

31-3-13
26-5-16 *AD*

[L. & M.]
[9,000-2-2-96.]

Local & Munl. (1896) Department.

MISCELLANEOUS.

G.O., No. 812 *M*

DATED 11th May 1896

[Despatch Abstract.]

Petition.

Informing the Municipal Councillors Calicut with remark
that Government sees no sufficient reason to cancel the remarks
complained of in their -----.

BACK PAPERS.

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

FURTHER PAPERS.

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

DEXED.

Alaneous.

LOCAL AND MUNICIPAL DEPT.

G.O. DATE 11-5-96
No. 812/11.

When given for copying.

[Despatch Abstract.]

Petition

Informing the Municipal
Councillors Calicut, with
remark that Government
Sees no sufficient reason
to cancel the remarks
complained of in their

CHIEF SECRETARY
GOVERNMENT OF MADRAS
9 MAR 1896
GOVERNMENT HOUSE
QUINCY

In the file of the
petition of the
Municipal Councillors
Calicut, the Government
has no objection to the
remarks of the
Municipal Councillors
Calicut, in G.O. 704-
1895 No 1614/14. Respecting
the remarks of the
Municipal Councillors
Calicut.

2/11/96
1/11/96

READ AGAIN ORDER OF GOVERNMENT, DATED
189 , No. , MISCELLANEOUS.

BACK PAPER, No.

FURTHER PAPER, No.

OF 189

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO.

ORDER OF GOVERNMENT

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL (not paged).

N.B.—

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

Copied by *huffe*
Examined by *Sud*

To,

The Chief Secretary,

to the Government of Madras,

THROUGH,

THE MUNICIPAL COUNCIL,
CALICUT.

SIR,

WITH reference to G. O. dated 7th October 1895, No. 1614 M., reviewing the Administration Report of the Calicut Municipality for 1894-95, we, the undersigned members of the Calicut Municipal Council, beg most respectfully to submit a few facts in connection with the following remarks of the Government, in the matter of the payment of Rs. 1948 to one Armugam Chetty, as damages for the cancellation of his tender for the construction of the Hospital Building:—"The Council is much to blame for the extremely unbusinesslike manner in which it dealt with the tenders in this case and for its failure to take the necessary action when it found that the resolution in question had not been carried out, or that from want of funds there might be difficulty in carrying it out. Some, if not all the members, were well aware of the circumstances of the case, and it was the clear duty of any member who had this knowledge, to bring the matter to notice. Of the failure to do this in due time, no explanation has been offered." (*vide para. 4 (6)*).

2. The Municipal Council at its meeting on the 2nd May 1891, resolved to accept the tender of one Armugam Chetty for the construction of the Hospital Building. Soon after, facts came to the notice of the Council, which tended to show that it was not safe to entrust the work to the tenderer aforesaid. The acceptance of the tender had not matured into a contract enforceable in law, in accordance with the provisions of section 45 of the Municipal Act. Even the resolution accepting the tender, had not been communicated to the tenderer. The Municipal Council, as it was then constituted, believed that he had not collected any materials and would not be subjected to any damages. In these circumstances, the Municipal Council at its meeting on the 25th of the same month, passed the following resolution:—

"Read petition No. 307 of 90-91, dated 13th May 1891, from Kariyalil Kunhipachan stating that his tender for building the new Hospital was less than that of Armugam Chetty; that the latter presented his tender after the time, without the deposit, that he sued the Municipality, and that he was punished by Court for illegal acts and praying that Petitioner's tender may be accepted.

"Proposed by Mr. Peroo Muppan and seconded by Mr. LaNauze that the tender for building the new Hospital by Kariyalil Kunhipachan, being the lowest and the man being competent to carry on the work, be accepted; and that the resolution passed at the meeting on 2nd May 1891, accepting the tender of Armugam Chetty, which is higher, be cancelled.

"Proposition carried by 12 against 4 votes."

Thus, the Council rescinded its former resolution, as it is competent to it, under Section 30, Sub-section (5) and gave the work to the petitioner above mentioned, who had tendered for a smaller sum.

3. The Court however, having decided against the Municipal Council, a compromise was brought about, considerably reducing the amount of damages and making the reduced sum payable within four months, with the usual condition that in case of default, the whole sum payable under the decree should be paid. The following resolution was passed by the Municipal Council in this matter on the 21st April 1894:—

"Read letter No. 237 dated 6th April 1894, from Mr. T. M. Appu Nedungadi, First Grade Pleader, Calicut, forwarding copies of the decree and judgment in O. S. No. 717 of 1891 on the file of the Principal District Munsiff's Court and requesting that his fee in the above suit, may be paid to him.

"Read also Chairman's office note dated 9th April 1894 circulating the copies of the decree and judgment said above, among the Councillors and the Councillors' remarks thereon.

"Messrs. T. M. Appu Nedungadi and M. A. Subramania Iyer with the Chairman will endeavour to come to terms with the Plaintiff. Failing to effect a satisfactory settlement, they will take such steps as they may consider fit."

In pursuance of the above resolution, a compromise was effected and accepted by the Council on the 28th April 1894 under the following resolution:—

"Read letter No. 266, dated 24th April 1894, from Messrs. M. A. Subramania Iyer and T. M. Appu Nedungadi, Municipal Councillors, Calicut, informing that the decree debt in O. S. 717 of 1891 on the file of the Principal District Munsif's Court, is Rs. 1,842-8-8 and that the decree-holder has agreed to accept in full satisfaction of the above debt, Rs. 1,253-0-11 payable within 4 months from 24th April 1894 with interest at one per cent. per mensem. The recommendation of the Sub Committee is accepted. An early payment will be made. A payment of Rs. 50 as fee, is sanctioned."

