Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1355

Dated 25th June 1895

INDEXED.

[Despatch Abstract.]

REGISTRATION OF A COMPANY.

Informing the Chairman and General Superintendent of the Wesleyan Mission, Madras, that the Wesleyan Methodist Trust Association of South India cannot be registered until certain amendments as pointed out by the Government Solicitor are made to No. IV of the Articles of Association.

BACK PAPERS.

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

FURTHER PAPERS.

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

Copy of letter from the Government Solicitor, Madras, d/ 25th February 1895, No 104.

I beg to acknowledge the receipt of copy of the order of Government d/ 7th instant, No 257, Judicial with copies of the Memoranda of Association of the Town High School, Kumbhakonam, and the Malabar Club, and requesting my opinion whether these Associations can legally be registered under section 26 of the Indian Companies Act 1882.

2. That section provides that where any Association which might be formed under the Act as a limited Company proves to the Local Government that it is formed for the purpose of promoting Commerce, Art, Science, charity or any other useful object, and that it is the intention of the Association to apply the profits, if any, or other income

of the Association in promoting its objects and to prohibit the payment of any dividend to its members, the Local Government may, by license, direct such association to be registered &c. In each case in which it is proposed to register an association under this Section it is therefore necessary to see whether the Association complies with all the requirements of the Section.

D

3. Taking the Association of the Town High School, Kumbhakonum, first, the Memorandum of Association states that the objects of the Association are (amongst others) (a) to conduct and manage the Institution and its feeders and branches, (b) to enlarge and modify the aim and scope of the Education imparted in the Institution and its feeders and branches (c) to provide for the delivery and holding of lectures, Exhibitions, Public Meetings &c calculated to advance the cause of education (d) to carry on any other business which may seem to the Association capable of being conveniently carried on in connection with the above, or calculated, directly or indirectly, to enhance the value of or render profitable any of the Association's property or rights. So far, the objects of the Association show that it is formed for the purpose of promoting art, science and in a way, commerce and other useful objects.

4. Taken by themselves the objects marked f. g. h. i. j. l. m. & n are quite consistent with the objects of an association trading for the benefit of its members. Clause 4 of the Memorandum of Association provides that the income and property of the Institution and its branches and feeders shall be applied solely towards the promotion of the objects of the Association as set forth in the

Memorandum, and that no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus remuneration or otherwise howsoever by way of profit to any of the members of the Association in respect of any services performed by them as Members of the Managing Committee. This Clause 4 further provides that nothing therein contained shall exclude any member of the Association from the benefit of any grant made in furtherance of any of the objects of the Association.

5. Clause 5 of the Memorandum provides that if any member of the Association pays or receives any dividend, bonus, remuneration or other profit in contravention of the 4th para. of the Memorandum his liability shall be unlimited. I felt some doubt whether such a provision as this is legal for Section 7 of the Indian Companies Acts 1882

1882 provides that the liability of the members of ~~the~~ a Company formed under the Act, may, according to the Memorandum of Association, be limited either to the amount if any unpaid on the shares respectively held by them or to such amount as the members may respectively undertake by the Memorandum of Association to contribute to the assets of the Company in the event of its being wound up; but that, where a Company is formed as a limited Company, the liability of the directors or managers of such Company or of the managing directors may, if so provided by the Memorandum of Association, be unlimited. This I think means that as regards members generally they are all to be on the same footing as to the limit of their ~~lot~~ liability, but that, as regards directors, managers or managing directors their liability may be unlimited, if so provided by the Memorandum of Association. Except as regards them the Act does not provide for an unlimited liability on the part of members of a limited liability Company. However the words "or to such amount as the members may respectively undertake by the Memorandum of Association to contribute to the assets of the Company" may be held to mean that the members have each the right to fix the amount and, as I see that this clause is in use in England, I think it may be passed in the present case.

6. It was probably the intention of the framers of the Memorandum of Association of the Town High School, Kumbakonam that the whole of its profits or other income should be applied in promoting its objects and to prohibit the payment of any dividend to its members, for, besides clause 4, clause 7 of the Memorandum of Association provides that, if upon the winding up or dissolution of the Association, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the ~~shall~~ same shall not be paid to or distributed among the members of the Association but shall be given or transferred to some other Association or associations having objects similar to the objects of the Association of the Town High School, Kumbakonam, but I do not think that the intention is sufficiently carried out by the Memorandum, for, clause 4 thereof while providing, as it does, that the income and profits of the Association shall be applied solely towards the promotion of its objects, goes on to say that no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, remuneration or otherwise howsoever to any members of the association in respect of any services performed by them as members of the Managing Committee as such. The words I have underlined create a

limitation which ought not to exist. Again, the provision that nothing contained in clause 4 shall be deemed to exclude any member of the Association from the benefit of any grant made in furtherance of any of the objects of the association, might allow a member to participate in the benefit of a grant made to the Association by Government or by a private individual in furtherance of the objects of the Association - What is probably intended is that, any member of the Association may receive a grant from the association to enable such member to carry out its objects but, if that is the meaning, it is not so clearly expressed as it should be

