[L. & M.
5,000—8-4-99.]

Local & Munl. (1899) Department.

MISCELLANEOUS.

G.O., No. 813 M

DATED 9-6-99

INDEXED.

[Despatch Abstract.]

Lease of tolls & cart-stand fees in the Ongole Municipality — Forwarding to the advocate General for opinion certain papers relating to the ——

BACK PAPERS.

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

FURTHER PAPERS.

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

[L. & M.
500—4-3-99.]

LOCAL AND MUNICIPAL DEPARTMENT.

Papers to be read in Proceedings:—

Again G.O., No. dated 189 .
Again G.O., No. dated 189 .
Current No. 793 Mis. of 1899, dated 8th March, from the Collr. of Nellore.
" " 868 Mis. " 1899, " 16th March, " — Do —
" " " 189 , " , "

Misc.

ORDER. No. 813 Mis. d/ 9/6/99

The papers read above are forwarded to the Advocate General for opinion as to whether, in the circumstances disclosed therein, the Chairman could be held personally liable ~~for a civil suit by the Municipal Council~~ under Sec. 259 of the Madras District Municipalities Act IV of 1884 as amended by Act III of 1897. and whether a suit would lie against him.

(From order)

7. vi. 99

To

The Govt. Solicitor with papers in original to be returned. Despd 10/6/99.
~~Collr. of Nellore.~~

Dld

B.G.
6.6.99

6.6.99

Local and Municipal Department.

O.Mis. 793 M & 868 M. of 1899.

Lease of tolls and cartstand fees in the Ongole Municipality.

For orders.

Who is the Chairman?

9.v.99

V. Lakshminarasimha Rao Pantulu

Vide Sub. Collr's letter O.Mis. 793 M A.

The right to collect tolls and cart-stand fees in the Ongole Municipality during the year 1898-99 was sold in public auction on the 10th and 11th March 1898 for Rs2,500 and Rs510, respectively, to three persons, namely Audinarayanappa, Venkatarangam and Subbaramayya, jointly; but the sale was not approved by the Municipal Council on the ground that the amounts were very low. In the re-sale which was held on the 19th idem, the farms were knocked down to one Venugopala Krishnayya for Rs2,917 & Rs531 respectively and the sales were confirmed by the Council on the 22nd idem. This man ~~having~~, however, having failed to pay the necessary deposit within three days of the sale, as required by the terms of the lease, one of the original bidders, Audinarayanappa, presented a petition to the Council on the 30th idem, stating that he was a partner with Venugopala Krishnayya and requesting that the time for payment of the deposit might be extended by one week. This request was acceded to by the Council; but only a part of the deposit was actually paid and a promissory note for the balance of Rs180-13-6 was executed

Submitted - that in this case it would be well to take the Advocate General's opinion whether the Chairman cannot be held personally liable under § 289 of the Act - and § 20 to direct that a suit be filed against him. This playing fast & loose with contracts and deposits is only too common in the conduct of Municipal affairs.

Para 3. ibid

Very well 9.v.99.

H.A. 5.6.99.

Para 4. "

Submit a draft to Advocate General sending him the papers

8.vi.99.

by two other persons interested in the contract, namely Venkatarangam and Subbaramayya. On the 14th April 1898, an agreement for the lease of tolls and ~~cary~~ cart-stand fees was drawn up in the names of all the four persons above referred to, but it was signed only by three of them, Audinarayanappa refusing to sign. The instalments of tolls were paid up to the end of June and partly for July, and those of cart-stand fees up to the end of September, though the payments were irregular and not in strict accordance with the terms of the lease. The subsequent instalments were not paid at all. Warrants were then issued by the Municipal Council for the arrears due, but a sum of only ₨38-8-0 was realized thereby. A criminal action was brought against the contractors under sections 105 (2) and 269 of the District Municipalities Act, which proved a failure. The Council also sanctioned the institution of a civil suit for the recovery of the sum of ₨180-13-6 due on the promissory note executed by Venkatarangam and Subbaramayya and resolved to resell the farms at the risk of the defaulters. After a great delay, the farms were resold about the end of January 1899, for a total sum of ₨373-8-0, but the suit for ₨180-13-6 was not instituted. The total collections, including the ₨373-8-0 obtained by the resale and the deposits made by the defaulting contractors, amounted to ₨2183-4-1, leaving a balance of ₨1264-11-11, which is the loss sustained by the Municipal Council,

On,

Para 5. of Sub-Collr's letter.

Para 7 of Sub-Collr's letter A
& para 6. of Sub-Committee's Report B.

Para. 7 of Sub-Comttee's report. B.

Paras 7 & 8. ibid. B.

Paras 9 to 11 of Sub-Collr's letter D.

On the advice of the Government pleader, at Nellore, the Collector has directed the Municipal Council to take legal action for the recovery of this amount from the ~~Collectors~~ Contractors, with the exception of Audinarayanappa who did not sign the contract deed. The Collector now submits the papers for the information of Government and points out that the recovery of the amount from the contractors has been rendered very difficult by the commission of numerous irregularities in connection with the lease and the insolvency of the contractors, and that the Chairman seems to have been culpably negligent in the matter. The chief irregularities noticed and the Chairman's explanation thereon are dealt with below.

