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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.
B.P. No.

227

Press
Mis.

Dated

16.2.1968

196

Not to be folded or roughly handled

No. 194. Read the following Proceedings of the Board of Revenue, dated 6th December 1875, No. 3,301 :—

Read the following letter from A. McC. WEBSTER, Esq., Collector of South Canara, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Mangalore, 11th October 1875, No. 1,974 :—

I HAVE the honor to submit the report required by Government in their Proceedings, dated 12th May 1875, No. 711, Revenue Department, communicated with Board's Proceedings, Miscellaneous No. 4,897, of the 3rd June 1875.

2. In paragraph 3 of the Proceedings under reference, the Government state that they have no objection to the proposed removal of all small-meshed cruives, but desire that the Collector should use his influence to get king's-gaps established in prescriptive weirs which close the ascent and descent of fish.

3. I have accordingly issued a notice pointing out the reckless destruction of fry by closely-twined cruives, and interdicting the use in rivers of cruives having meshes of less than two inches. To enforce this prohibition fully, it will probably be necessary to have recourse to criminal prosecution, as was done by Mr. Thomas in the case of poisoning fish, after thoroughly promulgating the notice and allowing ample time for its full comprehension by the people. In the absence of a special law, persons acting in contravention of the orders might perhaps be charged for trespass or mischief under the Penal Code. Considering, however, that the people have been in the enjoyment of the privilege from time immemorial, that special legislation on the subject has been advocated, and that the amenability of offenders to punishment under the Penal Code is at least doubtful, I beg to be favored with definite instructions on this point before taking further action in the matter.

4. With regard to the establishment of king's-gaps in prescriptive weirs, I beg to state that it would be highly inexpedient to require king's-gaps to be established in irrigation dams. In this district, there are no permanent structures of the sort; but as soon as the rivers fall after the monsoon, temporary irrigation dams are constructed. If king's-gaps are made in these dams their usefulness for irrigation would be destroyed, as the body of water in the river in the fair season is not sufficient to allow water to be stored, and at the same-time a king's-gap to be established through which there would be a sufficient flow of water to admit of the passage of fish. These temporary dams disappear with the first floods in the monsoon, and the rivers are then absolutely free from their source to the sea. I am informed too that the migration of fish principally takes place during the months in which the rivers are high, and therefore perfectly free from obstructions.

5. While deprecating any interference of this nature with irrigation dams, I think that where weirs are established across the river for the sole purpose of catching fish, king's-gaps might be insisted on, and Government, though averse to allowing interference with the former, may prohibit the latter class of dams, unless a king's-gap is established. If they have power to prohibit small-meshed cruives, they have, I respectfully venture to think, the power of regulating the construction of weirs for the sole purpose of catching fish.

6. As regards the effect of what has already been accomplished (paragraph 4 of the Government Order), I find that in paragraph 15 of the Proceedings of Government, dated 25th October 1872, Mr. Thomas was authorized to take action on the following points:—

- (1.) Stock-pools to be fenced and carefully preserved from being netted by staking and watching.
- (2.) Ryots turning off water for irrigation to be required to put up gratings to exclude fry.
- (3.) The poisoning of streams to be prohibited and vigorously repressed.

7. Of these three measures, what has been effectually carried out is the repression of poisoning of streams, the prohibition being enforced by criminal prosecution of the offenders. I beg to enclose a memorandum showing the number of persons convicted of poisoning streams for the purpose of catching fish since 1868, when the practice was first interdicted by Mr. Thomas. The average number of cases prosecuted each year is not more than four, though in one year, 1873, it was nine. Poisoning is now well known to be forbidden, and is, I believe, of rare occurrence on or near the coast, though I cannot say that it is so in the interior where, as Mr. Thomas states, the Village Magistrate, the Police and the people may not unfrequently be dividing the spoils without fear of detection, and where it would be difficult to stop it entirely without a special establishment. The repression of poisoning has no doubt had some good effect, but I do not think that it has resulted in an appreciable increase in the stock of fish in the rivers. Mr. Thomas himself informs me that under the circumstances, he does not think that any improvement has been or could be wrought or expected, and that his propositions not having been sanctioned, all that he could do was to learn and submit proposals for future measures.