7 As regards the Town High School, Kumbakonam, therefore it appears to me that its Memorandum of Association is not so ~~framed~~ framed as to enable the Association to be registered under Section 26 of the Indian Companies Act 1882.

8 With regard to the Malabar Club I feel considerable doubt whether a club can, as a general rule, come within Section 26 of the Act at all - There can of course be no doubt that the Club is not ~~[illegible]~~ formed for the purpose of promoting commerce, art, science or charity and, though it may be formed for an useful object, that object would be useful only to the members of the Clubs and their friends and not to the general public or to anyone but a member of the Clubs and his friends - I throw out this with considerable doubt because I am aware that Government granted its license to the Ootacamund club to be registered under 26 of the Act, and I believe the Murree club obtained a license for the like purpose. I also see that in England several clubs have been registered under a provision of law corresponding with

Section 26 of the Indian Companies Act 1882. I do not of course know what the main objects of these clubs are but they are the Cyclists Touring Club registered in 1887 the main object of which would probably be to promote the Science of cycling, the Hammersmith Constitutional Club, registered in 1886 probably a political club, the Huddersfield Borough Club, Registered in 1879, probably also political; the Huddersfield Cricket ~~Cricket~~ and Athletic Club, Registered in 1879, promoted no doubt to Encourage Athletics, the Huddersfield Carlton Club registered in 1875, and no doubt a political Club, the London Athletic Club registered in 1886 and obviously promoted for the Encouragement of Athletics, the Manningham Foot-ball Club, registered in 1886, no doubt for the promotion of football, the New Castle-upon-Tyne Junior Liberal Club, registered in 1880, and no doubt a political club, the St Pancras Reform Club, registered in

1887

1887, also political and the Scarborough Liberal Club, registered in 1885 also Political. I may mention however that many of these clubs were registered prior to the date of the decision in the Case firstly mentioned hereafter and all of them prior to the date of the decision in the case secondly mentioned hereafter and I think from the names of these clubs it may fairly be assumed that the utility of the objects for which they were promoted would not be confined to their members. It seems to me that the useful object referred to in section 26 of the act is not intended to be an object that is useful merely to a limited number or class of persons but one that is useful to the general Community. There can be no doubt that the promotion of ~~the~~ Commerce, art, science and charity are purposes which benefit the general Community and I think therefore that the legislature must have ~~[illegible]~~ intended by the words "any other useful object" in the Section to refer to an object useful to the general Community. Unfortunately I can find no decision bearing on Section 26 of the Indian Companies Act 1882 or directly on Section 23 of the (English) Companies Act 1867 ~~1882, or directly on Section 2~~: the corresponding Section, as regards the expression "any other useful object" but in the Queen v. The Institution of Civil Engineers L.R. 5 Q. B Div 48 it was held that a Society the primary object of which is the acquisition and advancement of Scientific Knowledge for the purposes and in the interests of a particular profession such as that of Civil Engineers is not a society instituted for the purposes of science exclusively within the 1st Section of 6 & 7 Vict. C 36 and, consequently, is not entitled to exemption from rating under that Section. In a later Case "In the matter of duty on the Estate of the Institution of Civil Engineers" L R 20 Q B Div 621, it was held ~~in~~ on appeal from the decision of the Queen's Bench Division that the property of the Institution of Civil Engineers was entitled to the benefit of the exemption contained in Section 11 of

the

the Customs & Inland Revenue Act 1885, as the property of the Institution was property which was appropriated and applied for the promotion of Science. By Section 11 of the Customs and Inland Revenue Act 1885 a duty is imposed upon the annual value, income or profits of property belonging to any body corporate or unincorporate, subject to an exemption in favour of property which, or the income or profits whereof shall be legally appropriated and applied "for the promotion of Education literature science or the fine Arts". At first sight these two decisions appear to conflict and they do conflict but, on
Sic? the facts, and not in principle. In the first case the Court found that the primary object of the Institution was the acquisition and advancement of Scientific Knowledge for the purposes and in the interests of a particular profession; in the latter case the Court held

that the property of the Institution was appropriated and applied for the promotion of Science — In his judgment Lord Esher M. R. said that the Institution was incorporated and, in its charter, its nature and objects were declared to be "the general advancement of mechanical Science and more particularly for promoting the acquisition of that species of Knowledge which constitutes the profession of a Civil Engineer" that the object was not stated to be the promotion of the profession of a Civil Engineer but a species of Knowledge, that a great deal depended on the way that had been carried out and that the institution had not been carried out as a ~~more~~ mere school of Engineers but, on the contrary, its object was to spread general principles and not to teach the individual to be a working Civil Engineer and that the main object of the institution was the promotion of

