



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

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PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Bill, which it is intended to introduce into the Council of the Governor of Bombay for the purpose of making Laws and Regulations, is, together with a Statement of Objects and Reasons accompanying it, published for general information:—

A Bill to provide for the Management of the Vihar Water Works.

WHEREAS by Section XXX. of Act XXV. of 1858 it is enacted that the Municipal Commissioners for the town of Bombay shall pay to the Governor in Council certain annual sums in discharge of the original cost, with interest, of the works called the Vihar Water Works, and of the cost of maintaining the same, and whereas it is desirable, in consideration of the large outlay incurred in the construction of the said works that one moiety of the same in excess of Twenty-five lacs of Rupees should be defrayed by the Governor in Council, and whereas it is expedient that the management of the said Vihar Water Works be transferred to the said Commissioners, and that the said Commissioners be invested with powers for making such management effectual, and for raising certain funds for the purposes aforesaid, in addition to the funds which by law they may now raise, and that in the exercise of such powers and the disposal of such funds they be subject to certain rules and limitations; It is hereby enacted—

Short Title.

I. This Act shall be called "The Vihar Water Works Act."

II. From and after the day of the Vihar Lake the Vihar Lake Works to be vested in the Island of Salsette, the Municipal Commissioners of Bombay. and all the land adjacent thereto up to the level of the embankment on the side thereof and included within the limits delineated in the Schedule A to this Act annexed, and all the land and other immovable property which is necessary for the purpose of conveying the water of the said Lake by pipes into the Town of Bombay, and there distributing the same, and which, being the property of Government, has ordinarily been applied to, or employed for, the purposes aforesaid, shall be vested for a term of years in the Municipal Commissioners for the Town and Island of Bombay, in trust for the purposes of this Act and subject to the conditions hereinafter provided; and it shall be lawful for the Governor in Council at the end of the period of () years aforesaid and thenceforward from time to time to order that the said property shall vest in the said Commissioners on the conditions and for the purposes aforesaid for such further period not exceeding () years from the day of any such order, as shall seem

expedient: Provided that the Title Paramount and Ownership in Chief of the said property shall not pass to, or be vested in, the said Commissioners, but shall in every case be and remain vested in the Governor in Council, and that the said Commissioners, in addition to any other sums by them payable, shall pay to the Governor in Council a yearly rent of Rupees One Hundred on the 1st January 1865, and on the same day in each year ensuing.

III. It shall be lawful whenever the same

Access to land and
conduits, &c.

may be necessary in order to repair, renew, extend, improve or examine the Lake, conducting pipes, or any other portion of the Water Works aforesaid for the Commissioners and their servants at all reasonable times to enter upon and pass through any land or other property adjacent to the same or in the neighbourhood thereof, in whomsoever such property may be vested, and to convey into and through the said land or other property such materials, tools, and instruments as may be necessary for the purposes aforesaid; and any person obstructing such entrance or passage, or conveyance, shall, on conviction before any Magistrate, be liable to a fine not exceeding Rupees commutable, if not paid, to one month's simple imprisonment, provided that all damage done to land or other property by the said Commissioners or their servants in the exercise of the powers by this Act conferred, shall be made good by the Commissioners to the owners of the same.

IV. All materials, tools, instruments, and

Movable property other movable property,
vested in Municipal purchased or otherwise
Commissioners. acquired prior to the said

day of by or for the Governor in Council for the purposes of the Water Works aforesaid, and on that day vested in the Governor in Council or in any person in trust for him, shall then forthwith become vested in the Commissioners aforesaid in trust for the purposes of this Act.

V. From and after the day aforesaid the

Management and main- said Water Works and
tenance by the Muni- the business thereof shall
cipal Commissioners. be exclusively managed

and conducted by the said Commissioners, who shall be bound to keep the said Water Works and the property pertaining thereto in good repair and effective for the proper purposes of the same, and the said Commissioners shall make such extensions, improvements, and alterations in the said Water Works and property as may be necessary, and for such purposes may expend such sums as may be necessary out of the Municipal Fund, subject however to such limitations as the Governor in Council, upon the representation of the Bench of Justices, may in any case think fit to prescribe.

