

THE ADMINISTRATOR GENERAL ACT AND THE OFFICIAL TRUSTEE ACT - A GENERAL OVERVIEW

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Introduction:

The public office of Administrator General and Official Trustee dates back to the period of British India. When the British East India dominated the trading sectors in India and gradually positioned its dominion and power over the Indian Provinces, they had to settle in India to manage and to engage in trade practices, thus acquired properties and invested their wealth in other associated activities. When the officers of the British who were in India, died in India, without any relative to take care of the properties, or had to leave India on completion of their work or on the command of the Majesty, the predicament as to how to deal with the properties emerged . The issue relating to the immovable properties that they had acquired in India had to be dealt with and then, the idea of a public office, to take care of the estates of such persons to put an end to the issue, germinated and thus the offices of Administrator General and Official Trustee Acts¹ were formed.

Administrator General In India – The Early Footsteps:

The East India Company, the then dominant political power started to lose its status of monopoly in India and sought the help of the British Crown and the British Government laid its clutches on the affairs of the Company and the Indian provinces by passing the Regulating Act 1773 that brought many changes to the then existing system of governance. The Regulating Act

¹Mr. C.J.Stewart, the Public Trustee in his lecture before the “Institute of Bankers” on 12.02.1908 referred the “Colony of New Zealand” which is considered as pioneer. The office of Official Trustee was introduced in India in the year 1843, and the office of Administrator General dates even earlier

1773, authorized the British crown to establish a Supreme Court at Calcutta² by issuing a charter in 1774. The Supreme Court was then empowered to exercise ecclesiastical jurisdiction³ in Bengal, Bihar, and Orissa over British subjects, as was exercised in the diocese of London. (The word “diocese” means “administration”. When used in an ecclesiastical sense, it refers to a territorial unit of administration). Thus the Supreme Court was authorized to : Grant probate of last wills of British subjects; Letters of administration – intestacy, when no executor named; Sequester (*Confiscate or take possession*) the estate of deceased persons; To grant administration to lawful next of kin or to grant to creditor .

Therefore, from 1.1.1801, when any British subjects died in the presidency of Bombay and no next of kin applied for the administration of the estates of the deceased, then the grant went to the registrar, and the registrar administered the estates of the deceased.

After the period of the British reign, a public official (with the powers like that of the public trustee of the England⁴) continued administering the estates of the deceased person. He

²The Supreme Court of Judicature at Fort William, Calcutta was founded by an Act of Parliament in 1774. It replaced the Mayor's Court of Calcutta and was British India's highest court from 1774 until 1862, when the High Court of Calcutta was established. From 1774 to the arrival of Parliament's Bengal Judicature Act of 1781 in June 1782, the Court claimed jurisdiction over any person residing in Bengal, Bihar or Orissa. These first years were known for their conflict with the Supreme Council of Bengal over the Court's jurisdiction. The conflict came to an end with Parliament's passing of the Bengal Judicature Act of 1781 which restricted the Supreme Court's jurisdiction to either those who lived in Calcutta, or to any British Subject in Bengal, Bihar and Odisha, thereby removing the Court's jurisdiction over any person residing in Bengal, Bihar and Odisha.

³The ecclesiastical courts are a special system of courts administering the ecclesiastical law. Ecclesiastical law means the law relating to any matter concerning the Church of England administered and enforced in any court. The range of spiritual matters dealt with often extended into the secular area. The ecclesiastical courts had jurisdiction over sacramental matters that included anything having to do with marriage, such as separation and legitimacy. They also had exclusive jurisdiction over cases involving wills; in England, the ecclesiastical courts, which became Anglican in the 16th century, had complete jurisdiction in matters of succession to personal property

⁴The public trustee is a permanent official carrying on the business of executorships and trusteeship as one of the governmental services of the state and with the machinery of a government department. He acts as an executor or an administrator of a deceased person, or as a trustee of a will or settlement , in the same manner and under

was entrusted with the powers to protect the property of persons dying and when no steps were taken by his next of kin or where they were absent from British India.

