

Home (1918) Department.

Education

Ordinary SERIES.

G.O. No.

116

DATED

1-2-18

INDEXED

[Despatch Abstract.]

Basel Mission Educational Council, Calicut.

Communicating to the Collector of Malabar the opinion of the Advocate General that the _____ is legally competent to carry on business ^{and} to hold the property of the Mission.

Home (Edn)

Memo. No. 1386 B-3 of 8/12/17

The d.o. from the Collector of Malabar dt the 29. 10. 17 with its enclosures, enquiring whether the Basel Mission Educational Council, Calicut, as now constituted is legally competent to carry on business or hold property of the mission, is forwarded to the Honble the Advocate-General and he is requested to advise Govt. in the matter.

P. H. 8/11

To,

Govt. Solicitor
the ~~Honble the Advocate~~

~~General~~ with enclosures.

Copied
P.H.B.
18.12.17

Recd to Insp
with enclos
20.12.17

8.11.17.

See
9.11.17
14.12.17

CA
16.12.17

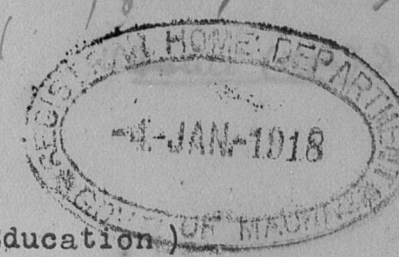
18/12/17

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O P I N I O N

200 B
C No 14, 18 3



Re: Memorandum No.1386 B-3, Home Department(Education)

dated the 18th Decr. 1917.

The Basel Mission Educational Council, Calicut, was registered under section 26 of the Indian Companies Act, 1882. Being an association for -- profit it was according to what is usual in such cases formed not as a -- company limited by shares but as a company limited by guarantee without -- any share capital. Table A in the first schedule to the Act of 1882 did not therefore become applicable by virtue of section 38 of that Act. The provisions of the Indian Companies Act, 1913 are now applicable to the -- company. Vide section 250. A company registered under section 26 is -- entitled to all the privileges of limited companies and will be subject to all their obligations with some exceptions not material for the present -- purpose. Section 147 of the Indian Companies Act, 1913, penalises the -- carrying on of business by a company if its number of members is reduced -- below seven and section 162(iv) enables a company to be wound up if its -- number of members is so reduced. Under section 41 of the Act of 1882 the original subscribers of the Memorandum of Association together with such -- other members as from ^{time} to time became members of the company became a body-corporate having perpetual succession. The Articles of Association as -- required by section 37 of the Act of 1882 stated for the purpose of registration that the company was to consist of 20 members. I think the -- Articles of Association Nos.1,2 and 8 are perfectly valid. The result is the Home Committee and the manager in subordination thereto have full -- powers to admit members. Under section 45 of the Act of 1882 and section 30 of the Act of 1913, every person other than the subscribers of the -- Memorandum who agreed to become a member of the company and whose name was entered in its register of members became a member of the company. The -- fact that there is no provision in the Articles of Association for the -- admission of members is immaterial. I presume that the names of the present members were, after they agreed to become members, entered in the --

register

3/
register of members by the manager for the time being. It was immaterial whether or not the admissions were in pursuance of the resolutions of a -- meeting of the company. It is equally immaterial whether the Home Committee did or did not authorise their admission. I however assume that the -- admission was by a manager appointed by the Home Committee or by the -- manager for the time being of the Basel Mission High School who is -- declared by the Articles to be the manager of the company in default of -- such appointment. The facts do not very clearly appear from the papers -- but probably there were either resolutions of a meeting of the original -- or surviving members or there were directions or authorisations by the -- Home Committee. On the whole, I think that the company is legally competent to carry on business and to hold the property of the Mission.

M a d r a s)
30th Decr. 1917)

S. Srinivasa Iyengar
Advocate-General

(True copy)

Henry Brightwell
Government Solicitor

HOME DEPARTMENT (EDUCATION)

From

Henry Brightwell,
Government Solicitor,
M a d r a s.