VI. Whereas in the construction of the
Part repayment to Go- Vihar Lake and Water
vernment by Commission- Works the Governor in
ers of cost of Water Council has expended a
Works. sum of Sixty-five lacs of

Rupees or thereabouts, and whereas it is by Section XXX. of Act XXV. of 1858 enacted that an annual payment of not less than One lac and seventy-five thousand Rupees shall be made by the Municipal Commissioners to the Governor in Council, and shall continue to be made until the whole of the expense incurred in the construction of the said Vihar Lake and Water Works, with interest at four per centum per annum, shall have been repaid; except such portion thereof as shall be defrayed by Government out of the Public revenue, and that the said Commissioners shall also pay to the Governor in Council such further sum in each year as shall be equal to the cost of the maintenance of the said works during the preceding year, it is hereby declared and enacted, that all sums in excess of Forty-two and a half lacs of Rupees expended by Government in the construction of the Works aforesaid shall be held to have been defrayed out of the public revenue, and that the said sum of Forty-two and a half lacs of Rupees, together with interest at the rate of four per cent. per annum from the day of

shall be repaid by the said Municipal Commissioners to the Governor in Council in annual sums of not less than Two and a half lacs of Rupees out of the Municipal Fund, which sums shall be appropriated first to the payment of the interest accrued due from and after the said day of on account of the said sum of Rupees Forty-two and a half lacs, and the remainder to the liquidation of the principal sum of Rupees Forty-two and a half lacs aforesaid, until the whole be paid off; and from and after the day upon which the Act shall come into operation, the liability of the said Commissioners to pay to the Governor in Council in each year the amount of the cost of the maintenance of the said Vihar Water Works shall cease and determine, but if the said Commissioners shall in any year fail to pay to the Governor in Council the sum of Two and a half lacs of Rupees as aforesaid, it shall be lawful for the Governor in Council to give two months' notice to the said Commissioners, requiring payment of all arrears accrued due on account of the said annual payment, and in failure of the Commissioners to make such payment, together with payment of such further sums as may in the meantime have become due on the said account, the said Vihar Water Works and all the movable and immovable property appertaining thereto and vested in the said Commissioners, shall cease so to vest, and shall forthwith become vested in the Governor in Council in trust for the purposes for which it was previous-

ly vested in the said Commissioners: Provided that all sums received from and after the of 18 upon which day the said Vehar Water Works were opened, by the Governor in Council on account of water supplied from the said works, shall after deduction of all sums expended in the management and maintenance of the same be credited to the said Commissioners as having been paid on their account and received by the Governor in Council, in liquidation of the principal sum of Forty-two and a half lacs of Rupees aforesaid.

VII. From and after the day upon which Water-rates may be levied by the Municipal Commissioners. this Act shall come into operation, it shall be lawful for the Municipal Commissioners to impose such annual or other periodical rates for the supply of water from the said Vehar Water Works, and such periods for the payment of the same, upon houses, wharves, and other structures, and upon all works and places whatsoever so supplied with water, and thereafter so to, alter the said rates and periods as may be necessary or expedient and as the Governor in Council may approve, and such rates shall be recoverable by the said Municipal Commissioners in like manner as rates payable under the provisions of Act XXV. of 1858.

VIII. It shall be lawful for the said Commissioners, subject to such rules as the Governor in Council may, from time to time, prescribe, to supply water to any person from the said Water Works, in such quantities and on such terms and conditions as shall seem fit, and to contract for the supply of such water for any purpose whatever to any person without measurement at a reasonable fixed rate, and all moneys due to the said Commissioners on account of any water so supplied shall be recoverable in like manner as the rates in the last preceding Section mentioned.

IX. All public wells, tanks, reservoirs and the like vested or which may hereafter be vested in the Municipal Commissioners, and from which the public may ordinarily have drawn water without payment, shall be continued and maintained by the said Commissioners, so long as the Governor in Council shall require, and the public shall have free access thereto and may draw water therefrom without hindrance or payment of any fee whatever.

X. Such buildings owned or rented by Government and requiring supplies of water as may be exempted by the Governor in Council, shall be supplied by the Municipal Commissioners with such water from the

Vehar Water Works, in such quantities and at such times as shall be reasonable and as the Governor in Council may prescribe, without payment for the same of any rate or price whatsoever.

XI. Every person liable to the payment of any rate or price to the Municipal Commissioners for any water supplied to him from the said Vehar Water Works upon certain conditions as to the use of the same, who shall fraudulently dispose of such water to persons or for purposes in violation of the said conditions, shall be held to have committed criminal breach of trust, and shall be liable to the penalty provided in Section 406, of the Penal Code.

