

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	257		7-2-95				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
1906			95	23-4-95			
1789			95	1095			
2219			95	22-5-95			
2846			95	1355	725-6-95		
2632			95	1095	8722-5-95		
			95	30-6-95			

CURRENT No 931

No. 104

Madras: 25th February 1895.

From,

Ernest Barclay,
Government Solicitor,

Madras.

To,

The Chief Secretary to Government,

Madras.

Sir,

1. I beg to acknowledge receipt of copy order of Government dated 7th instant No. 257, Judicial with copies of the Memoranda of Association of The Town High School, Kumbhakonum, 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.

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

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 Act 1882 provides that the liability of the members of 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 liability,

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, Kumbhakonum, 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 same shall not be paid to, 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, Kumbhakonum, but I do not think that the intention is sufficiently carried out by the Memorandum, for, Clause 4 thereof while providing, it is true, 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, Khombakonum, therefore it appears to me that its Memorandum of Association is not so 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 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 Club and their friends and not to the general public or to any one but a member of the Club and his friends. I throw out this ~~doubt~~ 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 & 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, also political and the Sparbrook Liberal Club, registered in 1885 also political. I may mention however that many of these

these Clubs were registered prior to the date of the decision in the case firstly mentioned hereafter and ~~many~~ ^{all} of them prior to the date of the decision in the case secondly mentioned hereafter & 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 commerce, art, science & charity are purposes which benefit the general community and I think therefore that the legislature must have 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, 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 on appeal from the decision of the Queens 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 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 pro-

-fits whereof shall be legally appropriated and applied "for the pro -
-motion of education literature science or the fine arts". At first sight these two decisions appear to conflict and they do conflict but, on 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 later 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 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 the highest form of science. Lord Justice Fry in his judgment said that the main object to which the fund was appropriated was the promotion 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 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 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 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 &

I have the honor to be,

Sir,

Your Obedient Servant,

Lucretia Barclay

Government Solicitor.

~~Ct- No 75~~

Ex. 257: 7.2.95 Miss & paper

From

The Lost Schictor

Madras

No 104

Date 25. 2. 95

Recd 25. 2. 98

Recd 26-2-95

Encl. e No 89 +

Subject 62757

Passing remarks on the

Memoranda of Assoc.

of the Iowa High School

Kumbhak nam him

Malabar Club

Malabon
US 2/3/55 DW 48
36

US 2/8/95 - DW 48 36

(Gardes)

From

D. G. Harrison Esq.
Honorary Secretary
Malabar Club
Calicut

Ly

The Honorable Mr. J. F. Price
S. C. S. C. S. S.
Chief Secretary to Govt.
Judicial Dept.

Dated 16th March 1895
Recd 18th March 1895

Requesting early
orders of Govt. on letter
dated 23rd Nov 1894
for the Registration
of the Club under
Section 26 of the Indian
Companies Act.

To await return of
connected papers from care:
Show me, if in two days the
papers have not come back
from care *X*

MR
20-3-95

140
23/3

CURRENT NO.

1342

Malabar Club
Calicut 16 March 1895.

From
D. N. Morrison Esq.
Honorary Secretary
Malabar Club
Calicut

To
The Honorable Mr. J. F. Price I.C.S. C.S.
Chief Secretary to Government J. D.
Madras.

Sir,
I am desired by the Committee of the
Malabar Club to invite your attention to
my letter of the 23rd Nov. last & to request that
Government may be pleased, at an early
date, to sanction the Registration of the
Club under Section 26 of the Indian Com-
panies Act.

I am to explain that the Club in
anticipation of sanction have arranged
for the purchase of the Club premises &
that a large sum of money has been
subscribed on debentures and paid in
for this purpose. The Club is
paying six per cent for this money,
and it has been now lying unemployed
for several months, as the Committee are
unable to complete the purchase until the
Club is placed on a proper legal footing by
registration. If the Government will be
pleased to pass early orders on the Committee's
application, the Club will be saved further
loss from this cause.

I have the honor to be
Sir,

Your most obedient servant

D. N. Morrison

Honorary Secretary

Undercomd. 87
S. Secy 4 no 3003
M.

C. No. 931/95

From

Dated _____

189

FOR ORDERS.

Please see P.O. of 7. 2. 95 No. 257 just
referring to the Govt. Solicitor for
opinion the question of registering under
s 26 of the Indian Companies Act the
Mallabar Club & the Town High
School, Kambakonam.

2. The Govt. Solicitor states reasons as to
for disallowing the registration of the
latter body in paras. 6 & 7 of his
letter. These paragraphs may, when
submitted, be communicated to the
Association with the remark that
they must amend their memorandum
of Assocn., as he points out, before
they can be registered.

