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[Despatch Abstract.]

The Tanjore Jubilee Fund. of 1887

Com^d to the Collector of Tanjore the opinion of
the Advocate Genl as to the best method of car-
rying out the Charitable Trust.

14/6/97.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	CA ^o 1222/97						

Government {1897} of Madras. EDUCATIONAL.

Recd.

Enclosures

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1897.

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G.O., No. 335, 14th June 1897.

JUNE.

The Tanjore Jubilee Fund of 1887.

Communicating to the Collector of Tanjore the opinion of the Advocate-General as to the best method of carrying out the charitable trust.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

READ—again G.O., No. 111, Educational, dated 25th February 1897.

READ—also the following paper:—

From the Government Solicitor, Madras, dated 18th May 1897, No. 314.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 17th May 1897:—

OPINION.

[Re the Tanjore Jubilee Fund—vide G.O., No. 111, dated 25th February 1897.]

It is not possible to answer *seriatim* the several questions raised by the Collector of Tanjore in his letter, dated 14th January 1897, without further and fuller information on various points; but, considering the lapse of time since the Jubilee fund was raised in 1887, the informal and irregular manner in which meetings in this country are generally convened for raising funds for objects of public utility and the loose and inartistic manner in which the proceedings of such meetings are usually conducted and recorded, I can say from experience that further authentic information will hardly be now available. In fact, it seems doubtful whether there is any authentic record of some of the proceedings referred to in the correspondence. Under the circumstances it seems to me that the only effectual mode of carrying out the charitable trust in the present case, which will steer clear of all difficulties, is to take action under the Charitable Endowments Act VI of 1890 and apply its provisions for vesting the fund in the Treasurer of Charitable Endowments, settling a scheme for the administration of the Trust fund and appointing by name or office one or more persons to administer the Trust fund.

The execution of a formal instrument of trust as proposed by the Collector will not only require the co-operation of all the persons concerned, but will be attended with greater difficulties than in taking action under the Charitable Endowments Act. Even if the former course were practicable in the present case, which I very much doubt, the latter course will, for obvious reasons, be more satisfactory and in a legal point of view decidedly more effectual.

2. The provisions of the Act can be applied by Government only on application made to it under section 6, sub-section 1, clause (a), by the persons acting in the administration of the trust, or by a majority of them, whose concurrence is also required for the settlement of a scheme under the Act for the administration of the trust. Clause (b) of the sub-section 1 of section 6, under which clause the application will have to be made by *all* the persons proposing to apply a fund in trust for a charitable purpose, is not the one applicable to the present case, inasmuch as the fund in question is already held in trust for a charitable purpose. It becomes therefore necessary to consider who are to be regarded in the present case as persons lawfully entitled to make the application under section 6, sub-section 1 (a) of the said Act. The proceedings forwarded to me show that there are four bodies or sets of persons whose legal status, with reference to the fund in question, has to be considered, besides the Collector in whose sole name apparently the fund now stands.

They are (1) the Jubilee Committee appointed at the meeting of 2nd February 1887, including such as may have been added thereto subsequently; (2) the five trustees appointed at the meeting of the 20th October 1887; (3) the two persons in whose names the fund was invested in March 1888; and (4) the executive committee appointed at the meeting of the 27th July 1895.

3. As regards the Jubilee Committee, which is the most important body, there are two conflicting versions both as to its composition and its powers. In the printed notes of the deed of trust and in a paper purporting to give a history of the Tanjore Jubilee Fund—both prepared apparently by Mr. Bilderbeck—it is stated that the committee consisted of the twenty-seven persons named therein and “some other mirasidars and merchants.” It is also stated in the said papers that the meeting of the 2nd February 1887 authorised the committee to collect and receive subscriptions for the Jubilee memorial, the form and nature of the memorial being left to be determined thereafter; but on reference to the printed paper which purports to be a record of the entire proceedings of the 2nd February 1887 with the signature of the chairman, I find that twenty-seven gentlemen alone were appointed members of the committee though they were given power to add to their number, and that the committee was authorised not simply to collect and receive subscriptions as stated by Mr. Bilderbeck, but also to carry out the objects of the meeting.