XII. The Municipal Commissioners shall at Inspection of Works all reasonable times permit all persons appointed by the Governor in Council on that behalf, to enter upon, and inspect, and take account of all the property by this Act vested, or which, in virtue of the same, may become vested in the said Commissioners; and the persons so appointed as aforesaid shall be entitled to enter upon and pass through any property adjacent to, or in the neighbourhood of, the said Vehar Water Works, or any part thereof, subject to the same conditions as the Municipal Commissioners, and if from the report of any person appointed as aforesaid it shall appear that the said Water Works or any portion of the same are not in a sound and effective condition, it shall be lawful for the Governor in Council by notice, under the signature of a Secretary to Government, to call upon the said Commissioners to repair, improve, and make effective such works or portion thereof within such a period as may seem reasonable, and the said Commissioners shall be bound within such period to comply with such requisition, failing which the Governor in Council may immediately on the expiration of such period order the said works or portion thereof to be repaired, improved, and made effective, in such manner and by such means as shall seem fit, and the Municipal Commissioners shall, in any such case, be bound forthwith to pay to the Governor in Council the cost of the work so performed, in addition to any other sums by them payable.

XIII. The Municipal Commissioners shall keep accounts of all receipts and disbursements on behalf, or by reason, of the said Vehar Water Works, apart and distinct from any other accounts, and shall present to Government and cause to be published in the *Government Gazette*, an annual statement of such accounts, and the said accounts shall at all reasonable times be open to examination and audit by any person appointed on that behalf by Government, and if upon the report of the person so appointed

it shall appear that the said accounts are falsely, erroneously, or negligently kept, it shall be lawful for the Governor in Council to order the same to be corrected, and to be kept in future with due diligence according to such plan as Government may prescribe, as truly representing the affairs of the said Water Works.

XIV. If from any such annual report of the Disposal of surplus Commissioners or any refunds. port of an examiner appointed by the Governor in Council as aforesaid, it shall appear that after paying to Government the sums due under this Act, and after providing for the repairs and maintenance of the Water Works and the payment of necessary salaries, any surplus remains in the hands of the said Commissioners or their agents, of moneys received on account of the said Works, it shall be lawful for the said Commissioners to expend the same in such extensions and improvements of the said Works and of the apparatus connected therewith as shall seem fit, and as the Governor in Council may approve, and if such improvements or extensions shall appear to be necessary, it shall be lawful for the Governor in Council to require that the same may be made; and if it shall appear that the surplus, after providing for such payments to Government and for such expenses of repairs and maintenance as aforesaid, has in any year exceeded the sum of Fifty thousand Rupees, the said Commissioners shall forthwith prepare a new scale of rates and prices, so calculated as to reduce the annual receipts on account of the said Water Works, either by the whole amount by which the same exceed the necessary disbursements on account thereof, or by such sum as shall remain after providing for the extensions and improvements which may properly be made out of the said surplus or profits, and shall submit the same for the approval of the Governor in Council, and in failure thereof the Governor in Council may order such new scale to be made, or may prescribe a new scale calculated as aforesaid, which new scale the said Commissioners shall forthwith adopt, and shall thereafter recover such demands only for supplies of water as are in accordance therewith.

XV. If the Municipal Commissioners shall refuse or fail duly and diligently to maintain and manage the Vehar Water Works, or to keep accounts of the same, or to perform any duty which, under this Act they are bound to perform, it shall be lawful for the Governor in Council, after such notice as shall seem fit, to appoint any person or persons for the performance of all or any of such duties, until the next ensuing election of Municipal Com-

missioners, and to assign to such persons such salary as shall seem reasonable, to be paid out of the Municipal Fund, and the person so appointed shall have and exercise in the performance of the duties assigned to him by the Governor in Council the like powers and privileges as the Municipal Commissioners, and the Municipal Commissioners shall, from the date of such appointment, cease to perform the duties assigned to the persons so appointed, and shall transfer to the said persons all documents, accounts, and property necessary for the proper performance of such duties, provided that from and after the next ensuing election of Municipal Commissioners the duties and powers of the person so provisionally appointed by the Governor in Council as aforesaid shall cease, and shall forthwith devolve on and vest in the Municipal Commissioners, and that such person shall be bound to transfer to the Municipal Commissioners all documents, accounts, and property held by him or under his control, on account of the said Vehar Water Works.