From these facts the Government will, we trust, be satisfied that the Municipal Council acted all along, with due regularity and with the best regard to the interests of the Municipality, and when it was found that it was nevertheless mulcted in damages, the Council did its best to reduce the magnitude of its liability. We are therefore very much grieved to find the Council's conduct characterized by the Government as "extremely unbusinesslike."

4. It was the omission on the part of the Chairman, to pay away the debt within the time agreed upon, thereby increasing the amount of damages by about Rs. 700, and to obtain the Council's sanction for or even ratification of the payment of the excess sum, that was animadverted on in submitting the last administration report. To our great regret, when the G. O. reviewing the report, was received, we find that the Council is also *blamed* in the terms referred to in para 1 above. As regards the alleged failure to take the necessary action when it was found that the resolution in question had not been carried out, we beg to submit that no steps could possibly have been *then* taken, which would have the effect of averting the penalty that had already been incurred by the omission to pay the amount within the stipulated period. It was not even possible to attempt an amicable settlement with the decree-holder, inasmuch as the debt including the penalty payable to him under the decree, had been attached by a creditor of his. As regards the probable difficulty from want of funds in carrying out the resolution, we beg leave to state that no such difficulty was ever brought to the notice of the Council either before or after the expiry of the period fixed for the execution of the resolution. In this connection, we beg to invite the attention of the Government to Section 32, sub-section (1) which provides that "the resolutions of the Municipal Council shall be carried into effect by the Chairman in whom the *entire* executive power of the Municipal Council shall be vested." The Council or any of its members, has nothing to do in carrying out its resolutions. It is therefore, we submit, the clear duty of the executive, to bring to notice any existing difficulty in carrying out any resolution before it is passed, as well as any difficulty that might afterwards arise in giving effect to any resolution already passed.

5. In the present case, the Chairman did not suggest any difficulty either on the occasion of passing the resolution on 28th April 1894, or since then, although there were *four* meetings of the Council before the expiry of the stipulated period. As a matter of fact, however, we find that there was no difficulty from want of funds to have paid the debt in due time; for it is seen from the Books of the Municipal Office that in the very next month (May) after the passing of the resolution, the collections were Rs. 7,653-13-4 which together with an opening balance of Rs. 154-0-10 amounted to Rs. 7,807-14-2 in the hands of the Chairman. As the Council had desired that "an early payment will be made," the comparatively small sum of Rs. 1,253-0-11, could have been paid off in that month. It cannot be said that there were other more pressing demands to meet; for, the total expenditure in May, was only Rs. 3,799-0-9 leaving a nett balance of Rs. 4,008-13-5 to the credit of the Municipality. Taking the whole period from May to August 1894, the period during which the payment in question had to be made, the total receipts were Rs. 20,140-2-11, and the total expenditure, Rs. 18,862-1-5, leaving a nett balance of Rs. 1,278-1-6, (a sum exceeding the judgment debt) at the end of August 1894. From these figures, it will, we submit, be seen that the plea of any difficulty from want of funds, is simply untenable. We even doubt whether any suggestion by any of the Councillors to pay away the debt within the time, would have been heeded. The Chairman never pleaded any inadvertence; sufficient funds were available, and at the meeting of the Municipal Council on 5th June 1895 when the resolution recording the Council's disapproval

of the Chairman's conduct in the matter, was being discussed, he maintained that he had the exclusive discretion in the management of the financial affairs of the Municipality, for which he was directly responsible to the Government.

6. Even after the default was made, the Chairman did not, we beg leave to state, place the matter before the Council and obtain its sanction to pay the additional sum, as he is bound to do, although there were *eight* meetings of the Municipal Council before the date of actual payment (7th February 1895) and a notice of execution, issued from Court, had, in the interval, been served on the Chairman on 18th September 1894. Nor was the Council even apprised of the fact of payment on the 7th February 1895, although there was a meeting of the Municipal Council on the 28th idem.

7. We beg most respectfully to submit that none of us were personally aware of any difficulty (in fact none existed) in paying, or of the Chairman's intention not to pay up the debt in time, *before the default was made*, and that most of us became aware of the default as well as the unauthorized payment, only when they were brought to light by means of the questions put to, and the answers given by the Chairman at the meeting of the Municipal Council on the 22nd March 1895. We also believe that our other colleagues were in the same position with us, as otherwise any of them would have interceded in the matter before it was too late.

8. We beg to state that we are afraid that the facts above set forth, were not before the Government when the matter in question was being disposed of. With reference to the remarks of the Government that "no explanation has been offered" by the Council, we beg to submit that there was no occasion for submitting any explanation in the first instance, as no allegations were made against the Council then and that none was called for on receipt of the special report of the Collector, on which the stricture passed by the Government on the Council's conduct, is apparently based. We very much regret that the Collector's report, on which the Council's conduct has thus been condemned, was not communicated to the Council either before or after the passing of final orders by the Government, and that even the Council's subsequent request to be favoured with a copy of it was not granted.

In these circumstances, we respectfully beg that the Government will be pleased to reconsider its remarks against the Municipal Council and its members in regard to the matter in question.

