destroyed."

Other bye-laws again appear to interfere unnecessarily in matters not requiring regulation except in very special circumstances, as for instance the following which is found among the bye-laws of the Salem Municipality:—

Salem, No. 27.—"No empty bullock-cart or other conveyance shall ply for hire in any street, but shall remain stationary at one or other of the cart-stands set apart for the purpose."

4. The High Court has reason to believe that a considerable proportion of the bye-laws of Municipalities, which may not as yet have come judicially under the notice of the Court, are either illegal or uncalled for and objectionable, as being arbitrary and oppressive in themselves, or susceptible of great abuse in their application. In these circumstances, the Court would venture to suggest to His Grace the Governor in Council the expediency of directing a general revision of the bye-laws of the Municipalities throughout the Presidency.

*Proceedings of the Madras Government, Financial Department,
1st February 1876.*

No. 2412.

Proceedings of the High Court of Judicature at Madras, 15th October 1875.

Read again report of Summary Cases, Nos. 140 and 141 of 1875, disposed of by the Cantonment Magistrate of Cannanore.

Read also copy of the bye-law referred to in the above cases submitted in accordance with the Proceedings of this Court, dated 27th August 1875, No. 1891.

In these cases the defendants have been convicted of permitting cattle to stray in the streets and thoroughfares in breach of a Municipal Bye-law framed under the provisions of Section 145 of Madras Act X. of 1865 and continued in force under Section 167 of Madras Act III. of 1871.

2. The High Court is of opinion that the bye-law under which the defendants have been convicted was not a bye-law of the kind which a Municipality has the power to make. The words "for the management of all matters connected with conservancy" mean the management of all the matters connected with conservancy which the Act gives a Municipality power to deal with. The prevention of cattle from straying in the streets and thoroughfares is not one of these matters. The convictions being illegal are hereby annulled. The fines if levied must be refunded.

3. Ordered accordingly.

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

No. 47.

Proceedings of the High Court of Judicature at Madras, 8th January 1876.

Read again Register of Summary Trials held before the District Magistrate of Salem.

Read also the Proceedings submitted in accordance with the Proceedings of this Court, dated 15th October 1875, No. 2419.

In this case the defendant has been convicted of a breach of a Municipal Bye-law in flying a kite in the public street and has been sentenced to pay a fine of 4 Annas. The High Court is of opinion that the bye-law of the breach of which the defendant has been convicted is not a bye-law which could legally be made under the power given in Section 163, Act III. of 1871 (Towns Improvement Act). The words "for all matters connected with conservancy" mean "for all matters connected with those measures of conservancy which the Act in its previous Sections gives the Municipality power to deal with." The law did not intend by these words to give Municipalities the power to create offences in regard to matters which are already sufficiently provided for by the Penal Code. The conviction is hereby annulled. The amount of the fine must be refunded.

2. Ordered accordingly.

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

No. 280.

Proceedings of the High Court of Judicature at Madras, 25th January 1876.

Read again Statement of Trials held during the month of August 1875, by the Bench of Magistrates of Salem.

(Here enter High Court, No. 13340 of 1875.)

Read also letter, dated 23rd October 1875, No. 72, from the District Magistrate of Salem, forwarding records in Cases Nos. 103, 113, and 114, called for in the Proceedings of this Court, dated 20th October 1875, No. 2489.

The defendants have been convicted of the breach of Municipal Bye-laws in one case by flying a kite to the annoyance of passengers on a public road, in another by plying an empty bullock-cart for hire, and in a third by gambling in the public street.

*Proceedings of the Madras Government, Financial Department,
1st February 1876.*

2. The High Court is of opinion that the convictions cannot be maintained. The bye-laws under which the defendants have been convicted are framed apparently for the purpose of preventing obstruction to the carriages of passengers in the roads of the town. Section 163 of Act III. of 1871, which confers on Municipalities the power of framing bye-laws, was not intended to enable Municipalities to deal in the shape of bye-laws with acts and omissions for the punishment of which the Penal Code has in Chapter XIV. sufficiently provided. The words "for the management of all matters connected with conservancy and for carrying out all the purposes of this Act" confine the authority to make bye-laws to matters distinctly within the purview of the Act which the matters dealt with in these convictions are not. The bye-laws contemplated in Section 163 are bye-laws ancillary to the carrying out of the express provisions of the Act.

