G.O

~~Public Works~~ Marine (1897) Department.

G.O., No. 770-71 Mar

DATED 2 September 1897

[Despatch Abstract.]

English Merchant Shipping Act 1894: Ordered that the Opinion of the Acting Advocate General relative to ~~the~~ the interpretation of the — be communicated to the Govt. of India Legislative Department for such action as may be considered necessary in connection with the Merchant Shipping Bill now before the Legislative Council.

The Govt. of India, Legislative Dept. addressed

D.C.
8/9

[P.W. 25. 5,000—30-11-96.]

Indexed. 16/9/97

BACK PAPERS.

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

FURTHER PAPERS.

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

B

No 1088.

Interpretation of the Eng. with Merchant Shipping Act

~~The Hon Sir Henry Bliss~~
~~K.C.I.E~~

To The Presidency Port Officer 9/9/97

Issue with reference to [illegible] his [illegible] about restricting area [illegible]

1/9/97

Copy 4/9/97

H.M. 30.8.97

Marine Dept.

Proceedings of Govt.

No. 770 Mar. of 2d September 1897

The opinion of the Acting Advocate General will, with reference to paragraph 4, be communicated to the Govt. of India Legislative Dept. for such action as may be considered necessary in connection with the Merchant Shipping Bill now before the Legislative Council.

No. 771 Mar. of 2nd September 1897

To
The Secretary to the G. of I.
Legislative Dept.

Sir
In continuation of my letter No 453 E. dated 9 July 1897, I am directed to forward a copy of the Proceedings of this Govt. No 770 Marine, of 2d Septr 1897 containing a further opinion of

G.O.

BACK PAPERS.

of the Acting Advocate General arising out of the provisions of the English Merchant Shipping Act, 1894, a bill dealing with which is now before the Supreme Legislative Council.

30/8/97

d 9/9/97

R.S.

M

Note for the Hon: Member

With reference to the Hon: Member's note of 17/8/97, the following explanation of the Advocate General's "opinion" is offered.

Para 1. The meaning seems to be that certain duties× specified in para 1 of the Instructions of the Board of Trade as appertaining to "officers of Customs" (or Superintendents)+ can be exercised by any officer appointed by the Governor General to discharge the functions of the "officers of Customs" or "Superintendents" aforesaid.

× e.g. those mentioned in Section 247(1) of the Act, 1894.

+ Vide Sec 742 of the Act, 1894 p. 316. and Sec 15 of the Merchant Shipping Amendment Act 1862. p 737 of volume –

Para 4. The Advocate Genl. here says that the Governor General cannot delegate any of his powers unless such delegation is expressly allowed.

There seems to be no provision in the Act for such delegation – (the Advocate General points to none). It would thus seem to follow that no officer of Govt. can discharge any of the duties, (e.g. those regarding distressed seamen) expressly assigned to the Governor Genl. under Section 191 of the Act, 1894.

R.S.

G.O.

G.O.

Marine ~~P.W.~~. DEPARTMENT.

Interpretation of English Merchant Shipping Act

READ the following:—

C. No. 1088 of 1897.

~~The Hon. Sir Henry Bliss K.C.I.E.~~

~~His Excellency the Governor~~

⊕ not put up — should be PH

⊗ Note p. 46 of the Instructions of the Board of Trade —

FOR ORDERS.

It will be seen that the Advocate General does not understand para 2 of the Instructions of the Board of Trade to mean that the Government can delegate any of its powers or duties to any of its officers, but only can appoint any of its officers to discharge the functions specified in para as appertaining to the holders of certain offices.

2. He is also of opinion,

(1) that the Instructions of the Board of Trade issued under the Act of 1854 continue in force under the Act of 1894, so far as they are consistent with the later Act; and

(2) that the powers vested in the Governor General under the Act of 1894 cannot be delegated except where delegation is expressly allowed.