XVI. From and after the day upon which Building, &c. within this Act comes into operation, it shall not be lawful for any person without the consent of the said Commissioners, to erect any building, shed, or other structure, for the purposes of dwelling or manufacture, trade or agriculture, within the limits of the water-shed of the Vehar Lake, as defined in the Schedule B to this Act annexed, nor to extend or alter any such structure heretofore existing within the said limits, or to apply the same to purposes different from those to which it has heretofore been usually applied; and it shall not be lawful within the said limits, without such permission as aforesaid, for any person to carry on any operation of manufacture, trade, or agriculture, in any manner whereby any injury may arise to the said Lake, or the waters of the same may be fouled or rendered less wholesome; and any person so offending shall, at the prosecution of the said Municipal Commissioners, be subject, on conviction before any Magistrate, to imprisonment of either description for any period not exceeding one month, or to a fine of Rupees One Hundred, or to both; and it shall further be lawful for the Magistrate of the District, in case of any such conviction as aforesaid, to order the immediate removal of such building or structure, and the discontinuance of such operation or use of the land as aforesaid; and in case of disobedience to remove such structure and to prevent such operation or use, and for any opposition to such removal or other disobedience of such order as aforesaid, the offender shall be liable, in each instance, to the penalty in this Section above provided.

STATEMENT OF OBJECTS AND REASONS.

In consequence of the dearth of water experienced in the Island of Bombay in the hot weather of 1845 and subsequent years, the Government were led to forward to the Board of Conservancy a scheme which had been proposed by the late Colonel Crawford, who then held the appointment of Superintendent of Repairs, for the supply of water for the Island by the formation of a reservoir in the hills of Salsette near Vohar, with the request that the Board would state how far they would be prepared to aid Government in carrying out the scheme.

With that correspondence the Government transmitted to the Board a report by Lieutenant Colonel DeLisle (then Lieutenant DeLisle) who had been deputed in 1851 to make a survey of the ground and report upon the project.

The Board of Conservancy, in turn, referred Lieutenant DeLisle's report to their Superintendent of Repairs for the time being, Mr. Conybeare, for his report. The result of this reference was the very elaborate report which was submitted to Government by the Board of Conservancy, with their letter, No. 50, dated 15th March 1853, in which they state in reply to the question put to them by Government, as to how far they would be prepared to aid the Government in completing the project, that "they were prepared to recommend to the Bench of Justices that one-third of the cost should be borne by the public, and that this should be defrayed by a special assessment yielding from Rs. 50,000 to Rs. 75,000 per annum, this amount being paid annually to Government from the Municipal Fund until the contribution of one-third should be completed."

Mr. Conybeare, in his report stated, that he considered Lieut. DeLisle's project, which was estimated to cost 12 lacs of Rupees, to be defective, and he was of opinion that the cost would under the most favourable circumstances, amount to 10 shillings, or Rs. 5 per head of the population, or to about 25 lacs of Rupees; and in a correspondence that took place between the Government and the Board of Conservancy, it was agreed that the Government should advance the capital for the completion of the works and the distribution of the water, on the condition that the Municipal Fund should make to Government a return of 4 per cent. on the capital so appropriated.

Under date the 15th March 1855, Mr. Conybeare submitted a second report on the proposed scheme, which was printed and referred to Colonel Crawford. In this report it was estimated that the works would cost £2,06,033, but Colonel Crawford showed that it was impossible to estimate their ultimate cost, as that depended greatly upon the price at which the pipes could be laid down in Bombay, and that as the price of iron was liable to considerable fluctuations, the works in all probability would exceed the sum at which Mr. Conybeare had estimated them, for the price at which he had put down the pipes was low.

These proceedings were duly reported to the Government of India, who were requested to sanction the commencement of the project, but in a letter dated 7th December 1855, they refused their consent to the advance of the necessary sums of money in the following words:—

"That until the formal reply of the Municipality is obtained to the payment of interest at 4 per cent. per annum, on the capital to be advanced, whatever the amount may be, also to the payment of such further sums as may be necessary to provide for the cost of maintenance of the works when completed, His Lordship in Council is of opinion, however desirous he may be of forwarding the project, that the Government of India cannot justify to the Home Authorities a consent to advance the large sums required for the construction and completion of the dam."

A reference on the subject was in consequence made to the Municipality, and their assent having been obtained to the conditions laid down by the Government of India, that Authority on the 29th March 1856 gave permission to the Bombay Government to enter into such arrangements as might be necessary for the promotion of the project generally, on the understanding

that the total amount of money to be advanced would amount to Rs. 25,00,000 only. The Government of India at the same time directed that a draft of an Act providing for the payment of interest on the sums advanced in conformity with the conditions agreed to, should be forwarded for their approval; and in a subsequent communication, dated 30th May 1856, they stated that it would be necessary in the draft to make provision for the repayment of the capital.

