

- (1) பக்கங்களின் எண்ணிக்கை 20
 (2) புதுக்கித் திருப்பிய நாள் மார்ச் 1895
 (3) ஆதாரக் குறிப்பவர் சுருக்கொப்பம்

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

Judicial தலை

அரசாணை எண். மு. கோப்புத் தாள் எண்.	35 (31-32)	அச்சகம் பலவகை
நாள் :	10-1-1881	199

மடிக்கவோ சுண்டப்படிகையாளவோ கூடாது.

ஆவணக் கா. 1-18,006-69-90.

செப்பனிருபவர் அபயம் 18.2.95

செப்பனிருவதற்காக எடுத்த
கொள்கைப்பட்ட நாள் 1995

செப்பனிரு முடிந்த நாள் 1995

செப்பனிருபவர் அபயம் 18.2.95

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செப்பனிரு முடிந்த நாள் 1995

JUDICIAL DEPARTMENT.

Subordinate Magistracy.

No. 31. *From H. J. STOKES, Esq., District Magistrate of Madura, to the Chief Secretary to Government, dated 5th November 1880, No. 1038.*

No. 32. ORDER THEREON, 10th January 1881; No. 35.

* As laid down in G.O., Revenue, 19th February 1873, No. 197, paragraph 3, taken together with G.O., Revenue, 24th July 1874, No. 920, paragraph 3, it is the removal from office of such officers that alone requires the sanction of Government.

(True Extract.)

Chief Secretary.

To the District Magistrate, Madura, } with copies of the Revenue G.Os. quoted.
 „ all District Magistrates,
 „ Revenue Department.
 „ Board of Revenue.

Govt. of 1881 Madras.

JUDICIAL.

To

THE DISTRICT MAGISTRATE,

Madras,

&c.,

&c.,

&c.

Dated January, 10th.

Issued

Recd.

Encl.

G.O., 10th January 1881, No. 35.

JANUARY.

Nos. 31-32.

Subordinate Magistracy. — Orders passed on letter from District Magistrate, Madras, requesting instructions as to whether a District Magistrate can punish Sub-Magistrates (who are Tahsildars and Deputy Tahsildars) by suspension.

No.

From the Dist Magistrate Madras

Dated 6 Nov. 1880 No 1038 enquiring

whether it is competent for a Dist Magistrate
FOR ORDERS.

Suspend a Submagistrate

by order of the District Magistrate

See 10/10. Jan 1881. No. 35
as laid down in

G.O. 24 July 74 No 920

para 3. says "it is not

G.O. Rev. 19/2/73 No 197
para 3, taken together with

the wish of Govt. that any

G.O. Rev. 24/7/74 No 920
para 3 - is the removal

reference to them should

from office of such officers
that alone requires the sanction

be made when... suspensions

are ordered." — an Order

of Govt.

which is equally applicable

2. Following the analogy
of the Civil Code Act, III/71,

to take LOP? Take both

S. 21, which allows a 5th judge,
whenever he sees urgent necessity

As Revenue has Magistrate

for so doing, to suspend a 5th Magistrate,
sending a full report to the H. Co.,

Officers.

a 5th Magistrate may be allowed to suspend
a Tahsildar or a Tahsildar; in whatever

Deputy Tahsildar or Tahsildar may be

permitted by the Col. with-
out reference to the Board,
whose orders must however
first be obtained in the
case of Taholders (Board
J. O. no 244 p. 6 & para 8.)

This would seem to
involve that a D. Tah.
a Sheikda Submag.
can be suspended by
the Dist. Magt. & a Tah.
kept only by the Board

These orders appear
however to have been
passed ~~with~~ regarding them
Officers more in their
Revenue than in their
Magistral capacity

Capacity he is
deemed to be a delinquent
refusing his proceedings
for the orders of the D. Magt.

1872-27/12/72

The D. Magt. Enadua. 6
a D. Magt. Enadua. 12
The Rev. D. Magt. 11
a D. Magt. Revenue 11

3/1/81 140-170

2) 3
It might be well to
restrict suspension of
Submagistrates generally for
dereliction of duty in
exercise of their Judicial
functions, to Govt alone.

The question is now
raised by the same Officer
(Mr. H. Stokes) who recently
made the reference as to the
power of the Dist. Mag. to fine
Submag - where G.O. 2 Nov 87
No 2629 was passed declaring
that G.O. No. 263 had
been always held to
include Officer-officers.

A case came before
where a Dist. Magt. fined

into column 11
the name of
the Submag.
Dec 20/1

a sub. mag for imposing
too light a sentence on a
prisoner.

