

36

19-5-93

~~3/20/5/93~~

1202
1

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers:—

From C. W. W. MARTIN, Esq., Acting District Magistrate, Salem, to the Chief Secretary to Government, dated Salem, 10th March 1884, No. 601.

Certain difficulties have lately arisen in connection with the working of section 49 of the Police Act XXIV of 1859 and the orders of Government of 21st September 1882, No. 1373, which I think it necessary to bring to notice.

2. The Act is defective in several ways: it does not define who the superior officers of police alluded to in the section are: it does not define who the magistrate is who is to control the police officers: it does not make it incumbent on persons who wish to conduct a procession to apply for a license; and by its terms persons are only punishable at all if a superintendent or superior officer has actually given a license and the license has been disobeyed.

3. In the beginning of the Act superintendents are defined as "subordinate" officers of police, and from this I argue that the superior officers of police in section 49 must mean officers superior to the *subordinate* superintendents. They do not, and I think ought not to include inspectors and the inferior grades.

The magistrate to control was not, I think, intended to be a magistrate of any class but the magistrate of the district.

This view of the status of the police officers and the magistrate is, I think, confirmed by the wording of the subsequent and more scientific Act V of 1861, which has not been extended to this presidency. In it the licensing officers are the superintendents and assistant superintendents, and the controlling officer is the magistrate of the district.

4. Act V of 1861, however, also omits the most important provision of all making it illegal to take a procession without license, in other words, making it incumbent on a contemplating processionist to apply for a license.

5. These questions have come before me in the ordinary course of appeal and revision work, and I have been obliged to recognise that it is not penal to take a procession without a license and also that an inspector of police has no power to issue a license.

6. The Inspector-General of Police with whom I have corresponded and conversed thinks that the law is defective, as I have said, and will, I believe, address Government upon the subject.

7. I had thought of submitting, for the consideration of Government, the question of extending Act V of 1861 to this presidency by notification, but its own defect as pointed out in paragraph 4 would leave the matter still in a most unsatisfactory state, unless its extension were followed by a short supplementary Act requiring that a license shall be obtained previous to each procession.

From the Government Solicitor, dated Madras, 3rd April 1884, No. 191.

ABSTRACT.—Forwarding the following opinion of the Honorable the Advocate-General, dated 2nd April 1884:—

OPINION.

I concur in the construction of section 49 of Act XXIV of 1859, which the magistrate of Salem suggests in his letter to the Chief Secretary to Government, dated the 10th March 1884, No. 601. I also think, with him, that the present law is defective; but how far it would be advisable to alter it, is a question which requires consideration.

2. There is a section in the Police Act for the Town of Madras (Act VIII of 1867), section 50, clause XIV, the practical effect of which is that licenses must be obtained from the Commissioner of Police to do the acts mentioned therein. I believe no practical inconvenience is experienced by the native community of Madras by reason of their liability to obtain licenses, for licenses are given by the Commissioner of Police in all proper cases.

3. It is not so certain that if a similar law were in force in the mofussil, the same satisfactory results would be attained. The power to give licenses would be given to the superintendent or assistant superintendent, subject to the control of the magistrate of the district, and if the giving or withholding of licenses were confided to their sole discretion, the practice in different districts would be different. Some would give the licenses in all save exceptional cases, others would not. Others again, if they thought that any considerable number of persons were opposed to processions or music, would refuse the licenses such refusal being calculated to secure quiet and prevent risk of breach of the peace.

4. The best course seems to me to be if a change is to be made in the law to make it an offence to conduct processions without a license, and to leave it to the discretion of the superintendent or assistant superintendent of police to grant or refuse the license, subject, however, to such rules as may, from time to time, be prescribed by the Governor in Council for regulating the grant or refusal of licenses.

5. I enclose a copy of an opinion which I gave on the 2nd October 1882, upon the license question.

(Signed) P. O'SULLIVAN,
Advocate-General.

ENCLOSURE.

OPINION.

