

Government of Madras.

EDUCATIONAL DEPARTMENT.

Order no.
page no. 96

Recd.

Regd.

} 1907.

Enclosures

Spare copies

(30)

G.O., No. 839, 17th December 1907.

Grant-in-Aid Code.

Amending articles 54 and 59 of the — relative to the refund of building and furniture grants.

Educational (1907) Department.

ORDINARY PRINTED.

G.O., No. 839

DATED 17th Dec '07

C

[Despatch Abstract.]

Grant in aid Code

~~Grant in aid Code~~ Making Certain alterations in the
and furniture grants related to the repair of building

Grant in aid Code

making

~~Grant in aid Code~~

and furniture grants

BACK PAPERS.

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

FURTHER PAPERS.

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

Government of Madras.

EDUCATIONAL DEPARTMENT.

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G.O., No. 839, 17th December 1907.

Grant-in-Aid Code.

Amending articles 54 and 59 of the — relative to the refund of building and furniture grants.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

READ—the following paper:—

Letter—from the Hon'ble Mr. T. T. LOGAN, B.A., Acting Director of Public Instruction.

To—the Secretary to Government, Educational Department.

Dated—Madras, the 20th September 1907.

No.—Ref. on Cur. No. 6327.

In October 1894 a grant of Rs. 1,200 was paid by the department towards the cost of a building for the Church of Scotland Zenana Mission Girls' school, Sholinghur, in accordance with the provisions of the Grant-in-Aid Code. Ten years later, i.e., in October 1904, the manager applied for permission to use the building for purposes other than educational and the permission was granted subject to the condition that he refunded Rs. 600, being one-half of the amount of grant paid on its behalf. The manager refused to abide by the Director's decision and requested that the amount to be refunded might be determined by a Court of Arbitrators as provided for in the Grant-in-Aid Code. A Court of Arbitrators was accordingly appointed; but the decision was not unanimous, the arbitrator nominated by the manager considering that the amount, viz., Rs. 960, fixed by the other two, was excessive. In these circumstances, I addressed the Government Solicitor on the subject and requested him to let me know in what manner the decision of the majority of the arbitrators might be enforced. From the enclosed copy of his reply No. 499, dated 21st May 1907, it will be seen that he considers that the provisions of the Code in this respect should be modified and that corresponding modifications should be made in chapter IX also, so as to make it possible for the decision of the arbitrators to be effective whether the decision is unanimous or not. In the case of the Sholinghur school the refund of Rs. 600 has been accepted as advised by the Government Solicitor, but it is now obvious that the rules should be so altered as to prevent any misconception in the matter on the part of managers and to strengthen the hands of the department in enforcing the provisions of the Code whenever this is necessary. I have accordingly the honour to request that the sanction of Government may be obtained to the substitution of the following for the present rules 54 and 59:—

"54. *Claims of the Government.*—If a building for which a grant has been drawn has, prior to the lapse of twenty years from the date of payment of the grant, been diverted to other than educational purposes approved by the Government the manager shall refund such portion of the grant as may be determined by, or by the majority of three persons, one to be nominated by the Director, another by the management and the third by the two persons so nominated. If the manager fail to make such refund he shall be bound, should the Government desire to purchase it, to sell the building to the Government at a valuation to be determined by or by the majority of the three persons, so nominated who in making their valuation shall deduct from the price such portion of the grant as to them may seem equitable. If neither of the above course is followed, the Government may recover the amount of such refund by such other means as they may think fit to take."

"59. *Claims of the Government.*—In the event of an institution which has received aid under this chapter being closed within five years from the date on which a grant under this chapter has been drawn, the Government shall be at liberty to purchase the articles towards the supply of which the grant was given at a valuation to be made as provided for in rule 54 in the case of school buildings."

The above draft rules have been suggested by the Government Solicitor who says further that such substitution does not necessitate any alterations being made in Appendices M and T, but that from Appendix O, lines 44 and 45 and Appendix P, line 43, the words "by arbitrators to be appointed" should be omitted.

ENCLOSURE.

Letter—from W. O. DAVID, Esq., Acting Government Solicitor.

To—the Director of Public Instruction.

Dated—Madras, the 21st May 1907.

No.—499.

I have the honour to acknowledge receipt of your Ref. on Cur. No. 10600 of 1904, dated the 7th instant, with enclosures.

2. I am of opinion that the agreement in the prescribed form of application for a grant in aid by which the applicant is bound to abide by the provisions of rule 54 of the Grant-in-Aid Code is not a "submission" within the definition in section 4 (b) of the Indian Arbitration Act as the rule referred to contemplates the determination of the amount of the refund by three arbitrators without any difference as to the amount having first arisen and that therefore the Arbitration Act does not apply to arbitrations under the Grant-in-Aid Code.

3. The above makes it unnecessary to answer your question (2) and the first part of question (3).

4. I am of opinion that as the decision of the arbitrators is not unanimous it is not enforceable. The procedure provided for in rule 54 is similar to that commented upon as follows by Mathew, J., in his judgment in *United Kingdom Mutual Steamship Assurance Association v. Houston & Co.*, (1896, 1 Q.B., page 567): "For a reference to three arbitrators means that all three must concur in the making of the award. In the view I take of the meaning of the rule it is true as 'Mr. Walton has pointed out that arbitration under it can seldom have any result; for it will be rarely possible to get all three to agree in their decision. But if the parties desired to have an effective arbitration they should have framed their rule differently.'"