The Administrator General Act

The office of Administrator General was formed in the year 1849, abolishing the ecclesiastical registrars that then had the powers to administer the estates of the persons and enabled and made over the estates of the deceased persons to the Master of the Supreme Court. Thus, the estates passed on from the Ecclesiastical Registrars to the Administrator General.

The Administrator General was appointed by the Government and was then confined to the presidency of Fort William at Calcutta and was later extended to Bombay and then to Madras in the year 1850. Later, in the year 1867, the jurisdiction of each Administrator General was defined and prohibited the Administrator General from holding ecclesiastical Registers.

Then, in the year 1902, the Government took over to resolve the civil liabilities of the deceased person for a commission earned, to be credited to the Government. Powers were given to the High Court of the State to give direction as to manage the estates.

Later, based on the report of Mr. Sanders the then Administrator General and Official Trustee of Bombay, Act 1913 was introduced on 10.9.1912, by the Hon'ble Mr. Syed Ali Iman, the Law member and after consideration on 25.2.1913 the Act was passed into law.

Indian legislature thus borrowed the rules from the presidency of law in England, but kept distinct, the laws of Administrator General & Official Trustee though both the Acts have much in common. Now an Administrator General can act as an executor, administrator with will,

the same obligation as a private individual , but with a guarantee that all breaches of trust will be made good out of the funds of the state

(in case of intestacy), take charge by an order of the Court order, or act as a limited administrator pendent lite.

The passing of the Administrator General Act was felt convenient as it obviates uncertainty on the death of the testator and affords safe custody of wills⁵. The Act empowers the Administrator General to collect and take possession of such assets, and to hold, deposit, realize, sell or invest the same according to the directions of the High Court, and, in default of any such directions, according to the provisions of this Act so far as the same are applicable to such assets. The Act further entitles the Administrator-General to maintain any suit or proceeding for the recovery of such assets; if he thinks fit, to apply for letters of administration of the estate of such deceased person; to retain out of the assets of the estate any fees chargeable under rules made under this Act; and to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made The Act also facilitates any private person who had obtained probate or letters of administration of the estate to transfer to himself the trust , to be administered by himself⁶ .

⁵ **Section 10. Power of Administrator-General to collect and hold assets where immediate action is required.**—(1) Whenever any person has died leaving assets within any State exceeding rupees ten lakhs in value, and the High Court for that State is satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, the High Court may, upon the application of the Administrator-General or of any person interested in such assets or in the due administration thereof, forthwith direct the Administrator-General— (a) to collect and take possession of such assets, and (b) to hold, deposit, realize, sell or invest the same according to the directions of the High Court, and, in default of any such directions, according to the provisions of this Act so far as the same are applicable to such assets. (2) Any order of the High Court under sub-section (1) shall entitle the Administrator-General— (a) to maintain any suit or proceeding for the recovery of such assets; (b) if he thinks fit, to apply for letters of administration of the estate of such deceased person; (c) to retain out of the assets of the estate any fees chargeable under rules made under this Act; and (d) to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made.

⁶ **Administrator general Act 1963 .22. Transfer by private executor or administrator of interest under probate or letters.**—(1) Any private executor or administrator may, with the previous consent of the Administrator-General of the State in which any of the assets of the estate, in respect of which such executor or administrator has obtained probate or letters of administration, are situate, by an instrument in writing under his hand notified in the Official Gazette, transfer the assets of the estate, vested in him by virtue of such probate or letters to the Administrator-

The Administrator General is also empowered to grant to any person, claiming otherwise than as a creditor to be interested in such assets or in the due administration thereof, a certificate under his hand entitling the claimant to receive the assets therein mentioned left by the deceased within the State, to a value not exceeding in the whole ten lakhs rupees, whenever any person has died leaving assets within any State and the Administrator-General of such State is satisfied that such assets, excluding any sum of money deposited in a Government Savings Bank or in any provident fund to which the provisions of the Provident Funds Act, 1925 (19 of 1925), apply. The Act also authorizes transfer to the Government any assets that lay unclaimed without any application for more than twelve years to be transferred to the credit of the Government⁷

Official Trustee Act

The office of Official Trustee in India was formed in the year 1843. In 1855, Act VIII enabled that the Administrator General might be appointed as Official Trustee. On 24.02.1864, the Act of Official Trustee was introduced into the council, by Honble Mr. Maine, principally for the relief of a large class of people who suffered from much of the existing state of law. A trust of Private Property has two principal objects – To ensure safety of trust funds and to enable regular payment of the annual income. The Official Trustee Act, 1864, facilitated the

General by that name or any other sufficient description. (2) As from the date of such transfer, the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except in respect of acts done before the date of such transfer, and the Administrator-General shall have the rights which he would have had, and be subject to the liabilities to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by that name at the date of such transfer.

