

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

No. 2726 of 1895.

JUDICIAL DEPARTMENT.

Bombay Castle, 25th April 1895.

FROM

THE HONOURABLE MR. G. W. VIDAL, I.C.S.,

Acting Chief Secretary to the Government of Bombay;

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,

Home Department.

SIR,

I am directed to acknowledge the receipt of your letter No. 10 JUDL.—1096, dated the 2nd October 1894, in which you enquire—

1st.—What the practice is in the Bombay Presidency in regard to the debit of the cost of the establishments attached to Benches of Magistrates exercising jurisdiction in Mofussil municipal districts; and

That the annual cost of the clerical establishments of Benches of Magistrates should be borne by Municipal Funds up to, but not exceeding the amount of fines under Sections 3 to 5 of the Town Nuisances Act, 1889, which may be credited to Municipal revenues.

2nd.—Whether the proposal contained in paragraph 4 of the letter from the Government of Madras (recited in the margin) should be accepted.

2. In reply, I am directed to state, with reference to the first point, that the practice is not uniform and varies in almost every District in which there are Benches of Magistrates. In some instances Government pay the whole cost of establishments, in others the Municipality either pays the whole cost, or else the charges are divided in varying proportions between Government and the Municipalities.

3. This divergence in practice may be thus accounted for. It has been held by this Government, on the advice of their Law Officers, that fines levied in municipal cases, such as are ordinarily tried by Benches of Magistrates, are not "paid to or levied by" the Municipality within the meaning of Section 18 of Bombay Act VI of 1873, but are "moneys accruing by gifts or transfers from Government" within the meaning of the same section, and that, such being the case, it is open to Government to attach such conditions to the grant of such moneys as they may think fit. Therefore, though a Municipality cannot be asked to pay for establishments, Government may deduct any sum from the total amount of fines inflicted in such cases as shall be sufficient to cover the whole or part of the cost of establishments. Government have, therefore, affixed to the transfer of fines to Municipalities the condition of payment of a certain sum for establishments, having regard in each case to the financial position of the Municipality.

4. As to the second point, it appears that Sections 3 to 5 of Madras Act III of 1889 (Town Nuisances Act) are applicable to all Municipalities in the Mofussil of the Madras Presidency and provide a supplement to the Madras District Municipalities Act of 1884. The fines levied under the former Act have been ordered to be credited to Municipalities on the analogy of the cases referred to

CURRENT NO. 2763
No. 830 Local & Municipal Dept.

From

J. P. Hewett, Esq., C. I. E.,
Offg. Secretary to the Govt. of India.

To

The Chief Secretary to the Government of Madras.

CHIEF SECRETARY
6 JUN 1895
GOVERNMENT OF MADRAS

Home Department

Simla, the 31st May 1895.

(Judicial)

Sir,

I am directed to reply to your letter No. 1016 Mis., dated the 3rd August 1894, in which it was suggested that in the circumstances brought to notice in your letter, the annual cost of any establishment which might be necessary for Courts of Bench Magistrates exercising jurisdiction within the limits of District Municipalities in the Madras Presidency should be borne by Municipal Funds up to but not exceeding the amount of fines under sections 3 to 5 of the Towns Nuisances Act which might be credited during the year to Municipal revenues under the system at present in force.

2. Before disposing of the suggestion, the Government of India deemed it desirable to ascertain the practice prevailing in other provinces and a reference was accordingly made to other Local Governments and Administrations. From the replies received it appears that, in most provinces, Municipalities are called upon to pay either in whole or part for the establishments of Bench Magistrates exercising jurisdiction within municipal limits.

3. I am to forward herewith for the information of the Governor in Council a copy of the Bombay Government's reply, and to say that it would appear that an amendment

* Letter from the Govt. of Bombay No. 2726 dated the 25th April 1895. of the Madras Municipalities Act is the most convenient

means of securing in the Madras Presidency, the legal power

to

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by the Government of India in the orders contained in their Resolution, Financial Department, No. 6680, dated the 21st November 1874. The Madras Government ask that, as a set off to those orders, Municipalities should pay for the establishments employed in connection with the infliction of those fines and the Government of India ask the opinion of this Government on this proposal.

5. The difference between the position of the Madras Government and that of the Bombay Government in regard to this question arises from the fact that the Municipal Fund, as constituted by Section 27 of Madras Act IV of 1884, does not include "moneys accruing by gifts or transfers." The fines levied under Sections 3 to 5 of the Town Nuisances Act, 1889, and credited, by executive order of the Madras Government to Municipal Funds, appear to come under the heading (vide Section 27) of "moneys which, under sanction of the Governor in Council, may be transferred to such Municipal Council."