If it should be deemed advisable to have recourse to legislation as to the use of music in streets or other places, it may be well to advert to the Police Act for the City of Madras, Act VIII of 1867, section 50, clause XIV. The clause runs as follows:—

"Whoever beats a drum or tom-tom, or blows a horn or trumpet, or beats or sounds any brass or other metal instrument or utensil, except at such times and places as shall be from time to time allowed by the Commissioner of Police."

The effect seems to be to make it requisite that a license should be obtained from the Commissioner of Police as a condition precedent to the right to do any of the acts specified. In practice licenses under this clause are granted by the Commissioner of Police, and I had lately before me a copy of the form of license used. The Commissioner of Police seems to be the sole judge as to whether he will grant or refuse the license in each case. It will be seen that the terms of the clause quoted differs from section 49 of Act XXIV of 1859 (the Mofussil Police Act), and that section 49 does not apparently give the same power as does the Act for the Town of Madras. The Madras Act makes it penal to do the acts mentioned at any time, and not merely in reference to processions, unless they are allowed by the Commissioner of Police, whereas the Mofussil Act authorizes the officers of police to "regulate the use of music in the streets on the occasion of native festivals and ceremonies."

2nd October 1882.

(Signed) P. O'SULLIVAN,
Advocate-General.

ORDER—dated 15th May 1884, No. 1201, Judicial.

The Advocate-General's opinion is communicated to the District Magistrate, who will see that his view as to the construction of the present Act (XXIV of 1859) is concurred in by that officer.

2. As to the suggestion made at the close of paragraph 7 of the District Magistrate's letter, His Excellency the Governor in Council is not of opinion that legislation in the direction suggested is expedient or necessary. While no hardship is caused in the city of Madras by the existing law, the same or a similar law if made applicable to outlying parts of the presidency would be, and reasonably be most unpopular. His Excellency the Governor in Council is further of opinion that such a law is wholly unnecessary since in any well-organized district the local authorities will have timely intimation of any procession likely to cause danger to the public peace, His Excellency in Council accordingly sees no reason at present to legislate further on the subject.

(True Extract.)

E. F. WEBSTER,
Chief Secretary.

To all District Magistrates.
"the Inspector-General of Police.
"the Commissioner of Police.
Copy to the Government Solicitor.

Ed. J. Wright.

Govt. of Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., 15th May 1884, No. 1202.

MAY.

Police Act.

Communicating to the District Magistrate of Salem Advocate-General's opinion as to the construction of Police Act XXIV of 1869, and remarking that legislation in regard to proposal about religious processions is expedient.

The Collectors of
The District Magistrates of
The Presidents, Municipal
Commissions,
The Presidents, Local Fund
Boards,

1202
3

Anantapur.
North Arcot, Chittoor.
South Arcot, Cuddalore.
Bellary.
South Canara, Mangalore.
Chingleput, Saidápet.
Coimbatore.
Cuddapah.
Ganjam, Chatrapur.
Godávári, Cocanada.
Kistna, Masulipatam.
Kurnool.
Madura.
Malabar, Calicut.
Nilgiris, Ootacamund.
Nellore.
Salem.
Tanjore.
Tinnevelly.
Trichinopoly.
Vizagapatam.

12021
3A

For the ...
...

Sum
sent to
Wes 15/5-

Recd - 10/11/82 - 18

No 601
Salem District Magistrate's Office
10th March 1882.

From
C. W. W. Martin Esquire
Acting District Magistrate
Salem.

To
The Chief Secretary
To Government
Fort Saint George.

Sir,
Certain difficulties have
lately arisen in connection with the
working of, Section 49 of the Police
Act ~~XXIV~~ of 1859 and the orders of
Government of 21st September 1882
No. 1373, which I think it necessary
to bring to notice.

2. The act is defective in several
ways: It does not define who the
Superior Officers of Police alluded to

12026/15-411-84

in the Section are: It does not define who the Magistrate is who is to control the Police officers: It does not make it incumbent on persons who wish to conduct a procession to apply for a license; and by its terms persons are only punishable at all if a Superintendent or Superior Officer has actually given a license and the license has been disobeyed.

