

[L. & M.]
[8,000-8-4-99.]

Local & Munl. (1899) Department.

MISCELLANEOUS.

G.O., No. 985 M.

DATED 13-7-99.

INDEXED.

[Despatch Abstract.]

Toll gates and Cart Stand Contract Recording,
with remarks, the Advocate-General's opinion
regarding — of the Cengole Municipality for
1898-99.

BACK PAPERS.

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

FURTHER PAPERS.

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

CR CR
Local & Munl. (1899) Department.

CURRENT No. 1674 m

red

From

The Local Solicitor
Madras

again p. No 813 m d 9-6-99
+ Cus 1674 m

Order
this

No. 983 - muni d 13/7/99

Recorded with the following remarks:-

No 312

The
irregularities in connection with the contracts
for the coll. of tolls & cart stand fees in the
ongole municipality, now brought to light,
reflect great discredit on the Chairman
and the Council. The Coll. will report the
result of the suit filed by the Council
against the contractors.

Dated 22-6-99

Received 23-6-99.

Registered 26-6-99

Enclosures Cus 793 m + 868 m of
99 returned - Lugo No 813

Spare copies -

/From orders

846
m 7-59

PH
m 12/99
To

The Chairman m.c. Ongole Pro

Coll. Queller. Pro

Sept 15/7/99

SUBJECT.

Forwarding the Advocate
General's opinion regarding
tollgates and cart stand
contracts of the Ongole
municipality for 1898-99

9/11
12/7

2/3/9

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Section 259

W 80. 985 m 13-7-99

OPINION

12 P
GENERAL DEPT.
16/7/99

1. In this case I regret that I cannot advise proceedings against the Chairman of the Municipal Council, Ongole, under S. 259 of the District Municipalities Act - at any rate, as matters stand at present. There can be no question that the Chairman's conduct in connection with the "farms" of the tolls and cart stand charges has been lamentably unbusiness-like; but I do not think that, at any rate in the present state of affairs, a suit against him, with the object of making him personally liable, would be successful.

2. On the facts as stated in the Report of the Sub Committee, it seems to me that a large measure of blame attaches to the Council, or a majority of the Council, as well as to the Chairman, for the mismanagement of the business. After the confirmation by the Council on March 14th 1898, of the resale to Kristnayya it was of course the duty of the Chairman, and of the Council, to decline to recognize any other parties to the transaction and to take prompt steps to compel Kristnayya to carry out his contract. The Chairman seems to have lost no time in bringing Kristnayya's failure to pay the required deposit to the notice of the Council; but the resolution of the Council on March 30th to accept Audinarayanappa's offer was a most unbusinesslike proceeding, and the Chairman ought to have protested against it even if he had been out-voted. The same observation applies to the resolution authorising the extraordinary arrangement of April 13th and 14th under which two agreements were signed by Kristnayya, Venkatarangam Naidu, and Orunganti Subharamanya (the two last named being complete strangers to the original transaction) and the promissory note signed by these two alone.

3. Payments were made, more or less irregularly, under the tolls agreement up to July, and under the cart-stand agreement up to September. In September the Chairman again applied to the Council for advice, the proceedings referred to in paragraph 7. of the Sub Committee's Report were instituted, and, after considerable delay, "the re-sale of the cart-stand fees having escaped the attention of the Council by over-sight" the "farms" were re-sold. As the executive officer of the

Council the Chairman seems alone responsible for the delay in the sale of the cart-stand "farm"; but, as regards the other matters, the Council, or the majority of the Council, appear to have been almost as blame worthy as the Chairman. But the action, or inaction of the Council affords no valid excuse for the conduct of the Chairman, and I fully agree with the observation of the Collector as to the gravity of the irregularities and the culpable negligence of the Chairman.

4. At the same time, as I have already stated, I do not think proceedings against the Chairman under S. 259 of the Act would succeed. Under this section the Chairman, in his capacity as a Municipal Councillor, is personally liable for "the loss of ... any money belonging to the Municipal Council if such loss is a direct consequence of his neglect or misconduct". I have considerable doubts as to whether the words of the section are wide enough to cover the facts of the present case. I question whether money due to the Municipality under a contract, or tolls and charges which, but for the contract, would have been payable direct to the Municipality, are "money belonging to the Municipality". But, however, this may be, it seems to me that until the termination of the proceedings against the "contractors", it cannot be said that there has been a "loss". It may be that the proceedings will result in a complete indemnity to the Council. This appears to be the Chairman's view (see his note in red ink to paragraph 17 of the Sub-Committee's Report), and, in any case, at the present stage, I do not see how the plaintiff, in a suit against the Chairman, could prove the "loss".

C. Arnold White

Advocate General

Ootacamund

June 16th 1899.

(True Copy)

Lincoln Barclay

Government Solicitor

1899/10/16

Received by the Collector
of the District of
Madras

The Secretary to Government
of the District of
Madras

No 312

1899

Received by the Collector
of the District of
Madras

1899/10/16

Lincoln Barclay

(1899) Department

From

Ernest Barclay
Government Solicitor
Madras

To

The Secretary to Government
Local & Municipal Department
Madras

N^o 312

Dated 22 June 1899

Recd 23 JUN 1899

Enclos

Forwarded with enclosures
with reference to the Order
of Government N^o 813 M. This
dated 9 June 1899. Local &
Municipal

Ernest Barclay
Government Solicitor

WH
WH
WH
WH

[G.]
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1,000-10-3-98.

LOCAL AND MUNICIPAL DEPARTMENT.

Again fo. no. 813-M, 8th June 99
C. No. 1674-M of 1899.

SUBJECT.

Lease of toll + Cartolain Contracts
Ongole.

FOR ORDERS.

F

Please see the notes and
orders in G.P. N^o 813 M, dated 9th
June 1899.

2. In reply to the reference
made to him, the Advocate-General
says that he cannot advise the
institution of proceedings against
the Chairman of the Municipal
Council under section 259 of the
Act, at any rate as matters stand
at present, seeing that until the
termination of the proceedings against
the "contractors," it cannot be said
that there has been a "loss." He ho-
ever, agrees with the observation of
the Collector as to the gravity of the
irregularities and the culpable ne-
gence of the Chairman. It is the
submitted that the papers

para 4 of his opinion

para 3

now be recorded with the remark that the irregularities in connection with the contracts in question reflect great discredit on the Chairman and the Council and that the Collector may be asked to report the result of the suit against the contractors so that ^{it may be considered whether} the Council ^{may} be directed to institute proceedings against the Chairman, if the loss sustained by it is not fully recovered from the defaulting contractors.

V.D.
14/7/99
806
9.7.99
to H. In

The A.S. is not apparently confident of the result of a suit even if the pending law - suits result in a loss to the Municipality.

806
7.7.99

Omit this part
I accept the rest
H. 8.7.99

When given for copying _____
When copied _____
When examined _____
When signed _____ 187

189

READ AGAIN G.O., No. _____, DATED _____
189 .

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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