We beg to remain,

Sir,

Your most obedient Servants,

I append a separate note also signed P. A. Krishna Rao

P. A. Krishna Rao

L. Zachariah

T. M. Appu Nedungadi

M. Subrahmaniam Iyer

T. T. Srinivasan Pillai

E. Subrahmaniam Pillai

A. Subrahmaniam Iyer

H. Krishnan Rao

Padmanabha Krishna Rao

M. Chappu Rao

Govindji Ardesary

D. Ganpat-Rao.

*Calicut
26th January 1896.*

True Copy

P. A. Krishna Rao

L. Zachariah

Note.

In submitting this appeal for the consideration of the Government, I, who was the mover of the resolution recording the Council's disapproval of the Chairman's conduct in the matter, and which has given rise to this controversy, feel constrained to add a few facts connected with me personally. In the middle of July 1894, I was asked by Mr. Varada Rao to state if I was willing to be a Municipal Councillor and on my answering him in the affirmative, I was in due course recommended to the Government for nomination as a Municipal Councillor. My appointment was published in the Fort St. George Gazette of the 14th August 1894 and the first meeting of the Municipal Council that I attended, was that of the 13th October 1894. It will thus be seen, that I had no personal knowledge of the Council's resolution of the 28th April 1894 or of its nonperformance within the stipulated date (24th August 94). I must admit that I, as Pleader, conducted the suit and obtained the decree in question against the Municipality, but I positively deny any knowledge of the subsequent compromise and took no part in the enforcement of the compromise. Early in February 1895, I happened to hear it discussed in Court that the penalty provided by the compromise had been incurred and ought to be realized in execution of the decree. I rightly or wrongly (I do not take upon myself to say which) made up my mind and questioned the Chairman about it at the meeting on 22nd March 1895. The answers given being evasive and unsatisfactory, the questions were repeated in April with the same result. The questions and answers are quoted below for easy reference:—

22nd March 1895.

Q 3. (a) Has the judgment debt due by the Municipal Council under decree in O. S. 717 of 1891 in favor of Armugam Chetty, been paid within the time agreed upon in the compromise between the Municipal Council and the said Armugam Chetty?

A No.

Q (b) If not, why not?

A No funds were available, there being no provision in the Budget.

Q (c) Has the debt been since paid off?

A Yes.

Q (d) If so, when and what amount?

A On 9th February 1895; Rs. 1947-14-4.

Q (e) How much more money had to be paid by reason of the default in payment within the stipulated time?

A The difference between Rs. 1253-0-11 and the amount that may be settled by the Court with after interest.

Q (f) Under what authority was the excess amount paid and who is responsible for incurring the additional liability?

A The money was paid as the Government Pleader was of opinion that the property of the Council would be attached if the decree amount is not paid. The determination of the question of responsibility rests with the Council.

Nothing further was done in the matter until June 1895 when the Administration Report was taken up for discussion. The resolution in question was then moved by me and carried by a majority. I tender this explanation of my conduct, as I do not know what, if any, representations might have been made against me, I being the mover of the resolution. I distinctly disclaim any personal motives against Mr. Varada Rao, to whom on the other hand, I am indebted for my nomination to the Municipal Council.

26th April 1895.

Q 1. Why was the matter of funds not being available from want of provision in the Budget, to pay off the Judgment debt in O. S. 717 of 91 within the stipulated time, not brought to the notice of the Municipal Council?

A Council was aware from the printed copy of the Budget of the want of provision for the charge referred to in the question.

Q 2. Why was not the sanction of the Council obtained for paying a much larger sum towards the decree debt aforesaid, owing to default in payment within the stipulated time?

A The Councillor is referred to the answer to question No. 3 (f) answered at the meeting held on the 22nd March 1895.

Q 3. How were funds found to pay a larger sum in February 1895 when funds were not available in August 1894?

A By saving effected for payments deferred under the other grants.

*N.D. Printed Copy of the Budget
is not supplied to each Councillor.
Absence of provision in the Budget
is no excuse for the nonpayment in
August 1894, inasmuch as the Budget
remained unaltered at the time of payment in
Feb'y 95.*

26th July 1896.

507 O.D. Karimachari.

True Copy.

O.D. Karimachari.

hisachari

FROM

P. P. Karunakara Menon.
P. A. Krishna Menon.
G. Zachariah.
T. M. Appu Nedungadi.
N. Subrahmania Iyer.
J. J. Srinivasagom Pillay.
E. Subrahmanian Pillay.
A. Subrahmania Iyer.
K. Krishnan Nair.
Padanad Krishna Menon.
M. Chuppa Menon.
Cooverjee Ardesor.
D. Ganpat Rao.

Municipal Councillors,
CALICUT.

TO

The Chief Secretary,
TO THE GOVT. OF MADRAS.
THROUGH, THE MUNICIPAL COUNCIL,
CALICUT.

Dated—26th January 1896.

Enclosure. 1.

ADMINISTRATION REPORT.

Requesting, for reasons stated, to reconsider the remarks of the Government against the Calicut Municipal Council and its members, in the matter of the payment of damages for the cancellation of the tender for the construction of the Hospital Building, in reviewing the — for 1894-95

Local & Municipal Dept.

CURRENT No. 810/M

To,

The Chief Secretary
to the Government of Madras.

SIR,

We the undersigned Municipal Councillors of Calicut, beg to submit herewith, a true copy of a communication which was sent to the Chairman, on the 30th January last, but which has not up to this day, been forwarded to the Government.