Instructions were accordingly sent to the Government Solicitor to prepare a draft, which was forwarded to the Government of India, under date 25th July 1857. Intermediately a discussion took place between the Bench of Justices and the Government, relative to the liability of the Municipality to repay the cost of the construction of the Water Works, being limited to 25 lacs of Rupees, and in an elaborate Resolution dated 24th April 1857, the Government summed up the question in the following words:—

“As the Worshipful Bench assented, in 1854, to legalize a water-rate on occupiers of houses, &c. at the rate of 3 per cent. on their annual value or such higher rate, as would suffice to pay interest at 4 per cent. on an unlimited capital, which unlimited capital also they subsequently consented to endeavour to repay, the Right Honorable the Governor in Council considers that they would not be justified in now insisting upon the restriction referred to in paragraph 3 of their present letter.**** At the same time His Lordship in Council is ready, in lieu of the Draft Act, to agree to any other means for securing the Municipal Fund what he considers to have been prescribed by the Government of India, and to have been the object of the negotiations above described, viz: the repayment of the outlay made by Government within 42 years, with interest at 4 per cent. and the maintenance of the works. He has already in paragraph 43 of the Government letter No. 648, dated 19th March 1857, suggested an arrangement which he thinks will, if sanctioned by the Government of India, be far more advantageous to the Municipality than any other which could be adopted in order to effect a settlement of the debt on account of the Water Works. ****”

In their reply to the foregoing Resolution, the Bench, whilst they maintained that they were only justly liable to repay 25 lacs of Rupees, offered to devote annually a sum equal to 5 per cent. on 25 lacs of Rupees for the payment of that sum, principal and interest, at 4 per cent. and also to devote a further sum equal to 5 per cent. on half the capital expended beyond the sum of 25 lacs of Rupees, for the liquidation of half of the additional capital outlay with interest at 4 per cent.

The Bombay Government reported the correspondence which had taken place to the Honorable Court of Directors, and in doing so submitted a recommendation that the Municipality should be relieved of all the expense that might be incurred over and above the 25 lacs of Rupees, and stated that should the Honorable Court be unable to accede to that request, they would recommend the acceptance of the offer made by the Bench described in the last preceding paragraph.

To this despatch the Honorable Court sent a reply in which they consented that a moiety of the excess beyond 25 lacs of Rupees should be regarded as a grant in aid contributed by the State; and the Supreme Government, to whom an extract of the Honorable Court's Despatch was forwarded, authorised that the Draft Act which they had directed to be prepared, providing for the repayment of the whole capital, should be modified “in conformity with the concession which the Honorable Court are willing to make in favour of the Municipality of Bombay.”

Copy of this letter from the Government of India was communicated to the Bench, but no further correspondence appears to have taken place relative to the amount to be paid by the Municipality, until the letter from the Clerk of the Peace, No. 8, dated 12th February 1862.

In this letter Her Majesty's Justices, after recognizing the fact that the Municipality is bound to pay 25 lacs, plus *half* of any excess which may have been incurred by Government in the construction of the works, with 4 per cent. interest on the unpaid balance, suggested that as they consider that Government not to be in a position to hand over perfect works, the works as they now stand should be made over to them on payment of 25 lacs of Rupees plus *one-third* of the excess.

This letter having been referred to the Government Law Officers, Mr. Westropp, then Acting Advocate General, recommended resort to legislation to settle the questions pending between the Government and the Municipality.

It is in consequence of this recommendation that the present Bill has been prepared, its object is to provide for the transfer of the works to the Municipality on the terms sanctioned by the Home Authorities and the Government of India, and to vest the charge and maintenance of the Works in the Municipal Commissioners, as also to give them powers to impose water-rates, and to confer upon them authority to enforce the payment of those rates. Provision is also made for the inspection of the Works by the Government Officers, and for the manner in which Government is to proceed in the event of the Municipal Commissioners failing to perform their duties under the Act.

As this Bill relates chiefly to questions between the Government and the Municipal Commissioners, and to matters affecting those classes of the community who may be supposed to have a knowledge of English, the Bill need not be translated into any of the Vernacular languages.

(Signed) A. D. ROBERTSON.

By order of His Excellency the Governor in Council,

R. WEST,

Officiating Under-Secretary to Government.

Bombay, 10th February 1863.