(1) A deposit equal to three months' rental was not taken from the contractors, nor were the farms resold for default of payment of the deposit, but only a promissory note was taken from two of the contractors for the balance of deposit due.

The chairman states that he brought this matter to the notice of the Municipal Council, which, however, accepted the promissory note. He does not therefore appear to be solely responsible for this irregularity.

(2) No security was taken from the contractors for the regular payment of the instalments.

The Chairman says that no security was taken, as two other persons, namely Venkatarangam and Subbaramayya, also agreed to be contractors. This explanation

is

Vide Collr's letter, No 868 M. E.

" No 793 M. F, & para 4.

Para. 3 (1), (2) & (5) of the Collr's endorsement. E.

Vide marginal Notes of Ch. C. in paras 11 (VII) of the Sub-Committees report.

Vide marginal notes of the Chairman in para. 11 (V) of C. the Sub Committees report is very inadequate.

(3) The monthly instalments were not paid in advance within the first week of every month, and no steps were taken to resell the farms promptly even after default to pay the instalments completely, until urged by the Council to do so. The Chairman states that every one of the Councillors knew the irregularity of the contractors in paying the monthly instalments and that if the farms had been resold, the Council could never have been in a better position, as the loss would still have to be recovered from the defaulting contractors. The Chairman is much to blame for his neglect to adhere strictly to the terms of the lease and resell the farms promptly.

Para 3(6)&(7) of Coll's letter F

Marginal Notes of the Chairman in para. 11 (I) of the Sub Committee's report C

(4) No civil suit was instituted against the contractors on the promissory note for Rs.180-13-6, the balance of the deposit from them, as directed by the Municipal Council.

Para. 11 (x) of the Sub Committee's report C.

The Chairman points out that the suit could not be instituted, as the necessary records had been filed in the Sub-Magistrate's Court in connection with the criminal prosecution against the contractors. This explanation does not appear to be valid, as there is apparently no reason why the papers should not have been got back from the Sub-Magistrate and the civil suit filed after the criminal prosecution was dismissed.

(5) No notice was taken by the Chairman of the timely warning given by some of the Municipal Councillors as to the doubtful solvency of the Contractors.

Vide para. 3 (8) & (9) of the Coll's endorsement F and para. 11 (xi) & (xiv) of the Sub Committee's report G.

The

Charges XIV & XV G.

The character and status of the parties appear to have been known to the Chairman himself. It is stated that a pauper suit was brought by one of the contractors, namely, Venugopala Krishnayya, in the Local Munsiff's Court for partition of his family property and that another suit was instituted in the same Court by Venkatarangam on a forged document and that these facts must have been known to the Chairman who was a member of the Local bar.

marginal notes, ibid.

The Chairman observes that he is not expected to know everything that takes place in the Court and that the Councillors who knew the character of the contractors should have protested against the contract as laid down in the Act. This explanation may perhaps be accepted.

The Chairman's conduct in not having taken sufficient security from the contractors and in failing to enforce the terms of the lease strictly, although he had a warning from some of the Municipal Councillors as to the insolvency of the contractors, is reprehensible; and it is therefore for consideration whether by such neglect he has not rendered himself liable for a civil suit by the Municipal Council under section 259 of the Madras District Municipalities Act IV of 1884, as amended by Act III of 1897, in case the loss is not recovered from the contractors.

V.R.
5/5/99

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is very inadequate.

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Local & Munl. (1899) Department.

11 MAR 1899

CURRENT No. 793 M

From the Collector of Nellore

Order

No. 414/Eng

Dated 8 March 1899
Received
Registered
Enclosures 1
Spare copies

SUBJECT.

Submitting Sub Collector's letter regarding Tollgates and Cart Stand Contracts of the Ongole Municipality for the year 1898-99

181.

4.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

1

Ongole
Dated 17th February 1899

From Messrs P. Pitchayya Puntulugaru
" V. Ananda Rao Pantulugaru
" V. Veerasawmi Naidu garu,
members of the Sub Committee,
appointed under Reso No 341 of
30th January 1899.

To The Chairman Municipal Council
Ongole

Sir, With reference to Council's resolution No 341 dated 30th January 1899 and also letter from A. Z. G. Campbell Esquire, Assistant Collecto in charge of the Sub Division, Nellore to us, we have the honour to report as follows:-

I am sorry I cannot attend the meeting which is to be held exactly at the marriage time in my house.

1. The farms of tolls and cart stand of this Municipality for 1898-99 were first knocke down in auction by the Chairman to one Sreeram=giri Audinarayanappah for Rs 2550 and Rs 510 respectively on the 11th March 1898, Subject of

Course to Confirmation by the Council as advertised.

2. But they were subsequently cancelled by the Council on the complaint of one M. Varadayya Naidu on the ground among others that they fetched very low amounts.

