

L. & M.
1899-12-6-20

Local & Munl. (1898) Department.

MISCELLANEOUS.

G.O., No. 1959 M

DATED 22-11-98.

INDEXED. DESPATCHED

[Despatch Abstract.]

President of the Munl. Commission, Madras

Communicating to the President,
Munl. Commission, Madras, Ad. Judicial
Dept^l communicating to the Inspector-General
of Registration and to the Local and
Munl. Dept^l, with remark, the opinion
of the Advocate-General on the question
whether the present — can be
treated as an "officer of Government"
within the meaning of section 28
of the Registration Act, 1877.

BACK PAPERS.

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

FURTHER PAPERS.

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

Government {1898} of Madras. JUDICIAL.

LOCAL & MUNICIPAL DEPT.

CURRENT No. 3492 No

Recd.

Regd.

1898.

Enclosures

Spare copies

G.O., No. 1704, 4th November 1898.

N. Huse order No. 1989 *24/11/98*
Communicated to the President, Municipal
Commission, Madras.

NOVEMBER. *HA* *24/11/98*
24/11/98

To The President, Municipal Commⁿ Madras
24/11/98

President of the Municipal Commission, Madras.

Communicating to the Inspector-General of Registration and to the Local and Municipal
Department, with remark, the opinion of the Advocate-General on the question whether the
present — can be treated as an "officer of Government" within the meaning of section 88 of
the Registration Act, 1877.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again G.O., No. 2259, Judicial, dated 17th September 1880.

READ—also the following papers:—

From the Hon'ble M.R.Ry. P. RAJARATNA MUDALIYAR, Diwan Bahadur, Inspector-General of Registration, to the Chief Secretary to Government, dated Madras, 19th August 1898, G. No. 5170.

At the instance of the Acting Registrar of Madras, I have the honour to inquire whether, under G.O., No. 2259, Judicial, dated 17th September 1880, the present President of the Municipal Commission, Madras, can be treated as an "officer of Government" for purposes of section 88 of the Indian Registration Act, 1877. At the time the order was passed, the post of President of the Madras Municipality was generally held by a covenanted officer lent by Government, while in mufassal municipalities and district boards, Collectors of districts were *ex-officio* Presidents under Madras Act III of 1871, and the whole correspondence that led to the passing of the Government order clearly indicates that the order was intended to apply to officers of Government who were discharging the duties of Presidents of Municipalities and District Boards as *ex-officio* members. The Act of 1871 has been replaced by Madras Acts IV and V of 1884—the Madras District Municipalities Act and the Madras Local Boards Act—according to which non-official members might be elected Chairmen of Municipalities and Presidents of Local Boards, and the question arises whether the Government order referred to above can apply to their case. In the case of the present President of the Madras Municipality who is not in the service of Government (having retired on pension), the Registrar doubts whether he can be treated as an officer of Government and his personal attendance dispensed with in regard to the registration of a contract deed entered into between the said President and the contractor. I venture to think the President's presence cannot be dispensed with. To avoid inconvenience, he might empower some officer of the municipality by a general power of attorney to appear in all such cases.

Endt. No. 1869.

Referred to the Hon'ble the Advocate-General for favour of opinion.

(By order.)

OOTACAMUND,
2nd September 1898.

(Signed) A. R. KNAPP,
Acting Under Secretary.

To the Government Solicitor.

From R. E. ELLIS, Esq., M.I.C.E., Acting President, Municipal Commission, Madras, to the Secretary to Government, Local and Municipal Department, dated 19th September 1898, G. No. 332.

I have the honour to enclose copy of letter No. 697, from the Acting Registrar of Madras and to request that Government will exempt the President, Municipal Commission, from appearing either in person or by agent before the Registrar's office to admit execution, as there are a large number of documents that have to be registered during the year.

2. Hitherto the Registration Department have not insisted on the President being present to admit execution.

3. Under section 52 of the amended Act I of 1884 the common seal of the Commissioners is affixed to every instrument prior to registration.

ENCLOSURE.

From M.R.Ry. C. MARIAPPA MUDALIYAR Avargal, Acting Registrar of Madras, to the Acting Engineer, Municipal Commission, Madras, dated 31st August 1898, No. 697.

