

*Thursday,
2nd February, 1893*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXII

Jan.-Dec., 1893

ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,

1893

VOLUME XXXII



Published by Authority of the Governor General.



CALCUTTA
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
1893

*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vict., cap. 67.*

The Council met at Government House on Thursday, the 2nd February, 1893.

PRESENT :

His Excellency the Viceroy and Governor General of India, G.C.M.G.,
G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, Kt., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble J. Woodburn, C.S.I.

The Hon'ble Raja Udai Partab Singh, C.S.I., of Bhinga.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble Dr. Rashbehary Ghose.

The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

The Hon'ble G. R. Elsmie, C.S.I.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

The Hon'ble Fazulbhai Vishram.

The Hon'ble C. C. Stevens.

RULES UNDER THE INDIAN COUNCILS ACT, 1892.

His Excellency THE PRESIDENT said :—" Before we proceed to the business on the paper I should like to make a statement to the Council upon another matter.

"Hon'ble Members will recollect that, during the last session of the Imperial Parliament, a Bill was passed affecting in several respects the Council which I have the honour of addressing, and the local Legislative Councils of Bombay, Madras, Bengal and the North-West Provinces. The circumstances under which the measure was introduced, and the discussion which took place while it was passing through the two Houses of Parliament, are well known, and I do not think it necessary to recur to them now.

[The President.]

[2ND FEBRUARY,

“The changes introduced by the new Act had reference to the constitution of the Legislative Councils, and to their functions. As regards their constitution, the Act provided for an increase in the number of Additional Members, and conferred upon the Governor General in Council the power of making regulations as to the conditions under which such Members should be nominated. As regards the functions of the enlarged Councils, the Act gave them the right of discussing the annual Financial Statement, and also the right of addressing questions to the Government.

“With the object of introducing these changes, it was enacted, under clause 1 of the new Act, that ‘the Governor General in Council may from time to time, with the approval of the Secretary of State in Council, make regulations as to the conditions under which such nominations,’ (i.e., the nominations of Additional Members) ‘or any of them, shall be made by the Governor General, Governors, and Lieutenant-Governors respectively, and prescribe the manner in which such regulation shall be carried into effect.’

“The provision affecting the functions of the enlarged Councils is clause 2 of the Act, under which ‘the Governor General in Council may from time to time make rules authorising, at any meeting of the Governor General’s Council for the purpose of making Laws and Regulations, the discussion of the annual Financial Statement of the Governor General in Council and the asking of questions, but under such conditions and restrictions as to subject or otherwise as shall be in the said rules prescribed or declared.’

“The clause contains a like provision authorising the heads of the Local Governments to make similar rules, and it is provided that rules made under the Act by Governors in Council and Lieutenant-Governors shall be ‘submitted for, and shall be subject to, the sanction of the Governor General in Council,’ while the rules made by the Governor General in Council are to be ‘submitted for, and shall be subject to, the sanction of the Secretary of State in Council.’

“Acting upon the lines thus laid down for our guidance in the two clauses which I have quoted, we at once entered into correspondence with the Local Governments with a view to framing regulations under clause 1 for the nomination of Additional Members. We also prepared rules with regard to the discussion of the Financial Statement and the asking of questions in this Council, and we entered into correspondence with the Local Governments as to the rules which were to be made for similar purposes in the case of their Legislatures.

1893.]

[*The President.*]

“The question was one of some difficulty; and necessitated a considerable amount of correspondence. We did not think it necessary to insist upon absolute uniformity as between province and province in the matter of the new rules, but it was obviously desirable that they should be framed in a uniform spirit, and in accordance with what we believed to be the general principles accepted by Parliament when the Act was passed.

“We were able to arrive at an understanding with the Local Governments before the end of the Simla season, and by the end of October last our proposals had been submitted to the Secretary of State.

“It was my earnest hope that we should have obtained the sanction of Her Majesty’s Government by a date which would have enabled us to bring the whole of the new rules into operation at the commencement of the present session, but it is scarcely matter for surprise that the Secretary of State should have thought it necessary to examine carefully proposals so far-reaching and so important as those which we have submitted to him, and we learnt a few days ago that, in consequence of a legal difficulty which had been encountered in reference to the new regulations for the appointment of Additional Members, it was not likely that we should, for some little time to come, be made aware of His Lordship’s views upon the whole question.