The point arises
whether any authority save
Government, should be
allowed to interfere either by
suspension or by fine with a
Magistrate in the exercise of his
purely judicial functions (e.g.
receiving evidence, awarding sentence,
taking bail or) as opposed to
his ministerial ^{or personal} duties (e.g.
sending in returns, attending
Court or.)

FOR ORDERS.

J.E. 14/12
J. H. W.

2115
No 1038.

Madura District Magistrate
Office
5th November 1880

From,

E. J. Stokes Esquire
District Magistrate
of Madras

To,

The Honorable R. Davidson
Chief Secretary to Govern-
ment
Fort Saint George

Sir,

In addition to my letter dated
26th October last, No 996, I have the honor to
request instructions as to whether a District
Magistrate can punish Sub-Magistrates
(who are Tahsildars and Deputy Tahsildars) by
suspension.

I have the honor to be
Sir

Yours Most Obedient Servant

W. Stokes
District Magistrate

W. Stokes

1880 - reported

(last sample)

From

the District of Columbia

Washington

To

the Chief Clerk

& General

Post Office

And to

Remondy & Co.

11 Mo 1038

Respecting justice

as to whether a law

Magistrate can

summon subordinates

by subpoena

3163

*Proceedings of the Madras Government, Revenue Department,
19th February 1873.*

No. 128. Read the following letter from the Secretary to the Board of Revenue, to the Secretary to Government, Revenue Department, dated Madras, 21st November 1872, No. 2,243:—

I AM directed to request that Government will issue orders defining clearly the position of the Board with regard to the institution of prosecutions against Tahsildars and Deputy-Tahsildars.

2. It is provided by Section 167 of the Criminal Procedure Code, and re-enacted by the new Code which comes into force on the 1st January 1873, that—

(1) No judge shall be prosecuted as such Judge;

(2) And no official not removable from his office without the sanction of Government shall be prosecuted as such official, except with the sanction of Government or some authority empowered by Government to grant such sanction.

3. Further, by the new Code, *all Magistrates* are removable by Government (Section 9) who are to appoint them; so that, while a Tahsildar or Deputy-Tahsildar cannot, after the 1st of next January, be prosecuted for any offence alleged against him as a *Magistrate* without the sanction of Government, or of some authority empowered by Government, he can be so prosecuted as a *Tahsildar* on the motion of the commonest Policeman.

4. It is even doubtful whether the present position of the Board as to Tahsildars is equivalent to an order of Government empowering them to decide the question whether a Tahsildar when offending as a *Judge* shall be prosecuted or not. If the proceeding is authorized by law, and the person before whom it is taken is empowered to decide, such person is a *Judge*, so that a Tahsildar may sometimes act in the capacity of *Judge*, as, for instance, when he is assessing Income-tax.

5. The Board think that the protection against hasty and malicious prosecutions accorded to Tahsildars and Deputy-Tahsildars as Judges is far more necessary to them in the discharge of their invidious duties in the Revenue and Miscellaneous Departments, and that the duty of determining whether they shall be put on their trial or not should be entrusted to the Board of Revenue.

6. The only way in which it could be made illegal for prosecutions against Tahsildars and Deputy-Tahsildars to be instituted without the sanction of the Board would be this: Government must assume in the case of these officers the exclusive power of removal which the new Procedure Code will give them in the case of the very same officers in their capacity of Magistrates, and then authorize the Board to sanction prosecutions against them.

7. But the Board do not think it advisable to surrender the power which they now possess of ordering the dismissal of incompetent or criminal Tahsildars and Deputy-Tahsildars. It is true that an appeal lies to Government against every such order, and that the right of appeal is almost always exercised, so that the power surrendered would be a small matter; but the position which the Board holds as Head of the Revenue Department must be maintained.

8. It will be sufficient if Government issue instructions to Collectors that no prosecution against Tahsildars or Deputy-Tahsildars in any capacity and on any

*Proceedings of the Madras Government, Revenue Department,
19th February 1873.*

charge shall be instituted, unless the Board have previously approved of the prosecution and the charge.

9. I am to add that two cases have recently occurred in which the Board have felt the want of this species of authority.

No. - 129.

ORDER THEREON, 19th February 1873, No. 197.

Miscellaneous.