6. It appears, therefore, that there is no need, so far as this Presidency is concerned, to take action in order to secure the object desired by the Madras Government, as that object is already secured in this Presidency, in the manner above described in paragraph 3.

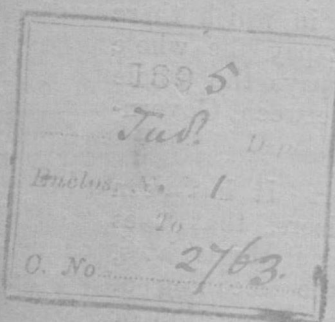
I have the honour to be,

Sir,

Your most obedient Servant,

(Signed) G. W. VIDAL,
Acting Chief Secretary to Government.

* Madras Act III
of 1889.



1843 mofat

to give effect to the proposals contained in your letter under reply. The Governor General in Council has no objection to provision being made in the Bill now pending before the Madras Legislative Council to amend the Madras District Municipalities Act, for securing the desired object. His Excellency in Council leaves it to the Local Government to settle the terms of the amendment to be introduced into the Act.

* Madras Act
IV of 1884.

I have the honour to be,
Sir,

Your most obedt. Servant,

J. P. Bennett

Offg. Secretary to the Govt. of India.

Judicial Department.

CURRENT NO. 2763.

Local & Municipal Dept.

CURRENT No. 1843 M

From, The Govt of India
Home Dept. (Judicial)

No 830.

Dated 31st May
Recd 6th June } 1895
Regd 7th do }
Ecc: 1

Subject

Regarding the cost of the establishments
of Bench Magistrates exercising
jurisdiction within the limits of
District Municipalities in the
Madras Presidency.

1015-16 M 3-8-94
742 L 12-6-94
1667 J 22-8-91
1705 L 14-12-89
614 L 18-8-89

[G.]
690-7-5-95.

L.M.

DEPARTMENT.

C. No. 1843 M.

The explanation of the office for
the heavy delay in sending up this
paper has been called for.
M. sec. 245

FOR ORDERS.

Please see the reference to India in
Go. 1015 M. The current is the
3.8.94
reply thereto.

It is submitted that India
has missed the point of this Govt's
letter. This Govt. pointed drew
attention to the fact that although
sec. 286 (3) of Act IV of '84 compelled
the crediting of fines imposed for
offences under that act to Municipal
Revenues, yet there was nothing to
prevent fines collected for offences
under secs. 3-5 of the Madras
Town Nuisances Act from being
credited to the payment of Bench
Clerks except orders of this Govt.
which had followed the rule laid
down in India's letter in Go.

2126. A. It stated its opinion that
19.12.74
the rule in question was not equitable

DD
26/7/95

and asked, by implication at any rate, that it might be relaxed.

India first referred this letter to the
Bombay Govt. India's reply is

that this Govt. should amend the
Act IV of 1884.

It was not proposed to apply
fines for offences under Act IV of
84 to paying Bench clerks, & in
the amended Act the section 286
is unaltered. It was the disposal
of the fines collected under the
Towns Nuisances Act that was under
discussion.

Dated
Recd
Regd
Exec: 1

There appears to be no legal
difficulty in diverting these
to payment of Bench Clerks, for
the words "all other moneys which,
under sanction of the Govt. in
Council, may be transferred to
such Municipal Council" in
Sec. 27 of Act IV of 84 would
appear to cover them as soon
as this Govt. can give the
necessary order.

Regar
of Ben
jurisd
District
Madras

Submitted that India
may be again addressed
24.7.95

Payment of Bench
Clerks from fines collected
under Towns Nuisances Act
FOR ORDERS.

H.M.
Hon. Mr. Goss

[G.
24.]

500-213895

L.M.

DEPARTMENT.

Papers to be read in proceedings:—

Letter
Again G.O., dated 3rd Aug. 1894, No. 1016 M. to the Sec. to Govt.
Again G.O., dated 189, No. of India, Financial Dept.
Current No. 1845 M. of 1895, dated from
" " " 189, " " "
" " " 189, " " "

order
ORDER. 87.8.95 No. 1281 Mins

The following letter will be despatched to
the Govt. of India:—

Letter 87.8.95 No. 1282 Mins
To the Secretary to the Govt. of India.
Home Dept. (Indial).