“Under these circumstances we considered it desirable to apply to Her Majesty’s Government for permission to introduce immediately that part of the new procedure which has reference to those enlargements of the functions of the Legislative Councils, of which I spoke just now. I am glad to say that this suggestion was readily agreed to by Lord Kimberley, and that we have received his sanction to introduce at once the new rules under which, in future, Hon’ble Members will have the right of discussing our financial proposals, and of addressing questions to us on matters of public interest. The new rules will be published in the official Gazette, but it may be desirable that I should take this opportunity of stating briefly what their substance will be, and of mentioning one or two considerations by which we have been guided in framing them.

“The rules for the discussion of the Financial Statement are of the briefest and simplest character. They merely lay down that—

- (i) the Statement shall be explained in Council every year and a printed copy given to each Member; that

[*The President.*]

[2ND FEBRUARY,

- (ii) after the explanation has been made, each Member shall be at liberty to offer any observations he may wish to make on the Statement; and that
- (iii) the Financial Member shall have the right of reply, and the discussion shall be closed by the President making such observations, if any, as he may consider necessary.

“The rules for the discussion of the Financial Statement in the Local Legislature are framed upon the same lines, and I need not further refer to them.

“The privilege thus conferred upon the Legislative Councils is, I venture to think, one of great importance. I have, more than once, expressed in this room my strong opinion that the present practice, under which the Council has been allowed an opportunity of criticising the financial policy of the Government of India only upon those occasions when financial legislation was resorted to, could not be defended. The right to criticise the financial administration of a Government is one of which it is impossible to over-estimate the value, and I have never concealed my opinion that it was improper as well as illogical that that right should be frequently denied merely upon the technical ground that no Bill upon which a financial debate could be originated happened to be before the Council. The right to discuss, and to criticise, is one which should be either altogether withheld, or altogether conceded. The present arrangement, under which it has been exercised one year and held in abeyance the next, is altogether indefensible. These financial discussions will now take place with regularity, and not upon sufferance, and I feel no doubt that both the public and the Government of India will gain, the one by the wider knowledge and insight into public affairs which it will obtain, the other by the increased opportunity which will be given to it of explaining its position, and defending its policy.

“I will now pass to that portion of the new regulations which has reference to the asking of questions under section 2 of the Councils Act of last year. The main point which we found ourselves called upon to consider had reference to the conditions and restrictions under which the newly-conferred right should be exercised. We propose that at least six days' notice shall ordinarily be given in writing to the Secretary in the Legislative Department of any questions which an Hon'ble Member intends to ask; but that the President may, if he thinks fit, allow a question to be asked with shorter notice, or may require a longer notice should the circumstances demand it.

1893.]

[*The President.*]

“ We have laid down that questions must be so framed as to be merely requests for information, and must not be put in an argumentative or hypothetical form, or in defamatory language. No discussion will be permitted in respect of an answer given to a question. These two restrictions are substantially identical with those under which questions may be put to Her Majesty’s Government in the British House of Commons. A question, of which notice has been given by one Member, may, if he so desires, be asked by another Member on his behalf.

“ There remains one point of the utmost importance. We had to consider whether it was desirable to specify certain subjects with regard to which questions should be inadmissible. It is obvious that there are some matters with regard to which no Government can allow itself to be publicly interpellated, such matters, for example, as military preparations at a time when hostilities are in progress or in contemplation, or matters of financial policy involving the premature disclosure of information affecting the market. The conclusion to which we came was that it was better, at all events in the early days of the new procedure, not to commit ourselves to any such specification of subjects. The impropriety of a question may be due quite as much to the time and circumstances under which it is asked as to the subject-matter, and, although we believe that experience may possibly enable us to lay down rules of the kind suggested, we are of opinion that, for the present, it will be desirable to content ourselves with taking power for the President to disallow a question upon the ground that it cannot be answered consistently with public interests. The reformed Councils will, I have no doubt, show a proper appreciation of the limits within which the right of interpellation can be exercised without injury to public interests, and I have every hope that it will very rarely be found necessary to resort to the veto of the President. I may add that in this case also the rule adopted is similar to that in force in the House of Commons.

