

MADRAS RECORD OFFICE.

Government of Madras.

Marine DEPARTMENT.

G.O. No. 110	Press Mis.
Dated 13. 3.	1858

Not to be folded or roughly handled

Fort Saint George, Marine Consultation, 19th March 1858.

No. 1. From J. J. FRANKLIN, Esq., Secretary Marine Board; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 27th February 1858, No. 906.

SIR,

I have the honor by desire of the Marine Board to submit the accompanying letter from Messrs. Arbuthnot and Co., on the subject of an intended purchase of Coals at Bimlipatam, for the use of Government, and to enter into the following explanation of the transaction it refers to.

2. Mr. William Arbuthnot of that firm intimated, in November last, that they had good Steam Coal at Bimlipatam, which they were willing to dispose of. At this time Coals were scarce, and it was with difficulty sufficient could be obtained to meet the demand. Thirty five Rupees a Ton were freely given for Coal purchased in November, and this rate was offered; but Mr. Arbuthnot was expressly informed that he was to send in his tender in an Official form on the 18th of that month; a private note was sent by Mr. W. Arbuthnot, which is inserted in the margin of Messrs. Arbuthnot's letter of the 24th Instant. This was replied to privately as marked No. 2, in the same letter, and it will be seen that, in the commencement of the reply, the fact of the official offer not having been made was noticed. Mr. Arbuthnot was requested to send it in officially which was enough to shew that the private offer was not considered sufficient authority to act upon. Such transactions are of daily occurrence. Negotiations are entered into verbally, or by note, and afterwards submitted and ratified formally by official correspondence, which would be interminable if such were not done.

3. Time passed, and no official communication being received, nor any further mention made of the transaction, it was supposed that some difficulty had arisen in carrying out their original intentions, and Mr. W. Arbuthnot's note was destroyed.

4. About the latter part of January, however, it was incidentally remarked that there were some Coals at the disposal of the Board at Bimlipatam. Inquiries were made; and they then learned, for the first time, that Messrs. Arbuthnot and Co. considered that the purchase had been duly effected. The Board called for any document shewing that this was the case, when an extract was furnished from the private note marked No. 2, before alluded to, in which the first part having reference to the necessity of an official tender was suppressed. It is not usual to keep copies of private notes, and none had been made of this; but it was remembered that the request for the official tender had been distinctly made. They accordingly called for, and obtained, the original, which corresponds with that transcribed; and they submit that this very omission was enough to shew that Messrs. Arbuthnot and Co. felt that it must invalidate their claim, and that in consequence of their not having formally offered the Coal as therein requested, the negotiation was not concluded. It had merely arrived thus far; that on the tender being submitted the Board were bound to accept it. The tender was not submitted, and consequently the matter fell to the ground.

5. There are also circumstances attending this transaction which render it, the Board think, unreasonable in Messrs. Arbuthnot and Co. pressing their claim. The Board were glad to purchase Coal in November for 35 Rupees a Ton. In December they made no purchase at a higher rate than 30 Rupees; and in January the price given was never higher than 25 Rupees. These rates were made generally known before hand, and all purchases were in accordance therewith. The Board would gladly have availed themselves of the Coal in November or December; yet up to the latter part of January no intimation had been given to them of the quantity they could obtain: the real fact being that the Coal was not, as it appears by their letter of the 24th Instant, at Bimlipatam, at all, but at Chittiwalsa, three miles off; and even to the date of the letter, now submitted, they had no official record of the quantity to be at their disposal.

6. Under these circumstances Messrs. Arbuthnot and Co. have been informed that the Board cannot consent to give more for the Coal than 25 Rupees a Ton, the rate at which it could have been purchased in January; and as they decline to forego their original claim, there is no alternative but to lay the case before the Right Honorable the Governor in Council.

Fort Saint George, Marine Consultation, 19th March 1858.

From Messrs. ARBUTHNOT AND Co.; to the Secretary to the Marine Board, dated 24th February 1858.

SIR,

With reference to the communication verbal and written, that has taken place between our Mr. William Arbuthnot and yourself, on the subject of the sale of Coal at Bimlipatam, we deem it necessary to give the following brief recapitulation of the circumstances, as we understand them, connected with the transaction, and trust that you will now feel yourself warranted in acceding to our claim. Should you think otherwise, we shall be obliged by your referring the matter to the Right Honorable the Governor in Council, and beg you to accompany your reference by a copy of this letter.

In November last, Mr. William Arbuthnot entered into personal treaty with you regarding the sale of about 300 Tons of Coal deliverable at Bimlipatam. The price verbally offered, and accepted, on the occasion of that interview was Company's Rupees 35 per Ton, the approximate quantity to be delivered was specified, and further conversation on the subject took place, of no particular importance, except that it was calculated to confirm the transaction; which was so far concluded that you subsequently acknowledged that you considered yourself on behalf of the Government to have a proprietary right in the Coal. This at least is the inference we draw from your Statement that you would have considered it a breach of faith, had we, after the conversation

that took place, sold the Coal to any other purchaser. In order to have a written record of the transaction if we may so designate the arrangement verbally entered into, Mr. William Arbuthnot a day or two after, wrote the demi-official letter marginally marked 1, and received from you a similar reply (marked 2.) It is on the construction to be placed in the first sentence of this letter, (No. 2,) that we believe the present discussion has arisen, and we must here express our regret that the suggestion made in the afore-said demi-official communication respecting a formal offer was inadvertently overlooked by us, in consequence of the definite nature of the agreement arrived at, privately between yourself and Mr. Arbuthnot, having previously led to the adoption, on the part of the latter, of the necessary steps towards duly giving effect to the engagement, which we conceived to be *already* existing, by ordering the transfer of the Coal from the Agent in whose charge it was Chittiwalsah to another party at Bimlipatam a Port 3 Miles distant, who was, as proposed in the letter, (No. 1,) to receive and store the Coal on behalf of the Government. Though we regret this unfortunate omission, and the discussion to which it has given rise, we beg to submit that the sale of the Coal was virtually concluded and was not actually conditional on the issue of an official Tender; It appears to us that the very expression made use of in your note, relative to such official Tender,

No. 1.