Sir,
I am directed to acknowledge the
receipt of your letter No. 830, dated
the 31st May 1895, in which his
opinion is expressed that the most
convenient means of securing the
legal power to give effect to the proposals
of this Govt. in its letter No. 1016 M.
dated 3rd Aug. 94 is to amend
the District Municipalities Act (Madras
Act IV of 1884).

2. In reply I am to say that
it would appear that a misapprehension
exists as to the nature of the proposals.

2577/95

25.7.95

referred to. The fines imposed by the
Magistracy & credited to the Municipalities
in this Presidency are inflicted &
collected by virtue of the powers in
two different Acts - the Towns
Nuisances Act (Madras Act III of 1889)
& the District Municipalities Act (Madras
Act IV of 1884).

④. The fines collected under the
latter Act are & have always been
credited to the Municipal Councils
in accordance with the provisions
of Sec. 286 (3) of the Act, and it is
not the desire of His Govt. that any
change should occur in this procedure,
in the Draft Bill to amend the Act
which has recently been framed by a
Select Committee of the Legislative
Council this section 286 (3) has
been left unaltered.

⑤. On the other hand under
the Towns Nuisances Act (Madras
Act III of 1889) contains no provision
declaring that the fines levied under it
shall be credited to any
particular fund, and it appears to be
possible to decide by an executive order
to show what fund they shall be
paid.

In the proceedings of the Govt. of
Madras they have been

* The Magistrate by whom any
fine or penalty is imposed by
virtue of this Act shall award
the whole of such fine or penalty
to the Municipal Council to be
by them applied to the purposes
of this Act."

[G.]
[24.]
500-21-5-95

DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated	189	, No.
Again G.O., dated	189	, No.
Current No.	of 189	, dated
" "	" 189	, "
" "	" 189	, "

ORDER.

India in the Financial Dept. Dated
21st Nov. 1874. No. 6680. Accounts, &
dated 25th January 1875, No. 4624, it
was ordered that fines collected under
Sec. 48. of the Police Act, (Madras Act
XXIV of 1859), should be credited
to Municipal funds when the offences
for which they were inflicted were
committed within Municipal limits.
The Madras Towns Nuisances Act
repealed this section 48. of the
Police Act & this Govt. in its order
dated 22nd August 1891. No. 1667, (copy
of which (enclose), directed that,
inasmuch as sections 3-5 of the
Towns Nuisances Act covered the
same ground as the repealed
Sec. 48 of the Police Act, fines
levied under those three sections
should, in accordance with the

[G.]
[24.]

300-21-5-05.

Papers to be read in proceedings:—

Again G.O., dated	189	No.
Again G.O., dated	189	No.
Current No.	of 189	, dated from
" "	" 189	, "
" "	" 189	, "

ORDER.

in modification of the procedure
laid down in its orders of
Nov. 1894 and Jan 1895,
above referred to.

I am accordingly to ask that the
Govt sanction of the Govt. of India
may be obtained to the proposals
set forth in the preceding paragraph,
(from orders).

M. 30. 295

31/7/95.

BS

2/8/95

defrayed by contributions from

orders of the Govt. of India quoted
above, be credited to Municipal
funds. If the offences in respect of
which they were imposed were committed
within the limits of a Municipality.
⑦ b. ~~It now appears~~ This course
has been hitherto, & is now being
followed. ⑧ It however now appears
to this Govt, as has already been
stated in my letter dated 3rd August
1894, No 1016-M, that it is inevitable
that Municipal Councils should be
permitted to receive so large a revenue
from ^{the Bench} Courts which are maintained
for Municipal work at the exclusive
cost of the Govt., & it is proposed that
no charges on account of such
establishment as may be necessary in
the of Bench Magistrates in Municipalities
the Courts should be borne by Municipal
funds ^{out of} the fines collected under
sections 3-5 of the Poona Munsuances
Act, such contributions not exceeding
the total amount of the fines collected.
9. As the present procedure in
the matter of crediting these fines is
based ^{solely} upon the orders of the Govt.
of India, it would appear that further
executive orders of that Govt. ^{are} ~~would~~
~~cannot~~ sufficient legal authority ^{to authorize the addition}
of any change that may be desired.
change which ~~may be desired~~ ~~and~~

Payment of Bench Clerks from
fines collected under Town
Misanus Act.

1843

Am.

(from order)

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28

When given for copying _____
When copied _____ 189.
When examined _____
When signed _____

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B. -

- A = Copy in full.
- B = Not to be copied.
- P = Copy abstract only.
- Q = Copy heading only.