

Pension (1899) Department
Government (1899) of Madras.

PUBLIC. Current No 1023

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} 1899.

Enclosures -

Spare copies -

G.O., No. 1308, 21st November 1899.

NOVEMBER.

Loans.

Communicating to the departments of the Secretariat, for information and guidance, the Government of India Resolution regarding the admissibility of — by Government servants to managers of Court of Wards or encumbered estates.

List

Order 7th Decr. 1899 No 842

Revised.

1st
21/11/99

11/11/99

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

Read—the following paper:—

From T. W. HOLDERNESS, Esq., c.s.i., Secretary to the Government of India, Department of Revenue and Agriculture (Land Revenue), to the Secretary to the Government of Madras, Revenue Department, dated Simla, 30th September 1899, Cir. No. 5—319-3.

I am directed to forward, for information and guidance, a copy of the correspondence noted in the margin relating to the admissibility of loans by Government officials to managers of estates administered under a Court of Wards or an Encumbered Estates Act.

1. Letter from the Government of Bombay, No. 6129, dated 31st August 1899, and enclosures.
2. Letter to the Government of Bombay, No. 2276—319-2, dated 30th September 1899.

ENCLOSURES.

From the Hon'ble Mr. J. W. P. MUIR-MACKENZIE, I.C.S., Secretary to the Government of Bombay, to the Secretary to the Government of India, Department of Revenue and Agriculture, dated Bombay Castle, 31st August 1899, No. 6129.

Under the Resolution of the Government of India in the Home Department (Public), No. 2-R.—87-103, dated 16th January 1890, Covenanted Civil Servants and Members of the Statutory Civil Service as well as all uncovenanted officers in the subordinate Executive and Judicial Services of the Government "are prohibited from lending money at interest, whether directly or through relatives or other agents, to landholders, with or without security, within the province in which they are employed." In June last the Commissioner in Sindh made a reference to this Government inquiring whether, in view of the orders quoted, there was any objection to the Manager, Sindh Encumbered Estates, accepting a loan of Rs. 10,000 at 8 per cent. offered by Rao Saheb Varialsing Nihalsing, Registrar of the Sadar Court in Sindh, in aid of a certain estate which is being managed under the Encumbered Estates Act. I am directed to forward a copy of the Resolution No. 4801, dated 11th July 1899, passed on the reference from the Commissioner, in which this Government ruled that the Manager of the Encumbered Estates was not an agent of the landowner within the terms of the orders of the Government of India, and that there was no objection to the loan being accepted in the case referred to. The loan in this case was understood to be one under section 24 (c) of the Sindh Encumbered Estates Act, XX of 1896, as the Commissioner in Sindh stated that "the Manager must continue to administer the estate until the liability had been finally discharged" [section 27 (1) of the Act].

2. I am to enclose a copy of a memorandum from the Commissioner in Sindh, No. 4883, dated 8th August 1899, and its accompaniment, in which orders of Government are requested with regard to loans aggregating Rs. 20,400 offered by Mr. T. Summers, Executive Engineer, Fuleli Canals, on the security of certain estates at present in charge of the Manager, Sindh Encumbered Estates. In the opinion of His Excellency the Governor in Council these loans are objectionable on the grounds that the lands are to be mortgaged to Mr. Summers, and may at any time be brought under his jurisdiction, and that under section 27 (2) of the Encumbered Estates Act, XX of 1896, such mortgages continue in operation after the termination of management. Before disposing of the matter, however, His Excellency the Governor in Council desires me to request that you will be good enough to move the Government of India to favour this Government with a definite pronouncement as to the admissibility of these and similar loans

offered by Government servants. It has been suggested to this Government that such loans may be allowed, provided they are taken up under section 24 (c) of the Act, in which case the lender will not have pledged to him as security any of the property under management, his security lying in the solvent and capable administration of the estate by the official Manager. But, although these loans may be a convenient way of obtaining money and beneficial to the estate, yet the Governor in Council is inclined, on consideration, to doubt the expediency of allowing Government officials to be mixed up in such transactions.

3. I am to state that this Government proposes to confirm the action of the Commissioner in Sindh in respect of the acceptance of a loan of Rs. 7,000 from Mr. Summers, as that transaction had already been completed before the date of the Commissioner's reference to Government. I am to solicit the approval of the Government of India to this proceeding as also to that described in paragraph 1 above.

Extract from the Proceedings of the Government of Bombay, No. 4801, dated Bombay Castle, the 11th July 1899.

Read—the following:—

Letter from the Manager, Encumbered Estates in Sindh, to the Commissioner in Sindh, No. 1132, dated 12th June 1899—

"Referring to the correspondence ending with your No. 948, dated the 24th February last, sanctioning the liquidation scheme of estate No. 273—382 of Sayad Alibakhsh Shah, son of Sayad Ali Mahomed Shah, zamindar of Tando Bago and Badin, and remarking that you were awaiting the report regarding negotiations for a loan on account of the estate, I have the honour to request the favour of your sanctioning a loan of Rs. 10,000 offered by Rao Saheb Varialsing Nihalsing, Registrar of the Sadar Court, at 8 per cent. per annum.