3. In resales one Chinnkula Venugopala Kristnayya became the purchaser for Rs 2917 and Rs 531 respectively. These were confirmed by the Council in its resolution No $\frac{425}{22 \cdot 3 \cdot 98}$, but he failed to pay up the required deposit in time as notified. This was brought to the notice of the Council by the Chairman on 28th Idem for advice. On the 30th of the same month, when it came for disposal by the Council the first bidder S. Audinarayanappah put in a memo before the Council stating that he is also a partner of the above Venugopala Kristnayya and asking time for the payment of the balance of the

deposit and also promising to bind himself by the terms of the real purchaser C. Venugopala Kristnayya. This was accepted by the Council accordingly. This man paid up Rs 100 on the 6th April 1898 in part payment of the arrear deposit with a petition signed by 2 others also Viz:— Are Venkatarungam and Oruganti Subbaramayya of Nidamanur who were quite strangers and unknown to the Municipality then for any of its purposes under consideration.

4. Again on the 9th April 1898 these two people petitioned the Municipality requesting that the previous payments should be taken first in full discharge of carts stand deposit carrying the balance to that of Tolls and promising to pay up the balance in a fortnight together with the instalment of April and also agreeing to execute the necessary agreements in four days

5. On the 13th Idem an agreement in the names of 4 persons that figured themselves in the matter some how or other as stated above, but signed only by the two new comers, namely A Venkatarangam Naidu and Oruganti Subbaramayya was taken by the Chairman in spite of distinct refusal by S. Audinarayanappah to join them and in the absence of C. Venugopala Kristnayya the real purchaser. A pronote also was taken simultaneously with the above from only the said A. Venkatarangam Naidu and Oruganti Subbaramayya for Rs 180-13-6, the arrear deposit. However for some reason or other which cannot be gathered from the records of the office the real purchaser C. Venugopala Kristnayya who did not appear before the Municipality on any of the above said occasions subsequent to the purchase on 11th March 1898, was made to sign the agreement on the 14th April

1898 and also to execute another for cart stand along with the above said two persons.

6. Though irregularly and contrary to the terms of the agreements dated under reference the tolls and cart stand fees were however paid until the end of June and partly in July in the case of the former (tolls) and in the case of the latter (cart stand fees) until September fully.

7. The Chairman then moved the Council again for its advise in the matter. The Council then resolved to recover the arrears by warrants and failing which to prosecute the defaulters. Warrants were accordingly issued in the case of Tolls for July and August, but in vain as might be expected. But in the case of cartstand fees a sum of Rs 88-8-0 was paid before the warrant was executed. A Civil action also was sanctioned for the recovery of the amount due on pronote mentioned

Supra and a sum of Rs 20 also was immediately placed at the disposal of M.R.Ry D. M. Kristna Rao Pantulu garu Ba first grade pleader for the purpose. This was done so long back as September last. The Chairman conducted the criminal prosecution also through a Vakeel but it failed.

8. Then the Chairman placed before the Council the financial condition of the Municipality drawn up by the Head Clerk of the office for its consideration and advice in the matter. With a view to avoid any further loss to the Municipality the Council resolved at once the resale of the farms in question at the risk of the defaulters requesting the Chairman to lay before it the previous history of the matters in question

for its information. But it was not done so until now. The resale of the cart stand fees having escaped the attention of the Council by oversight, it came to the notice of the Council subsequently at the instance of the Chairman delegate and it was also decided similarly. The two farms have been resold and they fetched Rs 340 and 33-8-0 respectively besides Rs 27-7-11 and Rs 1-5-0 collected while under departmental management of the Municipality after defraying the necessary charges incurred then.

Why

Rs 340

+ Rs 33-8

or 373-8.

9. This is the History of two farms of the Municipality for 1898-99.

10. Now we offer our remarks thereon for such consideration and action as may

be deemed necessary both by the Council and other higher authorities concerned.

11. After giving our best consideration in all respects to the several points involved in the matter under reference we unanimously come to the following conclusions:—

I. The terms of notification were not at all strictly observed from the very begining to the last.

It was unavoidable. If the forms were resold, the Council should never have been in a better position. Even then the loss should have been recovered from the Contractors that is the defaulters only

II Accepting a memo from Sreeramaju Audinarayanappah offering himself as a partner of Chimkula Venugopala Kristnayya the real purchaser in his absence

III. Several intermediate transactions carried on by A. Venkatarungum Naidu and C. Subbaramayya subsequent to Venugopala Kristnayya's purchase until 14th April 1898 in his absence when he wrote cartstand agreement in the absence of others though they seemed to have signed it later on. This circumstance

The contract was complete by the execution of the bond.

will technically give room to the contending parties to impeach the bonafidies of the said transactions ~~and~~ and also invalidate them on the ground of want of privity of contract between them in several sets at different stages.

Two others undertook to be contractors

IV Failure of the so called contractors to furnish the security as required by the notification on the subject.

Not required under the acts

V The non-registration of the agreements as mentioned in the said notifications.

