

Law Sanction (1926) Department.

Miss SERIES.

G.O. No. 173

DATED

4-2-26

[Despatch Abstract.]

Suit:-

Recovery of grants in aid - George Middle School,

Kalladaikurchi - Second Appeal - Sanctioned.

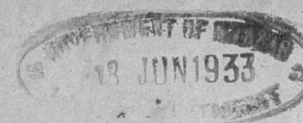
BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
49.	304	8	3.3.25				
"	1408	8	17.11.22				
"	984A	8	22.8.22				
"	1241	8	6.9.21.				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Memo: 376 B-1 17.2.26.							

Law (General-Education) DEPARTMENT.



CURRENT No. 23302B

Received 192 Registered 2.12 1925

Subject.

Law (Edn)

Submitted for perusal.

Proposals from the collⁿ of Tinnevely on the question of preferring a second appeal may be awaited.

ENCLOSURES.

No.....

Spare copies.....

cu
4.12.25
879
5/12.25
No. Tin.15-456

FORT ST. GEORGE,

Dated the 1st December 1925.

FROM

THE ACCOUNTANT-GENERAL, MADRAS,

To

The Secretary to Government,
Law (General-Education) Department.

STX

Reference: G.O.No.984-A, Law Education dated 12-8-22 regarding recovery of a sum of Rs.1709 from the Educational Society, Kallidai-kurichi.

The Collector of Tinnevely in his letter No. F-8-O.R 3-24 dated 14th November 1925, reports that the appeal filed on behalf of Government was also dismissed by the Additional Sub Judge, Tinnevely and that copies of judgment and decree have been applied for, on receipt of which is to be decided the question of preferring a second appeal on behalf of Government.

As the transaction has been outstanding in the books of this office for a considerably long period, the above fact is brought to the notice of Government with a view to secure early settlement.

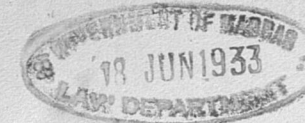
Asstt. Accounts Officer.

R.S. 1/12

Law (Educational)

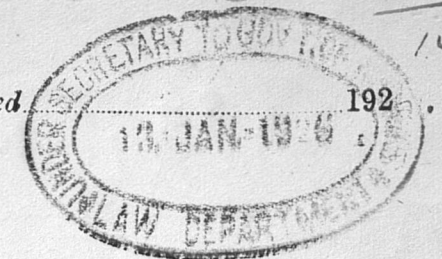
DEPARTMENT.

C.F. 81



CURRENT No.

Received 192 Registered 192



Subject.

Suits (Tinnevelly) - Tinnevelly Additional Sub Court- A.S..

97/25- Recovery of grants-in-aid- second appeal- Sanction-Collector's letter submitted.

ENCLOSURES.

No.

Spare copies

Endt. No. A. 199.

Station Madras. Dated the 11th January 1926

From

W. Scott Brown Esq., I.C.S.,
Secretary,

Land Revenue. and
The Board of Revenue Revenue Settlement, etc.
Separate Revenue.

H.A.B. Vernon Esq., I.C.S.,
Commissioner of Land Revenue.

Resolution

Reference.

Read the following paper:-

Letter from A.Mc.G.C. Tampoe Esq., Collector of Tinnevelly,

rr 3 5 mpa A.2-4978-22 dated 5th January 1926.

Endorsement.

Submitted to Government for orders.

W. Scott Brown
Secretary.

To the Secretary to Government, Law (Educational) Dept., with
enclosures and records.

Copy to the Collector of Tinnevelly.

J.G./111.

11/1/26

P.T.O.

3
-2- 3
Letter from A.Mc.G.C. Tampoe Esq., Collector of Tinnevelly,
No.A.-2-4978-22 dated the 5th January 1926.

Suits- Recovery of grants-in-aid-George Middle School- Kallidai-
kurichi-Ambasamudram-District Munsif Court- O.S.63/23-Appeal-
Tinnevelly Additional Sub Court- Dismissal- Report regarding second
appeal.