5. In these circumstances I am of opinion that Government had better take what they can get, i.e., the Rs. 600 which has been agreed to be paid and should amend rule 54 of the Grant-in-Aid Code.

6. In the last sentence in rule 54 the word "think" should be substituted for "seem". As it stands the sentence purports to make the means of recovery dependent on the seeming fitness of Government to take them.

Order—No. 839, Educational, dated 17th December 1907.

The following will be substituted for articles 54 and 59 of the Grant-in-Aid Code:—

"54. *Claims of the Government.*—If a building for which a grant has been drawn has, prior to the lapse of twenty years from the date of payment of the grant, been diverted to other purposes than educational purposes approved by the Government, the manager shall refund such portion of the grant as may be determined by Government. If the manager fail to make such refund, the Government may recover the amount by such means as they may think fit to take."

"59. *Claims of the Government.*—If an institution, which has received aid under this chapter, is closed within five years from the date on which a grant under this chapter is drawn, the Government shall be at liberty to purchase the articles towards the supply of which the grant was given, at a valuation to be made by an officer to be deputed by the Government for the purpose."

2. Appendices O, P, Q and R to the Grant-in-Aid Code should be revised with reference to the alterations now made in article 54.

(True Extract.)

H. D. TAYLOR,
Ag. Secretary to Government.

To the Director of Public Instruction.
Gazette.

Editor's Table (order only).

NOTES CONNECTED WITH G.O., No. 839, EDUCATIONAL,
DATED 17TH DECEMBER 1907.

[SUBJECT.—*Alterations in the Grant-in-Aid Code.*]

From the Director of Public Instruction, dated 20th September 1907, No. 6327.

Rule 54 of the Grant-in-Aid Code says :

"If a building, for which a grant has been drawn, has, prior to the lapse of twenty years from the date of payment of the grant, been diverted to other than educational purposes approved by the Government, the manager shall refund such portion of the grant as may be determined by three arbitrators, one to be nominated by the Director, another by the management, and the third by the two arbitrators so appointed. If the manager fail to make such refund, he shall be bound, should the Government desire to purchase it, to sell the building to the Government at a valuation to be determined by the arbitrators, who, in making their award, shall deduct from the price such portion of the grant as may seem equitable. If neither of the above courses is followed, the Government may recover the amount by such other means as they may see fit to take."

2. This rule appears however to be defective in that it makes no provision for any difference of opinion among the arbitrators. In the case of the Church of Scotland Zenana Mission girls' school, Sholingur, towards which a grant of Rs. 1,200 was made in 1894, the manager wanted to divert the school building to other than educational purposes; the three arbitrators appointed as provided in rule 54 not being unanimous, the Government Solicitor has advised the Director of Public Instruction that the decision of the majority of the arbitrators in the circumstances is not enforceable and has recommended that the rule should be amended.

3. The Director of Public Instruction accordingly suggests that rule 54 may be altered as follows :—

"If a building, for which a grant has been drawn, has, prior to the lapse of twenty years from the date of payment of the grant, been diverted to other than educational purposes approved by the Government, the manager shall refund such portion of the grant as may be determined *by, or by the majority of three persons*, one to be nominated by the Director, another by the management and the third by the two persons so nominated. If the manager fail to make such refund, he shall be bound, should the Government desire to purchase it, to sell the building to the Government at a valuation to be determined *by or by the majority of the three persons so nominated* who in making their *valuation* shall deduct from the price such portion of the grant as to them may seem equitable. If neither of the above courses is followed, the Government may recover the amount of such refund by such other means as they may *think* fit to take."

The alterations made are in italics. In line 4 for the words "by three arbitrators" the following words have been substituted, viz., "by or by the majority of three persons"; in line 7 for the words "by the arbitrators" the following has been substituted, viz., "by or by the majority of the three persons so nominated"; and in line 10 the word "think" has been substituted for "seen". In line 7 the word "valuation" has been substituted for "award".

4. Rule 59 of the Code runs—

"In the event of an institution which has received aid under this chapter being closed within five years from the date on which a grant under this chapter has been drawn, the Government shall be at liberty to purchase the articles, towards the supply of which the grant was given, at a valuation to be determined, as in the case of school buildings, by arbitrators."

5. The Director of Public Instruction proposes to amend this rule also as follows:—

"In the event of an institution which has received aid under this chapter being closed within five years from the date on which a grant under this chapter has been drawn, the Government shall be at liberty to purchase the articles towards the supply of which the grant was given at a valuation to be made as provided for in rule 54 in the case of school buildings."

In line 4 for the words "to be determined as in the case of school buildings, by arbitrators" the following words have been substituted, viz.: "to be made as provided for in rule 54 in the case of school buildings."