3. In the beginning of the Act Superintendents are defined as "Subordinate" Officers of Police and from this I argue that the Superior Officers of Police in Section 49 must mean Officers Superior to the Subordinate Superintendents: They do not and I think ought not to include Inspectors and the inferior grades.

28
The Magistrate to control was not I think intended to be a Magistrate of any class but the Magistrate of the District: ^{120V}/₅

This view of the Status of the Police officers and the Magistrate is, I think, confirmed by the wording of the subsequent and more Scientific Act V of 1861, which has not been extended to this Presidency: In it the licensing officers are the Superintendents and Assistant Superintendents and the controlling Officer is the Magistrate of the District.

11. Act V of 1861 however also omits the most important provision of all making it illegal to take a procession without license in other

not perfectly
absolute

words, making it incumbent on a contemplating processionist to apply for a license.

5. These questions have come before me in the ordinary course of appeal and revision work and I have been obliged to recognize, that it is not penal to take a procession without a license, and also that an Inspector of Police has no power to issue a license.

6. The Inspector General of Police with whom I have corresponded and conversed, thinks that the law is defective, as I have said, and will, I believe, address Government upon the subject.

7. I had thought of submitting for the consideration of Government the question of extending Act V of 1861 to

30
1202/6
to this Presidency by Notification, but its own defect as pointed out in para 4, would leave the matter still in a most unsatisfactory state, unless its extensions were followed by a short Supplementary Act - giving that a license shall be obtained previous to each procession.

I have the honor to be
Sir,

Your most obedient Servant

C. S. S. S.
Acting District Magistrate

agreed
1/2/11

x: col
Comdant
Therayamalone

1202
16

Order

Refused to the Advocate General for
Opinion -

17. 11. 84

The Madras Police Act is undoubtedly
badly drawn and in the points referred
to by the Dist Magistrate, in point
of law, but the purpose
or suggestion of the Dist Mag, that no
procession anywhere should be
legal without a license, seems to go
to far, in out of the way villages such
a rule would cause a deal of
hardship and probably extortion in
the hands of the Subordinate Officers
of Police who would have power
to give licenses - It would seem
from reading Act V. 61. that such a
provision was purposely omitted
from that Act.

Yes. such prohibition is in effect
the of the general kind to which
the High Court have taken objection
in 17. 11. 84

FW

WA

1032

From the Collector
and District Magistrate,

Salem.

To

The Chief Secretary
Judicial Department
Fort St George

Dated 10th March 1884

No. 601

SUBJECT.

Bringing to notice certain
defects of the Police Act.

Opinion

5 8/12 1202

I concur in the construction of Section 49 of Act XXIV
of 1859 which the Magistrate of Salem suggests in his
letter to the Chief Secretary to Government, dated the 10th
March 1884. I also think, with him, that the present
law is defective; but how far it would be advisable to alter
it is a question which requires consideration.

There is a Section in the Police Act for the Town of Madras.
(Act VIII of 1867) Section 50, Clause XIV, the practical effect
of which is that licenses must be obtained from the Commis-
sioner of Police to do the acts mentioned therein. I believe no
practical inconvenience is experienced by the Native Com-
munity of Madras by reason of their liability to obtain licenses,
for licenses are given by the Commissioner of Police in all
proper cases.

It is not so certain that if a similar law were in force
in the Mofussil, the same satisfactory results would be attained.
The power to give licenses would be given to the Superintendent
or Assistant Superintendent, subject to the control of the
Magistrate of the District, and if the giving or withholding
of licenses were confided to their sole discretion, the prac-
tice in different Districts would be different. Some would give
the licenses in all save exceptional cases, others would not.
Others again, if they thought that any considerable number
of persons were opposed to processions or music, would
refuse the licenses, such refusal being calculated to
secure quiet and prevent risk of breach of the peace.

The best course seems to me to be, if a change is to
be made in the law to make it an offence to conduct proces-
sions without a license, and to leave it to the discretion
of the Superintendent or Assistant Superintendent of Police
to grant or refuse the license, subject however to such rules
as

as may from time to time, be prescribed by the Governor
in Council for regulating the grant or refusal of licenses.

