

**In Re: Reference Under Section 46 of Act No. 1 of 1879**

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**Court :** Allahabad

**Decided On :** Dec-31-1969

**Reported in :** (1897)ILR19All293

**Judge :** John Edge, Kt., C.J.,; Knox and; Burkitt, JJ.

**Appellant :** In Re: Reference Under Section 46 of Act No. 1 of 1879

**Judgement :**

John Edge, Kt., C.J.

1. One Subhan presented a petition to the Municipal Board of Allahabad, asking permission to erect a tiled shed and to keep a house for storing wood on certain land within the jurisdiction of the Municipal Board. On that petition action was taken by the Municipal Board, and certain orders were passed by the department of the Board to which such questions were delegated. Later on Subhan applied to the Secretary of the Board for, and obtained, a copy of his petition and the order passed by the Board thereon. That copy was certified as correct by the Secretary of the Board. That copy was produced by Subhan and put in evidence in a Magistrate's Court. The Board of Revenue for these Provinces has referred to us the question whether the copy, which was given upon plain paper and bore no stamp, came within article 22 of the first schedule to the Indian Stamp Act. It was not a copy chargeable with duty under the law relating to Court fees. The question turns in our opinion on the point as to whether or not the Secretary of the Municipal Board was, in certifying the copy to be a true copy, a public officer.

2. The question is not free from difficulty and doubt. The term 'public officer' is not defined in the Stamp Act. We may say that, in our opinion, a fiscal Act, which imposes the payment of duty on the subject, ought to contain definitions of all terms which have to be considered in applying the Act, and which are not accepted as well recognised terms of universal application. For instance, under the Indian Penal Code, apparently, the Secretary of a Municipal Board would be a public servant, but he would not be a public officer as that term is defined in the Code of Civil Procedure. On turning to the Evidence Act we find that, by Clause v of Section 78, the record of the proceedings of a Municipal body in British India is a public document. Curiously the word record is not used in the clause, which merely enacts that the proceedings of a Municipal body in British India are within the meaning of public documents. Clause v of Section 78 brings the record of the proceedings of a Municipal body in British India within Clause 2 of Sub-section (1) of Section 74, as the record of the acts of an official body. Turning to Section 76 we find that every public officer having the custody of a public document which any person has a right to inspect shall give that person a copy on payment, &c.;" According to the explanation to Section 76. 'Any officer who, by the ordinary course of his official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.' Working back from that we find that the record of the proceedings of a Municipal Board is a public document, and the officer who is authorized by the ordinary course of his official duties to give copies of public documents is for these purposes a public officer. Now the Secretary of a Municipality is an officer who by the ordinary course of his official duty is authorized to deliver copies of the public documents of which he has the custody as Secretary. Our answer is that the copy in question came within Article 22 of schedule 1 of the Indian Stamp Act and required an eight-anna stamp. We wish to guard ourselves against its being considered that we have decided that the Secretary of a Municipal Board is, for any other purposes than that of certifying copies or extracts of public documents, a public officer. Our opinion will be communicated to the Board of Revenue.