H. D. TAYLOR. | Submitted that these alterations may be approved.

6. The Director of Public Instruction also states that the words "by arbitrators to be appointed" occurring in Appendix O (*vide* line 1 on page 29 of the Code) and in Appendix P (*vide* line 4 from the bottom on page 31 of the Code) should be omitted. These alterations are consequential on the omission of the word "arbitrators" from rule 54. If this is approved, the words "the said arbitrators", "arbitration" and "arbitrator" occurring in the subsequent portions of the appendices referred to should, it is submitted, be also omitted. The Director of Public Instruction may therefore be asked to revise thoroughly the appendices in question.

H. D. TAYLOR.

T.K.—9-10-07.

K. RANGASWAMI AIYANGAR—11-10-07.

C. A. SOUTER—14-10-07.

The Government Solicitor is of opinion that the Indian Arbitration Act cannot be applied to arbitrations under the Grant-in-Aid Code. The alterations may be approved, but even now the rule will not apply to cases where all three persons differ.

H. D. TAYLOR—16-10-07.

Let Dr. Bourne see u.o.

G. S. F[ORBES]—17-10-07.

To the Director of Public Instruction.

OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION.

In my letter, Cur. No. 3460, dated 12th April 1905 (paragraph 45), I proposed to leave the determination of the amount of refund to Government. I laid the proposal before the Conference which discussed this letter and it was rejected but only by 8 votes to 7 (out of about 25 present).

A question of refund has so very rarely arisen in the past that I did not press the point and in submitting the draft Code made no allusion to it. A case having now arisen with a result that is unsatisfactory from the Government point of view, the opportunity might perhaps be taken to alter the rules as I originally proposed. I can see no valid reason against leaving the decision to Government. The money is entrusted to the manager for a certain purpose and if he chooses to divert it from this purpose it is not clear why he should have any voice in determining the amount to be refunded.

H. D. TAYLOR. |

A. G. BOURNE—24-10-07.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

The Director of Public Instruction's letter No. 3460, dated 12th April 1905, is printed with G.O., No. 373, Educational, dated 3rd June 1905, which is submitted. The portion referred to is paragraph 45 on page 9 of the Government Order. The Director's proposal was discussed in paragraph 7 of Mr. Galletti's note on page 3 of the notes with G.O., No. 373, Educational, dated 3rd June 1905. There are no discussions on this point in the notes with G.O., No. 356, Educational, dated 21st May 1906.

T.K.—30-10-07.

K. RANGASWAMI AIYANGAR—1-11-07.

The Director of Public Instruction apparently recommends that there should be no arbitrators.

C. A. SOUTER—2-11-07.

I am inclined to doubt whether, in law, a decision of the Government, as judge

There is no such case here.

G. S. F[ORBES].

the suit would, I submit, be decided, not on the order of Government, but on the Court's view of the equity of the case.

It would be better either to omit the rule altogether or to provide for the buildings reverting to Government in its entirety if used for other purposes within 20 years, or else to appoint arbitrators of some sort, even though their decision would not be of legal force.

H. D. TAYLOR—3-11-07.

The Secretary's view is not, I think, valid.

A grant is not a matter of legal obligation; and we can make any condition we please in giving it. Government is not a "person", moreover and has no personal interest in the settlement.

Dr. Bourne's proposal is quite in accord with ordinary principle, I believe.

[If Government diminish the pay of an officer of the Indian Civil Service or discharge him from the service or refuse him his pension, he has no right of suit in any Law Court. The Government itself (the Crown) decides the matter finally.]

G. S. F[ORBES]—6-11-07.

Please draft for approval amending the Code.

H. D. TAYLOR—6-11-07.

A draft is submitted for approval.

T.K.—7-11-07.

K. RANGASWAMI AIYANGAR—9-11-07.

C. A. SOUTER—12-11-07.

I understand the Honourable Member to have approved of the later proposal of the Director of Public Instruction on page 2 *supra* to dispense with arbitrators entirely and to leave the decision—in all cases—to Government, but I am not quite sure. Please put up another draft on those lines in the alternative.

H. D. TAYLOR—13-11-07.

Another draft is submitted for approval.

2. The draft is on the lines of the draft proposed by Dr. Bourne in paragraph 45 of his letter on page 9 of G.O., No. 373, Educational, dated 3rd June 1905, and follows the wording of the present articles 54 and 59 as far as possible.

T.K.—20-11-07.

K. RANGASWAMI AIYANGAR—22-11-07.

C. A. SOUTER—23-11-07.

The drafts are submitted in alternative.

I am not quite certain which carries out the intention of the Honourable Member.

H. D. TAYLOR—26-11-07.

Yes: we make it a condition virtually of our grant that the Government shall determine the amount of refund, etc.

I am doubtful about what is meant by "other than educational purposes approved by Government". I take it to mean "educational purposes other than those approved by Government" (?) but, if so, why merely to "educational purposes other, etc". Please examine.

G. S. F[ORBES]—26-11-07.

Submitted that the words "other than educational purposes approved by Government" occurring in rule 54 appear to be intended to convey purposes which are not educational purposes approved by Government.

But why are these dilemmas and irregularities of language not noticed in the office?

G. S. F[ORBES].

2. In the Grant-in-Aid Code approved in G.O., No. 395, Educational, dated 16th June 1885, the rule ran thus:

"That in the event of any building, towards the erection, purchase, substantial improvement or repair or enlargement of which a grant may have been made by Government, being diverted, prior to the lapse of twenty years from the date of the issue of the grant, to other than the purposes for which the grant

Page 29 of G.O., No. 395, Educational, dated 16th June 1885.