To

The Secretary to Government,
Home Department (Education)
M a d r a s.

Dated 3rd January 1918)
Received)

No. 23.

Forwarded with enclosures with
reference to the Memorandum of
Government No. 1386 B-3 dated the
18th December 1917 Home Department
(Education)

Henry Brightwell
Government Solicitor.

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1386

Regd 6.11.17

14th Dept

Home (Educ) U.O.

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3.11.17

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VTK

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Malabar Collector's Office,
Camp. Malappuram, 29th October 17.

My dear Graham,

In G. O. No. 585 (Educ) dated 20th June 1913 the Government approved of the acquisition of some land for the Basel Mission College, Calicut. The intention was that the land should be conveyed to the Basel Mission Educational Council which is registered as a company under Section 26 of the Indian Companies Act - see G.O. 1924 dated 12th December 1903, Judicial. In accordance with the agreement made between the Basel Mission Educational Council and the Secretary of State published in the Fort Saint George Gazette dated 14th October 1913, Part I-B page 541, a deed of conveyance should now be executed for the land acquired in 1914, similar to the conveyance dated 15th September 1904 for the land acquired in 1904. But the question has arisen whether there is now any legally substituted Basel Mission Educational Council.

2. The memorandum of association was originally signed by 8 missionaries of the Basel Mission who have all either died, or left India, or been interned. There is no provision in the Memorandum of Articles of Association to regulate the admission of members or the filling up of vacancies. It appears that in fact vacancies were filled by the members of the Association from time to time as Missionaries went home and were succeeded by others. The various alterations were recorded in the minutes. The present members are:

- (1) Rev. B. Luthi, Chairman of the Basel Mission in India.

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- (2) Rev. Dr. J. Meyer, Chairman of the Basel Mission in Malabar.
- (3) Mr. H. Eidenbenz, General Agent of the Basel Mission Industrials.
- (4) Rev. A. Jucker, Secular Agent of the Basel Mission in Malabar.
- (5) Rev. Dr. Burkhardt, Manager of the Basel Mission High School, Palghat.
- (6) Miss J. Meyer, Manager of the Basel Mission Girls' High School, Calicut.
- (7) Mr. W. E. Hoare, Principal of the Basel Mission College, Calicut.
- (8) M.R.Ry. Diwan Bahadur G. T. Vurgese Avl., Manager and Correspondent of the Basel Mission College.

Their appointment was recognised at a meeting of the Council held in Calicut on 19th June 1915, in accordance with ~~which~~ the following minute, ^{which} was recorded:

"All the members of the Educational Council have been interned. Communication with Government however, can only be executed by an Educational Council which is duly constituted. Since we are authorised by the Home Committee to do everything needful in managing the affairs of the Basel Mission in India, we nominate a new council in succession to that interned. According to the practice hitherto observed, the Members of the General Local Committee are ex officio members of the Educational Council. As additional members we appoint the Principal of the Basel Mission College, Calicut Mr. W. E. Hoare, and the manager of the said College Mr. G. T. Vurgese, Rao Bahadur. The latter gentleman we authorize to act as Manager in accordance with and in continuation of the resolution of the meeting on 3-3-1915."

3. Mr. Vurgese, the Manager, referred the question to Mr. Appu Nedungadi, High Court Vakil, Calicut and Mr. ^C V. Madhavan Nayar, Barrister-at-Law, Madras and they have both given opinion, that the Council as at present constituted is not legally competent to carry on business or hold property of the Mission. Copies of the reference

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sent to them and their opinions are attached. I think the question is open to some doubt and ^{if} the Government agree I should be glad ^{if} the Government Solicitor ^{could} be consulted. It will of course be possible to form a new company for the purpose of holding the land that was acquired in 1914 and has not yet been formally conveyed; but the question ^{would} then seem to arise in whom does the property acquired in 1904 and conveyed to the Basel Mission Educational Council ^{now} vest?