8. For the purpose of carrying out the instructions of Government on the other two points, *viz.*, the preservation of stock-pools and the putting up of gratings to exclude fry from irrigation channels, Mr. Thomas appears to have applied for funds in the letter disposed of by the Government Proceedings under reply. But nothing seems to have been accomplished in these respects owing, as above explained, to want of funds. It will not be easy to carry out the first measure without a special establishment, but if Government will sanction the temporary entertainment for five months in each year (*i.e.*, from January to May inclusive) of four water-bailiffs on 7 Rupees each per mensem, I will have stock-pools selected and carefully preserved. I will also try to induce the Wurgdars to put up gratings at the heads of their irrigation channels, and, if I fail, will then submit a separate estimate of the probable amount required to enable me to do so, as in the absence of an enactment on the subject, I doubt the possibility of compelling all ryots to do it at their own cost (*vide* paragraph 10 of Mr. Thomas' letter to Government, No. 231, dated 26th February 1873).

9. I may mention, also, that I have been informed by Mr. Thomas that more than five years ago some of the small-meshed cruives had in one river been partially removed by his Superintendent, and that the result was an increase of fry as stated in his report; but that directly the cruives were replaced, the whole

advantage was lost, and that, in accordance with the Board's views, they were never again interfered with.

10. As to the local feeling in respect to Mr. Thomas' measures (paragraph 4 of the Government Order), I find that the repression of poisoning seems to be the only measure which was generally and vigorously carried out by Mr. Thomas, the interdiction of small-meshed cruives having only been partially and temporarily tried on one river. To the former the people now seem to be reconciled, while the latter has long ceased to be enforced.

11. Public feeling regarding any measure interfering with long-established habits and customs can scarcely be expected to be favorable, but I do not think that there have been any general complaints regarding the prohibition of poisoning, the only measure that has been carried out.

12. As regards Mr. Thomas' other proposals, I believe that in 1869 the fishermen learning that Mr. Thomas was about to propose a tax on their nets or the leasing of the fisheries petitioned against the hardship of such a tax, &c., and were reassured by Mr. Thomas, who informed

them that it was not the intention of Government to raise money but to improve the fisheries, and that the imposition of such a tax was not contemplated at any rate at that time.

13. While on this subject, I beg to refer to my letter to the Board, No. 304, dated 5th November 1869, addressed to them while Officiating Collector of Malabar, in which I strongly deprecated the introduction of the system of leasing river fisheries in that district, in consideration of the common rights of the people and the little advantage that would be derived from such a measure. The circumstances of the two districts are similar, and I have seen no reason to alter the opinion then expressed.

14. Lastly, with reference to the inquiry of Government whether I wish to carry on the researches begun by my predecessor, I beg to state that the pressure of my ordinary work and my want of knowledge of the special subject will not permit me to do so. The preservation of fish from reckless destruction will, however, engage my best attention.

ENCLOSURE No. 1.

Memorandum showing the Number of Persons convicted of poisoning Streams for the purpose of catching Fish.

	Cases.	Persons.
1868...	3	10
1869...	5	20
1870...	3	28
1871...	1	3
1872...	3	11
1873...	9	39
1874...	3	12
Total ...	27	123

MANGALORE,
11th October 1875.

(Signed) A. McC. WEBSTER,
Collector.

SUBMITTED to Government with reference to G.O., dated 12th May 1875, No. 1,711. Mr. Webster states that he has issued a notice interdicting the use of cruives with meshes of less than two inches. To enforce attention thereto, he anticipates that he will have to resort to criminal prosecution. He doubts the amenability of offenders to punishment under the Penal Code, and asks for definite instructions.