2. We beg also to state that although the rules of this Municipality require that meetings of the Municipal Council shall be ordinarily held on the 2nd and the 4th Fridays in each month, the Chairman, did not convene any meeting of the Municipal Council until the 25th February, on which day, a notice was issued, convening a meeting at the usual hour of 5-30 P. M. on the 28th *idem.* which was already known to be a day of lunar eclipse. The meeting as soon as it assembled, had accordingly to be adjourned without transacting any important business.

3. As however, we think, the communication should not be delayed any longer we beg most respectfully to take the liberty of submitting the enclosed copy to the Government, direct, for which we beg to be excused.

4. We most respectfully request the Government will be pleased to accord an early and favorable consideration to the prayer contained in the enclosed communication.

We beg to remain,
Sir,

Your most obedient servants.

CALICUT,
29th February 1896. }

P. P. Karunakara Menon

P. A. Krishna Menon

G. Zachariah

T. M. Appu Nedungadi

N. Subrahmania Iyer

J. J. Srinivasagom Pillay

E. Subrahmanian Pillay

A. Subrahmania Iyer

K. Krishnan Nair

Padanad Krishna Menon

M. Chuppa Menon

Cooverjee Ardesor

D. Ganpat Rao

16/4/95-10-95
1019/26-6-95
20/4/95-1-96

From,

P. P. Karunakara Menon
J. M. Appu Nedungady.
Padanad Krishna Menon
P. A. Krishna Menon
M. Shuppu Menon.
N. Subramania Iyer.
K. Krishna Nair
G. Zachariah.

Municipal Councillors
Calicut.

To,

THE CHIEF SECRETARY
to the Government of Madras.

Dated—29th February 1896.

Enclosure 1.

Administration Report

Submitting copy of a letter, handed over to the Chairman for transmission to the Government and requesting for reasons stated, to reconsider the remarks of the Government against the Calicut Municipal Council and its members in the matter of a certain payment of damages, in reviewing the ——— for 1894—95.

For D. P. Karunakara
Cash Mr. A. Iyer

14/3.

To,

The Chief Secretary,

to the Government of Madras,

THROUGH,

THE MUNICIPAL COUNCIL,
CALICUT.

SIR,

WITH reference to G. O. dated 7th October 1895, No. 1614 M., reviewing the Administration Report of the Calicut Municipality for 1894-95, we, the undersigned members of the Calicut Municipal Council, beg most respectfully to submit a few facts in connection with the following remarks of the Government, in the matter of the payment of Rs. 1948 to one Armugam Chetty, as damages for the cancellation of his tender for the construction of the Hospital Building:—"The Council is much to blame for the extremely unbusinesslike manner in which it dealt with the tenders in this case and for its failure to take the necessary action when it found that the resolution in question had not been carried out, or that from want of funds there might be difficulty in carrying it out. Some, if not all the members, were well aware of the circumstances of the case, and it was the clear duty of any member who had this knowledge, to bring the matter to notice. Of the failure to do this in due time, no explanation has been offered." (vide para. 4 (6).

2. The Municipal Council at its meeting on the 2nd May 1891, resolved to accept the tender of one Armugam Chetty for the construction of the Hospital Building. Soon after, facts came to the notice of the Council, which tended to show that it was not safe to entrust the work to the tenderer aforesaid. The acceptance of the tender had not matured into a contract enforceable in law, in accordance with the provisions of section 45 of the Municipal Act. Even the resolution accepting the tender, had not been communicated to the tenderer. The Municipal Council, as it was then constituted, believed that he had not collected any materials and would not be subjected to any damages. In these circumstances, the Municipal Council at its meeting on the 25th of the same month, passed the following resolution:—

"Read petition No. 307 of 90-91, dated 13th May 1891, from Kariyalil Kunhipachan stating that his tender for building the new Hospital was less than that of Armugam Chetty; that the latter presented his tender after the time, without the deposit, that he sued the Municipality, and that he was punished by Court for illegal acts and praying that Petitioner's tender may be accepted.

"Proposed by Mr. Peroo Muppan and seconded by Mr. LaNauze that the tender for building the new Hospital by Kariyalil Kunhipachan, being the lowest and the man being competent to carry on the work, be accepted; and that the resolution passed at the meeting on 2nd May 1891, accepting the tender of Armugam Chetty, which is higher, be cancelled.

"Proposition carried by 12 against 4 votes."

Thus, the Council rescinded its former resolution, as it is competent to it, under Section 30, Sub-section (5) and gave the work to the petitioner above mentioned, who had tendered for a smaller sum.

3. The Court however, having decided against the Municipal Council, a compromise was brought about, considerably reducing the amount of damages and making the reduced sum payable within four months, with the usual condition that in case of default, the whole sum payable under the decree should be paid. The following resolution was passed by the Municipal Council in this matter on the 21st April 1894:—

"Read letter No. 237 dated 6th April 1894, from Mr. T. M. Appu Nedungadi, First Grade Pleader, Calicut, forwarding copies of the decree and judgment in O. S. No. 717 of 1891 on the file of the Principal District Munsiff's Court and requesting that his fee in the above suit, may be paid to him.

"Read also Chairman's office note dated 9th April 1894 circulating the copies of the decree and judgment said above, among the Councillors and the Councillors' remarks thereon.