“ The rules as to questions asked in the Local Legislatures are conceived in the same spirit, but they contain two special and important restrictions. Under the first of these, Members of Council are precluded from asking questions with regard to matters or branches of the administration other than those under the control of the Local Government. The second restriction is this, that in matters which are, or have been, the subject of controversy between the Governor General in Council, or the Secretary of State, and the Local Government, no question shall be asked except as to matters of fact, while the answer must be confined to a statement of the facts. The necessity of both

48 *RULES UNDER THE INDIAN COUNCILS ACT, 1892; AMEND-
MENT OF LAND ACQUISITION ACT, 1870.*

[*The President; Mr. Woodburn.*] [2ND FEBRUARY, 1893.]

these restrictions is, I think, so obvious that I need not take up the time of the Council by defending them.

“ These are the changes which will come into immediate operation. Of those which are likely to follow, and which affect the constitution, as distinguished from the functions, of the Councils, I am obviously precluded from speaking while the matter is still in the hands of the Secretary of State. I will, however, venture to say that, even if the changes which we have been able to introduce were to stop short with those which I have now explained,—and I do not suggest for a moment that this is likely,—a very material advance will have been made in the direction of increasing the usefulness of the Legislative Councils. Their functions have, until now, with the solitary exception to be found in those occasional discussions of the Budget which I have just mentioned, been strictly and narrowly limited to those of assisting the Government of India in the work of legislation. They have been absolutely precluded from asking for information, or inquiring into matters of public interest. In advising Her Majesty’s Government to allow us to exceed these limits, we feel that we have taken a very serious and far-reaching step. We have taken it under a deep sense of the responsibility which we have assumed; we are fully aware that we are effecting a radical change in the character of these Legislatures; but we are profoundly convinced that the time has come when it is desirable to bring them into closer touch with the rest of the community, and that the reform which we are about to introduce is one which will be for the advantage of the Government as well as of the people of this country.

“ I ought, perhaps, to add that the new rules will be published in the *Gazettes* immediately.”

LAND ACQUISITION ACT, 1870, AMENDMENT BILL.

The Hon’ble MR. WOODBURN presented a preliminary Report of the Select Committee on the Bill to amend the Land Acquisition Act, 1870. He said :—“ The Report which I present is a very full one, and I do not think it is necessary for me to go into detail in explaining the changes which we have recommended.

“ The changes we have recommended in the Bill are considerable. The most important of these concerns the procedure in the adjustment of claims to compensation. The present Act requires the Collector or assessing officer to refer for the decision of a Court aided by assessors any difference between

2ND FEBRUARY, 1893.]

[Mr. Woodburn.]

himself and the owner of the land to be acquired as to the value of it. This reference has equally to be made if the owner is absent when the award is made, or if even one of many persons interested should chance to be so absent. The experience of the last twenty years has shown that the effect is to occasion a very large number of unnecessary references to the Courts. Non-attendance is very much more frequently due to indifference than to dissatisfaction with the award. The local enquiries which precede an award are often made by an official subordinate of the Collector, and, if the owner is satisfied with the preliminary estimate on the spot, he does not give himself the trouble of attending at the head-quarters of the Collector. In the case of railway lines more particularly, where the line is taken through the lands of a proprietary community, an insignificant corner of one owner's field may be taken; but, if he is not present at the award, his co-parceners, who have large interests and do attend, may be subjected to all the expenses of a trial before assessors, although they are themselves perfectly satisfied with the award. The Bill introduced by Mr. Bliss last session proposed to make the Collector's award final, leaving any dissatisfied proprietor the option of bringing a civil suit to alter the award. We think that so material a departure from the present procedure is not necessary, and that it will sufficiently meet the requirements of the case if, instead of providing rigidly that reference shall be made irrespective of the wishes of the proprietor, reference shall be made only when the proprietor so desires. This is the recommendation that has been made by more than one of the Governments consulted, and we are of opinion that it is right. We have to bear in mind that the proprietors with whom the Collector deals are often poor peasants, who have neither the means nor the courage to challenge his decisions by a formal suit against the head of the district administration, and that they would accept very inadequate compensation rather than do so. We have recommended therefore in modification of the provisions of the Bill that the existing procedure be continued with some necessary alterations.