VI The failure of payment of deposit and instalments in time as stipulated in the said agreements

Parties executed & Council approved

VII The taking of a pro note for the balance deposit of Rs 180-13-6 contrary to para 8 of the notification

VIII. The said A. Venkatarangam petitioned the Chairman urging upon the strict enforcement of the terms of the agreements and also praying for the resale of the Farms of the defaulters. The Chairman though made a note thereon for a resale does not seem to have pressed for it in the meeting though it was late. C. Venugopalakristnayya also in a petition criticised the action of the Council in not enforcing the terms of the agreements.

Pressed but not cared

IX No institution of Civil Suit Sanctioned in September last with the necessary funds for the recovery of the pro-rata debt. Had the Suit been brought then the amount, with Costs could have been recovered erelong. Now this amount is to be treated as almost irrecoverable as may appear later on.

Papers were in the Sub Magistrate's Court so, Vakil could not be

X Instituting a criminal prosecution Vide Magistrate's Judgment.

XI The unheeding of the warnings given

by some of the Councillors against the Solvency of the Contractors in question in time as will appear from memos furnished by them at our request

They should have protested as laid down in the Act

XII Doubtless the executive put in Several memos before the Council for its advice on Several occasions. This alone in our opinion will not exonerate him from any blame in the light of the circumstances stated in this on the ground he has been an executive officer.

He was very well justified No blame can attach him

XIII. The Several of the Said meetings at which these matters were transacted had only the bare minimum number of quorums, of which some members were against the proposals carried on though their dissents were not recorded as requested by them as will appear from their memos

Resolution Carried

N

XIV. Further he can be said that he knew the status and the characters of the contractors even previous to their concerns [illegible] these matters as will appear from the following

Every one knows. Andinarayanappah alone was a Contractor for 1897-98

XV. The said C. Venugopala Kristnayya brought a pauper suit against his father and brother in the Local Munsiff's Court for partition of his family property and it was dismissed. The said Venkatarangam brought a suit collusively with this Venugopala Kristnayya against him and his father and brothers on a pro-note alleged to have been executed by the father. This C. Venugopala Kristnayya's father-in-law and brother-in-law were among other attesters of the said note. The suit was dismissed though C. Venugopala Kristnayya admitted it while the others impeached it as bold forgery. This was also confirmed in appeal. This C. Venugopala Kristnayya is the brother-in-law of C. Subbaramayya who was a gumastah formerly of the said

Chairman not expected to know everything in Court

A. Venkatarangam with pecuniary dealings of various kinds and even of spurious nature such as the antecedents of these persons. All these we believe know the Chairman who is a member of the Local bar.

XVI. In spite of the above circumstances the Council was however vigilant and careful in directing the resales which fetched some money when the Municipality stood in great need of it.

Did not every one of the Councillors know the irregularity of payments from the beginning

XVII. Accepting the figures of A. Z. G. Campbell Esquire who enquired into the present condition of the Municipality we think that the sum of Rs 1204-11-11 cannot be recovered easily though with a resort to civil action of a long and vexatious nature costing much labour and money even in case of success. Doubts will have to be entertained until the fruits of litigation actually find their

Contractors jointly quite able to pay. Debt will never be lost.

way into the Municipality. As all the said contractors have no undisputed property available for Municipal dues.

XVIII At any rate an immediate civil action is quite absolutely necessary for the recovery of the arrears &c.

XIX Under the above circumstances we are of opinion (a) that the said contractors were not proper persons for purposes of contract (b) that Sreeramapuri Andinarayanappah cannot be considered as one of the contractors, as we believe. (c) that proper steps were not taken in time for the recovery of the arrears.

Andinarayanappa is liable. Proper steps were taken

Papers received from the Assistant Collector in charge of the Sub Division together with the petition presented by C. Venugopalakristnayya and the memos received from some of the Councillors

+ 2

mentioned above are herewith sent for perusal.

We have the honour to be
Sir
Your most obedient Servants

(Signed) P. Pitchayya
(Do.) V. Ananda Rao
(Do.) V. Veeraswami Naidu

(True copy)

[illegible]
7. 3. 99
For Collector

1
793/m/99

No 754
D.

Nellore Sub-Collector's Office
Dated 2nd March 1899

LOCAL & MUNICIPAL DEPT.
793 M

From A. Y. G. Campbell Esquire.,
Assistant Collector in charge
of the Sub-Division, Nellore

To The Collector of Nellore.

Sir, I have the honour to draw your attention to the following facts connected with the contracts for the tolls and cart stands in the Municipality of Ongole.

2. The rights to levy the tolls and collect the fees for the use of the cartstand during the year 1898-99 were sold in public auction on March 10th and 11th 1898, the highest bids recorded being Rs 2550 and Rs 510 respectively both offered by Sreeramagiri Audinarayanappa, Ara Venkatarangam and Voruganti Subbaramayya jointly. M. Varadayya Naidu put in petitions to the Council stating that he would offer more than the highest bids already taken and requesting resales. The Council in its resolution No 417 dated 19th March 1898 ordered the resales accordingly.

3. In the resales held on 19th March 1898 the highest bids were Rs 2917 and Rs 531 offered by Chivukula Venugopala Krishnayya alone. These sales were confirmed in the Council's resolution No 425 dated 22nd March 1898.