J. J. FRANKLIN, Esq.,

MARINE BOARD OFFICE.

MY DEAR FRANKLIN,

As it is uncertain what quantity of Coals we have at Bimlipatam, I cannot engage to specify any precise number of Tons, but we will deliver to ourselves on behalf of the Government whatever there may be on hand at Company's Rupees 35 per Ton. The Coal will be stored at Government expense and I will write to Bimlipatam to ascertain the quantity. Payment to be made on receipt of a reply. Please send me a line confirming the above and oblige.

(Signed) W. M. ARBUTHNOT.
18th November 1857.

No. 2.

WILLIAM ARBUTHNOT, Esq.,

MY DEAR ARBUTHNOT,

Will you let me have your offer officially. This is best or there may be discussion hereafter. I will give 35 Rupees a Ton for 5 or 600 Tons at Bimlipatam, but as we have no Store Godowns there, nor any one to take charge of it, we should expect you to keep it for us till it was required. We would not mind paying Godown Rent and paying for the Coals when delivered.

(Signed) JOHN J. FRANKLIN.

is of itself evidence to the fact of the sale being a *bond fide* one, as it then stood, though a formal Tender was desirable, by way of record, in order to prevent any possible subsequent doubt or discussion. We believe however that difference of opinion on this point is the ground on which you, in your official capacity, now decline to pass for payment our Bill for the value of 301 Tons, which were weighed and delivered at Bimlipatam, and whether or not our view of the case could

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be legally substantiated, we submit that the transaction should be regarded in an equitable light, and that we, having acted in perfect good faith, with considerable expenditure of time and trouble, should not, in consequence of a mere formal irregularity, be subjected to so serious a loss as that in which a repudiation of the sale would involve us.

No. 2.

ORDER THEREON, No. 110; dated 13th March 1858.

Under the circumstances stated in the above letter and accompanying correspondence, the Government approve the decision intimated by the Marine Board to Messrs. Arbuthnot and Co. in respect to their Coal.

(Signed) T. PYCROFT,

Chief Secretary.

Exd. J. A. Wilson.

Marine Department

No. 84.
The Secretary Marine Board.
Dated 27th February 1838.

In order.

There was suddenly a change
in this transaction on both sides.

The Secretary of the M^d B^d. appears to
have considered the ink as off his responsibility
having no official letter - & the
no use was made of the coal.
On the other hand Messrs. Whitbread & Co.
take - they considered the bag
lost - that they unfortunately neglected

to their coal.

18th Dec. 1838

JP

Letter received
27/2/38
Case 19 March 38
Marine, 1838. adp. 18

6

board the off! letter required.

Mr. Frank's note to say there is no
doubt of the off. letter. at the same time
there is a possibility - that Messrs. put this in-
struction mentioned in the private drawing.
not. If there is nothing to show. that they
held off in consequence of having other
business about the coal. this representation
charms consideration.

It is however - clearly owing to their mis-
take. that Geo. lost the use of the coal
at the time. - It is not fair to expect the
higher price. - There is nothing to be

the purchase of the coal. now. but it is
probable to be able to have them at
a lower rate. I see no reason to
more than the present price - tho: as
there was a bus. under handing - a sum
might be stretched to give the 2.nd 30d.
tho: I don't believe that had been done

At

The Secretary to the Marine made a
preliminary arrangement for the
purchase of coal, regarding the seller
to submit a formal application to the
S.D. of which he was the organ. The seller
reflected to do so - The matter was
not brought officially before the S.D.
and the transaction dropped.
I cannot see that the S.D. is to blame
any one to blame but themselves - They are

Case 19 June 1858
Marine 1858. acc'd

Letter 1858
Marine 1858. acc'd

Date 13

Replied to from the way
of State for America dated
24th February 1859
of 1859

The Secretary - Marine Board
The Chief Secretary
to Government
St. Paul Street

Date 27th February 1858
Ree 7 March. No 254

No 84
Ree 7 March. No 254

Submits the account
of the purchase of
coal at 13 in a ton for
the use of Government and
entirely into the expenditure
of the Government.

With an order

To 6th George 1
13th March 1858

Marine 18th. Disposed 20th

Under the circumstances stated
in the above letter and accompanying
correspondence the Govt approve the
decision intimated by the Marine
Board to Messrs. De Burgh & Co in respect
to their coal.

JP

perfectly well aware of the necessity of
observing correct forms of business
if we ever countenance irregularities
such as here described and allow
officers to bind their superiors by alleged
conversations & private notes, there
will be no end of misundestandings
trouble.

and simply support the Board

I remain with MLE
Yours