2. Mr. Thomas argued in his letter recorded in the G.O. above quoted, that the people had just as much prescriptive right to catch fish by poison as to use small-meshed cruives, and that as the latter process was just as destructive as the former, it was equally with the other punishable under the Indian Penal Code after due explanatory and prohibitory notices had been published.

The Board think that, unless the waters affected are generally used for drinking purposes, or the act is technically a "nuisance," where the people have been in the habit of taking fish poisoning is *not* properly punishable as mischief. The very guarded opinion of the Advocate-General, recorded in G.O., dated 25th June 1873, No. 662, seems to support this view. In the circumstances the fish are not the property of Government or of any one, and the act of poisoning them is not punishable under Section 426 (mischief) of the Indian Penal Code. Mr. Webster does not quote the section under which the persons referred to in the enclosed list were convicted, but the Board gather that penalties were adjudged under Section 426.

3. Poisoning, however, is so obviously objectionable on various grounds that moderate punishments are not likely to be generally objected to as unreasonable. But the interdiction of small-meshed cruives will hardly commend itself as forcibly or generally to the people. Attempts to punish taking fish with such cruives under the Indian Penal Code will probably be resisted by the people, and have little chance of being upheld by the Courts. As Mr. Webster has published the interdiction, the Board would not direct its cancelment, and indeed would use all legitimate influence to have it attended to; but they feel confident that he cannot enforce attention under the Penal Code, and think that he should be instructed not to attempt to do so.

4. In the temporary dams on the West Coast erected for cultivation purposes king's-gaps would be prejudicial to the crops and are not required; for at the seasons at which fish migrate such dams are overtopped or are swept away bodily by the freshes. Wherever permanent weirs are erected, fish-ladders should certainly be provided. Where dams are erected for fishing purposes only, or where nets are stretched, king's-gaps should be strictly ordered. The order would be generally understood, and could generally be maintained without much trouble. But in this matter, also, the Board would avoid attempting penal enforcement till authorized by a Fishery Act.

5. As to what has been done in pursuance of G.O., dated 25th October 1872, it seems that poisoning has been pretty generally put a stop to (as from considerations already touched upon might be expected); but with regard to staking and otherwise preserving stock-pools, and putting gratings at channel heads, little or nothing has been effected. Something might be done towards preserving pools, if a small establishment were allowed; and for that proposed by Mr. Webster, the Board recommend that sanction be accorded at once. But the erection and up-keep

of gratings is a much more difficult question, and the Board would deprecate any attempt to enforce such a measure until supported by an Act.

6. As to the leasing by Government of the right of fishing in the rivers and streams of most districts, the Board deprecate it on general grounds; and in Malabar and Canara there are special considerations to be weighed. The rights of riparian proprietors in these districts would have to be regarded. These the Board believe are generally taken to extend over streams within their properties and to the middle of boundary streams, and though any general Act requiring king's-gaps, limiting the size of meshes, and making such like provisions, would have force with regard to such waters, it is very doubtful whether Government would have the right to let the fishing of them.

(True Copies and Extract.)

(Signed) C. A. GALTON,
Acting Sub-Secretary.

No. 195. ORDER THEREON, 16th February 1876, No. 227.

Miscellaneous.

THE Government concur generally with the Board of Revenue in the views expressed by them.

2. In regard to cruives of small mesh, the Government do not desire to disturb existing orders on the subject; but they doubt whether prosecutions for their violation would succeed. They are glad that good practical results have been obtained by prohibiting the practice of catching fish by poisoning the water.

3. Paragraph 4 of the Board's Proceedings is approved.

(True Extract.)

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

To the Board of Revenue.

Mxd. W. H. French.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 6th December 1875.

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Collector.

6/227
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otherwise preserving stock-pools, and putting gratings at channel heads, little or nothing has been effected. Something might be done towards preserving pools, if a small establishment were allowed; and for that proposed by Mr. Webster, the Board recommend that sanction be accorded at once. But the erection and up-keep of gratings is a much more difficult question, and the Board would deprecate any attempt to enforce such a measure until supported by an Act.