4. At the Councils' meeting held on 30th March 1898, the Chairman drew the

Council's attention to the fact that Venugopala Krishnayya had not paid the deposits due under Condition 8 of the notification regarding the lease of the tolls and under Condition 3 of the notification regarding the lease of the Cart Stand. At the same meeting Sree Ramagiri Audinarayanappa presented a petition to the Council asking that he should be considered a partner with Venugopala Krishnayya and offering to pay the outstanding arrears of the deposits within one week. The Council passed resolution No. 438 in accordance with the wishes of Audinarayanappa.

5. On 13th April 1898 as the whole of the deposit due for the tolls had not been paid, a promissory note for the balance of Rs 180-13-6 with interest was executed by Ara Venkatarangam and Voruganti Subbaramayya only. This promissory note was approved by the Council in its resolution No. 15 dated 30th April 1898. The money due on the promissory note has not been paid yet.

6. On 14th April 1898, the agreements regarding the leases of the Tolls and Cart Stands were signed by Venugopala Krishnayya, Ara Venkatarangam Naidu and Voruganti Subbaramayya only. It appears that Sriramagiri Audinarayanappa refused to sign them. These agreements were approved by the Council in resolution No. 15 dated 30th April 1898

7. Instalments due for the lease of Tolls were paid in full for the months of April, May, June and in part for the month of July. Instalments due for the lease of Cartstand were paid in full for the months April to September inclusive.

8. On 24th January 1899 the Council in its resolution No. 340 directed the resale of the Tolls and on 30th January 1899 the Council in its resolution No. 341 decided to resell the lease of the Cartstands.

9. The following statement shows the amount received on account of the lease of the Tolls.

		Rs. as. p	
30. 3. 98.	Deposits	382-0-0	
6. 4. 98	Deposits	100-0-0	
13. 4. 98	Deposits	21-10-6	
15. 4. 98	Deposits	44-12-0	548-6-6
	Total.		
3. 5. 98	April instalment	243-1-4	
14. 6. 98	May instalment	243-1-4	
26. 7. 98	June instalment	243-1-4	
22. 9. 98	July instalment (part)	105-0-0	
	Total		834-4-0
	Net profit while toll gates were managed by the Council		27-7-11
	Price obtained in resale		340-0-0
	Grand total		1750-2-5

The amount still due is therefore Rs 1166-13-7, of which Rs 180-13-6 is covered by the promissory note.

10. The following statement shows the amounts received on account of the lease of the Cartstand

		Rs a p	
14-3-98.	Deposits	25-0-0	
9-4-98.	Deposit transferred for deposits made on account of lease of tolls	102-8-0	
15-4-98	Deposit	5-4-0	
	Total		132-12-0
18-4-98	April instalment	44-4-0	
14-5-98	May instalment	44-4-0	
29-6-98	June instalment	44-4-0	
8-8-98	July instalment	44-4-0	
22-9-98	August instalment	44-4-0	
22-9-98	September instalment	44-4-0	
	Total		265-8-0
	Net profits when cart stand was managed by the Council		1-5-8
	Amount obtained by resale		33-8-0
	Grand total		433-1-8 + 1750-2-5 = 2183-4-1

The deficit still due is therefore Rs 97-14-4

11. The total arrears for both the tolls and the cartstands amount to Rs 1264-11-11. This amount should be recovered from the Contractors.

12. It may be noted that my figures differ slightly from those given in Statement I showing the receipts of Municipal Fund, because I have included only the net profits (according to verbal information given me) while the tolls and cartstand were managed by the Council and in Statement I the gross receipts during those periods would be included.

13. On 19th September 1898 a warrant was issued for the destraint of the moveable property of the Contractors but it was returned with a report that none of the contractors owned any houses or moveable property in Ongole.

14. In accordance with Resolution No. 193 dated 17th September 1898, the Contractors were then prosecuted on 18th October 1898 before the Sub Magistrate Ongole under Sections 103(2) and 269 of Act IV of 1884. On 19th January 1899 the Sub Magistrate acquitted the accused under Section 245 C.P.C on the ground that the Section 269 of Act IV of 1884 did not apply to instalments due on these contracts.

15. In its resolution No. 194 dated 17th September 1898 the Council sanctioned the institution of a civil suit on the promissory note for Rs 180-13-6. The suit was not instituted as the promissory note was filed as an exhibit in the Sub-Magistrate's Court and the exhibits were not returned till about a fortnight ago.

16. In their resolution No. 341 dated 30th January 1899 the Council referred the whole question to a Sub Committee of three members for report. Owing to the retention of all the principal papers in the Sub Magistrates' Court, the Sub Committee was unable to prepare its report till 17th February 1899. The report was considered on 28th February 1899 by the Council. On account of the diversities of opinion as to the proper persons against whom proceedings should be taken, the Council resolved to obtain a legal opinion on the subject. || I have the honour therefore to forward the connected papers with a copy of the Councils' resolution and to request that you will be good enough to obtain the opinion of the Government pleader, Nellore on the points to which I shall draw your attention, unless you consider that the opinion of the Advocate-General is necessary. In order to save delay however I consider that it will probably be sufficient to obtain the opinion of the Government Pleader Nellore; but I request that the utmost despatch may be used in the disposal of this reference as it is apprehended that the parties liable will take steps to alienate their property and so defraud the Council.