"2. A loan for this estate could not be negotiated elsewhere, as the estate could repay only about one thousand rupees a year, and other capitalists were unwilling to wait beyond five years.

"3. As Government servants may invest in Government and Municipal securities, there is, I trust, no objection in their advancing to me."

Memorandum from the Commissioner in Sindh, No. 3596, dated 20th June 1899—

"Copy forwarded to the Judicial Commissioner in Sindh, with a request that he will be good enough to state whether he has any objection to the investment of the money by Mr. Varialsing."

Letter from the Judicial Commissioner in Sindh to the Commissioner in Sindh, No. 1083, dated 23rd June 1899—

"In reply to your memorandum No. 3596, dated 20th instant, I have the honour to inform you that I see no objection to the loan referred to being sanctioned, if there are no orders of Government against such investments.

Memorandum from the Commissioner in Sindh, No. 3823, dated 29th June 1899—

"The Acting Commissioner in Sindh presents compliments and has the honour to forward a copy of a letter from the Manager, Sindh Encumbered Estates, in which he asks for the Commissioner's sanction to his acceptance of a loan of Rs. 10,000 at 8 per cent. offered by Rao Saheb Varialsing Nihalsing, Registrar of the Sadar Court, in aid of a certain estate now under management, together with a copy of a reference to the Judicial Commissioner on the subject and his reply, and to enquire whether, in the opinion of Government, there would be any objection to the acceptance of such loans offered by Government servants. It is probable that, if this is sanctioned, similar cases will recur.

"2. The orders contained in the Resolution printed on pages 16 and 17 (Second Edition, 1891) of the pamphlet containing rules and orders of the Governor-General in Council, regulating the conduct of public servants, prohibit Government servants from lending money to landholders.

"3. The loan in question is in aid of a particular landholder, but in view of the fact that there can be no direct connection between the lender and the landholder, as the Manager must continue to administer the estate until the liability has been finally discharged, the Acting Commissioner is of opinion that the prohibition quoted above is not applicable to such a loan.

"4. The favour of an early reply is requested."

Resolution.—Government consider that the Manager of the Encumbered Estates is not an agent of the landowner within the terms of the orders of the Government of India referred to by the Commissioner, and that there is no objection to the loan being made and accepted in the present case.

MEMORANDUM from R. GILES, Esq., Acting Commissioner in Sindh, to the Secretary to the Government of Bombay, Revenue Department, dated Karachi, 8th August 1899, No. 4883.

The Acting Commissioner in Sindh presents compliments, and, with reference to Government Resolution No. 4801, dated 11th ultimo, has the honour to forward copy of a letter No. 1620, dated 5th August 1899, from the Manager, Sindh Encumbered Estates, in which that officer requests the Commissioner's sanction to a loan of Rs. 20,400 for certain estates from Mr. Summers, Executive Engineer, Fuleli Canals.

The Manager also adds that Mr. Summers has signified his willingness to make loans up to the amount of Rs. 40,000.

2. In the preamble to the Government Resolution above quoted, the Acting Commissioner's No. 323, dated 29th June, is embodied, and in paragraph 1 of that letter the Acting Commissioner enquired "whether, in the opinion of Government, there would be any objection to the acceptance of such loans offered by Government servants," and added that, if the particular loan then in question was sanctioned, similar cases would recur.

The Acting Commissioner intended, by putting the case in these words, to ask for general instructions, which would enable him to deal with the similar cases that he anticipated would arise, and, on receipt of the Government telegram No. 4826, dated 13th ultimo, and the subsequent Government Resolution, considered that Government held such loans (i.e., loans from Government servants) to be admissible, the Manager not being an agent of the landowner within the terms of the orders of the Government of India. Consequently, when the Manager applied for sanction to the acceptance of loans to the amount of Rs. 7,000, the Acting Commissioner, although personally inclined to deprecate such advances, accorded his sanction, having ascertained that the estates concerned were not within Mr. Summers' jurisdiction as Executive Engineer, and under the impression that the Government Resolution gave general sanction to their being made.

3 But, on receipt of the further application from the Manager now forwarded to Government, the Acting Commissioner observed what he had, he regrets to say, omitted to notice before, the limitation conveyed in the last four words of the Government Resolution, viz., "in the present case."

It is not quite clear whether Government intended, by these words, to qualify the general terms of the first part of the Resolution, and to require that each case of an offer of a loan by a Government servant should be submitted for the orders of Government, or whether the meaning intended was merely that, as there was no objection generally, there was none in the particular case in question.

4. The Acting Commissioner would observe that, in the case dealt with in the Government Resolution, viz., that of a loan from a judicial officer, he offered no opinion as to the desirability or otherwise of loans being accepted from Government servants. In the case of a judicial officer there is the least objection, but the Acting Commissioner regards very differently the case of an executive officer, who might be directly concerned, on some occasion, with an estate, in aid of which he had advanced money.