Yours sincerely,

J. C. ...

(Please return the attached paper.)

PAGES 8 TO 15

SUBSTITUTE FOR DETACHED ENCLOSURE.

Home (Convention) DEPARTMENT.

G.O. No. 116, dated 1-2 1918.

FORWARDED TO THE Collector of Malabar

WITH The G.O. mentioned above.
G.O. No. dated 1918.

DATE 4/2/ 1918

EXAMINER'S
DESPATCHER'S INITIALS 4/2

Home (Est.) Department.

The management of the educational institutions formerly under the control of the Basel Mission is now vested in a committee temporarily constituted for the purpose and approved by Govt.

(J) - vide page 8 of Govt. No. 253 Est. & the 8-3-16. The period of management by this committee has been extended

(L) up to the 31st March 1918 - vide Govt. No. 116 Est. & the 13-2-17. The Govt. have also prohibited the payment

of grants under chapters VIII & IX^(*) of the Grant-in-aid Code to the Basel Mission institutions

among others under the management of hostile missions ^{so long as their eventual ownership and management of the institutions were in question.} Govt. No. 462 Est. & the 28-4-16.

2. The question raised by Mr. Evans is, however, a distinct one and is entirely a legal question. Submitted that it may be referred to the Advocate-General for advice. A draft memo. is submitted for approval. If approved, it may be forwarded to the Public (War) and Home (Judicial) Depts. for acceptance or remarks.

8.11.17
9.11.17

The question is not merely a legal one. ~~The~~ The Basel Mission Est. Committee consists

(J) vide Govt. No. 253 Est. & 8-3-16 has only a temporary tenure and has been specially created to ~~oversee~~ keep the institution going. The principle on which furniture

(*) Building of furniture grants.

Building grants have been refused to these missions will hold with greater force to the ^{permanent} transfer of property to the Mission. The land was acquired for the extension of the College. Apparently no steps had been taken to build on this site before the beginning of war. Under existing conditions no grant will be given to the Mission for building on this land & without such a grant building operations will not be commenced. There is therefore no need to take any action in the matter of conveying the land to the Mission. The matter may rest where it is now. After the close of the war the future of the missions will be definitely settled & the question of conveyance may then be taken up.

As regards the land acquired in 1904, it was conveyed to the Mission in the same year and should have vested in the Mission authorities as other properties acquired by them by private negotiations & other means. Obviously these properties are under the management of non-alien missions or specially created temporary councils.

A

Q 1

Public (war) may see the file & offer any remarks on the questions.

Q
12.11.17

A. Yes. And we may add that the present Council is not a legal body unless when it takes steps for registration, but land can be conveyed

B. Referred to Public. There must be considerable property of this nature which it may be desirable to determine the ownership of before the war is closed

11/11/17

Public

Public Dept

The question referred to this Dept is in whom the land acquired in 1904 and conveyed to the Basel Mission Educational Council in the same year should now be held to vest, it having been shown that the Council is now practically defunct.

The Council appears to have occupied a curious position. It had a distinct

CURRENT NO.
4668
P. (war)

Ref 15.11.17

Go 1924 Ind N.
17.12.03

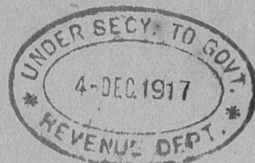
Vide the Memorandum
of Association at p. 11 ante

Vide Article 1 at p. 13 ante.

existence as a Company but its functions were merely those of an executive body subordinate to the General Mission. The Council was to ~~be~~ administered by the Home Committee of the Basel German Evangelical Mission (it is worthy of note that the mission is frankly described as 'German' and in subordination to that body). The properties acquired by the Council legally ~~vest~~ vest in the Council itself but practically in the General Mission.