This is clear enough.

C. A. SOUTER.

was sanctioned, the managers at the time of the diversion shall refund to Government such portion of the grant allowed them as shall be determined by arbitrators"

3. In 1893 when the Code was next revised the rule was recast as follows:—

"In the event of a building for which a grant has been drawn being diverted, prior to the lapse of twenty years from the date of payment of the grant, to other than educational purposes approved by Government, the manager shall refund such portion of the grant as may be determined by three arbitrators"

The then Director of Public Instruction Dr. Duncan observed in connection with this rule:

"Provision need not be embodied in this Code to regulate the procedure to be followed by arbitrators in the valuation of buildings which have ceased to be used for educational purposes."

The words in italics above seem to indicate that the expression "other than educational purposes approved by Government" refers only to purposes which are unconnected with education.

T.K.—2-12-07.

K. RANGASWAMI AIYANGAR—2-12-07.

A grant is made to a school solely for educational purposes, but these purposes need not be general, and usually will be particularized in the terms of the grant, e.g., for furniture, or books, or building, and so on. The restrictions in the use of a grant would therefore seem to be twofold: (a) the grant must be used only for educational purposes and (b) it must be used only for those educational purposes specified in the terms of the grant. This, I take it, is what is meant by "other than educational purposes approved by Government" and the words absolutely exclude the use of the grant for purposes which are not educational. This would seem proper.

C. A. SOUTER—3-12-07.

Grants under the Code are given generally for educational purposes. Specific grants are given for specific purposes.

The draft, I submit, is correct and may issue.

H. D. TAYLOR—4-12-07.

If the draft is to stand, the words should be "to other purposes than educational purposes approved by the Government."

G. S. F[ORBES]—5-12-07.

The draft, being in modification of a principle in the Grant-in-Aid Code, is circulated for approval of the Hon'ble Mr. Stokes.

H. D. TAYLOR—6-12-07.

Through the Financial Department.

FINANCIAL DEPARTMENT.

The draft may, it is submitted, be accepted.

V.G.K.—9-12-07.

C. M. SCHMIDT—9-12-07.

H. BRADLEY—11-12-07.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

Submitted to the Secretary.

2. The file may now be circulated to the Hon'ble Mr. Stokes.

K. RANGASWAMI AIYANGAR—13-12-07.

C. A. SOUTER—13-12-07.

Further circulation seems hardly necessary in this matter. Financial have accepted, but as the Government Order modifies the Grant-in-Aid Code further circulation—under the strict letter of the rules—seems necessary.

H. D. TAYLOR—16-12-07.

G. S[TOOKES]—16-12-07.

Issue.

H. D. TAYLOR—17-12-07.

[G.O., No. 839, Educational, dated 17th December 1907.]

[E.]
1,000-422-05

EDUCATIONAL DEPARTMENT.

CURRENT FILE.

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[P. T. O. FOR PUT UP PAPERS]

PAPERS PUT UP WITH CURRENT No.

Papers of the department to which the current belongs.

Number.	Date.	Original (=O) or spare copy (=S. C.).	Remarks. (In this column such of the papers as have been removed for copying, printing, etc., should be marked with a cross.)	Initials of Referencer with date in token of return to Reference department.
305-	23-6-03	Sc		

Papers of other departments.

Department.	Number.	Date.	Original (=O.) or spare copy (=S. C.).	Despatcher to note the return of the papers to the departments concerned.

Stock Form No. 185
4.000 27-4-06.

EDUCATIONAL DEPARTMENT.

Received 23 SEP 1907 190 , Registered 289 190



Subject.

Requesting that in the circumstances stated certain modifications be made in the rules in the Grant-in-Aid Code regarding refund of building and furniture grants.

ENCLOSURES.

No.

Spare copies

Ref on Current No. 6 3 2 7/07

Station Madras, Dated the 26th September 1907.

From (Name) The Hon'ble Mr. T.T. Logan, B.A.,

(Designation) As: Director of Public Instruction

Madras.

To the Secretary to the Government of Madras,
Educational Department

Sir,

In October 1894 a grant of Rs 1,200/- was paid by the Department towards the cost of a building for the Church of Scotland Zenana Mission Girls' School, Sholinghur, in accordance with the provisions of the Grant-in-Aid Code. Ten years later, i.e., in October 1904, the manager applied for permission to use the building for purposes other than Educational and the permission was granted subject to the condition that refunded Rs 600, being one-half of the amount of grant paid on its behalf. The Manager refused to abide by the Director's decision and requested that the amount to be refunded might be determined by a Court of Arbitrators as provided for in the Grant-in-Aid Code. A court of arbitrators was accordingly appointed; but the decision was not unanimous, the arbitrator nominated by the manager considering that the amount, viz.,