I enclose a copy of an opinion which I gave on the
2nd October 1882 upon the license question.

Signed / P. O'Sullivan
Attorney General

No 2nd April 1884.

(True Copy)

Wm. Barclay

Government Secretary

(Copy)

Enclosure
- Opinion -

68/9
VW/9

If it should be deemed advisable to have recourse to
legislation as to the use of music in streets or other
places, it may be well to advert to the Police Act for
the City of Madras, Act VIII of 1867. Section 50, Clause
XIV. The Clause runs as follows.

"Whoever beats a drum or tam-tam, or blows a horn"
or trumpet, or beats, or sounds any brass or other metal
instrument or utensil, except at such times and places
"as shall be from time to time allowed by the Commis-
sioner of Police."

The effect seems to be to make it requisite that a
license should be obtained from the Commissioner of
Police as a condition precedent to the right to do any
of the acts specified. In practice licenses under this
clause are granted by the Commissioner of Police, and
I had lately before me a copy of the form of license
used. The Commissioner of Police seems to be the sole
judge as to whether he will grant or refuse the license
in each case. It will be seen that the terms of the clause
quoted differ from Section 49 of Act XXIV of 1859 (the
Mofussil Police Act) and that Section 49 does not
apparently give the same power as does the Act for the
Town of Madras. The Madras Act makes it penal to do
the acts mentioned at any time, and not merely in reference
to processions, unless they are allowed by the Commissioner
of Police, whereas the Mofussil Act authorizes the Officers
of Police to "regulate the use of music in the streets on the
occasions of Native festivals and ceremonies."

Signed / P. O'Sullivan
Attorney General

2nd October 1882

1920²
10

4 Abstract
Judicial (1884) Department

From Ernest Barclay
Government Secy to
Madras

To Mr. (Chief Secretary to Government)
Colonel George

20/202-191
Dated 3 April 1884
Received

Enclosures 3
Remanded with enclosures with
reference to Order of Government
dated 29 March 1884 No 723 Judicial
Department

Ernest Barclay
Government Secy

The Advocate General's
opinion will be communicated
to the Dy. District Magistrate

16/4/84

78
Judicial Department

PROCEEDINGS OF THE MADRAS GOVERNMENT.

1202/15
Read the following

From the District Magistrate, Salem,
8 10th March 1884, No 601.
Advocate General, 33rd April 1884,
No 191.

Order 15 May 1884 No 1202

The Advocate General's
opinion will be communicated
to the District Magistrate,
who will see that his
view as to the construction
of the present Act (XXIV of 1857)
is concurred in by that
officer.

2. As to the suggestion
made at the close of
para 7 of the District
Magistrate's letter, His
Honour

Excellency the Governor
in Council is not of
opinion that legislation
in the direction suggested
is expedient or necessary.

While no hardship is
caused in the city of
Madras by the existing
law the same or a
similar law if made
applicable to outlying
parts of the Presidency
would be and reasonably
be most unpopular. His

Excellency the Governor
in Council is further of
opinion that such a
law is wholly unnecessary
since in any well organized
district the local authorities

will have timely in-
tervention of any procession
likely to cause danger
to the public peace,

8P

It is Council accordingly
see no reason at present
to legislate further on
the subject.

1202/16

All O^r M^{rs} to 13th Dup^d 29/1/16.

J. H. Police 6

Com^r of Police 6

(copy to the {out. sol. at 3})

Des^d 29/15

18 8 11 1232
Religious Prof.

Judicial

DEPARTMENT.

No. 1378.

1202

From Advocate General. No 196. 3rd April 84. 11

From. Dir. Mag. Salem No 601.
d. 16th March 84.

FOR ORDERS.

The question is the law regarding the regulation and management of processions.

The law is as follows in the Municipal. Act No. IV, 1859.

1st "Magistrate" includes all persons exercising the powers of a Magistrate, in their respective jurisdictions.