3. The opinion of the Advocate General might perhaps be communicated to the Government of India, Legislative Department, for such action as may

I do not follow the Adv. Genl. — ~~He~~ begins by saying that the "Instructions" of the Bd. of Trade ⊕ were apparently issued under 18 & 19 Vic, Cap 91, s. 16, under which the Bd. is authorised to make regulations regarding distressed seamen, a power which is continued under the Statute of 1894. These, therefore, under s. 745(1)(a) of this Statute, may be taken to have been made under the Statute itself. Now these Instructions say (para 2) that the Govt. of a Colony can depute ~~the~~ its duties ~~as~~ which are mentioned in para 1 to any of its officers. ~~It~~ Among these duties are those relating to the crews of merchant ships, which cover the case of distressed seamen. In India, at least so it seems to me, according to another Statute, the "Governor" means the G.G. Therefore the G.G. should depute to the Port officers named his duties under ss. 191 et seq of the Statute of 1894. There can be no difficulty in moving him to do so. But, in his para 4 the Adv. Genl. says that unless expressly allowed to do so, a Govr. cannot delegate his powers.

I fail to understand the position & think a fresh ref. to the Adv. Genl. necessary.

Perhaps H.E. will kindly advise.

17/8/97

H.E.

I take it that the book of Instructions put up are to be regarded more in the light of explanations than of Regulations having the force of law. The last ~~para of~~ sentence of para. 1 would seem to throw doubt

43—500-22-1-96.

H.Su. 20/8/97 R 26/8/97

may be necessary on para 4, in connection with the Merchant Shipping Bill now before that Government.

16/8/97

M.

FOR ORDERS.

doubt on the Instructions themselves possessing legal force.

The Govt. of India have a Merchant Shipping Act before them. I think our safest course would be to do as the Advocate-General suggests, — namely, to submit the matter to the Govt. of India, for consideration, in connection with their bill. See para. 4 of the Ad. Genl's report of 2 Aug. 1897.

A.S.H.

25.8.97

Marine (1897) Department.

CURRENT No. 1088

Order

From The Government Solicitor Madras

No. 442

Dated 5-8-97

Received 6-8-97

Enclosures one Book (Instructions to Officers in British Possessions)

Spare copies –

SUBJECT.

Forwarding the opinion of the Advocate General, regarding the delegation of powers of Govt. under the Merchant Shipping Act to certain Officers subordinate to the Govt.

1043

[M 4. 1,000—8-8-96.]

BACK PAPERS.

G.O.	No.	Department.	Date.
637	D/12-2-97		
532	D/4-6-97		
4532	D/9-7-97		

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Opinion

(Re G. O. No 637, Marine, dated 17th July 1897)

× vide §6 of the Instructions of the Board of Trade

1. The instructions of the board of trade were apparently issued under 18 and 19 Vict, cap 91, Sec16, corresponding to Sec 190 of Merchant Shipping Act, 1894, in which the board of trade is authorized - to make regulations with respect to distressed seamen and apprentices. The first four paras of the instructions are under the heading "preliminary" Para 1 begins by stating that the Merchant Shipping Act, 1854, requires officers of customs or other officers appointed for the purpose in the British possessions abroad to exercise certain functions in respect of the masters and crews of Merchant Ships, and in para 2, it is stated that the duties in question (referring evidently to the functions mentioned in para 1) can be deputed by the Government of the colony or possession to any of its officers, who, in one colony is styled a shipping master, in another, a Collector of Customs and in a third, a registrar of Shipping. I don't understand this to - mean that the Government can delegate any of its powers or duties to any of its officers, but only that the Government can appoint any of its officers to discharge the functions assigned (under various - Sections of the Merchant Shipping Acts in respect of the Masters and crews of Merchant Ships) to holders of certain offices which independently of the Merchant Shipping Act, are in existence and the incumbents whereof are appointed by the respective local Governments.

Probably at certain ports in some British possessions, there - may have been no officers under the style and name of the officers mentioned in the Sections of the merchant Shipping Acts relating to the masters and crews, In such cases, for the purpose of carrying - out the provisions of the Merchant Shipping Acts, the Government concerned utilized certain existing officers for the performance of the duties prescribed by the Act. The following - instances will illustrate my meaning:-

(a) Under Sec 13 of the Merchant Shipping Act, 1854, corresponding to Sec 723 (1) of the Merchant Shipping Act, 1894, every chief officer of customs in any place in any of Her Majesty's dominions, and every shipping Master may exercise the powers - therein specified for enforcing the provisions of the Act relating to Merchant Seamen (b) Section 159 of the Act of 1854 corresponding to Sec 124 of the Act of 1894 requires the - Master of a Ship who engages any Seaman in any British - possession to do so before an official shipping Master or - any other officer appointed for the purpose of Shipping Seamen and if there be no such officer or master, then before any - officer of customs.