THE Government concur with the Board that Tahsildars and Deputy-Tahsildars should be protected against hasty and improper prosecutions. It is observed that every Tahsildar and Deputy-Tahsildar in this Presidency is a Magistrate, and by the new Code of Criminal Procedure (Section 9) all Magistrates must be appointed, and are removable by the Government. Further, under the provisions of Section 466, an official not removable from his office without the sanction of Government cannot be prosecuted as such official, except with the sanction of Government, or of some authority to which he is subordinate, and whose power to sanction or direct such prosecution the Government shall not think fit to limit or reserve. It is provided, however, that "no such public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of the Government."

2. It is obviously incongruous that a public officer possessing these two jurisdictions should be protected in the discharge of one set of functions only, and in order to protect Magistrates when acting as Tahsildars and Deputy-Tahsildars, the Board propose that general instructions be issued prohibiting the entertainment of complaints of offences committed by such public servants in their capacity of Tahsildar or Deputy-Tahsildar, except with the sanction of the Board of Revenue.

3. The Government are of opinion that a Notification of this kind would be of doubtful legality; but the same object may be attained by formally vesting the appointment of Tahsildars and Deputy-Tahsildars in the Government (as the appointment of these same persons to be Magistrates is now vested), and by declaring that officers of this class shall not be removed from office—in whichever capacity they may have offended—without the sanction of Government. At the same time, to obviate the impression that the Government desire to interfere with the position so long occupied by the Board of Revenue in controlling the nomination by Collectors of Tahsildars, the Government will not receive any nomination which has not the approval of the Board. Hereafter every nomination of any officer to be a Tahsildar and Magistrate, or a Deputy-Tahsildar and Magistrate, must be submitted to Government through the Board of Revenue. In like manner, every report proposing the dismissal of any such officer shall be transmitted to the Board, who will forward to Government those cases only where they consider that the penalty has been justly incurred.

4. In regard finally to the limitation or reservation of the power of the several authorities to whom a Tahsildar and Magistrate or a Deputy-Tahsildar and Magistrate may be subordinate, to sanction or direct the prosecution of an officer

*Proceedings of the Madras Government, Revenue Department,
19th February 1873.*

of either grade in either capacity, the Government resolve to reserve this power to the Board of Revenue, who shall call for and consider such preliminary inquiry as each case may demand, before passing final orders in the matter.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To the Board of Revenue.

Ed. M. R. Bantleman.

Bill of 1873 *30/10/15*

REVENUE.

To

THE BOARD OF REVENUE.

Dated February 19th.

Recd.

Encl.

G. O., 19th February 1873, No. 197.

FEBRUARY.

Nos. 128-129.

*Prosecution of Tahsildars and Deputy Tahsildars.—*Proceedings Board of Revenue requesting the issue of orders defining clearly their position in regard to its institution, with orders thereon.



*Please refer
- 150 copies*

25/8

*Proceedings of the Madras Government, Revenue Department,
24th July 1874.*

No. 197. Read the following letter from J. GROSE, Esq., Secretary to the Board of Revenue, to the Secretary to Government, Revenue Department, dated Madras, 20th June 1874, No. 1,515 :—

I AM directed to solicit instructions on three points connected with G. O., dated 19th February 1873, No. 197, and 21st February 1874, No. 239, all of which are involved in the discussion of the papers now before the Board.

2. First with regard to the power to sanction the prosecution of Tahsildars and Deputy-Tahsildars possessing magisterial powers.

3. Under Section 9 of the Criminal Procedure Code, all Magistrates *shall* be appointed and *may* be removed by the local Government. From paragraph 2 of G. O., dated 19th February 1873, it appears that Government interpret this section as meaning that Magistrates shall not be removable from office except by Government. In paragraph 3 they expressly declare that Tahsildars and Deputy-Tahsildars shall not be removable without their sanction.

4. It follows that all Magistrates (including Taluq Sheristadars in that capacity) and all Tahsildars and Deputy-Tahsildars fall within the scope of Section 466, Criminal Procedure Code, which refers to the prosecution of any Magistrate or "any public servant not removable from office without the sanction of Government."

5. Section 466 seems to give two powers, the first of which Government possess and may allow other authorities to possess also, and the second of which Government alone possess and cannot allow any other authority to possess.

6. The first is the power to sanction the *entertainment of a complaint* of an offence committed by officers not removable without the sanction of Government in their official capacity.

7. The second is the power of the second paragraph of the section, viz., to sanction *the prosecution* of such public servant for an act said to have been done in his official capacity.

8. These two powers seem to the Board to be powers to do the same thing, but it is possible that a distinction may be drawn between them. Apparently Government noticed the fact that there were two provisions in the section when G. O., dated 19th February 1873, No. 197, was passed, for both are mentioned in paragraph 1; but they thought they could delegate both powers to the Board, and did so.