I also find that the form of the memorial was not, as stated by Mr. Bilderbeck, left to be determined thereafter, but that the resolution itself settled that it was to be an industrial school if the whole district joined in one central movement, the station in the district where it was to be located being alone left to be determined thereafter. Out of the twenty-seven names which appear in the print of the proceedings of the meeting of 2nd February 1887, six do not appear in the lists given by Mr. Bilderbeck, and in lieu thereof there are six other names which are not to be found in the former list. The meeting is only a self-constituted one without any legal character, and its proceedings in effect amount to no more than a proposal made by such meeting to the people of the district for commemorating the Jubilee in Tanjore by establishing an industrial school, and a recommendation that the gentlemen constituting the committee appointed by the meeting are fit and proper persons to appeal to the Tanjore public for donations towards the proposed charitable object, to collect such donations as may be made by charitable gentlemen in response to such appeal and, with such funds, to carry out the said object. I presume that the members of the committee as gentlemen enjoying the confidence of a meeting, presumably an influential and representative one, invited donations either directly or through agents for carrying out the resolutions of the meeting, and that donations were accordingly paid by various gentlemen in the district. Each donor by such payment becomes author of the trust to the extent of his donation and entrusts the persons constituting the committee with power to carry out the charitable purpose. When the donations are all received, the resolutions of the meeting of the 2nd February 1887 are, in effect, unanimously adopted by all the donors and in law a trust is created by all the donors jointly, and the gentlemen composing the committee are constituted by the donors joint trustees or persons entitled to act in the administration of the trust. Another possible view that may be suggested on the authority of *Strickland v. Weldon*, L.R. 28, Ch. dn. 426, is that the committee should be regarded as agents of the subscribers or donors, and if that view were taken in the present case, the only practicable course would be to institute proceedings under section 539 of the Civil Procedure Code. The decision in that case is that of a single Judge (Pearson, J.) and the facts are not fully set forth in the report. Whether upon the particular facts of that case the decision is right or wrong, it seems to me that in the present case the committee cannot be regarded as mere agents of the donors, and the proceedings are only consistent with the view that trustees were constituted for carrying out the trust. I am therefore of opinion that the twenty-seven gentlemen who were appointed as members of the Jubilee Committee and other gentlemen, if any, who were subsequently added by the committee should be regarded as the trustees of the fund or persons entitled to administer the trust.

4. In some of the papers it is apparently assumed that the Indian Trusts Act II of 1882 applies to the trust in question. This is not so, because by section 1 of the Act public or private, religious or charitable endowments, are expressly exempted from the operation of the Act. No doubt many of the provisions of the Act may be referred to as a succinct and authoritative enunciation of the general principles of law applicable to all trusts, but the sections which prescribe the statutory mode of creating trusts of immoveable and moveable property cannot be applied to the present case in determining whether a valid trust has been created or not.