17. Considering first the promissory note, the issues are

(1) Whether Venugopala Krishnayya should be made a defendant in a

Suit to recover the amount.

(2) Whether Sriramagiri Audinarayanappa should be made a defendant in a suit to recover the amount.

There is clause in the promissory note to the effect that "It is not to be inferred that the responsibility on the part of the said Audinarayanappa and Venugopala Krishnayya ceases", but the document is not signed by either of these persons. In the agreement embodying the contract for the lease of the Tolls it is stated in clause (7) "there is still a balance of Rs 180-13-6 to cover the deficit of the one-quarter deposit, for which Ara. Venkatarangam Naidu and Vomganti Subbaramayya among us now present have executed a promissory note. Owing to the execution of this you need not think that the responsibility of other partners has ceased"; but this agreement was not signed by Sriramagiri Audinarayanappa. In its resolution No. 118 dated 16th July 1898 the Council expressed its opinion that "all the parties of the original agreement including Audinarayanappa are liable for the amount due" on the promissory note. It appears that the Chairman still holds this opinion. With this opinion I cannot agree.

18. The next issue is.

(3) "Whether Sriramagiri Audinarayanappa should be joined as defendant in a Civil Suit for the recovery of arrears due for the leases of the tolls and Cartstands.

He had no share in the highest bids made in the resales on March 19, 1898; but in his petition dated 30th March 1898 he requested that he should be made partner with Venugopala Krishnayya in the case of both leases, and the Council sanctioned the arrangement in their Resolution No 438 dated

30th March 1898. On 6th April 1898 the three new partners paid Rs 100 deposit. Sriramagiri Audinarayanappa did not sign the agreement, nor according to the chellans enclosed did he pay any of the instalments for the Tollgates.

19. The next issue is

(4) "Whether the Contracts for the lease of the Tolls is invalidated by any of the following irregularities in carrying out the agreement,

(a) neither the successful bidder nor the executors of the agreement gave at any time adequate security for the whole amount in accordance with the Condition 8 of the notification which forms part of the agreement

(b) neither the successful bidder nor the executors of the agreement deposited in cash a sum equal to 3 monthly instalments of the rent, but part was deposited in cash and part was covered by a promissory note, and only a small portion of the deposit was paid within three days after the sale as directed in Condition 8 of the notification

(c) The deed was not registered in accordance with Condition 8 of the notification

(d) the penalty laid down in Condition 8 for failure to carry out that condition, namely that deposit should be forfeited and the farm resold or managed by the Council was not enforced though the word "shall" (not "shall be liable to") seems to imply that there is no alternative course. The different wording in Condition 9 and 10 may be noticed.

20. The next issue is

(5) "Whether the contract for the lease of the cartstand is invalidated by any of the following irregularities in carrying out the agreement:—

(a) Neither the successful bidder nor the executors of the agreement gave adequate security at any time for the payment of the whole rent in accordance with Condition 3 of the notification which forms part of the agreement

(b) The deposit was not paid within three days after the sale in accordance with the same condition.

(C) The agreement was not registered in accordance with the same condition.

21. The next issue is

(6) (a) Whether a power of attorney should have been given to the Cartstand Contractor and if so

(b) whether the contract is invalidated because no such power was given. In Section 92 (1) of Act IV of 1884, provision is expressly made to allow the tolls to be farmed out, but there is no provision in Section 190 to allow the right to collect fees for the use of the Cartstand to be leased out. The contractor must therefore be regarded as a person "authorized to collect the fees on behalf of the Municipality"

(See Section 190 (2))

22. The next issue is

(7) Whether the three persons who signed the two agreements are all liable for the contracts.

Presumably this issue will be settled in the affirmative although two of the executors had no share in the bid accepted, and did not sign any petition asking that they should be joined as partners. They have however signed other papers relating to the deposit and the agreements.

23. When these preliminary points have been decided, the Council must consider whether it will proceed in a Civil Court. In this connection I draw your attention to section XV of para 11 of the Sub-Committee's report remarks regarding the status of the contractors.

24. I enclose a statement furnished to me by the Chairman regarding the present financial position of the Council. From this statement it appears that in spite of the loss of money on account of the failure by the contractors, the Chairman expects a balance of Rs 1700 after paying all due debts at the close of the financial year.

25. It is hardly necessary for me to draw your attention further to the irregularities and mismanagement (already noticed in previous paragraphs) on account of which these difficulties have come upon the Municipal Council. The report of the Sub Committee, with the marginal notes

made in red ink by the chairman is enclosed. That report and the statements addressed to the Sub Committee by members who were present at the time of the confirmation of the sales indicate that, in their opinion, the Chairman is in some measure responsible for the loss which has been incurred by the Municipality.