"Messrs. T. M. Appu Nedungadi and M. A. Subramania Iyer with the Chairman will endeavour to come to terms with the Plaintiff. Failing to effect a satisfactory settlement, they will take such steps as they may consider fit."

In pursuance of the above resolution, a compromise was effected and accepted by the Council on the 28th April 1894 under the following resolution:—

"Read letter No. 266, dated 24th April 1894, from Messrs. M. A. Subramania Iyer and T. M. Appu Nedungadi, Municipal Councillors, Calicut, informing that the decree debt in O. S. 717 of 1891 on the file of the Principal District Munsif's Court, is Rs. 1,842-8-8 and that the decree-holder has agreed to accept in full satisfaction of the above debt, Rs. 1,253-0-11 payable within 4 months from 24th April 1894 with interest at one per cent. per mensem. The recommendation of the Sub Committee is accepted. An early payment will be made. A payment of Rs. 50 as fee, is sanctioned."

From these facts the Government will, we trust, be satisfied that the Municipal Council acted all along, with due regularity and with the best regard to the interests of the Municipality, and when it was found that it was nevertheless mulcted in damages, the Council did its best to reduce the magnitude of its liability. We are therefore very much grieved to find the Council's conduct characterized by the Government as "extremely unbusinesslike."

4. It was the omission on the part of the Chairman, to pay away the debt within the time agreed upon, thereby increasing the amount of damages by about Rs. 700, and to obtain the Council's sanction for or even ratification of the payment of the excess sum, that was animadverted on in submitting the last administration report. To our great regret, when the G. O. reviewing the report, was received, we find that the Council is also *blamed* in the terms referred to in para 1 above. As regards the alleged failure to take the necessary action when it was found that the resolution in question had not been carried out, we beg to submit that no steps could possibly have been *then* taken, which would have the effect of averting the penalty that had already been incurred by the omission to pay the amount within the stipulated period. It was not even possible to attempt an amicable settlement with the decree-holder, inasmuch as the debt including the penalty payable to him under the decree, had been attached by a creditor of his. As regards the probable difficulty from want of funds in carrying out the resolution, we beg leave to state that no such difficulty was ever brought to the notice of the Council either before or after the expiry of the period fixed for the execution of the resolution. In this connection, we beg to invite the attention of the Government to Section 32, sub-section (1) which provides that "the resolutions of the Municipal Council shall be carried into effect by the Chairman in whom the *entire* executive power of the Municipal Council shall be vested." The Council or any of its members, has nothing to do in carrying out its resolutions. It is therefore, we submit, the clear duty of the executive, to bring to notice any existing difficulty in carrying out any resolution before it is passed, as well as any difficulty that might afterwards arise in giving effect to any resolution already passed.

5. In the present case, the Chairman did not suggest any difficulty either on the occasion of passing the resolution on 28th April 1894, or since then, although there were four meetings of the Council before the expiry of the stipulated period. As a matter of fact, however, we find that there was no difficulty from want of funds to have paid the debt in due time; for it is seen from the Books of the Municipal Office that in the very next month (May) after the passing of the resolution, the collections were Rs. 7,653-13-4 which together with an opening balance of Rs. 154-0-10 amounted to Rs. 7,807-14-2 in the hands of the Chairman. As the Council had desired that "an early payment will be made," the comparatively small sum of Rs. 1,253-0-11, could have been paid off in that month. It cannot be said that there were other more pressing demands to meet; for, the total expenditure in May, was only Rs. 3,799-0-9 leaving a nett balance of Rs. 4,008-13-5 to the credit of the Municipality. Taking the whole period from May to August 1894, the period during which the payment in question had to be made, the total receipts were Rs. 20,140-2-11, and the total expenditure, Rs. 18,862-1-5, leaving a nett balance of Rs. 1,278-1-6, (a sum exceeding the judgment debt) at the end of August 1894. From these figures, it will, we submit, be seen that the plea of any difficulty from want of funds, is simply untenable. We even doubt whether any suggestion by any of the Councillors to pay away the debt within the time, would have been heeded. The Chairman never pleaded any inadvertence; sufficient funds were available, and at the meeting of the Municipal Council on 5th June 1895 when the resolution recording the Council's disapproval

of the Chairman's conduct in the matter, was being discussed, he maintained that he had the exclusive discretion in the management of the financial affairs of the Municipality, for which he was directly responsible to the Government.

6. Even after the default was made, the Chairman did not, we beg leave to state, place the matter before the Council and obtain its sanction to pay the additional sum, as he is bound to do, although there were *eight* meetings of the Municipal Council before the date of actual payment (7th February 1895) and a notice of execution, issued from Court, had, in the interval, been served on the Chairman on 18th September 1894. Nor was the Council even apprised of the fact of payment on the 7th February 1895, although there was a meeting of the Municipal Council on the 28th idem.

7. We beg most respectfully to submit that none of us were personally aware of any difficulty (in fact none existed) in paying, or of the Chairman's intention not to pay up the debt in time, *before the default was made*, and that most of us became aware of the default as well as the unauthorized payment, only when they were brought to light by means of the questions put to, and the answers given by the Chairman at the meeting of the Municipal Council on the 22nd March 1895. We also believe that our other colleagues were in the same position with us, as otherwise any of them would have interceded in the matter before it was too late.