5. The next point for consideration is what is the legal effect of the appointment at the meeting of subscribers held on the 20th October 1887 of five trustees, viz., the Collector of Tanjore for the time being, the Principal of the Kumbakonam College for the time being, and Messrs. S. A. Saminatha Iyer, P. Thumbusamy Mudaliar and K. Ranganatha Row. It appears to have been intended that these persons were to have the administration and management of the trust, and that the Trust funds should be vested in them. The meeting purports to be a meeting of subscribers, and among those whose names are noted as having attended it, there are seven who are members of the Jubilee Committee as originally constituted at the meeting of 2nd February 1887. I presume that the number of donors to the fund was very considerable, but that the number that attended was only a small proportion thereof. Unless notice had been given to each subscriber individually, the meeting cannot be regarded as a meeting of the subscribers. It does not appear whether the notice, if any, convening the meeting mentioned the purpose for which the meeting was convened. Be this as it may, the proceedings, except possibly in so far as the town of Kumbakonam was selected for the purpose of establishing the industrial school, can amount in law to no more than an expression of the wishes of a number of subscribers who attended the meeting, that the industrial school should take the form of a model farm and technical classes to be associated with the Government College in that town, and that the five gentlemen already named should be appointed as a committee of trustees for the purpose. If the trust had been already created and the Jubilee Committee constituted trustees to carry out the objects of the trust, it is difficult to see what powers the donors had to appoint new trustees. It is to be observed that, after a trust is once constituted without a power of revocation being reserved, it is not so much the donors as the beneficiaries that have any voice in the administration, application or diversion of the Trust fund. Having regard specially to the large number and composition of the Jubilee Committee, it will not be unreasonable to construe the resolution appointing the Jubilee Committee, which resolution must be assumed to have been endorsed by every donor as authorising the said committee to delegate their office to a select and smaller body of trustees—*vide* Lewin on Trusts, Eighth Edition, p. 254, and Indian Trusts Act, section 47. If the five trustees had been appointed at a meeting of the Jubilee Committee, or if their appointment at the meeting of the subscribers was communicated to the several members of the Jubilee Committee as it then stood and approved by them, the trustees so appointed may be regarded as the persons entitled to act in the administration of the trust within the meaning of section 6 of the Charitable Endowments Act, especially as the two persons in whose names the fund was invested in March 1888 may under the circumstances be regarded as holding the same on behalf of these five trustees; but as the validity of their appointment as trustees is doubtful for the reasons above stated, it will be advisable, in view to avoid all doubts, that both the Jubilee Committee and the Committee of Trustees should take action under section 6 of the Charitable Endowments Act.

6. As regards the appointment of the Collector of Tanjore and the Principal of the Kumbakonam College as ex-officio members of the Committees of Trustees, I may mention that the description should be taken simply as identifying two of the trustees. It only means that the individuals who for the time being are respectively the Collector of Tanjore and Principal of the Kumbakonam College are to be two out of the five trustees and that when they cease to fill those offices they also vacate the office of trustee, being succeeded by their successors in the offices of Collector and Principal respectively. They can be trustees only in their private capacity as citizens and not in their official capacity, though, as matter of departmental discipline, they may

have to obtain the consent of Government to act as trustees. No official in his official capacity as representing the Government can at all be trustee, for, according to the dictum of Lord Justice James in *Kinlock v. Secretary of State for India in Council*, L.R. 15, Ch. dn., p. 1 at p. 9, neither the Government of India itself nor the Secretary of State for India in Council is capable of being a trustee.

7. As regards the question of disclaimer referred to in Mr. Bilderbeck's letter, no doubt a trustee may disclaim his office within a reasonable time before acceptance, in which case the trust property vests in his co-trustees from the date of the creation of the trust (*vide* Indian Trusts Act, section 10); but it is unnecessary to dwell further on this point as it does not appear that any one has disclaimed.

8. As regards Messrs. S. A. Saminatha Aiyar and K. Kaliyanasundaram Aiyar in whose names the fund was, under the sanction of fourteen members of the Jubilee Committee, provisionally invested in March 1888 pending the transfer of the funds in the names of the five trustees, and who, I believe, have since transferred the funds to the Collector, they are mere name lenders or rather passive trustees appointed provisionally, and not persons acting in the administration of the trust within the meaning of section 6, sub-section 1 (a).