2. Proposals are under consideration for the taking over of the affairs of the General Mission by some new and unobjectionable agency and it will be the duty of any such agency to ~~take~~ take steps to secure the possession of the property held by the Council. Neither the General Local Committee looking after the mission here at present - vide paras 9 & 10 of the Reference at pp 4 & 5 ^{ante} and the lawyer's opinion (d) at p. 7 ^{ante} - nor the Committee temporarily looking after the schools - vide para 2 of fo. 253 Ed. 8 & 3.16 have any legal existence, and therefore no authority, in law, ~~of~~ over the affairs of the now defunct Educational Council. The mission authorities here are apparently

J



vide para (b) at p. ante

going on just as if they had the power of the Home Committee over the Council.

3 The legal advice taken by Mr. Vurgese is to the effect that 'a new Association should be formed with the express object of taking over and managing the affairs of the B. M. Educational Council now practically defunct. This is what the agency taking over the general mission (including its evangelic as well as its educational activities) should do, and may be left to do.

The Case may be returned to Home (Edn).

I think it wd. be as well to clear up the legal position of the Adv. Genl. though
22.11.17
24.11.17
Mr. Secy. - Rev. (in charge of the)

26.11.17

Home (Edn) no

Pub. no. 4668W-1

26.11.17

Rev G 879 Rgd 4-12-17

Edn no. 1386 B-2 3.12.17



Home (Edn) Department

The file may be forwarded to the Revenue Dept with reference to the last sentence in the Chief Secretary's note

Secretary's note 28.11.17

NOTES.

13

To Under Secretary.

Submitted. The file may be perused and returned to Home (Edw) Dept.

S for perusal

PR
7/12/17
10.12.17

for 10.12.17
The 11.12.17

Home. Educ. do

86 (1)
11/12

Rev. No. NO 879 G/17-1

13-12-17



Home (Edw) Department.

It is for consideration whether the reference to the Advocate-General suggested by the Chief Secretary in his note on the previous page may be made. If so, the draft memo. below is for approval.

14.12.17

14.12.17

16.12.17

18/12/17

[memo. no. 1386 B-3 of the 18.12.17]

pages 2-4 Cf.

[C.N. 14 B]. From the Govt. Solicitor no. 23 of the 3.1.18.

Submitted that the Advocate-General's opinion may be communicated to the Collector of Malabar. A draft order is submitted for approval. It may be sent to Public (War) for perusal before issue.

5.1.18

The file may go again to Rev & Public.

Apart from the legal question, please see the Secy's note (para. 1) on page 18 above.

CA
9.1.18

MM
10/1/18

Public (war)
Rev

Public Sept

The Advocate General considers that the Basel Educational Council is legally competent to carry on business - vide the last sentence of his opinion on p 36F. This disposes of the questions raised by Mr. Evans on pp 1-3 ante.

The case may be passed on to Rev.

J
21.1.18

Public No 130W-1
21-1-18.

Rev as
18.1.18
COM
19.1.18

Rev G No. 95G
22-1-18

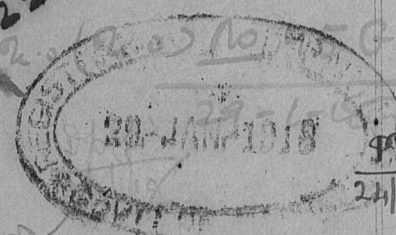


Revenue Department

To Under Secy

Submitted for perusal.

CLB
22.1.18



24.1.18 Home. Secy
S
25/1/18
28/1/18

The file may go to the
 Public (War) and Revenue Dept
 please see notes on the previous page. The draft
 order already submitted is for approval.

30.1.18
 CR
 30.1.18

CR
 31.1.18
 1/2/18

Revenue Department

Submitted for

for perusal

Revenue Department

Submitted for

for perusal

When given for copying
When copied
When examined
When signed

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READ AGAIN G.O. No.
191

DATED

PRINT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

- A = Copy in full.
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