26. Papers connected with these questions according to the list appended, a copy of the Council's Resolution No. 350, dated 28th February 1899, disposal No. 529 dated the 11th February 1899 and the records in C. C. No. 364 of 1898 on the file of the Sub Magistrate Ongole are enclosed.

I have the honour to be,
Sir,
Your most obedient Servant,
(Signed) A. Y. G. Campbell
2.3.99
Assistant Collector in Charge

(True Copy)

No 414/Eng/8 dated 8th March 1899.

Submitted to Government with copy of Sub. Committee's report dated 17th February 1899 with the Chairman's notes thereon.

2. It will be seen that the total arrears for both tolls and cart stands amount to Rs 1264-11-11 which should be recovered from the contractors. This has been rendered difficult owing to the various irregularities committed and also a doubt as to the solvency of the contractors.

3. The irregularities are as follows:—

(1) The deposit equal to 3 months' rental was not made in either case within three days of the sale as required by clauses 8 and 3 of the sale notifications regarding tolls and cart stands.

(1) (2) No steps were taken to resell the toll and cart stand farms for default of payment of the deposit above mentioned within the prescribed time treating the initial deposit of Rs 125 already made as forfeited as required by clauses 8 and 3 referred to above.

(2) (3) No security was taken for due payment of the whole of the contract amounts in either case in terms of the clauses 8 and 3 above quoted.

(4) Two agreements, however, were taken which were drawn in the names of—

4 persons {
1. C. V. Krishnayya
2. A. Venkataranjam
3. O. Subbaramayya
4. S. Audinarayanappa.

but signed only by the 1st three and not registered as required by the clauses 8 and 3 in question.

(5) A Promissory note was taken on 13th April 1898 from persons 2 and 3 named above for Rs 180-13-6 to cover the deficit amount of deposit yet due

(6) The monthly instalments were not paid in advance within the first week of every month in terms of the Sale notifications, nor the deposits applied nor any penalties levied. (3)

(7) No steps were taken to resell the farms promptly even after default in payment of the monthly instalments.

(8) No notice was taken though timely warning was given by some of the members of the Council as to the doubtful solvency of the successful bidder. (4)

(9) The character and status of the parties seem to have been known to the chairman and yet he contracted with them vide Clauses XIV and XV of para 11 of the Sub Committee's report.

(10) The chairman did not proceed to resell till urged by the Council to do so. vide para 8 of the Sub Committee's report. (5)

4. Thus it will be seen that the irregularities are both grave and numerous and the Chairman seems to have been culpably negligent. His term of office expires on 31st March 1899.

5. The legal difficulties which beset the matter have been pointed out in the report of the Assistant Collector in charge of the Sub division.

As desired by the Council I have forwarded the report to the Government Pleader in Nellore and after receipt of his opinion further action will be taken.

9.3.99
For Collector.

Local & Munl. (1899) Department.

CURRENT No. 868 M

ASST SECY TO GOVT
19 MAR 1899
LOCAL MUNL EDL & LEG DEPT

From the Collector of Nellore

Order

No. 4484 / Eng

Dated 16th march 1899

Received
Registered } 20th march 99

Enclosures 1

Spare copies

SUBJECT.

Forwarding Copy of the Nellore Government Pleader's letter regarding the legal steps to be taken in connection with toll-gate and Cartstand Contracts of the Ongole Municipality.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

No 36.

Dated 13th March 1899
Recd 13th – do –
Encl. Records.

From
M.R.Ry N. V. Rungachari
Govt. Pleader
Nellore

To
The Collector, Nellore

Sir,

With reference to your memorandum Re. No 375 dated 8th March 1899 regarding the loss sustained by the Ongole Municipality in tolls and cart stand fees for 1898-99 I have the honour to state hereunder my answers to the several issues of the law raised by the Sub Collector briefly giving the reasons when necessary.

Issue I Answer. It was Venugopala Krishnayya in whose name the sale was knocked down on 19th March 1898. The executan of the Pro-note had no intere in executing it other than for the purposes of the Contract entered into with the Municipality by Gopalakrishnayya: Their act was also ratified by Gopalakrishnayya as the wording of Clause 7 of the agreement impliedly shews. I am therefore of opinion that Venugopalakrishnayya is liable and may be impleaded in the suit on the pro-note

Issue 2

Andinarayanappa cannot be held liable. His petition to the Council to be taken as partner with Venugopakrishnayya and his promise to pay up the deposit do not bind him in any way. There is nothing to shew that he consented to the others (Venkatesurayam and Subbaramayya) joining in the partnership. The Council did not take his consent in admitting these two people into the contract and taking the pro-note. This act of the Council disentitles it from relying on the petition of Andinarayanappa.

Besides this, Andinarayanappa did not join in the agreement which is the docume completing the Contract. He expressly declined to be a party to it. He did not in any other manner act under the agreement; for, it is clear that he took no part in the partnership. The mere mention in the pro-note or the agreement that the liability of Andinarayanappa do not cease does not bind him. He was no party to either of these.