9. The last body, viz., the Executive Committee appointed at the meeting of subscribers held on the 27th July 1895, was apparently intended to be in supersession of the trustees appointed at the meeting of the 20th October 1887. It was at this meeting of subscribers that a student's hostel was substituted for a model farm and technical classes which were resolved upon at the meeting of the 20th October 1887. My observations as to the meeting of subscribers held on the 20th October 1887 are applicable with greater force to the proceedings of the meeting of the 27th July 1895. The scheme for the establishment of a model farm and technical classes having been found to be impracticable for various reasons which are not apparent from the papers sent to me, the proceedings of this meeting can only be regarded as an expression of the wishes of a number of donors—that under the altered circumstances the charitable fund should be devoted to a students' hostel at Kumbakonam, and that a new committee of trustees under the style of "Executive Committee" be appointed. At the meeting held on 28th November 1896 of the trustees appointed at the meeting of the 20th October 1887, it was resolved by the three trustees who attended the meeting to transfer the fund to the executive committee. Though this resolution was subsequently concurred in by one of the two trustees who did not attend the meeting, it was dissented from by the other trustee, Mr. Bilderbeck, and the resolution has not been carried out, but kept in abeyance pending this reference. Nothing therefore having yet been done which could be regarded as a transfer of the fund to the executive committee, this body may be left out of account for the purpose of making the application under section 6 of the Act.

10. If therefore the majority of the members of the Jubilee Committee and the majority of the committee of the five trustees join in an application under section 6 of the Charitable Endowments Act for vesting the Trust fund in the Treasurer of Charitable Endowments and concur in the settlement of a scheme for the administration of a charitable purpose, all difficulties can be removed and the object of the trust effectually carried out. In such a scheme the five members of the executive committee appointed at the meeting of the subscribers held on the 27th July 1895, viz., the Collector and Principal ex-officio, and Messrs. S. Seshayya, P. Thumbusamy Mudaliar and Kaliyanasundaram Aiyar, may be appointed under section 5 as a committee for administering the trust if it be considered expedient to entrust the administration of the trust to that body. The validity of a scheme settled under the Act cannot be questioned in any court or varied or affected by any decree of court (section 5, clause 4), and no suit can be brought against Government in respect of anything done or purporting to be done under the Act, and a suit against the Treasurer of Charitable Endowments for divesting him of the property can be brought only on the ground that the property was not subject to trust for a charitable purpose—*vide* section 14, Act VI of 1890.

MADRAS,
17th May 1897.

(Signed) V. BHASHYAM IYENGAR,
Acting Advocate-General.

ORDER—No. 335, Educational, dated 14th June 1897.

Communicated to the Collector of Tanjore with reference to his letter, No. 951-G. & B., dated 4th January 1897.

(True Extract.)

Secretary to Government.

To the Collector of Tanjore.
, Director of Public Instruction.

Educational (1897) Department.

CURRENT No. 607

Read again G.O. no 111 Ed-B 25-2-97

Order
noH.H.
No. 335 of 14-6-97.

Communicated to the collector

of Tanjore with ref. to his letter no 951
of 14th January 1897.From The Govt. Solicitor
Madras

No. 314

Dated 18

Received } 22

for Regd }

Registered 22

Enclosures 1 and one file

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stitched with inspection
802/m/- 111 of 1897 &
484/96).

SUBJECT.

Forwarding the opinion of
the Advocate General re
the Tanjore Jubilee Fund

Note. Perhaps this may be printed

and communicated to the D.P.I. as the

Principal of the Rumbakonam College

is interested in the matter.

To
The Collector of Tanjore
D.P.I. - 5 29/6/97Amend the references
quoted in the opinion to be
published. H.H.
22/5/97

BACK PAPERS.

G.O.	No.	Department.	Date
	111	Ed	25-2-97
	484	"	12-8-96
	872	"	14-11-95
	726	"	2-8-95

FURTHER PAPERS.

G.O.	No.	Department.	Date.

C 6078d
Educational (1897) Department

From

Ernest Barclay

Government Solicitor

Madras.

The Chief Secretary
to Government
Cotacamund.

Dated 18th May 1897.
Received.

N^o 3/4.

Forwarded with enclosures
with reference to the order
of Government N^o 11 dated
25th February 1897. Educational
Department.

Ernest Barclay
H. W. Morgan
Government Solicitor

18
Had the following papers:-

From the Port Collector,

Madras 8/18/5797 N^o 3/4

Abstract forwarding the
former opinion of the
Ad^r 8/17/5797