Lord Justice Fry in his judgement said that the main object to which the fund was appropriated was the promotion of science

of the highest form of science, and he found that the money was actually so applied as well as legally dedicated to it.

9. It seems to me therefore that, if it be necessary in the case of an Association promoted for the purpose of promoting science, that the main object of such Association should be the promotion of science and not the benefitting (by instruction in that science) of a particular class of persons, it is equally necessary that where an Association is promoted for any other useful object, that object should be useful generally and not merely to a particular class of persons.

10. The very first object of the Malabar Club as stated in its Memorandum of Association is to establish a club for the accommodation of members and their friends clearly showing that this object of the Club and, its main object does not come within the ~~[illegible]~~ principle

laid down in the cases I have quoted.

11. Objects 2, 3, 4, 5, 6, 7 & 8 are essentially such as would be consistent with the objects of a company trading for the benefit of its members but are not objectionable when read with the other stated objects.

12. My remarks on the first object of the club apply also to object 9.

13. Clause 4 of the Memorandum may be taken as in order.

14. With a regard to clause 6 my remarks in para: 5 above apply.

15. Clause 7 provides the limit of liability of members in the case of the club being wound up and seems to be in accordance with section 61 of the Act, and clause 8 is necessary under section 26 of the Act.

16. So far as I can see there is no objection except that of the main object of the Malabar ~~[illegible]~~ Club club not being an useful object within the meaning of section 26 of the Act, to the Club being registered under that section but I must confess that that objection seems to me a material one.

17. I return the two Memoranda of Association &c.

Current No 931
with encls.

Copy of letter from the Govt. Solicitor, Madras, dd 25th March 1895, No. 170.

I beg to acknowledge receipt of your Endorsement dd 11th instant No. 539 on a letter dd 15th ultimo No. 753 from the Chairman and General Superintendent of the Wesleyan Mission, Madras, to your address forwarding proposed Memorandum and articles of Association of "The Wesleyan Methodist Trust Association ~~of~~ for South India" and requesting Government to grant a license directing that the association may be registered under Section 26 of the Indian Companies Act 1882.

2. Clause III of the proposed Memorandum of Association states that one of the objects for which the Association is established is to act as and allow its name to be used as Trustee for the Wesleyan Methodist Missionary Society and, accordingly, I shol

and deal with and dispose of lands, buildings, investments and property of any kind real or personal, moveable or immoveable belonging to the Society in any part of India. This cannot be said to be for the purpose of promoting commerce, art, science or charity, so that, the question is whether the object mentioned is an useful object. The object by itself is an extremely limited one and seems to me to come within the principle laid down in the two cases mentioned in paragraph 8 of my letter of 25th ultimo No. 104, the object is merely to act as Trustee of a particular Society, so that the object has no general utility. It is true that another object of the association is said to be to purchase, take on lease or otherwise, acquire ~~or~~ hold, manage, let, sell, exchange, mortgage or otherwise dispose of real and personal property of any tenure and for interests

and

and in any part of India, but this, I think, must be as Trustee for the Wesleyan Missionary Society as otherwise the object would be an ~~[illegible]~~ unworkable one. The Chairman's letter too clearly shows that the whole object of the formation of the association is for the benefit of the Wesleyan Missionary Society. The second stated object of the association is not therefore really of more general utility than is the first stated object.

3. The second stated objects of the association is clearly an object for the purposes of profit or one by which profit may be made and, though such profit would not be divisible amongst the actual members of the association, it would be payable to or be applicable for the benefit of the Wesleyan Missionary Society and I am very doubtful indeed whether an association formed for the purpose of earning a profit applicable

for

Encl. 753 with encls. & 1494

for the benefit of a society or of individuals, is an "useful object" within the meaning of Section 26 of the act.

4. The remarks made in para 3 of my letter of 25th Ultimo, No 104 with regard to the Memorandum of Association of the Town High School, Kumbakonam, apply also to the Memorandum of Association of The Wesleyan Methodist Trust Association for South India.