(M)
Reference:- Board's Endt. No.A.1145- dated 27-2-25 and G.O.
No.304 dated 3rd March 1925.

(M)
The appeal preferred by Government against the decision of
the District Munsif, Ambasamudram, in the District Court, Tinnevelly
was transferred to the Additional Sub Court, Tinnevelly and dis-
missed with costs. Five printed copies of the judgments of the
original and first appellate court one of each set being a certi-
fied copy and a certified and 2 typed copies of the decree of the
first appellate court are enclosed.

2. The local Government Pleader considers that this is a
fit case for appeal to the High Court and has given the following
opinion. The judgment of the District Munsif was against the
Government and the Government had to appeal against that judgment.
The same reasons would apply now for preferring an appeal against
the present judgment also. The points involved are of great import-
ance and are all questions of law.

The learned Sub Judge has raised special pleas for dis-
allowing the Government's appeal. Questions which are not covered
by the issues framed by the lower court have been raised by him
and decided against the Government.

The view of the Sub Judge that the conditions under
which the Management of the School took grants from the Government
would not bind subsequent managers seems to be quite perverse. ||
An earlier grant-in-aid code has been referred to by the Sub
Judge though the code relating to the period of the present grant
was also placed in his hands.

D.W. 1, the correspondent of the school himself admits
in his evidence that by what they call the nationalization of the

school

4
-3- 4
school they have made it free of all Government control. This
aspect of the case has not been adverted to at all by the
learned Sub Judge.

The question whether the reduction from the total grant
of only one rupee by the Government was proper or not and
whether the Civil Court can question the propriety of the
action of the Government in this matter was never in issue.

But the learned Sub Judge has dealt with this question also.
The Government originally ordered a refund of the whole grant
but it seemed to me that such a claim may be technically open
to objection, as rule 55 says that the Manager shall refund
such portion of the grant as may be determined by the Govern-
ment and a portion cannot be said to include the whole. It
was on this view that the Government subsequently modified
their order by reducing the claim by one rupee. The determi-
nation of the portion to be refunded is a matter left to the
Government and it does not seem to be that it is justifiable
for a Civil Court to sit in judgment over that determination.

In paragraph 10 of the plaint, it has been alleged
that the school objects to the valuation of the articles
of furniture and this allegation is not traversed by the
defendant, nor was it the subject matter of any issue. Under
such circumstances the learned Sub Judge was not justified
in finding that there was no compliance with rule 59 as re-
gards the valuation of the articles of furniture-vide paras
16 and 17 of the judgment.

On the whole therefore, I am of opinion that a second
appeal in this case is quite necessary!

3. I agree with him and beg to point out that the case
has an importance quite apart from the money involved. It
is not unlikely that we may have similar instances in future
and a decision of the High Court will be of value either in
modifying tendencies of a similar nature in other High schools
or in modifying the conditions under which future grants are
likely to be made by Government.

4. The connected records are submitted herewith as

per list.

List of records.

1. Confidential file containing 53 pages beginning with the date 23rd June 1921.
2. D.M.C. No. 581 Ty./20.
3. -do- 206 Ty./18.
4. Dis. No. 783 Ty/18.
5. Dis. No. 146 Ty/17.
6. Collector's D.Dis. 6412/21.
7. Disposal on C. 344/20.
8. R.C. 560 Ty 21/5-4-22.
9. Collector's 2214-22 B.3
10. D.No. 2488/28-4-13 (Department of Public Instruction)
11. D.No. 6291/11-9-08. (-do-)
12. Collector's L.Dis. 7351/21.
13. Copy of Exhibits A to Q. 1.
14. Copy of depositions of P.W. 1.
15. -do- D.W. 1.
16. Copy of plaint O.S. 63/23
17. Copy of issues (O.S. 63/23)
18. Copy of written statement on behalf of the defendant.
19. Copy of decree in O.S. 63/23
20. 5 printed copies of the original and appellate judgments and a certified and 2 typed copies of the appellate decree.