None of the estates, indeed, for which it is proposed to utilize the loans made and offered by Mr. Summers, are situated within the Fuleli Canals district, and the Acting Commissioner does not suppose that it is likely that Mr. Summers will be transferred to a district where any of the estates financed by him are situated, but he might become Superintending Engineer over the district in which one of the estates lay, and he is unwilling to sanction any future loan without the clear orders of Government.

5. Should Government, however, consider that the Commissioner in Sindh may use his discretion in allowing or not the acceptance of loans from Government servants, the Acting Commissioner would be very glad to be able to accord his sanction in cases where there appeared to be no objection. The value of such loans to the Encumbered Estates Department is great, as the Manager has already represented his difficulty in obtaining advances except for very short periods; and these loans will not only be a material aid in themselves, but will also no doubt induce native capitalists to come forward.

6. In conclusion the Acting Commissioner would request Government to confirm his action in giving sanction to the acceptance of the loan of Rs. 7,000 from Mr. Summers, as that transaction has been already completed.

From L. W. SEYMOUR, Esq., Acting Manager, Encumbered Estates in Sindh, to the Commissioner in Sindh, dated Hyderabad, 5th August 1899, No. 1620.

I have the honour to request you will kindly sanction a loan of Rs. 20,400, to be taken up from Mr. Thomas Summers, Executive Engineer, Fuleli Canals, on the security of the

undermentioned estates. The estates have been leased to Banias with good security for the period shown against each in the statement given below:—

Number.	Estate.	Lease.		Loan required.	When repayable.
		Number of years.	Annual amount.		
177	Sayed Mahomed Zemanshah	7	Rs. 625	Rs. 2,300	1st August 1908.
2					
106	Shahbeg Khan, Mondrani	10	1,420	7,400	1st August 1915.
266					
48	Khuda Baksh Odho	5	860	700	1st August 1902.
419					
297	Karim Baksh Khan and others	5	2,300	10,000	1st August 1916.
97					
				20,400	

The rate of interest offered is 7½ per cent. per annum.

2. These estates are not situated in the Fuleli Canals division.

3. With the Rs. 7,000 previously sanctioned, the total amount of loan from Mr. Summers will now be Rs. 27,400; but as that gentleman is willing to make loans to the extent of Rs. 40,000 in all, I have the honour to request sanction to accept loans to the total of Rs. 40,000; provided the land mortgaged be not within the Fuleli division. I need scarcely add that these loans are a very material aid to the successful and economical working of the Encumbered Estates Act.

From T. W. HOLDERNESS, Esq., C.S.I., Secretary to the Government of India, Department of Revenue and Agriculture (Land Revenue), to the Secretary to the Government of Bombay, Revenue Department, dated Simla, 30th September 1899, No. 2276—319-2.

I am directed to acknowledge the receipt of your letter No. 6129, dated the 31st August 1899, in which you ask for a definite pronouncement of the Government of India as to whether officers in the service of Government may be permitted to become the creditors of encumbered estates under State management in Sindh, by lending money to the Manager appointed under the Act, in connection with liquidation schemes framed by him for the estates under his charge.

2. In reply, I am to say that the Governor-General in Council agrees with the Government of Bombay in doubting the expediency of allowing Government officials to be concerned in such transactions, and he desires that the prohibition contained in the Home Department Resolution No. 2-R.—87-103, dated the 16th January 1890, shall be held applicable to loans, whether on the security of a mortgage or unsecured, to estates administered under a Court of Wards or an Encumbered Estates Act. The creditor of to-day might in the course of official promotion become the Manager or the Commissioner of the Division to-morrow, and it is easy to foresee that if such loans became general, the conduct of the Government in administering estates of private persons for the benefit of its servants might be exposed to serious criticism. There is a clear distinction between these transactions and investments made by Government servants in a public or municipal security, which is raised in the open market by tender, which is at all times freely marketable and is governed by well-known conditions.

3. With reference to paragraph 3 of the letter under reply, I am to say that as the transaction was sanctioned by the Commissioner in the belief that it was not open to exception and is completed, the Government of India leave the decision of the matter to the Government of Bombay.

Endt. R. No. 1548-Rev.

Transferred to the Public Department.

(By order.)

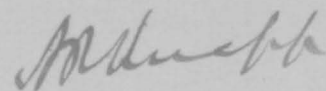
(Signed) N. E. MARJORIBANKS,
Ag. Under Secretary to Government.

27th October 1899.

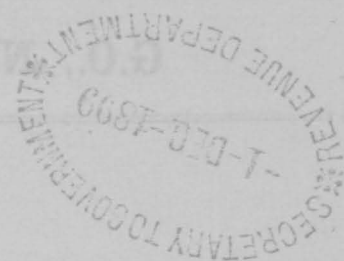
ORDER—No. 1308, Public, dated 21st November 1899.

Communicated to the departments of the Secretariat for information and guidance,
with reference to G.O., No. 60, Public, dated 30th January 1890.

(True Extract.)



for Chief Secretary.

To all Departments of the Secretariat. (Pension)
,, the Heads of Departments under the Public Department.

NOVEMBER

Exd. C. M. Thumbusawmy.