Issue 3

For the Same reasons I am of opinion that the Council can have no hold on Andinarayanappa for the recovery of arrears due in respect of the leases either for the tolls or cart stand:

Issue 4

In my opinion the contract did not become void for any of the reasons a to d.

The restrictions placed on the contractor as mentioned in Condition 8 namely (1) giving Security for the whole amount (2) depositing in advance three monthly instalments and (3) the registering of the agreement are really intended as measures for safeguarding the interests of the Municipality and minimising the chances of loss and other technical difficulties being put forward by the Contractor. These are acts that the contractor has to perform and failure to perform them will make the contract voidable only at the option of the Municipal council. The Contractor will not be allowed to say "I failed to perform my part of the contract and therefore it cannot bind me". As for the agreement its registration is only optional under the Act; the Contractor gets full right under it even without registration. As for the use of the word 'shall' in "[illegible] ll be resold or managed by the Council"

I do not think that the word was used in the same obligatory sense as it conveys in law. It seems to me on reading the whole notification that the word was used rather carelessly and with no object of any special meaning being attached to it. It cannot be supposed that such a condition which binds the promisee to give up the contract for default of the promisor and which has the effect of taking away the ordinary rights of a party under the law of contract could have been thought of by the Council. Besides this I fail to see any provision warranting such a course regarding the farming of tolls either in the Municipal or local Boards Act or the rules or byelaws framed thereunder. In the corresponding condition no 3 in the notification issued by the Chairman of the

Nellore Municipality and in Condition 3 of that issued by the President of the District Board the word 'shall' does not appear.

Issue 5

For the reasons given regarding the last issue I am of opinion that the contract in this case has not become void

Issue 6

I am of opinion that no power of attorney is necessary and even if it is, it need not have been express and in writing. This issue has been raised on the ground that Section 190 (1) does not expressly state that the right to levy the fees may be farmed as is the express provision in the case of tolls under Section 92. Another ground is that 190(2) shows that the person who collects the fees should be one authorized to collect on behalf of the Council. The ordinary rule at Common law is that every person owning and enjoying property has in the absence of any special restriction to the contrary a right to transfer his interest in it either absolutely or with any reservation. Therefore when the municipality has right to levy fees for the use of its cartstands, markets and slaughter houses &c., it has power to transfer its right to others by lease &c. as has been done in this case. It is nothing more than the case of a land-holder farming out the collection of rents. The legislation would not have intended that the Municipality should have no powers of farming out the collection of fees which it can levy. As for the express mention in Sec 92 of the powers of farming out the tolls it seems to me there must have been an object in making a specific mention of it. The right of levying fees under Sections 190 and 191 is a right that the Municipality has in its enjoyment of immoveable property

Viz places set apart for a special use and the ordinary rights are therefore presumed and no specific mention would be necessary. But the case of tolls is somewhat different. The object of levying tolls is to get compensation for the expenses incurred in the repairs or construction of roads. It is not a right attached to immoveable property. Ordinarily such a right is exercised by the person possessing it and perhaps the legislation intended that a right to have it farmed out should be specifically mentioned. Even if it be supposed that the municipality has no right to lease out the collection of fees and that the contractors should have been authorized to collect such fees, it does not appear that the authority must be given only by a power of attorney and in writing and not in any other manner. An authority if necessary may be either oral or in writing or may be express or implied. In this case the fact that the Contractor executed an agreement which was accepted by the Council is a sufficient authority. Then again it is the person from whom the fees are levied that should ask for the authority and not the contractor who did not ask for such an authority. Certainly the Contractor cannot now set up a plea that he did not collect the fees for want of proper power of attorney.

Issue 7 The three persons Venugopalakrishnayya, Subbaramiah and Venkatarungam are liable. The first had the bid knocked down in his name and the other two executed the pro-note for Rs 180 odd for the deposit payable in respect of the contract entered into by the first. All the three

Joined in the execution of the agreement. They took part in the partnership and paid a portion of the deposit and also moneys payable for some instalments.

The records sent to me are herewith returned.

I have the honour to be
Sir
Your most obedient Servant
(Signed) N. V. Runga Charlu
Govt Pleader
Nellore

(True copy)

17. 3. 99
For Collector

NELLORE COLLECTOR'S OFFICE,
DATED 16th March 1899.

No. ———
Eng

From C. M. Mullaly Esquire.,
Collector of Nellore.

LOCAL & MUNICIPAL DEPT.
([illegible] No. 868 [illegible]

To the Secretary to Government,
Local and Municipal Department,
Madras.

Sir,

In continuation of my endorsement No. 414/Eng dated 8th March 1899 on Sub-Collector's letter No. 754/D dated 3rd March 1899, I have the honour to submit herewith copy of letter No. 36 dated 13th March 1899 from the Government Pleader, Nellore, in reply to this office reference regarding the legal steps to be taken in the matter of the toll gate and cart stand contracts of the Ongole Municipality. The Municipal Council has accordingly been advised to take legal action promptly against all the parties concerned except S. Audinaranappa who did not sign either the promissory note or the agreements in question.

I have the honour to be,

Sir,

Your most obedient Servant

Collector.

16.3.99

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