[C-91B]

Ent: 9/1/21 8/10/26

Suit - Recovery of
grants-in-aid - George Middle
school, Kallidaikurichi -
Ent: from the Board of
Revenue (L.R.), N. A. 199 &
11-1-25 -

Referred to the
Govt. Pleader, Madras, who
is requested to advise ^(the Govt.) at
an early date whether an
appeal to the High Court
against the decree of the
Additional Subordinate
Judge of Tinnevely in
Appeal suit N. 97 of 1925
on his file is likely to
be successful.

DESPATCHED

16 JAN 1926

cur
15.1.26

8x
15.1.26

A
16/1

The Govt. Pleader, Madras
(with cf. and records in
vsl. to be ret. with reply)

Remind after 3 weeks.

note: Both the
Govt. Pleader
and the C.A. of Tinnevely
advise

advise the institution of
the second appeal. As the
appeal is to the High court,
the advice of the Govt. Pleader,
Madras, may first be
obtained.

Appeal time expires
on 4-3-26.

cvv
15.1.26

8/11
15.1.26

25
Mp. 3-5 CF

Paragraph 3 on p. 4 CF

CF. 30

Judicial

DEPARTMENT.

Received

192

Registered

192

Subject.

Suit - recovery of grants-in-aid-George Middle
school, Kallidaikurichi - Requesting to advise whether
an appeal to the High Court against A.S. 97/25, Addl.
Sub Court, Timevelly, is likely to be successful.

ENCLOSURES.

No.

Spare copies

Of No. 4.

Station Madras. Dated the 25th January '26 192

M.R. Ry.,

From (Name) Rao Bahadur C.V. Anantakrishna Ayyar avl.,
(Designation) Ag. Government Pleader,
Madras.

To The Secretary to the Government of Madras

Law (Education) Department.

Sir,

With reference to Government endorsement No. 91 B-1,
Law (Education), dated the 16th instant, I have the honour
to submit herewith the following

Opinion:-

The Educational Society in management of the school
at Kallidakurichi having passed a resolution to conduct
the school free from Government aid and on national lines,
the Government passed orders on 6-9-1921 as follows:- "It
has been reported that the Educational Society of

Kallidakurichi

27 9

Kallidakurichi managing the George Middle School in that locality have decided to conduct the school free from Government ~~understand~~ aid and on national lines. These the Government understand ~~and~~ are not the lines approved by Government and laid down in the Madras Educational rules." The Government accordingly directed the recovery from the defendant of the building grant and furniture grant made by the Government, less particular amounts mentioned in the Government Order. The suit is to recover a sum of Rs. 1708/- being the balance of the building grant and the furniture grant, not refunded by the defendant. Both the Lower Courts have dismissed the Government's suit. The Subordinate Judge's judgment in appeal goes ^{very much} further than the judgment of the District Munsif and decides against the Government various points either not touched by the District Munsif ~~or~~ properly enquired into in the first Court. In considering the question whether a second appeal is likely to be successful, I think we have to get over the findings of both the lower courts on the question whether the conditions of the grant have been broken by the defendant in the case. Because, if the findings of the lower courts on this point be upheld by the High Court, there will be no necessity to go into the various ^{other} questions raised by the Subordinate Judge on appeal.

(put up)

The first claim made in the suit is with reference to the return of the furniture grant. The plaintiff would be entitled to a return of the same only if it is proved that an institution which has received aid under this chapter is 'closed' under rule 59 of the Grant-in-aid Code of 1915. Both the Courts find that the school has not been closed, but substantially all sorts of activities with

which ~~was~~ ^{are going} with the school ~~connected~~ before ~~or~~ on even now. The circumstance that instruction is given on some more fresh subjects is no ground for saying that the institution is 'closed'. It seems to me that this portion of the plaintiff's claim for the refund of the furniture grant is not at all likely to be successful if raised in second appeal.