2 10 28

Rs 960/- fixed by the other two was excessive. In these circumstances, I addressed the Government Solicitor on the subject and requested him to let me know in what manner the decision of the majority of the arbitrators might be enforced. From the enclosed copy of his reply /No. 499 dated 21st May 07/ it will be seen that he considers that the provisions of the Code in this respect should be modified and that corresponding modifications should be made in Chapter IX also-so as to make it possible for the decision of the arbitrators to be effective, whether the decision is unanimous or not. In the case of the Sholinghur school the refund of Rs 600 has been accepted as advised by the Government Solicitor but it is now obvious that the rules should be so altered as to prevent any misconception in the matter on the part of managers and to strengthen the hands of the Department in enforcing the provisions of the Code whenever this is necessary. I have accordingly the honour to request that the sanction of Government may be obtained to the substitution of the following for the present rules 54 and 59:-

"54. Claims of the Government:- If a building for which a grant has been drawn has, prior to the lapse of twenty years from the date of payment of the grant, been diverted to other than educational purposes approved by the Government the Manager shall refund such portion of the grant as may be determined by, or by the majority of three persons one to be nominated by the Director another by the management and the third by the two persons so nominated. If the manager fail to make such refund he shall be bound, should the Government desire to purchase it, to sell the building to the Government at a valuation to be determined by or by the majority of the three persons so nominated who in making their valuation shall deduct from the price such portion of the grant as to them may seem equitable. If neither of the above course is followed the Government may recover the amount of such refund by such other means as they may think fit to take".

"59. Claims of the Government:- In the event of an institution which has received aid under this chapter being

3 11 38
closed within five years from the date on which a grant under this chapter has been drawn, the Government shall be at liberty to purchase the articles towards the supply of which the grant was given at a valuation to be made as provided for in rule 54 in the case of school buildings".

The above draft rules have been suggested by the Government Solicitor who says further that such substitution does not necessitate any alterations being made in Appendices M and T but that from Appendix O lines 44 and 45 and Appendix P line 43 the words "by arbitrators to be appointed" should be omitted.

I have the honour to be,

S i r ,

Your most obedient servant,

Arthur Hughes

For Director of Public Instruction.

RS
19-8-07

N.V.S.

No. 499

4
M a d r a s

Dated 21st May 1907.

From

W.O. David,

Ag: Government Solicitor,

M a d r a s.

To

The Ag: Director of Public Instruction,

M a d r a s

Sir,

1. I have the honour to acknowledge receipt of your Ref on Cur No. 10600 of 1906 dated the 7th instant with enclosures.

2. I am of opinion that the agreement in the prescribed form of application for a grant in aid by which the applicant is bound to abide by the provisions of Rule 54 of the Grant-in-Aid Code is not a "submission" within the definition in section 4 /b/ of the Indian Arbitration Act as the rule referred to contemplates the determination of the amount of the refund by three arbitrators without any difference as to the amount having first arisen and that therefore the Arbitration Act does not apply to arbitrations under the Grant-in-Aid Code.

3 The above makes it unnecessary to answer your question /2/ and the first part of question /3/.

4 I am opinion that as the decision of the Arbitrators is not unanimous it is not enforceable. The procedure provided for in Rule 54 is similar to that commented upon as follows by Mathew J in his judgment in United Kingdom Mutual Steamship Assurance Association v Houston & Co. /1896.1 Q.B. p 567/ "For a reference to "three arbitartors means that all three must " concur in the making of the award. In the view I take of the "meaning of the rule it is true as Mr. Walton has pointed out " that arbitration under it can seldom have any result; for it " will be rarely possible to get all three to agree in their decision. But if the parties desired to have an effective " arbitration they should have framed their rule differently".

5
598
5 In these circumstances I am of opinion that government had better take what they can get i.e. the Rs 600 which has been agreed to be paid and should amend rule 54 of the Grant-in Aid Code.

6 In the last sentence in Rule 54 the word "think" should be substituted for "seem" . As it stands the sentence purports to make the means of recovery dependent on the seeming fitness of Government to take them.

I have the honour to be,

S i r ,

Your most obedient servant,

/Signed/ W. O. D a v i d ,

Ag: Government Solicitor.

/True Copy/

W. O. David

For Director of Public Instruction.

Rs
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N.V.S.

NOTES.

Encl 1-35325

First
Return
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Educational Department.

Note & go. No. 8398058/17-12-07.

C. No. 2353, from the Director of Public Instruction, No. 6327, d/20-9-1907.

Subject.

Alterations in the Grant in Aid
Code.

Rule 54 of the Grant in Aid Code says--

"If a building, for which a grant has been
"drawn, has, prior to the lapse of twenty
"years from the date of payment of the grant,
"been diverted to other than educational pur-
"poses approved by the Government, the manager
"shall refund such portion of the grant as may
"be determined by three arbitrators, one to
"be nominated by the Director, another by the
"management, and the third by the two arbi-
"trators so appointed. If the manager fail
"to make such refund, he shall be bound, should
"the Government desire to purchase it, to sell
"the building to the Government at a valuation
"to be determined by the arbitrators, who, in
"making their award, shall deduct from the
"price such portion of the grant as may seem
"equitable. If neither of the above courses
"is followed, the Government may recover the
"amount by such other means as they may see fit
"to take."

Page 12. of the Code,
1906 Edition. perhaps

Note
The word "seem" is apparently
a misprint for "see".

Page 1 of the C.F.

Pages 4 & 5 of C.F.