6. As to the leasing by Government of the right of fishing in the rivers and streams of most districts, the Board deprecate it on general grounds; and in Malabar and Canara there are special considerations to be weighed. The rights of riparian proprietors in these districts would have to be regarded. These the Board believe are generally taken to extend over streams within their properties and to the middle of boundary streams, and though any general Act requiring king's-gaps, limiting the size of meshes, and making such like provisions, would have force with regard to such waters, it is very doubtful whether Government would have the right to let the fishing of them.

(True Copies and Extract.)

W. H. French
Acting Sub-Secretary.

To the Secretary to Government, Revenue Department, with printed copy of Mr. Webster's letter, dated 5th November 1869, No. 304.

Copy to the Collector of South Canara.

.. to H. S. Thomas, Esq., Collector of Tanjore.

Exd. W. H. French.

From A. McC. WEBSTER, Esq., Officiating Collector of Malabar, to the Acting Secretary to the Board of Revenue, dated Calicut, 5th November 1869, No. 304.

With reference to paragraph 2 of your letter to the Acting Secretary to Government, Revenue Department, of 23rd ultimo, No. 7,897, I have the honour to state that no measures have as yet been taken to give effect to the orders of Government, communicated in Board's Proceedings of 20th August 1869, No. 6,242.

2. My attention had been called to the fact, that orders had been issued, but as Dr. Day's reports could not be found in the Office, I was in correspondence with Mr. Thomas on the subject, it being probable that he had taken them away with him. I yesterday received a telegram from him that he had not the papers, and on further inquiry they were found with the Deputy Collector who had retained them, thinking they were spare copies.

3. Dr. Day's measures for the protection of fish as far as regards this district consist of:—

1.—Letting by public auction the right of fishing in all rivers above the tidal limit.

2.—Prohibiting the use of nets of a certain size of mesh.

3.—Prohibiting poisoning of rivers.

4.—The offer of rewards for the destruction of Crocodiles, Otters, etc.

It has, on the Board's recommendation, been decided not to carry out the second proposal. 4. With reference to the letting out of fresh water fisheries, I beg respectfully to be allowed to offer a few observations before it is finally determined to take the step. I think the question as it bears on this district should receive further consideration. The chief object of the measure appears to be, to provide a means by which certain persons (the lessors) should be induced to take an interest in the up-keep of the fisheries and to prevent any wanton destruction of small fry, and secondly, to get a body of men who could be controlled by fear of the cancellation of their leases, for which they may have paid considerable sums of money.

There is no doubt that where fisheries are valuable and are the property of the State, no better plan can be devised, for it would be very difficult to satisfactorily work a Fishery Act in this country. I do not allude to the question of profit, as it does not appear to have had any thing to do with the resolution of Government, to lease out fresh water fisheries. This course is proposed for conservancy purposes alone.

5. Before, however, it is decided to lease the fisheries, the expediency of the step must be shown. In districts where the practice has obtained from time immemorial, there can be no possible objection to its continuance. In this district, the right has never been exercised, since our acquisition of the country, we have derived no revenue from the fisheries, and I have not been able to find from the records, any precedent for the introduction of the system. A Moturpha tax was formerly levied from fishermen both by our Government and by that of Native rulers of the country, but this tax is far different in its nature to the measure now proposed. Under a Moturpha, every fisherman paid a tax on his profession, and could exercise it without hindrance, while by the system now proposed, the lessor of a fishery will be at liberty to prevent all persons from fishing unless they agree to his terms.

I do not say that the right of fishing is private. Were it so, there would probably be a special grant from the Crown to the proprietors, as is the case in Great Britain. It is a common right, and the Government may, therefore, have the power to regulate its exercise for the public good.