8. We beg to state that we are afraid that the facts above set forth, were not before the Government when the matter in question was being disposed of. With reference to the remarks of the Government that "no explanation has been offered" by the Council, we beg to submit that there was no occasion for submitting any explanation in the first instance, as no allegations were made against the Council then and that none was called for on receipt of the special report of the Collector, on which the stricture passed by the Government on the Council's conduct, is apparently based. We very much regret that the Collector's report, on which the Council's conduct has thus been condemned, was not communicated to the Council either before or after the passing of final orders by the Government, and that even the Council's subsequent request to be favoured with a copy of it was not granted.

In these circumstances, we respectfully beg that the Government will be pleased to reconsider its remarks against the Municipal Council and its members in regard to the matter in question.

We beg to remain,

Sir,

Your most obedient Servants,

Calicut... }
26th January 1896

I append a separate list of names of the Municipal Council members.

(2) P. A. Krishna Rao

(3) Jayachand

(4) M. S. S. S. S.

(12) C. S. S. S. S.

(13) A. S. S. S. S.

(5) S. S. S. S. S.

(6) S. S. S. S. S.

(7) S. S. S. S. S.

(8) S. S. S. S. S.

(9) K. S. S. S. S.

(10) S. S. S. S. S.

(11) S. S. S. S. S.

Note.

In submitting this appeal for the consideration of the Government, I, who was the mover of the resolution recording the Council's disapproval of the Chairman's conduct in the matter, and which has given rise to this controversy, feel constrained to add a few facts connected with me personally. In the middle of July 1894, I was asked by Mr. Varada Rao to state if I was willing to be a Municipal Councillor and on my answering him in the affirmative, I was in due course recommended to the Government for nomination as a Municipal Councillor. My appointment was published in the Fort St. George Gazette of the 14th August 1894 and the first meeting of the Municipal Council that I attended, was that of the 13th October 1894. It will thus be seen, that I had no personal knowledge of the Council's resolution of the 28th April 1894 or of its nonperformance within the stipulated date (24th August 94). I must admit that I, as Pleader, conducted the suit and obtained the decree in question against the Municipality, but I positively deny any knowledge of the subsequent compromise and took no part in the enforcement of the compromise. Early in February 1895, I happened to hear it discussed in Court that the penalty provided by the compromise had been incurred and ought to be realized in execution of the decree. I rightly or wrongly (I do not take upon myself to say which) made up my mind and questioned the Chairman about it at the meeting on 22nd March 1895. The answers given being evasive and unsatisfactory, the questions were repeated in April with the same result. The questions and answers are quoted below for easy reference:—

22nd March 1895.

Q 3. (a) Has the judgment debt due by the Municipal Council under decree in O. S. 717 of 1891 in favor of Armugam Chetty, been paid within the time agreed upon in the compromise between the Municipal Council and the said Armugam Chetty?

A No.

Q (b) If not, why not?

A No funds were available, there being no provision in the Budget.

Q (c) Has the debt been since paid off?

A Yes.

Q (d) If so, when and what amount?

A On 9th February 1895; Rs. 1947-14-4.

Q (e) How much more money had to be paid by reason of the default in payment within the stipulated time?

A The difference between Rs. 1253-0-11 and the amount that may be settled by the Court with after interest.

Q (f) Under what authority was the excess amount paid and who is responsible for incurring the additional liability?

A The money was paid as the Government Pleader was of opinion that the property of the Council would be attached if the decree amount is not paid. The determination of the question of responsibility rests with the Council.

Nothing further was done in the matter until June 1895 when the Administration Report was taken up for discussion. The resolution in question was then moved by me and carried by a majority. I tender this explanation of my conduct, as I do not know what, if any, representations might have been made against me, I being the mover of the resolution. I distinctly disclaim any personal motives against Mr. Varada Rao, to whom on the other hand, I am indebted for my nomination to the Municipal Council.

26th April 1895.

Q 1. Why was the matter of funds not being available from want of provision in the Budget, to pay off the Judgment debt in O. S. 717 of 91 within the stipulated time, not brought to the notice of the Municipal Council?

A Council was aware from the printed copy of the Budget of the want of provision for the charge referred to in the question.

Q 2. Why was not the sanction of the Council obtained for paying a much larger sum towards the decree debt aforesaid, owing to default in payment within the stipulated time?

A The Councillor is referred to the answer to question No. 3 (f) answered at the meeting held on the 22nd March 1895.

Q 3. How were funds found to pay a larger sum in February 1895 when funds were not available in August 1894?

A By saving effected for payments deferred under the other grants.

N.B. Printed Copy of the Budget is not supplied to each Councillor. Absence of provision in the budget is no excuse for the nonpayment in August 1894, inasmuch as the budget remained unaltered at the time of actual payment in February 1895.

26th January 1896.

P. M. Karunakarathilakam

J A 124
1896

FROM

P. P. Karunakara Menon.
P. A. Krishna Menon.
G. Zachariah.
T. M. Appu Nedungadi.
N. Subrahmania Iyer.
J. J. Srinivasagom Pillay.
E. Subrahmanian Pillay.
A. Subrahmania Iyer.
K. Krishnan Nair.
Padanad Krishna Menon.
M. Chuppa Menon.
Cooverjee Ardesor.
D. Ganpat Rao.

Municipal Councillors,
CALICUT.

TO

The Chief Secretary,
TO THE GOVT. OF MADRAS.
THROUGH THE MUNICIPAL COUNCIL,
CALICUT.

Dated—26th January 1896.

Enclosure. 1.

ADMINISTRATION REPORT.