2. This rule ^{appears to be} however, defective in that
it makes no provision for any difference of
opinion among the arbitrators. In the case of
the Church of Scotland Zenana Mission Girls'
School, Sholingur ^{where} ~~where~~ a grant of Rs 1200 was made in 1914
the manager wanted
to divert the ~~use of~~ the school building to
other than educational purposes, and ~~the~~ the
three arbitrators appointed as provided in
rule 54, ^{being} ~~being~~ not unanimous, the Government
Solicitor has advised ^{the D.P.G.} that the decision of the
majority of the arbitrators in the circumstances
is not enforceable and has recommended that
the rule should be amended.

Page 2 of C.F.

stat

stat

Page 13 of the Code

2.

15 / 28

3. The D.P.I. accordingly suggests that Rule 54 may be altered as follows:--

"If a building for which a grant has been drawn has, prior to the lapse of twenty years from the date of payment of the grant, been diverted to other than educational purposes approved by the Government, the manager shall refund such portion of the grant as may be determined by, or by the majority of three persons, one to be nominated by the Director another by the management and the third by the two persons so nominated. If the manager fail to make such refund he shall be bound, should the Government desire to purchase it, to sell the building to the Government at a valuation to be determined by or by the majority of the three persons so nominated who in making their valuation shall deduct from the price such portion of the grant as to them may seem equitable. If neither of the above course is followed the Government may recover the amount of such refund by such other means as they may think fit to take."

The alterations made are ^{in italics} underlined in red ink. In line 7 for the words "by three arbitrators" the following words have been substituted, viz: "by or by the majority of three persons"; in line 14 for the words "by the arbitrators", the following has been substituted, viz: "by or by the majority of the three persons"; ^{so nominated.} and in line 20 the word "think" has been substituted for "seem". In line 16 the word "valuation" has been substituted for "award".

4. Rule 59 of the Code runs--

"In the event of an institution which has received aid under this chapter being closed within five years from the date on which a grant under this chapter has been drawn, the Government shall be at liberty to purchase the articles, towards the supply of which the grant was given, at a valuation to be determined, as in the case of school buildings, by arbitrators."

5. The D.P.I. proposes to amend this rule ^{also} as follows:--

"In the event of an institution which has received aid under this chapter being closed within five years from the date on which a grant under this chapter has been drawn, the Government shall be at liberty to purchase the articles towards the supply of which the grant was given at a valuation to be made as provided for in rule 54 in the case of school buildings."

In lines 7 ^{and 8,} for the words "to be determined" as in the case of school buildings, by arbitrators"

the following words have been substituted, viz:-
"to be made as provided for in rule 54 in the case
of school buildings".

Submitted that these alterations may be
approved.

6. The D.P.I. also states that the words
"by arbitrators to be appointed" occurring in
Appendix O (vide line 1 on page 29 of the Code)
and in Appendix P (vide line 4 from the bottom on
page 31 of the Code) should be omitted. These
alterations are consequential on the omission of
the word "arbitrators" from rule 54. If this is
approved, the words "the said arbitrators",
"arbitration" and "arbitrator" occurring in the sub-
sequent portions of the Appendices, ^{referred to} should, it is
submitted, be also omitted. The D.P.I. may there-
fore be asked to thoroughly revise the Appendices
in question.

T.H.
9.10.07
DD ^{supplementary}
19.10.07
Lee
Calcutta
14.10.07

1906 Edition.

vide lines 7, 12 & 16
on page 29 of the Code.

Appendix

The Gov. Secretary is of opinion that the
Local Arbitration Act cannot be applied to
arbitrations under the G.O. Code
The alterations may be approved, but even
then the rule will not apply to
cases where all three persons differ!

Houghton
16.10.07

Am. Let D. Baume see us

SP
18/10
21/10/12
26.2353-1
18.10.07

SP. Secy.

87717

Put this up
Please

vide Resoln 10 on page 7 of G.O. no. 356 Edl & 21-5-06.

In my letter Ltr No. 3460 of 12 April 1905 (para. 45) I proposed to leave the determination of the amount of refund to Government. I laid the proposal before the Conference which discussed this letter and it was rejected but only by 8 votes to 7 (out of about 25 present). A question of refund has so very rarely arisen in the past that I did not press the point and in submitting the draft Code made no allusion to it. A case having now arisen with a result that is unsatisfactory from the Govt. point of view the opportunity might perhaps be taken to alter the rules as I originally proposed. I can see no valid reason against leaving the decision to Govt. The money is entrusted to the Manager for a certain purpose and if he chooses to divert it from this purpose it is not clear why he should have any voice in determining the amount to be refunded.

Adm 24.10.07

Put this (the D.P.I's letter no. 3460 of 12th April 1905) up, please.

H. D. J.
28.10.07

TK
18/10

IV. 1. 11. 1905
 (on 28 & 29 on 28)

[Faint, mostly illegible handwritten notes on the left page, possibly bleed-through from the reverse side.]

There is no such
 case here
 817

M.

M.

L.

There are no discussions on this point in the
 7th. 30.10.07
 30.10.07
 1.11.07
 Notes with G.O. No. 356 Exd., dated 21st May 1908.

Lee.

The D.P.I. apparently recommends
 that there should be no arbitrator.