6. As regards the necessity for the measure, the opinion of the District Officers does not coincide with that of Doctor Day. I enclose a copy of a letter from my Sub-Collector, Mr. Logan, who has had ample opportunities of noticing the supply of fish in our rivers. You will perceive that he is strongly averse to the proposal to lease the fisheries, and does not anticipate that the result would be satisfactory. He considers that the offer of rewards for their natural enemies, and the prevention of poisoning, would sufficiently protect the fish in the rivers of this district. Owing to our unfailing monsoon, and to the general configuration of the country, our rivers are perennial, and as we have no anicuts, spawning fish can ascend to the upper waters without hindrance. These

Ms 4890
Revenue 1875. Referred
Board of Revenue,
MADRAS.

PROCEEDINGS, 6TH DECEMBER 1876, No. 3,301.

Copy to Dec 15

Encl

Ms 227-16 February 1876

Received 23rd Dec 75

DECEMBER.

No. 3,301.

Fisheries of South Canara. Submitting to Government Collector's report on certain points noticed in their order on subject of—, recommending that sanction be accorded for the entertainment of the temporary establishment proposed by Collector for the preservation of pools, and deprecating the leasing by Government of the right of fishing in rivers and streams.

Ms 194

Ms 25 Oct 1872
- 25 Nov 73. 203-204
- 12 May 75. 19-21

upper waters are generally in an unhealthy and consequently uninhabited or thinly populated part of the country, where no net fishing even now takes place, and the only practice to guard against, therefore, is the poisoning of the water. This, as Mr. Logan points out, is sufficiently provided for by Section 277, of the Indian Penal Code, and no further legislation on this point is, therefore, necessary.

7. As, therefore, it is extremely doubtful if the leasing of the fisheries would have any effect in increasing the supply of fish in this district, and if carried out would undoubtedly be most unpopular and give rise to great discontent, I trust that the question may again receive the consideration of the Board and Government, and that its introduction be deferred for the present, and until further inquiry as to its necessity is instituted. Considering the length of time during which the fishing has been free and a common right, absolute necessity alone would justify its restriction.

If it is finally determined to lease the fresh water fisheries in this district from next fusly, it will remain for me to propose the manner in which the measure will have to be carried out, and I will, on receiving the Board's instructions to that effect, take immediate measures for its introduction.

8. I have the honour to request, that in view to the carrying into effect of Doctor Day's other recommendations, I be authorized to offer a reward of four annas for every Otter, and two rupees for every Alligator under 8½ feet in length.

9. Instructions would be issued to the Talook and Village Magistrates to at once put a stop to the poisoning of the rivers, and to punish all persons so offending, under Section 277 of the Indian Penal Code.

From W. LOGAN, Esq., Sub-Collector, to the Collector of Malabar, dated Tellicherry, 29th July 1869, No. 153.

As requested in your Endorsement, dated 24th ultimo, on Board's Proceedings, No. 3,823, dated 28th May 1869, I have the honour to state my opinion regarding Dr. Day's proposals for the preservation of river fisheries in the Presidency.

2. Speaking of this district only, I do not think that any measures are required beyond prohibiting poisoning and securing the destruction of Alligators.

3. The rivers in the sub-division are full of fish of all sizes, and it is astonishing to examine the contents of a pool in the small streams coming down from the hills. Fish, crabs, and prawns, are found in astonishing number.

4. So far am I from thinking that any steps should be taken to prevent the destruction of fish in these rivers, that I am of opinion it would greatly benefit the country if Government took steps to procure superior engines for their capture and instruct the people in use of them; except when poison is used, but few fish are taken. The lower castes sometimes dam up a stream in the monsoon and set traps for their capture, but this can only be done in small streams which nearly dry up in the hot weather, and where the supply of fish consequently fluctuates. In all the large tidal rivers such as the Pyangadi, Beliapatam, Anjara, Kandi, Mahe, Kuttiadi, and Ellatur rivers, the capture of fish is but small. The methods adopted can never make any impression on the supply of fish, and the fact is, that with the exception of an occasional Moplah, there are no persons who took to fishing mainly for a livelihood. One sees occasionally a party of men in two boats engaged in fishing with a net, but on inquiry, it will generally be found that they are cultivators, having a little diversion at a time when work is slack.