As regards the claim for refund of the building grant, the matter is not so simple. The Government would be entitled to a refund of the building grant only if the building or the land for the construction or acquisition of ~~it~~ which grant had been made has been diverted to purposes other than educational purposes approved by the Government." The onus of proving that an occasion for refund has arisen is on the Government, the plaintiff. Both the lower courts held against the Government on this question. In their order Ex. H of 6-9-1921, the Government stated that the resolution passed by the defendant ^{was} to conduct the school free from Government aid and on national lines. These, the Government understand, are not the lines approved by Government and laid down in the Madras Educational Rules. Evidence has to be let in to prove that the building has been diverted to purposes other than education ^{other} purposes approved by Government. The District Munsif remarks in para 8 of his judgment as follows:- "Except this allegation in the plaint, there is no ~~no~~ evidence adduced by the plaintiff to show what are the national lines. Further the plaintiff must show what are the lines adopted in the defendant's school and that ~~though~~ those lines are not approved by Government. There is no evidence for this either." The appellate Court confirmed the said finding.

I have got more to say against the observations ~~of~~
and reasonings of the Subordinate Judge with reference to
many of the other points that he discusses in his judgment.
I have not diverted to them now because, unless we succeed
on the main question discussed by me above, the other
points would not really arise in second appeal. If, as
the Government originally contemplated by passing orders
in 1921 ~~that~~, the said national lines were not lines
approved by Government, ^{and} evidence ~~had~~ been let in of
diversion by the defendant to purposes not approved by
Government,

Ag. Government Pleader.

13 (a)

Law (Ed) Dept

Suit - Recovery of grants-in-aid -

George Middle School, Kallidankurichi

- second appeal.

pp. 3-4 CF [C. 91B] From the coll. of Vinnerelly, N. A. 2-4978
22.5.1.26

p. 2 CF Endt: by the Bd. of Rev., A. R., N. A. 199
11.1.26

p. 26 CF [Endt: to the Govt. Pleader, Madras,
N. 91B-1 16.1.26]

pp. 26-30 CF [C. 226B] From .. As .., N. opn. 4 25.1.26.

p. 20. of CF

The Govt. of Pleader is doubtful whether a second appeal in the above suit ^{will} ~~is~~ be successful - please see his opinion on pp. 26-30 CF. The time for ~~proffering~~ ^{preparing} the appeal expires on 4.3.26.

The file may be submitted for orders to M₂ and C₁.

evr
28.1.26

8th
29.1.26.

Q
29.1.26

I think an appeal may be preferred. It is a pity evidence was not let in as to the exact manner in which there was "diversion" - but many of the observations of the Subjudge & his findings on most

1. 2.

$$\mathbb{M}_2$$

$$C_1$$

The Soul of Newton Consider it is
a fit case to appeal; ~~relative to the~~
~~interrelation of mind~~

The Ctr. Aug within.

The Sole Juke was evidently long
in drying and water not cured
in the case & things put away
about 1820.

Yrs

I agree that the reasoning of the judge is faulty - but doubt the chances of success. I however do not object to the filing of the appeal.

CBZ
3/2/26

A draft order is submitted for approval.

$$\frac{8/9}{3.2.26.}$$
$$\frac{a}{3/2}$$


	Date.	Initials.
When received for Fair-copying.		
When copied	4/2/76	h/j
When examined	4/2	h/j
When signed		
When despatched		

Suit--Recovery of grants in aid--George
Middle School, Kalladaikurchi--Second
Appeal--Sanctioned.

READ AGAIN G.O. No., dated 192

" " " " "

192

READ ALSO :—

C. No. 91B From the Board of Rev. L. R. & S., No. A 199, dated 11-1-1926

Government Pleader Madras, Opp. 4 25-1-1926

” ” ” ” ” ” ” 192

ORDER.

Mis.

No. 173, dated 4-2- 1926

The Government consider that an appeal should be preferred against the decision of the Additional Sub-Judge, Tinnevely, in A.S.No. 97 of 1925 on his file. The Government Pleader, Madras, is requested to take steps to file the appeal.

$$\frac{819}{3 \cdot 2 \cdot 26}$$
$$\frac{a}{3r}$$

To The Govt. Pleader, Madras
(with records as per list) *sent copy to Secy. to Govt.*
The Board of Revenue (L.R. & S.)
The Collector of Tinnevely
The D.P.I.