9. As stated above, the Board doubt whether any public servant not removable from office without the sanction of Government can be prosecuted without express sanction obtained direct from Government. If they are right, a reference to Government will be necessary whenever it is desired to prosecute a Tahsildar or Deputy-Tahsildar (in either of his capacities) or a Taluq Sheristadar in his magisterial capacity. This will cause a great deal of new correspondence, and the Board submit that the opinion of the law officers on the subject might be obtained.

10. Next with regard to the "removal" of the same officers.

From G. O., dated 21st February 1874, No. 239, it appears that a report to Government is necessary in all cases not only of the dismissal of Tahsildars and Deputy-Tahsildars, but also of their removal from one place to another in which

*Proceedings of the Madras Government, Revenue Department,
24th July 1874.*

their salary is less. Obviously such a report is equally necessary in the case of Taluq Sheristadars in their magisterial capacity.

11. The Board have papers before them which show that some Collectors believe they have no longer power to suspend Deputy-Tahsildars or Taluq Sheristadars without reference to higher authority.

12. I am accordingly directed to request that Government will decide whether any reference to them is necessary in the following cases:—

(1.) When the officers above mentioned are transferred to other stations where they occupy the same position without loss of salary.

(2.) When they are suspended from office temporarily.

(3.) When Deputy-Tahsildars or Taluq Sheristadars are dismissed.

13. Finally, the Board wish to be informed whether Taluq Sheristadars should be placed in the position given to Tahsildars and Deputy-Tahsildars by G. O., dated 19th February 1873, No. 197. As they are in an inferior position, there is not the same reason for giving them equal protection against prosecutions, etc; but the arguments used by Government with regard to Deputy-Tahsildars apply with equal force to Taluq Sheristadars.

No. 198.

ORDER THEREON, 24th July 1874, No. 920.

Miscellaneous.

HIS EXCELLENCY the Governor in Council observes that the distinction between the first and second clauses of

Section 466 of Act X. of 1872 has already been indicated in G. O., 3rd July 1874, No. 1,220, Judicial Department. An offence committed by a public servant in his capacity as such public servant comes under the first clause and falls within the jurisdiction of the Board with reference to G. O., 19th February 1873, No. 197. The prosecution of such an officer for an act done in the discharge of his duty must, as provided in the second clause, be sanctioned by Government, and this power cannot be delegated as was pointed out in the concluding sentence of paragraph 1, G. O., 17th February 1873.

2. The Governor in Council does not think that the section intends to make any difference between the *entertainment of a complaint* and the *prosecution*. Both terms are used in clause 1 to mean one and the same thing, and the Board can sanction such prosecution in cases which fall within their jurisdiction.

3. In regard to the two first cases referred to in paragraph 12 of the Board's Proceedings, it is not the wish of Government that any reference to them should be made when transfers or suspensions are ordered. The word "removal" in Section 9 is a technical term implying dismissal from the bench, and does not include such administrative measures as those indicated above.

From the way in which the third case is put, it might appear that the Board wished to withdraw from Deputy-Tahsildars the protection afforded them in their general capacity by G. O., 19th February 1873, No. 197. Their dismissal without the sanction of Government would place them in the same position as they were before that order was passed. The Governor in Council is not prepared to authorize any alteration as regards these officers.

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*Proceedings of the Madras Government, Revenue Department,
21th July 1874.*

4. It is not the intention of Government that Taluq Sheristadars should receive the protection in their Revenue capacity which it was the object of Government to give to Tahsildars and Deputy-Tahsildars when passing G. O., 19th February 1873, No. 197.

5. But Taluq Sheristadars in their magisterial capacity are entitled to the same protection as other Sub-Magistrates (G. O., 3rd October 1873, No. 1,586, Judicial Department).

6. When such officers are dismissed for reasons unconnected with their magisterial duties, a report should be made to Government in order that the sanction to their employment as Magistrates may be revoked. It seems clear that the appointment of Magistrate can only be cancelled by the authority which made it (Section 9, Criminal Procedure Code).

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

To the Board of Revenue.
„ the Judicial Department.

~~W. G. G. G.~~

Exd. F. R. Bantleman.

W.M.

4. 7-18

Govt. of 1881 Madras.

Just



10. 10. 1881, No. 35
Nos. 31-32

Subordinate Magistrate

Order passed on letter
from S. Magistrate, Ma-
durai, requesting in-
structions as to whether
a S. Magistrate can pro-
vide Sub-Magistrates (who
are Tahsildars and Dy.
Tahsildars) by suspension.