“ One of these, as in the Bill, is that the present system of trial with assessors be discontinued. The Governments and the High Courts consulted are of one opinion on this matter. They say that in practice the assessor is not an adviser to the Judge but a partisan—a useless and very expensive addition to the costs of a reference to the Courts. In the words of Mr. Justice Parker of the Madras High Court, ‘ the nominees of the parties are faithful to their trust and deliver their opinions with minds altogether unaffected by the evidence.’

[Mr. Woodburn.]

[2ND FEBRUARY,

"We have altered the definition of 'Court.' In the Act the Court to which a reference is made is in Non-Regulation Provinces the Commissioner of the Division. Since the Act was passed, the Punjab and Oudh have separated their Civil from their Revenue Courts, and there are now few parts of India in which there are not independent and distinct Civil Courts. Wherever these exist, it is to these that any objections to the Collector's award should be submitted.

"As regards costs the present Act directs that whenever the Court enhances the Collector's award—it may be by a single rupee—the Collector shall pay the whole of the costs. Under the Bill it is left to the Judge to apportion costs under the ordinary rules of the Code of Civil Procedure. The question of costs is diminished importance if assessors be no longer appointed, but we think that the Civil Procedure rules are not quite fairly applicable to the case of reasonable objections to a Collector's award, and we have recommended that the Collector shall ordinarily pay the costs when his award is enhanced, but have given the Judge authority to apportion costs when the claim was in his opinion extravagant and unreasonable.

"Much exception was taken in the correspondence placed before the Committee to the definition of 'market-value' which was proposed in the Bill. It is certainly inapplicable in many parts of India, and it would be difficult, if not impossible, to prepare a definition which would be universally and fairly applicable. We agree with the High Court of Bengal and the Lieutenant-Governor of the Punjab—himself a high authority on matters of the kind—that it is better, as at present, to make no express definition, but leave it to the Collector and the Court to ascertain and determine in each case what under the conditions of the locality would be a fair price for the land it is proposed to acquire.

"In the chapter of the Act regarding the payment of compensation we have added some important clauses. The first empowers the Collector to deposit the amount of his award in Court whenever there is a dispute as to the sufficiency of it or as to the persons entitled to receive it. The second empowers the owner of the land, although dissatisfied with the award, to take payment of it and refer to the Court his claim for the balance. To the extent of the award the Government will be relieved of any charges for interest, and it will no longer be to the advantage of the owner to protract proceedings.

"These, I think, are the principal points in which we have altered the Bill. We propose to maintain, except as to the association of assessors, the

*AMENDMENT OF LAND ACQUISITION ACT, 1870; PORAHAT 51
ESTATE.*

[2ND FEB., 1893.] [*Mr. Woodburn; Sir Alexander Miller.*]

existing procedure in the adjustment of compensation, which we think to be certainly the fairest to the owners of land that is being compulsorily acquired, but we have corrected in other respects those practical defects in the law which the Local Governments have brought to our notice. We think, however, as the changes are considerable, the Bill as now amended should be republished and circulated for criticism."

PORAHAT ESTATE BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to annex the estate of Porahat to the Singhbhum District, and for certain other purposes, be taken into consideration. He said:—"The Council will remember that this is a small Bill merely for the purpose of giving legal effect to what has been for some time the administration of this estate, which was forfeited many years ago, and a portion of which has been treated as belonging to the Singhbhum District though never formally attached to it or managed as if it were part of the Singhbhum District. The Lieutenant-Governor of Bengal is anxious that the matter should be put on a strictly legal footing, and this Bill was merely introduced for that purpose."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said:—"I have now to move that the amendments which I shall presently explain be made in the Bill. The Bill, as drawn, proposed that the law in force in the Kolhan in the Singhbhum District should be applied to the estate of Porahat. It appears that for some reason that is not desirable and, as the object of the Bill is not to alter the law but merely to legalise administration, I propose to leave out all reference to the Kolhan, and in order to do so it will be necessary in the first place to change the preamble. I propose that the third paragraph of the preamble should run in this way:—

'And whereas it is expedient that the said estate should be annexed to the Singhbhum District, and should, as forming part of that district, be declared, for the purposes of the Scheduled Districts Act, 1874, to form part also of the scheduled district described in that Act as the Chutia Nagpur Division.'