3. As regards the Balabar Club, the only objection raised by the Govt. Sol^y is that the main object is not an useful object within the meaning of s. 6 of the Act; his contention which is based solely on English rulings is that the object must be useful to the general public, & not merely to members of the club & their friends, as contemplated in the memorandum of association.

4. If this view is accepted it ~~will~~^{is} necessary to cancel the registration of the Polakow and Club, which was made (26. 7/10 May 1888 No 108
"in view of the English statute law
"practise under it as stated by" h
"although it was from the C

As to the Club, I think
beought to go by the
Govt. Secy's opinion - But
as this conflicts with
former orders of Govt
Circulate

11/3/95

The Ent. Politician admits
that there is a doubt. It was
decided by Ent. & Sir P. A. Hatcher
was a vote to the decision
that the Ootacamund Club
should be re-proposed under
Sec 26, so it is evident that
his opinion is not

note in that P.O., that "Wertheimer quotes no decided case on the English section 'Wertheimer' even if it could be procured without delay" would be of no help. *En Pons.*

The cases of the registration of Clubs under the English section which the Post Sol. refers may or may not be analogous to that of the Malabar Club; but that this Memoranda of association, it is impossible to be certain; Take the case of the Man-ningham Football Club; this, says the Post Sol., was no doubt founded "for the promotion of football" "a generally useful object." I submit that it is quite as likely that the object was only "for the promotion of football amongst its members" in which case, according to the Post Sol., it could not be registered.

6. There appears to be no decision bearing directly on section 26 of the Indian Act, or on the corresponding section of the English Act. The Odessa Club is a precedent created in India by Post, & apparently the Marree Club also is a precedent; it appears therefore desirable, if possible, to follow these precedents, but this can only be done by overruling the Post Solicitor.

7. Though the English rulings which he quotes cannot be obtained in the Secretariat library; nor can "Wertheimer".

D
6.3.95

The interpretation put upon the law by the Post Solicitor appears to be a very reasonable one, but there is the precedent created by the Odessa Club which was after due consideration entered 10

Registration Companies

shared by every body. What we to decide is whether the Malabar Club is "useful" or not. I think is useful to our outsiders who it attracts to join a well regulated association as well as to its members. No harm can be done by the registration. It is not clearly against the law. I would allow it.

(For orders)

I am inclined to agree with the hon. Mr. Joice, and to follow the precedent of the Odessa Club. I must confess that I am very doubtful of the propriety of the decision in that case, but it has not been shown to be clearly against the law, and in face of the great doubt on the subject do not think we have enough to go upon to overrule that decision, as we shall have to do, if we refused this present application.

21 Mar

H.M.

Resubmitted to the Hon. Mr. Bliss C.E. for perusal of the note made by H.E. the Post Sol. Mr. J. J. Joice

D
23.3.95

25/3/95
Very well - I don't object

MS
27/3/95

c113/c133/c153/c265

Again G.O., dated

18, No.

Again G.O., dated

7 February

1895, No. 257 J.G.

Current No.

of 18, dated

from

Current No.

931

of 1895, dated

25 Feb 95 from

16 March

the Post Solicitor to the Hon. Secy.

Malabar Club

Order 1st April 1895 No 673

Para 6 & 7 of the Post Solicitor's opinion will be communicated to the Association of the Iowa High School Knabakoram with the remark that the Memorandum of association must be amended accordingly before the association can be registered as desired

2. As regards the Malabar Club, the Post is not prepared to overrule the precedent of the Odessa Club, & accordingly resolves to permit the registration of the former body. The following license will accordingly be issued,

License.

Whereas the Malabar Club is a Association which is registrable under the Indian Companies Act 1882 as a limited company and whereas it has been proved to the satisfaction of the Post a Council that it is formed for purposes set forth in the Memorandum of association and that it is

the Club to apply the profits & income
of the Assoc. to promoting those purposes
and that payment of any dividend
to its members is prohibited by the fourth
article of the Memo^m of Assocⁿ, &c.
The Gov^t will be pleased to direct
under the provisions of s. 26 of the said
Act that the Malabar Club shall
be registered with limited liability
but without the addition of the word
limited to its name

From order
29/3/95

The Secy, Town High School Assocⁿ, Ltd.
Kumbakonam
para 1 of O, & a of paras. 617
of Govt Solicitors Opinion
Hon^{ble} Secretary to the Malabar Club
para 2 of O. with license
The Govt. Secy. (G.O.) 1 APR 95
IN M.S.

Registered
Clubs

From order
29/3/95

Copying		189
No.	DATED	
CURRENT No.		
GOVERNMENT TO C. No.		
ORDER OF GOVERNMENT		
STATEMENT WITH DITTO.		
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.		

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