5. I have, in this letter gone somewhat beyond the question put to me by your Endorsement, but the Association now proposed to be formed is peculiar and, for the reasons stated above, does not, in my opinion come within Section 26 of the Indian Companies Act 1882.

6. I return the papers sent to me by

CURRENT NO 2219

Judicial (1895) Department

From
Ernest Barclay
Government Solicitor
Madras

To
The Chief Secretary
to Government
Ootacamund

-3 MAY. 1895
No 270

Dated 1st May 1895
Recd 3d } do
Regd. 4th }

Enclos. 1 encl. 753 with
Encs: retd

Forwarded with Enclosures with reference to the Order of Government dated 11 April 1895. R. No 446 Judicial

Ernest Barclay
Government Solicitor

Rd 7/5
Ws 8/5

The English Companies Act of 1862 & 67 please.
7/5

The copy is not available here.
8/5

Cover

G.O. 446 R. of 11.4.95.
673 : 1.4.95 Misc.
257 : 7.2.95 ..
3003 : 8.12.94 ..
2639 : 3.11.94 ..

Read again G.O. of 11 Ap. 95 R. No. 446
& Cur. No. 2219/95.

~~For orders.~~

C.S.

Refce only ~~Advocate~~

~~with refce to the remark~~
~~Copy of the Govt. Sol.'s opinion will be furnished to the Hon. the Advocate General with refce to the remark that he has not seen that opinion.~~

Copies of the papers mentioned in the first sentence of para 2 of his letter will be furnished to the Hon. the Advocate General, with the request that he will be good enough to state whether the points raised therein are such as to lead him to reconsider his opinion

D
8.5.95

9/5/95

+ d 14/5

No 1062
17.5.95

Govt. Solicitor with papers — originals to be retd. } Des. 14/5

W3
13/5

CURRENT No 2219

Re proposed registration of the Wesleyan Methodist Trust Association of South India under the Indian Companies' Act, 1882.

OPINION.

I. In his letter of the 15th February, 1895 to the Chief Secretary to Government, the Revd. Mr. Cooling says that "the direct and primary purpose of the Association is solely to secure a good title to the immovable property of the Mission in South India and to prevent litigation". I fail to see how registration under the Indian Companies' Act, 1882 will "prevent litigation", but that is a detail not now under consideration. If the Mission has not secured a good title to the immovable property acquired by it during its seventy years of work in Sout India, it is not easy to see how, as to that property, it can improve its position by the scheme now proposed. Possibly the provisions of the Religious Societies Act, I of 1880, might have removed some of the difficulties said to have been caused by the death or removal of the trustees referred to in the second paragraph of the letter above mentioned Doubtless the Mission has taken legal advice as to the transfer of property now in the names of trustees to the proposed Association, and as to the advantages to be derived from registration &c. These are matters unconnected with what I understand to be the questions upon which I am asked to advise, and concern merely the Mission.

G. 446R
11. ap. 95

2. I have not seen the Government Solicitor's letter dated the 25th March, 1895, No. 170, or his opinions mentioned in the Order of reference to him dated the 11th Ultimo No. 539 . In giving the following opinion I assume that it is asked for on two points, Viz :-

(A) as to whether the Association can be registered under the Indian Companies' Act, 1882, and,

(B) whether the words "in respect of any services performed by them as members of the Association as such" in Article IV of the Memorandum of Association are "open to exception".

3. If the Revd. Mr. Cooling is correct in stating that the Church Missionary Society formed "a company registered in England under the English Companies' Acts 1862, 1883 called the Church Missionary Trust Association", there seems to be no reason why a similar Associatio should not be registered under the Indian Companies' Act, 1882. Sectio

7 of this Indian Act declares that" any seven or more persons associated for any lawful purpose may ....form an incorporated Company with or without limited liability". Section 26* (which is similar to Section 23 of the English Companies' Act, 1867, save that "Local Government" is substituted for the "Board of Trade") makes special provisions as to associations "formed for the purpose of promoting commerce, art, Science, Charity or any other useful object". These last four words are wide enough to include the purpose for which the proposed Association is to be formed. Even the word "Charity" would cover it for "trusts for the advancement of religion" form one of the four principal divisions of charity in its legal sense which were enumerated by Ld. Macnaghten in Commissioners of Income Tax V. Pemsel, (a) The prohibition contained in Section 21 of the English Companies Act, 1862, against "companies formed for the purpose of promoting Art, Science, religion, charity or any other like object" holding more than two acres of land without the sanction of the Board of Trade finds no place in the Indian Companies' Act, 1882. there seems, therefore to be no legal objection to the registration of the association.