Requesting, for reasons stated, to reconsider the remarks of the Government against the Calicut Municipal Council and its members, in the matter of the payment of damages for the cancellation of the tender for the construction of the Hospital Building, in reviewing the ——— for 1894-95.

Extract from the Proceedings of the Municipal
Council, Calicut at a Meeting held
on the 6th March 1896.

Present

J. Varada Rao Esq. M. P. C. S. Chairman
Captain N. A. W. Hamilton
M. R. P. A. Krishna Menon Sub
" K. Krishnan Nair " "
" P. P. Karunakara Menon " "
" D. Ganpat Rao " "

G. Zachariah Esq. M. P. C. S.
M. R. M. A. Subrahmanian Esq. Sub
J. J. Srinivasagom Pillay Esq
R. S. Austin Esq
M. R. P. Krishna Menon Sub
" J. M. Appu Nedungadi " "

M. R. P. P. Karunakara Menon
" P. A. Krishna Menon
" G. Zachariah
" T. M. Appu Nedungadi
" N. Subrahmanian Esq
" J. J. Srinivasagom Pillay
" E. Subrahmanian Pillay
" A. Subrahmanian Esq
" K. Krishnan Nair
" P. Krishna Menon
" M. Chuppa Menon
" Cooverjee Ardesor
" D. Ganpat Rao.

1) Read letter dated 26th January 1896 from the may jointly named municipal Councillors requesting to place before the next meeting of the municipal council and forward to Government with the Council's remarks a letter addressed to the Chief Secretary to Government Madras requesting, for reasons stated, to reconsider the remarks of the Government against the Calicut municipal Council and its members, in the matter

of the payment of damages for the
 the cancellation of the tender
 for the construction of the Hospital
 Building, in reviewing the Administration
 report for 94-95.

1) Proposed by Mr. K. Krishnan
 Nair vargal and seconded by Mr.
 J. N. Appa Reddy vargal that the
 Communication be forwarded to
 Government -

2) Proposed by Mr. M. A. Subramania
 Iyer vargal and seconded by Mr. R.
 P. O. Karunakaran vargal that the
 remarks of the Government against
 the Council embodied in para 4(6) of
 G.O. No 1614 - M dated 7th October 1895
 reviewing the administration report of
 the Calicut Municipality for 94-95
 are in the opinion of the Council, undeserved
 and the Council therefore for reasons
 stated in the accompanying memorial
 respectfully pray that the Government
 may be pleased to reconsider its
 remarks above referred to -

Mr. M. A. Subramania Iyer's
 amendment is carried -

Voting for	Voting against
Mr. M. A. Subramania Iyer vargal	Captain N. A. W. Hamilton
" J. N. Appa Reddy vargal "	R. D. Ashwin Esq.

Mr. P. A. Krishnan vargal Not voting
 " P. O. Karunakaran vargal
 " D. Ganpat Rao " Mr. K. Krishnan Nair vargal
 " J. Varada Rao Esq.
 G. Zachariah Esq.
 J. J. Srinivasan Pillay Esq.
 Mr. P. Krishnan vargal

(Sd) J. Varada Rao
 Chairman

(True Extract)

J. Varada Rao
 Chairman

N^o 253

Local & Municipal Dept.

Submitted. CURRENT No. 987/M

The Communication was placed before the Council at the request of the Signatories, at its meeting held on the 6th March 96 and the accompanying resolution was passed by it

Paradara

Chairman -
11.3.96

17/3/96
Refused by the Government
This the Rev. Dub Officer
End on 11.3.96

Submitted to the Council
22 MAR 1896
Ludwig
By J. M. M. M.

13-3-96
Calcutta
End on 13.3.96
Forwarded

All the facts are already before Government

Major
19-3-96

J. Hewitt
By 6/6/96

From The Chairman M.C. Calicut.

No. 253

Dated 11-3-96

Received 23-3-96

Enclosures 2

SUBJECT.

Submitting Municipal Council's resolution on memorial from the Municipal Councilors of Calicut praying that the remarks of the Govt. against the Calicut Municipal Council & its members in the matter of the payment of damages for the cancellation of the tender for the construction of the Hospital Building may be reconsidered.

26/3.

Again G.O., dated

189 , No.

Current No. 810 M.

of 1896, dated 29th February

Current No. 987 M.

of 1896, dated 11th March

from the M.R. R. P. P. Karunakaran
Chairman M.C. Calicut

FOR ORDERS.

In the first of the currents read above, eight councillors of the Calicut municipality submit for the favourable consideration of Government a copy of a petition addressed to Government by them and 5 other councillors, through the municipal council. The original petition has been submitted by the Chairman with the second current read above along with the resolution of the Council regarding the petition. In the petition and the resolution the councillors request Government to reconsider its remarks in paragraph 4(6) of G.O. No. 1614 M., dated 7th October 1895, reviewing the administration report of the Calicut Municipality for 1894-95.