Ch. 2.11.7.

I am inclined to doubt whether, in law,
 a decision of the Govt., as judge in their
 own cause, would be legally binding.
 In the event of a refusal to pay the
 amount Govt. could only sue and the
 suit would, I submit, be decided,
 not on the view of Govt. but on the
 Court's view of the equity of the case.

It would be better either to omit
 the rule altogether or to provide for the
 building's reversion to Govt. in the
 event of use for other purposes
 within 20 years, or else to
 appoint arbitrators of some sort, even
 though their decision would not be of
 legal force.

W.M.

W.D. 2.11.07

The Secy's view ~~is~~ not
I think valid.

As part is not a matter
of legal obligation; & we
can make any condition
we please in giving it.
Govt is not a "person"
moreover & has no
personal interest in
the settlement.

Dr. Bourne's proposal is
quite in accord with ordinary
principle, I believe.

(If Govt diminish the
pay of an officer of the I.C.S.
on discharge & then from
the service, or refuse him
his pension he has
no right of suit in any
law court. The Govt
itself (the Crown) decides
the matter finally.)

G. F. Roberts
6/11/07

Please Dept for approval - amending the Code

H.B. Roberts
6.11.07

TR
6/11/07

not 839384
17-12-07.

Red

7

20 7p

A draft is submitted for approval.

TH
7-11-07

RD
9-11-07

Sec
Cesaire
12.11.7.

I understand the H.M. to have approved
of the later proposal of SDJ on p 4
supra to dispense with a trial
entirely and to leave the decision
- in all cases - to J.O. - but I am
not quite sure. Please put up
another draft or those lines as
the alternative

H. D. Taylor
SDJ

Another draft is submitted for approval.

TH
20-11-07

The draft is on the lines of the draft pro-
posed by Dr. Bourne in paragraph 45
of his letter on page 9 of G.O. No. 373 Est.
dated 3rd June 1905 & follows the wording
of the present Articles 54 and 59 as
far as possible.

M.

RD
22-11-07

Sec
Cesaire
22.11.7.

The drafts are submitted in alternative.
I am not quite certain which ~~one~~ ^{comes out}
the intention of the H.M.

TH

H. D. Taylor
SDJ

Circulated 28th
Box No. 88.

Recd

8

21

88

Yes: we make it a condition
virtually of our grant that
the Govt. shall determine the
amt. of refund &c.

I am doubtful about
what is meant by "other than
educat^l purposes approved by
Govt.". I take it to mean "educat^l
purposes other than those
app^d by Govt." ? but if so
why merely to "educat^l
purposes other &c" than examine

G. L.
26

Oct
27/11

Submitted that the words "other than Educa-
tional purposes approved by Government" occurring
"in Rule 54 appear to be intended to convey" ~~other~~
purposes ~~which are not~~ educational purposes "approved by
Government, that is, purposes, which are not Educa-
tional purposes."

2. In the Grant-in-Aid Code approved in
G.O. No. 395 Educational dated 16th June 1885, the
rule ran ~~as follows~~ ^{thus}:-

"That

But why are these dilemmas &
irregularities of
language not
noticed in the
office?
[G. L.]

B.

TK
27/11

Page 29 of G.O.
no. 395 Edl 2 16-6-85. B.

This is clear enough.

Rule 5 of Ch. VII on page 44
of G.O. no. 852 Edl-20-11-93 C.

Last provision
Page 17 of G.O. 852 Edl. C.
20-11-93

9.

22 98

"That in the event of any building, towards
"the erection, purchase, substantial improvement
"or repair or enlargement of which a grant may
"have been made by Government, being diverted,
"prior to the lapse of twenty years from the date
"of the issue of the grant, to other than the
"purposes for which the grant was sanctioned,
"the managers at the time of the diversion shall
"refund to Government such portion of the grant
"allowed them as shall be determined by arbitrators
" x x x ".

3. In 1893 when the Code was next revised
the rule was recast as follows:-

"In the event of a building for which a
"grant has been drawn, being diverted, prior
"to the lapse of twenty years from the date of
"payment of the grant, to other than educational
"purposes approved by Government, the manager
"shall refund such portion of the grant as may
"be determined by three arbitrators x x x ".

The then Director of Public Instruction
Dr. Duncan observed *in connection with this rule,*

"Provision need not be embodied in this
"Code to regulate the procedure to be followed
"by arbitrators in the valuation of buildings
"which have ceased to be used for Educational
"purposes."

The words underlined above seem to indicate
that the expression "other than Educational
purposes approved by Government" refers only
to purposes which are unconnected with Educa-
tion.

Education.

T.K.
2-12-07

2-12-07

2-12-07

Rec.

A grant is made to a school
solely for Educational purposes,
but these purposes need not be
general, & usually will be
particularized in the terms of the
grant e.g. for furniture, or books,
or building &c &c. The restrictions
in the use of a grant would therefore
seem to be twofold, (a) the grant
must be used only for Edl. purposes
& (b) it must be used ~~it~~ $\$$
only for those Edl. purposes
specified in the terms of the grant.
This, I take it, is what is meant
by "other than Edl. purposes approved
by Govt." & the words absolutely
exclude the use of the grant for
purposes which are not Educational.
This would seem proper.