*Not available here.

(a) (1891) A.C. p 581.

4. I think that the words "in respect of any services performed by them as members of the Association as such" should be struck out of article IV of the "Memorandum". They are unnecessary, and may be misleading. They may be construed as if they were intended to qualify or limit the preceding portion of the Article.

J. H. Spring Branson
Advocate General.

Madras
30th April
1895.

(A True Copy)

Ernest Barclay
Government Solicitor.

CURRENT No. 2638.

Judicial (1895) Department

From
Ernest Barclay
Government Solicitor
Madras

To
The Chief Secretary to
Government
Ootacamund

No. 316

Dated 27th May 1895
Recd 28th do.
Regd 29th do.

CHIEF SECRETARY
28 MAY 1895
GOVERNMENT OF MADRAS

C. Nos. 753 & 931 with Encl
& C No. 1494 refs.

Enclds ~~2 [illegible]~~

Forwarded with enclosures with reference to the Order of Government dated 17th May 1895. No 1062 Judicial

Ernest Barclay
Government Solicitor

Refce No 1062/95 & papers

A.H.

Read again G.O. of 11 April 95 No. 446 Judl
& Cur. 2219 & 2638/95.

For orders.

~~Perhaps the original order suggested on C.N. 1494 may now issue?~~ The Advocate General's opinion seems more rational than the Govt. Solicitor's. If A.H. agrees with him, it will suffice to tell the assocn. to make the minor modification pointed out.

D
12.6.95

15/6/95

18/6/95

CURRENT No. 2638

Re proposed registration of the Wesleyan Methodist Trust Association of South India under the Indian Companies Act, 1882.

Opinion

1. Since writing my opinion dated the 30th April, 1895, I have been furnished with a copy of the papers referred to in paragraph 2 thereof

2. The Government Solicitor is of opinion that the object of the Association is not to promote Commerce, Art, Science, or Charity, but merely to act as trustee for a particular society; that that is not an object of general utility; and, therefore, that the Association cannot be registered under section 26 of the Indian Companies Act 1882

3. I do not agree with the Government Solicitor. I see no reason to change the views expressed by me in the third paragraph of my Opinion abovementioned. The South Indian Provincial Synod of the Wesleyan Mission propose to form a Trust Association "to secure a good title to the immoveable property of the Wesleyan Mission in South India" by holding that property in trust for the object of that Mission, i.e., for the "advancement of religion", which is one division of "Charity" in its legal sense. Probably it was

on a similar ground that the Church Missionary Trust Association was registered in England under the English Companies' Act 1862 - 1883

4. In paragraph 6 of the Government Solicitors opinion re the Town High School, Kumbakonum, objection is taken to words similar to those in the "Memorandum" in the present case to which I took exception. His objection and mine are, apparently based on similar grounds.

5 In the same paragraph the Government Solicitor objects to a proviso, similar to that contained in Clause IV of the "Memorandum" in the present case, that nothing contained in the "Memorandum" shall "be deemed to exclude any member of the Association ~~in~~ from the benefit of any grant made in furtherance of any of the objects of the Association". I think that this ambiguous proviso is open to the objection raised by the Government Solicitor, and that it should be amended

(Signed) J. H. Spring Branson
Advocate General

Ootacamund
23d May, 1895

(True Copy)

Ernest Barclay

8-3-95.

Judicial DEPARTMENT.

Papers to be read in proceedings:—

——— 1 April ——— No 673
Again G.O., dated 11 April 1895, No. 446
Again G.O., dated 189 , No.
Current No. 2219 of 1895, dated 1 May from } the Advocate General
Current No. 2638 of 1895, dated 27 May from }

ORDER. d/ 25th June 1895 No 1355

The Govt concurs with the Hon- the Advocate General & the Chairman & General Supdt of the Wesleyan Mission, Madras, will accordingly be informed that the Society cannot be registered as desired until No II of the Articles of Association is amended in the manner indicated in para 6 of the Govt Solr's opinion on the parallel case disposed of in G.O. d/ 1 April 1895 No 673

(True orders)
D
12.6.95

22/6/95

~~The Hon the Advocate General~~
The Govt. Solr. (A & O) - 2 copies
(A & O) - 1 copy
The Chairman & G.S., Wesleyan Mission Madras. with copy of para 6 of the Govt Solr's opinion

Copied 29/6

Registration of a
Company

C./mis (from orders)

When given for copying
When copied
When examined
When signed
189

READ AGAIN G.O., No. DATED
189

CURRENT No.

ENCLOSURES TO O. 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.—
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