2. "Subordinate Officer" means -
Superintendents & their assistants -
Therefore necessarily: "Superior Officer" (the expression used in section 49)
means somebody above assistants
and certainly cannot include
an Inspector or Sub Inspector.

Section 49.

3. Under the Act Superior Officers of Police may direct processions in the municipal subject to the general control of the "Magistrate".

It will be seen that it is not illegal
at all to carry a procession without orders,
the provisions of the law only come to
this, that if a police superior officer
knows of any coming procession he
may regulate its route, and the hours
at which it shall go etc.

Act V. 61. India

In the later Police Act. [V. 61] which is
now in Madras, District Super &
their assistants are entitled to
regulate processions subject to the
control of the Dist Magistrate.

The Dist Magistrate Salem now
proposes that the law should be
amended in the direction of making
it illegal to take a procession without
a license, and the Advo. General
would seem to support the proposal.

It is submitted that such a
course would be wholly inexpedient
politically and absolutely unnecessary.

The presumed object of the
proposal is to ensure greater safety
to the public, and to give an
additional safeguard against the

1202
12
Justice peace being broken.

1. It is submitted that such a
course as that proposed is inexpedient.
If every petty village procession is to be
made illegal ^{in the absence of a} ~~without a~~ license, one
of the most valued privileges of the village
life of country will be taken away.
After the Salem riots in the District of
Salem, every procession was prohibited
by the Dist Magistrate without a license
from the inspectors of police [if that was
not ordered, that at all events was
understood to be the general order by
the police and the villagers] needless to
say every village almost without
exception sent a deputation to the
undersigned when in camp in the
old weather of 82-83, and much
stronger representations would have
been made if the village population
had not understood that the prohibition
was temporary owing to the breach of
the peace in Salem.

Every District Officer ^{almost} would
it is submitted, be opposed to restricting
what is really one of the most dearly

I cannot
understand the
officer making
a proposal
if it

1202
14

Further on the Subject:

28-11

Have the order as
attained by the Chief
Secretary failed &
brought to Council
May 13/14

711

able close of
last suggestion made in para 7
of the last Magistrate's letter, His Excellency
in Council is not of opinion that
legislation in the direction suggested
is expedient or necessary. (The case
of Leeds & Town is entirely different
from that of the M. of F. and while
no hardship is caused in Leeds City
by the existing law dealing with
religion and other professions there,
the same or a similar law would
be only in part of the tendency
to be more unpopular. His Excellency
the Governor in Council, claims
that in any well organized district
the authorities cannot fail to
learn previous to the occurrence of
any procession likely to cause
danger to the public peace, and then
be able to take the necessary
precautions in time, and see
no reason at present to legislate

of Mr O'Sullivan's opinion

master of the table

such a law is wholly
unnecessary since
will have already
intervention

according

FOR ORDERS.

Circ.
7/11

*This draft sh^d be circulated
to Hon^{ble} members
If passed it sh^d be com^d
by all District Magistrates
C. M.*

[Despatch.]

READ AGAIN Order of Government, dated
188 , No. Miscellaneous.

ENCLOSURES.

Parent No.

1032

1378

ATTACHMENT WITH DITTO.

ORDER, GOV. OF GOVERNMENT—A.

PLEASE COPY OUT OF FILE FOR DESPATCH IN ORIGINAL.
(not pagel.)

Order 200
Letter
Collection

N.B.—

A = Print in full.

B = Not to be printed.

P = Print abstract only.

PAPER, No.

OF 188 .

1652/95

OF 133 .

1202
17

1/11 2/5-7C. 7/5-

21.5.12

65/1008

PRESS.

Ind DEPARTMENT.
G.O. DATED 15 May 1882.
No. 1202.

First copy sent to Press. 20/5

Returned for signature. 23/5

Despatched in print.

[Despatch Abstract.]

Police Act. Comm. (Adm.)
General's opinion to the
District Magtr. of Salem
- as
regards to the construction
of Police Act XXIV 1859
& remarking that the legis-
lation in regard to proposal
about religious processions
is expedient.

21.5.12 C. 7/5-
21.5.12