(c) Sec 173 of the Act of 1854 corresponding to Sec 137 (2) of the Act of 1894 empowers a Shipping Master to decide as an arbitrator disputes between the Master of a Ship and any of his crew.

(d) Sec 197 of the Act of 1854 corresponding to Sections 172 and 173 of the Act of 1894 empowers the Chief officer of - customs to take charge of the money and effects of a deceased Seaman or apprentice.

(e) Sec 221 of the Act of 1854 corresponding to Sec 198 of the Act of 1894 empowers any Shipping Master or any Chief officer of customs to entertain complaints by any three or more of the crews of any British Ship about provisions or water intended - for their supply.

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2. Sec 124 of the Act of 1854 corresponding to Sec 247 (1) of the Act of 1894 enumerates the duties of shipping masters and Section - 15 of the Merchant Shipping Amendment Act, 1862, changed the title of "Shipping Master " into "Superintendent", and that is the term - used in the Act of 1894 in lieu of "Shipping Master" wherever it - occurred in the Act of 1854. This term is defined in Sec 742 of the Act of 1894 as denoting in British possessions any shipping master or any other officer discharging in that possession the duties of - a Superintendent specified in Sec 247 (1) of the Act. The expression "the Chief officer of customs "occurring in the Act of 1854 was not - defined in that Act, but it is defined in Sec 742 of the Act of 1894 as including, the Collector, Superintendent, principal Coast officer - or other Chief officer of customs at each port. The way in which - the matter is thus dealt with in the Act of 1894 gives a clue to - paras 1 and 2 of the instructions in question, and it was probably - because some officers who were not strictly Chief Officers of - customs or shipping Masters, and in certain cases even registrars of shipping were authorized by Governments of British possessions to - discharge the duties in respect of masters and Seamen that the expression"the Chief Officer of customs" has been defined in the - Act of 1894 to include the several officers mentioned in such defi- -nition, and the word " Superintendent " which was substituted by the Act of 1862 for "Shipping Master" has been defined to include, in - respect of British possessions, any officers or person discharging in that possession the duties in relation to masters and Seamen, spe- -cified in Sec 247 (1) of the Act.

3. The practice referred to in paras (1) and (2) even if it was - not quite regular in certain cases under the Merchant Shipping

Acts, 1854 to 1892, is now made legal by the Act of 1894. The instructions issued by the Board of Trade under Sec 6* of the Act of 1854 and Sec 16+ of the Act of 1855 will no doubt, under Sec 745 (1) of the Act of 1894, continue to be inforce, So far as they are consistent with the provisions of the Act of 1894 as if they were in the nature of "regulations" made under Secs 190 and 713 of the latter Act. It should, however, be borne in mind that most of the instructions in question are only in the nature of explanations of the various provisions of the Act relating to masters and seamen: Such explanations will, of course, not have the force of law except in so far as they correctly Construe the Sections.

× or 713 of the Act of 1894

+ or 190 of the Act of 1894

4. I am of opinion that the powers vested by the Merchant Shipping Act, 1894, in the "Governor of a British possession", (an expression which as regards India denotes the Governor-General (vide 52 and 53 Vict, Cap 63, Sec 18 (6)) cannot be delegated except where it is expressly allowed. It will, however, be competent, under Sec 735 of the Act of 1894, to the Supreme Legislative Council to provide in the Merchant Shipping Bill now before it for delegation of such powers and also to vest some of these powers in the Local Government, and to further provide for the Local Government delegating such powers.

Madras, }
2nd August 1897. }

V. Bhashyam Iyengar
Offg. Advocate General.

(True Copy)
Wm Morgan
Ag: Government Solicitor.

(1897) Department

From

William Morgan
Ag: Government Solicitor
Madras

To

The Secretary to Government
Marine Department
Ootacamund

No 442

Dated 5th August 1897
Recd

Enclosure 1 Book

Forwarded with enclosure with reference to the Order of Government No 637 Marine dated 17 July 1897

William Morgan
Ag. Government Solicitor