3. The convictions are hereby annulled. The fines levied must be refunded.

4. Ordered accordingly.

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

No. 2. ORDER THEREON, 1st February 1876, No. 214.

Ordered to be communicated to the Advocate-General in continuation of G.O., 7th December 1875, No. 2388, Financial.

2. The Honorable the Judges of the High Court will be informed that the Mofussil Municipal Bye-laws are already under revision.

(True Extract.)

(Signed) W. HUDLESTON,
Chief Secretary.

To the Honorable the Judges of the High Court.

„ Advocate-General.

„ Board of Revenue.

Exd. J. Wright.

Proceedings of the High Court of
Judicature at Madras, 15th October 1875.

Read again report of Summary
Cases Nos. 140 and 141 of 1875, disposed
of by the Cantonment Magistrate of
Sannanore.

Read also copy of the Bye-law
referred to in the above cases submitted
in accordance with the Proceedings of
this Court, dated 27th August 1875, No. 189.

In these cases the defendants
have been convicted of permitting
cattle to stray in the streets and
thoroughfares in breach of a Municipal
Bye-law framed under the provisions
of Section 145 of Madras Act X of
1865 and continued in force under
Section 167 of Madras Act III of 1871.

The High Court is of opinion
that the bye-law under which the
defendants have been convicted was
not a bye-law of the kind which a

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FINANCIAL.

To THE HON. THE JUDGES OF THE

HIGH COURT,

Madras, 1st February 1876, No. 214.

Dated February, 1st.

Issued

Recd.

Recd.

O. O., 1st February 1876, No. 214.

FEBRUARY.

Nos. 1-2.

Municipal Bye-laws.—Proceedings of the High
Court holding that certain bye-laws are illegal and
suggesting a general revision communicated to the
Advocate-General, and the Honorable the Judges
informed that the bye-laws are under revision.

Municipality has the power to
make. The words "for the manage-
ment of all matters connected with
"Conservancy" mean the manage-
ment of all the matters connected
with conservancy which the Act
gives a Municipality power to deal
with. The prevention of cattle from
straying in the streets and thorough-
fares is not one of these matters.
The convictions being illegal are
hereby annulled. The fines, if levied,
must be refunded.

Ordered accordingly.

(Signed) J. Weir,
Ag. Registrar,
Appellate Side.

(True Copy)

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Ag. Registrar,
Appellate Side.

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Proceedings of the High Court of Jan-
tore at Madras, 8th January 1876.

Read again Register of Summary
Trials held before the District Judge
of Salem.

Read also the Proceedings
submitted in accordance with the Pro-
ceedings of this Court, dated 15th Octo-
ber 1875, No. 2419.

In this case the defendant
has been convicted of a breach of a
Municipal bye-law in flying a kite
in the public street and has been
sentenced to pay a fine of 4 Annas.
The High Court is of opinion that
the bye-law of the breach of which
the defendant has been convicted is
not a bye-law which could legally
be made under the power given in
Section 163 Act III of 1874 (Im-
provement Act). The words "for all
"matters connected with conservancy"

de. H. J. 1876/1/36

mean for all matters connected with
"those measures of conservancy which
the Act in its previous sections gives
"the Municipality power to deal with."
The Law did not intend by these
words to give Municipalities the power
to create offences in regard to matters
which are already sufficiently pro-
vided for by the Penal Code. —
The conviction is hereby annulled.
The amount of the fine must be re-
funded.

Ordered accordingly.

Signed J. Uleir,

Ag. Registrar,
Appellate Side.

/ True Copy /

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Ag. Registrar,
Appellate Side.

No. 280

Proceedings of the High Court of Judicature at Madras, 23rd January 1876.

again
Read Statement of Trials held during the Month of August 1875 by the Bench
of Class Magistrate of Salem.

(Here enter High Court No. 3340 of 1875.)