Adverting to your letter P.W. No. 484, dated 30th August 1898, I have the honour to inform you that the contractors concerned have appeared before me and admitted execution of the agreements referred to and their admissions have been only recorded on the same, but as no one has appeared to admit execution on behalf of the Municipal Commissioners who have also executed the agreements by affixing their common seal, I have suspended registration of the agreements and made a reference to the Inspector-General of Registration requesting instructions as to whether the President of the Madras Municipality may be treated as an officer of Government within the meaning of section 88 of the Registration Act, exempted from appearance at this office either in person or by agent to admit execution of the agreements on behalf of the Commissioners or to sign as provided under section 58. I understand that he has referred the matter to Government for orders.

2. If, however, your President appears at this office and admits execution of the agreements on behalf of the Commissioners, their registration will be completed and they will be returned.

3. I may here state that the period of four months prescribed for the registration of documents in the first clause of section 34 will expire in the case of the three agreements on the 13th and 18th proximo and 1st November 1898 respectively.

No. 1162.

Transferred to the Judicial Department.

(Signed) A. EDGINGTON,
Acting Assistant Secretary.

12th October 1898.

From the Government Solicitor, Madras, dated 27th October 1898, No. 488.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 26th October 1898:—

OPINION.

I am of opinion that the present President of the Municipal Commission, Madras, is not an "officer of Government" within the meaning of section 88 of the Registration Act, 1877. Even if the words "officer of Government" had stood alone, I do not think, without placing a very strained construction upon these words, they could be held applicable to the present President of the Municipal Commission.

The section, however, enumerates certain public officers who are entitled to the same exemption as an "officer of Government." This appears to necessitate a strict construction of the words "officer of Government"; and although no doubt it would be reasonable that the President of the Municipal Commission, Madras, should, *ex-officio*, enjoy the same exemption as regards attendance at a registration office as is enjoyed by an "officer of Government" or by an Official Assignee, or Sheriff, or Registrar of a High Court, still as the law stands, it seems to me that the present President of the Municipal Commission is not entitled to this exemption.

2. Further, section 35 of Act I of 1884 (M) which requires the Governor in Council to remove the President, if his removal is recommended at a special general meeting at which twenty-five Commissioners have voted, is inconsistent with the view that the President is *ex-officio* an "officer of Government."

Section 34 of Act I of 1884 (M) empowers the Governor in Council to appoint "a proper person" to be President of the Municipal Commission, whilst section 37 provides that any Civil or Military officer in the service of Government may, in certain circumstances, hold the office of President. Of course it might well be that a person holding the office of President might be an "officer of Government" in his capacity of a "Civil or Military officer in the service of Government," but the present President of the Municipal Commission, who has retired from the military service, cannot be so described.

3. With regard to G.O., No. 2259, Judicial, dated 17th September 1880, and the opinion of the Advocate-General therein referred to, I am inclined to disagree with the view taken by the then Advocate-General. It seems to me that an "officer of Government" does not cease to be an "officer of Government" for the purposes of section 88 of the Registration Act, 1877, and so lose the right to exemption from attendance personally, or by an agent, at a registration office on being appointed President of a Municipality or of a Local Board, notwithstanding that the registration proceedings are in connection with an instrument executed by him in his capacity as President. But as regards the point now in question, I think it is clear that under the existing enactments the gentleman who now holds the office of President of the Madras Municipality is not an "officer of Government" within the meaning of section 88 of the Registration Act, 1877.

(Signed) C. ARNOLD WHITE,
Advocate-General.

ORDER—No. 1704, Judicial, dated 4th November 1898.

The Advocate-General's opinion will be communicated to the Inspector-General of Registration and to the Local and Municipal Department.

2. This Government has no power to exempt the President of the Madras Municipal Commission from attendance.

(True Extract.)

for Chief Secretary.

To the Inspector-General of Registration. ✓
" Local and Municipal Department. ✓

Exd. C. M. Thambuswamy.

When given for copying
When copied
When examined
When signed

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By AD AGAIN G.O., No.
189

, DATED

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 UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

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