Calender
3.12.7.

The Draft, I submit, is correct a
way inside

Long

427
427

If the draft is to stand the words sh^d be "to other purposes than educational purposes app^d by the Govt."

8757a

The Draft (May 21, being a
modification of a previous in the
S. & A. Code, is circulated for
approval of the State Bd. Notes.

Thurs the 7th. Sept -

$$\begin{array}{r} 125 \\ 6 \overline{) 750} \\ \underline{60} \\ 150 \\ \underline{120} \\ 300 \\ \underline{300} \\ 0 \end{array}$$

Edo 2000, 2353-2
6 12.7



CURRENT NO.
5118
FINANCIAL

Regd 6.12.07

The draft may, it is subd., be accepted.

Final Oct 5118-1

11-12-0

$$\frac{0.54}{9.1207}$$

Cms

9.12

16720

11120

Recd

Submitted to the Secretary.
2- The file may now be circulated to the Honble. Stokes.

RD
13.12.07

Lee
Cler
13.12.07

Further circulation seems hardly necessary in this matter. Int. have accepted but as the P.C. modifies the present Aid Code further circulation - under the strict letter of the rules - seems necessary

Circulated 14.12.07.
Box No. 17.

The Hon. Mr. Stokes Esq

HW
16.12.07

C.S.
16.12.07

Howe
16.12.07

[$\frac{E.}{12}$]
1,000--10-10-07.

READ AGAIN G.O., No. _____, dated _____ 190

” ” ” ” ” 190

READ ALSO:—

C. No. 2353, From the SP2, No. 6327, dated 20-9-1907

[illegible][illegible]

ORDER.
P. S.

No. 839, dated 17-12-1907

The Govt are pleased to direct
that the following ^{will} shall be
substituted for articles 54 and
59 of the Grant-in-Aid Code.
" 54. Claims of the Govt. If a building
" for which a grant has been drawn
" has, prior to the lapse of twenty years
" from the date of payment of the grant
" been diverted ~~into the service of Govt~~ to other than educa-
" tional purposes ^{other than those} approved by the Govt.
" the manager shall refund such
" portion of the grant as may be
" determined by Govt. If the manager
" fail to make such refund, the

2 2X 7p

" Govt. may recover the amount
" by such means as they may think
" fit to take."

59 - Claims of the Govt. If the
" event of an institution, which has
" received aid under this Chapter, being
" closed within five years from the date
" on which a grant under this Chapter
" has been drawn, the Govt. shall be
" at liberty to purchase the articles
" towards the supply of which the grant
" was given, at a valuation to be made
" by an officer to be deputed by the
" Govt. for the purpose."

2. The D.P.I. will be requested
to revise ~~thoroughly~~ Appendices Q, P, Q
and R to the Grant-in-aid Code
~~shd be revised~~
with reference to the alterations now
made in Article 54, and to submit
the revised appendices for the approval
of Govt.

7H
not 11/07
22.11.07

Chet
22.11.07

By 26/11/07

817

16/11/07

To The D.P.I.
Gazetted Part I - B of 17-12-07, p. 662
no. 157.
12/12/07

First
Return
Desp

Not approved

28

Educational Department.

C.No.2353, from the Director of Public Instruction, No.6327, dated 20-9-07

*Attentive Rys
ALB*

Cancelled head

ORDER:-
P.S.

Dr. B. B. B.

The proposals of the Director of Public Instruction are approved. The following will be substituted for Articles 54 and 59 of the Grant-in-Aid Code.

"54. Claims of the Government:-

" If a building for which a grant has been
" drawn has, prior, to the lapse of
" twenty years from the date of payment
" of the grant, been diverted to other
" than educational purposes approved
" by the Government, the Manager shall
" refund such portion of the grant as may
" be determined by, or by the majority
" of, three persons, one to be nominated
" by the Director another by the manage-
" ment and the third by the two persons
" so nominated. If the manager fail to
" make such refund he shall be bound ,
" should the Government desire to pur-
" chase it, to sell the building to the
" Government at a valuation to be determined
" by, or by the majority of, the three
" persons so nominated who in making
" their valuation shall deduct from the
" price such portion of the grant as to

them

" them may seem equitable. If neither
" of the above course is followed, the
" Government may recover the amount of
" such refund by such other means as they
" may think fit to take."

"59. Claims of the Government:-

" In the event of an institution which
" has received aid under this chapter
" being closed within five years from the
" date on which a grant under this
" chapter has been drawn, the Government
" shall be at liberty to purchase the
" articles towards the supply of which
" the grant was given at a valuation
" to be made as provided for in rule
" 54 in the case of school buildings".

2. The Director of Public Instruc-
tion will be requested to revise
thoroughly appendices O and P to the
Grant-in-Aid Code with reference to the
alterations now made in Articles 54
and 59 and to submit the revised

Appendices for the approval of
T.K.
7-11-07. *Government.*

K.R.
9-11-07.

32d
12-11-07.

To

The D. P. I.
Gazette.

First copy sent to Press.

Returned for signature.

Despatched in print.

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, DATED

REAR No.

2353 A

REAR G.O. to G. No.

REAR OF GOVERNMENT.

A
not A

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