Read also letter dated 23rd
October 1875, N^o 72, from the District
Magistrate of Salem forwarding records
in Cases N^{os} 103, 113 and 114 called for in
the Proceedings of this Court, dated 20th
October 1875, N^o 2489.

The Defendants have been
convicted of the breach of Municipal
Bye-laws in our Case by flying a kite to
the annoyance of passengers on a public
road, in another by flying an empty bullock
cart for hire and in a third by gambling
in the public street.

The High Court is of opinion
that the convictions cannot be maintained.
The bye-laws under which the defendants
have been convicted are framed apparently
for the purpose of preventing obstruction

to the Carriages of passengers in the
roads of the Town. Section 163 of Act
III of 1871 which confers on Municipalities
the power of framing bye-laws was not
intended to enable Municipalities to
deal in the shape of bye-laws with
acts and omissions for the punish-
ment of which the Penal Code has
in Chapter XIV sufficiently provided.
The words for the management of all
matters connected with Conservancy
and for carrying out all the purposes
of this Act confine the authority to
make bye-laws to matters distinctly
within the purview of the Act which
the matters dealt with in these con-
victions are not. The bye-laws con-
templated in Section 163 are bye-laws
auxiliary to the carrying out of the
express provisions of the Act.

The Convictions are
hereby annulled. The fines levied

must be refunded.

Ordered accordingly

(Signed) J. Weir,

Acting Registrar,
App. Side

(True Copy.)

L. Weir

Acting Registrar,
Appellate Side.

From

T. Weir Esquire,

Acting Registrar of the
High Court of Judicature
at Madras

To

The Honorable W. Huddleston,

Chief Secretary to
Government.

Honorable Sir,

I am directed to forward
for the information of Government copies
of the High Court Proceedings marginally
noted in which the Court holds that

* H. C. Pro. dated 15th Oct^r 1875, N^o 2412.— " — 8th January 1876, N^o 147.— " — 25th January —, N^o 280.

certain Municipal Bye-laws
for the breach of which persons
have been convicted and punished
are illegal in being beyond the scope of
the powers conferred in Section 163 of the
Madras Towns Improvement Act III of 1871.

That Section was in the
opinion of the High Court intended to confer
upon Municipalities the power of making
Bye-laws for purposes ancillary to the

main purposes (inclusive of Conservancy)
especially provided for by certain preceding
Sections of the Act.

A large proportion, however, of
the Bye-laws of Municipalities which happen
to have come under the notice of the Court
deal with matters many of which are
already sufficiently provided for by the
Penal Code or by Act XXIV of 1859, Sections
48 and 49, and a large proportion of them
are matters to which the authority of the
Act to make Bye-laws does not in the opinion
of the High Court extend. Some even of the
Bye-laws are not only unauthorized by Law
in the sense already indicated, but are in
themselves such as no system of law should
countenance - as for example the two following
Bye-laws of the Salem Municipality.

Bye-law No. 2. 'All pigs found straying
'may be at once destroyed.'

Bye-law No. 20. 'Any buffalo, pig or
other animal or poultry found feeding within
'a public latrine or any place resorted to
'as a latrine shall be destroyed.'

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Other bye-laws again appear to interfere
unnecessarily in matters not requiring regulation
except in very special circumstances - as
for instance the following which is found
among the bye-laws of the Salem Municipality.

Salem No. 27. 'No empty bullock Cart
'or other conveyance shall ply for hire in any
'Street but shall remain stationary at one
'or other of the Cart-stands set apart for
the purpose.'

The High Court has reason
to believe that a considerable proportion
of the bye-laws of Municipalities which
may not as yet have come judicially
under the notice of the Court are either
illegal or uncalled for and objectionable
as being arbitrary and oppressive in
themselves or susceptible of great
abuse in their application. In these
circumstances, the Court would
venture to suggest to His Grace
the Governor in Council the expediency

of directing a general revision of the
Bye-laws of the Municipalities throughout
the Presidency.

I have the honor to be,

High Court of } Honorable Sir,
Judicature, Madras, }
27 January 1876 } Your most Obedient Servant,

Edin
Acting Registrar,
A. P. S. S. S.