⁷ **51. Assets unclaimed for twelve years to be transferred to Government.**—All assets in the charge of the Administrator-General which have been in his custody for a period of twelve years or upwards, whether before or after the commencement of this Act, without any application for payment thereof having been made and granted by him shall be transferred, in the prescribed manner, to the account and credit of the Government: Provided that this section shall not authorize the transfer of any such assets as aforesaid, if any suit or proceeding is pending in respect thereof in any court.

appointment of an Official Trustee to act as sole trustee, in the presidency of Bengal, Madras and Bombay.

The Official Trustee can be appointed: By a settlement, creating trust, by Will, by an order of the High court, by a Surviving trustee, beneficiary, Executor or administrator or by the Administrator General himself under section 24⁸ of the Administrator General Act. The Official Trustee acts as the custodian of the trust⁹ vested in him. For better administration and for accountability of the official trustee, the act permits the beneficiary of the Trust to inspect the copy of the accounts of the trust held by the official trustee¹⁰.

The office of official trustee is under the direct supervision of the high Court¹¹ and the order of the court is deemed a decree¹² under the Act. The Official Trustee may incur

⁸**Section 24. Appointment of Official Trustee as trustee of assets after completion of administration.**—(1) When the Administrator-General has, so far as may be, discharged all the liabilities of an estate administered by him, he shall notify the fact in the Official Gazette, and he may, by an instrument in writing, with the consent of the Official Trustee and subject to any rules made by the State Government, appoint the Official Trustee to be the trustee of any assets then remaining in his hands.

(2) Upon such appointment, such assets shall vest in the Official Trustee as if he had been appointed trustee in accordance with the provisions of the Official Trustees Act, 1913 (2 of 1913), and shall be held by him upon the same trusts as the same were held immediately before such appointment.

⁹Definition of the term "TRUST" under the Indian Trusts Act,1882: A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner

¹⁰**22.Right of beneficiary to inspection and copies of accounts**

. - Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom, and nothing in the Indian Trusts Act, 1882 (2 of 1882.), shall affect the provisions of this section.

¹¹**25.Power of High Court to make orders in respect of property vested in Official Trustee**

.- The High Court make such orders as it thinks fit respecting any trust property vested in the Official Trustee or the interest or produce thereof.

¹²**27.Order of Court to have effect of a decree**

. - Any order made by a High Court under this Act shall have effect the same effect as a decree.

expenditure with the sanction of the High Court on religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

When any amount payable to the beneficiary under a trust could not be affected by the official trustee for more than twelve years, in consequence of the beneficiary having been unable to be traced, the amount in the hands of the official trustee is transferred to the credit of the government, in the manner prescribed. The Act also makes provision for payment if any subsequent claim is raised by any person¹³.

Conclusion

The Administrator-General thus protects the interests of minors, beneficiaries and creditors of the estates that the law requires the Administrator-General to administer. The Administrator General, in administering estates, has to determine the liabilities payable by the estate and has responsibility to ascertain, collect, manage and distribute the assets of the estates in accordance with the laws of intestacy to beneficiaries who have proven their relationship to the deceased. The Official Trustee is thus duty bound to act in accordance with the terms of the will and as per law, under the supervision of the High Court in the best interest of the trust, vested in him.

¹³24.Mode of proceeding by claimant to recover money so transferred

. - (1) If any claim is made to any moneys so transferred and such claim is established to the satisfaction of the prescribed authority, the Government shall pay to the claimant the amount in respect of which the claim is established.

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court [Government].and, after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the payment of such money as it thinks fit, and such order shall be binding on all parties to the proceedings.

(3)The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.