"I introduce the word 'schedule' before 'district' in the last line but one of the preamble, because Mr. Stevens pointed out to me that we had already in the preamble used this word in its strictly technical sense, and that Chutia Nagpur is not a technical district; but, as it is described as one of the districts in the Scheduled Districts Act, by putting the word 'schedule' before

‘ district ’ we show that we are using ‘ district ’ on that occasion in a special sense.

“ The second amendment is consequent upon the one which I have just moved. It is that section 3, which was introduced for the purpose of bringing the law in the Kolhan into force in Porahat, should be omitted, and that as that section is struck out the others should be renumbered.

“ The third amendment is this. As the Bill is drawn it proposes to legalise all acts of executive authority which have been done by any officer acting under the authority of the Government or otherwise in pursuance of an order of the Government ‘ or which have been or shall be ratified by the Lieutenant-Governor of Bengal.’ It seemed to me on reading the section that it went too far, because there might conceivably be acts of executive authority, done by an officer without any consultation with the Lieutenant-Governor and the Lieutenant-Governor might disapprove of them. I propose therefore to alter that word ‘ or ’ into ‘ and.’ The practical effect of that will be that, if any objection is taken to anything which has hitherto been done by anybody in Porahat, the Lieutenant-Governor will be able to say ‘ Well, I ratify it,’ or, by refusing to ratify it, will allow the objection to be good. I do not think that it is the least necessary under the circumstances that there should be any formal order of the Lieutenant-Governor, unless somebody is challenged, and in case any officer of Government is challenged on the ground that what has been done is not warranted by law, then, if it was a thing that ought to have been done, the Lieutenant-Governor has only to stop the proceeding at once by saying that he ratifies what has been done; and that seems to me to be preferable to the issue of any formal general order on the subject. I do not, however, want to assume that anything will be challenged at all.

“ There is one other amendment which is purely verbal, which is not on the paper, because I did not notice it in time. In the fourth line over the page of the Bill will be found the words ‘ no suit and other proceeding,’ &c. Of course it should be ‘ no suit or other proceeding,’ &c. I propose therefore that the word ‘ and ’ should be turned into ‘ or ’.”

The amendments were put and agreed to.

The Hon’ble SIR ALEXANDER MILLER then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

1893.]

[Mr. Elsmie.]

GOVERNMENT TENANTS (PUNJAB) BILL.

The Hon'ble MR. ELSMIE moved that the Bill to provide for the grant of Special Tenancies in certain Government lands in the Punjab be taken into consideration. He said that, on introducing the Bill on the 12th January, he had briefly explained its general purport. He had now only to add that the Local Government had approved of the measure as introduced.

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE said that he had now to move that certain verbal amendments which had been suggested to him only this morning should be made in section 8 of the Bill with a view to bringing out the meaning somewhat more clearly. He would read the whole section, so that the alterations might at once be appreciated. The section ran as follows:—

“8. The rights or interests vested in a tenant by or under this Act shall not be capable of being attached or sold in execution of a decree or order of any Court or in any insolvency proceedings, nor shall they or any of them be transferred by sale, gift or mortgage or charged by any private contract without the previous consent in writing of the Financial Commissioner.”

The proposal was that the latter part of the section should run as follows:—

“nor shall they or any of them, without the previous consent in writing of the Financial Commissioner, be transferred or charged by any sale, gift, mortgage or other private contract.”

The amendment was put and agreed to.

The Hon'ble MR. ELSMIE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 16th February, 1893.

J. M. MACPHERSON,

*Offg. Secretary to the Government of India,
Legislative Department.*

CALCUTTA;

The 3rd February, 1893.