The circumstances under which the remarks to which exception is taken were made, are as follow:- In

1894

1891, one Arumugam Chetti sued the municipality and ^{in 1893} obtained a decree against it for Rs. 1253-4-11 and costs in respect of his tender for certain municipal work which was first accepted by the municipality, and then rejected. Subsequent to the decree, the council authorized two of the councillors and the Chairman to effect a compromise with Arumugam Chetti. The Chairman would have nothing to do with this business, but the two councillors prevailed on the contractor to accept Rs. 1253-4-11 in full satisfaction of the decree, provided payment was made within 4 months from the 24th April 1894. The Council in its resolution dated 28th April 1894 accepted the arrangement, and resolved to pay the amount at an early date. No payment was, however, made till the 7th February 1895, when, in consequence of the terms of the compromise not having been complied with, the full amount of the decree with costs and interest, amounting to Rs. 1842-8-8 had to be paid. The sanction of the council was not obtained by the Chairman before the payment was made. In these

* Para. 60 of the Chairman's letter }
in G.O. No. 1614 M. dt 7th October 1895 }

D.C. no. 2547 M. of 1895 in G.O. No. 1614 M. dt 7.10.95, report about the matter in which which put up separately in a confidential cover.

these circumstances, the council in adopting the administration report for 1894-95, recorded a resolution expressing its regret at the default committed by the Chairman in not paying the amount agreed upon under the compromise, and at the loss of Rs. 700 which the council thereby suffered.

The Collector submitted a confidential D.C. no. 2547 M. of 1895 in G.O. No. 1614 M. dt 7.10.95, report about the matter in which which put up separately in a confidential cover. condemning the conduct of the Chairman, he suggested that the councillors were not altogether free from blame especially Mr. A. R. P. P. Karunanara Innon who had been Arumugam Chetti's Vakil in the suit.

On these facts the Government passed the remarks contained in para. 4(6) of G.O. No. 1614 M. dated 7th October 1895.

The petitioners contend that for the delay in making the payment the Chairman was solely responsible and that the Chairman & not the Council is under the Act to carry out the resolutions of the municipal Council. They state that they were not aware until after payment had been

been made that any difficulty had existed in finding funds to make the payment. The Chairman's explanation was that he had had no funds for the purpose, but the petitioners state that the amount ~~could~~ have been paid in May 1894, the receipts for which month were Rs 7,650 while the charges were only Rs 3,800. The receipts for the four months from May to August are stated to have been Rs 20,140-2-11 and the charges ^{only} Rs 18,862-1-8 leaving a balance of Rs 1,278-1-6 from which, the petitioners contend, the amount due to Arumugam Chetti could have been paid within the stipulated time.

For these reasons, the petitioners state that no blame can attach to them in regard to this matter & that no explanation was needed or called for from them about it. One of them, Mr. P. P. Karunakara Menon in a separate note attached to the petition states that he did not, until February 1895, know of the compromise effected with Arumugam Chetti or of the default committed in acting up to its terms. This may be true, but, on the face of it, is not probable

probable as he acted as Arumugam Chetti's lawyer in the suit against the municipality & would almost certainly know of the compromise. There is no actual proof that the councillors knew that the money had not been paid & if they did not know it they can hardly be blamed for their carelessness, except that knowing that the municipal finances were in a very bad state, they should have made some enquiries as to how this unusual demand was to be met. The presumption against them is strong & there do not appear to be sufficient grounds for reconsidering the G.O. which is by no means very strongly worded.

WWS
8-9-96

Looking to all the circumstances of the case there seems to be no more doubt that the Council was fully aware of what was going on and held its hand in view to the passing of the resolution censuring the Chairman. Arumugam Chetti had a friend on the Council - one Ramalinga Iyer who took a lively interest in his case - so lively that he undertook any authority communicated to him the Resolution of the Council

It seems hardly possible to doubt that some at least of the Councillors, including the Vakil P. P. Karunakara Menon, must have known quite well what was going on; and so far, the G.O. is right. On the other hand, Varada Rao behaved with great simplicity - in fact acted just as if he wanted to support the Council in the wrong as he could. I don't think there is any reason why the G.O. should be cancelled, but I must say that I think Mr. Forbes made a mistake when he issued it ~~and~~ and threw all the blame on

The Chairman was anxious in refusing to have anything to do with the offer arrangements of a compromise and he was distinctly in the wrong and not complying with the Council resolution. If he had said he knew all that could have happened would have been that he would have ended the year nearer the estimated deficit than he did.

He consented
to find it.

There is almost certain to be
more heard about this, so the
papers had better be circ-

Circ=

ms
18/4/96

I think that, with out can-
-celling the G.O., we might say
that we recognize the validity
of the representations in para
4 of the paper with relieve the
Council from a portion of the
blame attributed to them.

29
19/4/96

I concur with the Hon. Mr. Grose.

28.4.96

of my work at the time with the
unlike to which reception is taken and
I do not see that there is any
sufficient reason for withdrawing
it as I regard the statement made
as disingenuous and believe that
the Commissioners generally knew
all along that ~~their~~^{their} many restriction
had not been carried out and
unwarranted silent of us with
a troubling a chairman who
is obnoxious to them.

h. d.
174/86

Cs.

Adm. No 812 mis of 11.5 g

The petitioners will be informed that while the ~~for~~^{for} ~~was~~ no sufficient reason ~~for~~^{for} cancel its order referred to, it yet recognizes the validity of the representations in para. 4 of the petition, which relieve the Council from a portion of the blame attributed to it.

(from orders)

WbS
28.4.96

7/5/96.

7.th The Petitioners this the
Chairman W.C. Calcutt
Sept 13/59

From
FOR ORDERS.

24. 4 Circ.
W.

812h

To Hon. W. Bliss, C.I.E. before issue.

When given for copying

When copied

When examined

When signed

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO O. 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.

1894 / 1895
27/4 / 28/5

Wink