DESPATCHED
4 FEB 1926

1925

DEPARTMENT.

CUTTINGS FROM NEWSPAPERS.

1. Name of Paper *Madras Mail*
 2. Published at *22/14/1925*
 3. Dated *6/14/1925*

Law (em)
M
10.11.25

EX-GOVERNMENT SCHOOL

ECHO OF "NATIONALISM"
 (From our own Correspondent)

TINNEVELLY, SUNDAY.
 Judgement has just been delivered by the Additional Subordinate Judge of Tinnevely, (Mr. K. S. Lakshminarasu Iyer) in an appeal preferred by Government against the order of the District Munsiff of Ambasamudram dismissing a suit filed by them against the Educational Society, Kallidaikurichi, for the refund of a building grant of Rs. 12,151.
 The facts briefly were as follow: In 1916 Government made a grant of Rs. 12,151 for constructing a building for the George Secondary School at Kallidaikurichi, but five years later the Educational Society which took upon itself the management of the school changed the name of the institution into Tilak Vidyalaya and resolved to conduct it on national lines and independent of Government aid. Under Rule 55 of the Grant-in-Aid Code, if a building for which a grant has been taken is diverted for purposes other than educational within a period of forty years, Government can demand any portion of the building grant to be refunded to them. The case for Government is that the grant was taken subject to this condition and that the resolution of the Educational Society amounted to a diversion of the building within Rule 55 of the Grant-in-Aid Code. They therefore directed that the full amount Rs. 12,151 minus a rupee should be refunded to them. The Manager of the school denied liability but with a view to avoid unnecessary dispute paid the Government a fortieth portion of the grant. The suit is to recover the balance.
 In the course of a lengthy order, the Judge held that no breach of any condition has been proved. There was no allegation in the plaint as to what act or event took place in the building to show that it was diverted within the meaning of the rule. The evidence showed that the building was still used for educational purposes, and that the subjects previously taught are still included in the curriculum. Only three educational subjects have been introduced, the Ramayana, the Koran and spinning, which furnished religious and vocational education. Spinning as a vocational subject was permitted in recognised schools.
 As regards the allegation of diversion made by Government the Judge observes: "Not receiving Government aid cannot affect the use of the building. If the management gets sufficient money from fees or endowments to meet the expenses of the school, they may not ask for aid and that cannot be a diversion. Working on national lines also cannot be taken as a diversion, because in the matter of the education of the na-

tion, the Government is not and cannot be said to be less interested than the nation itself. It was stated that the Director withdrew the recognition of the school and so its further continuance should be deemed to be a diversion. The order of the Director was after Government directed the recovery of money. So, it cannot justify the previous order. Nor can it be that the Director's action affected the purposes for which the building was utilised. Even granting there was a diversion they cannot demand the whole amount; they must use their discretion and fix a reasonable amount. Demanding the whole amount less one rupee is not a proper exercise of discretion. The amount paid by the school is a fairly reasonable amount and they cannot demand more.
 The Government also demand that certain furniture purchased by the school with their grant between 1916 and 1921 should be sold to them for Rupee one or such value as the court may fix. For the use of the school, furniture was purchased and Government contributed part of the value. Under Rule 59, if in case the school is closed within 5 years of the grant the Government can demand the furniture to be sold to them at a price to be fixed by an officer deputed by them. The school has not been closed, it is still working and the contention made by Government that the resolution of the Education Society amounted to a closure of the school is not tenable. Even granting that the school was closed and that the society was liable, no valuation has been fixed by an officer deputed by Government under the rules. The fixing of the price as rupee one cannot be accepted. The furniture has not been detailed in the plaint nor its condition described to enable the court to fix its own value. Under the circumstances the defendant cannot be pursued for purchase of the furniture by Government.
 The appeal is dismissed with costs.

Law (em)
Submitted
P.V.M.
16.11.25
16.11
5

V.T.M.
17.11

When given for copying _____
 When copied _____ } 192
 When examined _____
 When signed _____

READ AGAIN G.O. No. _____, DATED
 192 .

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT ... A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

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

N.B.—
 A = Copy in full.
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