5. There are, in my opinion, very great objections to the first of Dr. Day's recommendations. Government, I understand, intend merely to preserve the fisheries not to make them a source of profit, and any general introduction of letting fisheries by public auction, would only be looked on as another public burden. I question much whether any one would take the river fisheries here, and if they were taken, it would only be with a view to screw as much as possible out of the poor wretches who gather missiles and catch prawns in some of the shallows in the back-waters. Government should introduce valuable fishes into the rivers and improved methods of capture, before letting the fisheries by public auction.

6. I consider it would be impracticable to introduce the second recommendation.

7. The third recommendation relates to Eastern Coast.

8. The fourth recommendation would be useful, but it can be, and is practicably carried into effect already. See my letter, No. 73, dated 17th April 1869.

9. There are no anicuts or masonry works across streams in the sub-division, nor irrigation channels communicating with the sea.

10. The last recommendation would be useful, as Alligators destroy both fishes, and the men who catch them. Otters are pretty abundant on many of the rivers, and particularly near their mouths.

(True Copy.)

(Signed) A. McC. WEBSTER,
Officiating Collector.

From W. LOGAN, Esq., Sub-Collector, to the Officiating Collector of Malabar, dated Nadavannur, 17th April 1869, No. 73.

In reply to Mr. Ballard's endorsement on the Board's Circular Memorandum, No. 115, dated 12th February 1869, I have the honour to inform you that no great destruction of fish by poisoning seems to take place in the rivers in my division. There does not appear to be any organised system of thus capturing fish. In the smaller streams which become dried up except in the deep pools in the hot season, people sometimes resort to poisoning, in order to catch fish. It was attempted on a large scale about two years ago in the Kanath river, and the large stream in Pattur and Tirupirangatur Amshoms, in Kottayam Talook, but the Tahsildar hearing of it, and being afraid lest people should be poisoned by drinking the water, interfered and prevailed on the people in the neighbourhood to desist. The poisonous fruit of the Kodapanna and Kara and the red (not green) Atta trees, seem to be the agents used.

2. A far more serious destruction of fish takes place in the months of August and September, after the first heavy burst of the monsoon. As you are doubtless aware, the shore is then lined with dead fish giving off a most unpleasant odour. The people think that the muddy water coming down the river destroys the fish; and I think there is little doubt that this destruction is some how connected with the freshes, but whether they are salt-water fish that have run up the rivers with the tides in the dry season and have been caught by the freshes, or fresh water fish that have been swept out to sea by the floods, I am not prepared to say at present.

(True Copy.)

(Signed) A. McC. WEBSTER,
Officiating Collector.

Exd. G. A. Turton.

Dated 6. December

1875

FOR ORDERS

FOR ORDERS.

For orders general concurrence with the view
than no doubt that the prohibition
cannot be enforced under the existing
law. As respect cruises of small
vessels - I am not sure that it is
practicable. The practice of catching fish
by poisoning the water stands on
the same ground. I think it is
great doubt whether the law covers
the offence. In the mean time good
practical result - has been ob-
tained & I will pass over the points
of silence.

Yours with the P.P. 4
M. 2/12

Japan with
his relatives in
1888

Ms. 4890/55

FOR ORDERS.

Fisheries of South
Ceylon.

PROCEEDINGS of the MADRAS GOVERNMENT.

N^o 227 Revenue Department
Under date the 16th February 1876

Read the following ~~letter~~ Proceed-
ings of the B^d of Revenue of 6th
December 1875 No 3301....

The Government con-
cur generally with the B^d
of Revenue in the view ex-
pressed by them.

In regard to excises of
small mesh, the Government
do not desire to disturb
existing orders as to sub-
jects; but they doubt whether
prosecutions for their violation
can be ^{with success} sustained. They
are glad with good practical
results have been obtained
by prohibiting the practice
of catching fish by poisoning
the water.

Para 4 of the B^d's Proceedings

is approved.

144 To the Board

16 Feb

Bobt. of 1873 *Stydras.*

To _____

Proctor

Es

Dated
F. ed.

187, No.

Nos.