H.R.O.—No. 270—23-11-09

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 765 Press Misc.

Dated 27 1894

Not to be folded or roughly handled.

No. 34. Read the following letter from Major E. LAWFORD, Officiating Chief Engineer; to the Secretary to Government, dated 10th August 1858, No. 2678.

SIR,

In submitting for the orders of Government the accompanying correspondence,* relative to a difference of opinion between the Collector and District Engineer of Tanjore on the interpretation to be given to Act† 1 of 1858, I have the honor to state my opinion that if Mr. Phillips' views are correct, the District Engineer will be prevented from executing the necessary repairs to the river banks in that province.

* No. 479 dated 5th August 1858, from the Collector of Tanjore, with its enclosure.

† Supplement to Fort Saint George Gazette dated 12th February 1858.

2. The demand made by Major Birdwood is one that would have been authoritatively carried out by the Tahsildar under the former system and it was with the express view of meeting the very difficulty now felt by the District Engineer that the Act in question was passed.

3. It certainly will not be sufficient in cases of emergency to leave the Officers of Public Works dependent on the will of the Merassidars for the supply of trees, for the protection of river banks, and there is no reason to suppose that such materials will be more lavishly used now than heretofore.

4. The custom of the Country has hitherto sanctioned the forcible seizure of trees for repairs and under certain circumstances it is absolutely necessary.

Letter from H. D. PHILLIPS, Esq., Collector of Tanjore; to Major E. LAWFORD, Officiating Chief Engineer, dated Nagapatam, 5th August 1858, No. 479.

SIR,

From	District Engineer,	24th July	1858,	No	187.
To	do.	do. 29th	„	„	463.
From	do.	do. 31st	„	„	197
To	do.	do. 3rd August	„	„	478

1. I have the honor to transmit for such orders as you may consider proper, or for submission to Government if that course seems necessary, a copy of the correspondence marginally noted.

2. The point involved in it is, whether I can legally enforce the Provisions of Act I. of 1858, in securing for the Department Public Works, such materials as are wanted for the construction of three Modussuls.

3. It is not my opinion that the Act provides any justification for such a requisition on a Collector by a District Engineer; but as the latter Officer takes a different view, and by my inability, in the conscientious discharge of my own duties, to adopt his construction of the Law, believes himself relieved of the responsibility attaching to his position, your special instructions seem particularly needed.

4. If the Government should be of opinion that I am at liberty to cut down by force, the trees, leaves and bamboos which very likely might be got by the District Engineer himself at something beyond the reasonable price mentioned as having been unsuccessfully proffered, I shall of course be free to act, not otherwise.

Letter from Major W. J. BIRDWOOD, District Engineer of Tanjore; to H. D. PHILLIPS, Esq., Collector of Tanjore, dated Tranquebar, 24th July 1858, No. 187.

SIR,

I have the honor to forward the accompanying List, shewing the places and quantity of materials emergently required for the construction of Modussels in the Codavassel Talook, and to request you will be good enough to issue the necessary orders to the local Village Authorities to supply the same on emergency, under Act I. of 1858, as all the endeavours of this Department to obtain them at a reasonable price, have been unsuccessful.

District

List of Materials required for the construction of the undermentioned works of the Codavassel Talook, in 2nd Division, Tanjore District.

Name of Rivers.	Limit.	No. of estimate.	Description of works and the materials required.	Remarks.
		1857-58.	*Modussul on the north side.*	The banks are in a very dangerous state in these limits, and all our endeavours to procure materials have failed.
Poottaur.....	Rathanellore.....	890	18 Cocoanut trees for 18 Horses 54 Bamboos.. 900 Cocoanut leaves	
			Modussul on the south side.	
Do.	Codavassel.....	Do.	Cocoanut trees for 92 Horses..... 276 Bamboos..... 4,600 Cocoanut leaves.....	
		1858-59.	*Modussul on the south side.*	
Arasalaur.....	Vistnoopoorum.....	652	Cocoanut trees for 15 Horses ... 45 Bamboos..... 750 Cocoanut leaves....	

Sub-Engineer's office, Camp Combaconum, 20th July 1858.

(Signed) C. W. MAITLAND,
Sub-Engineer.

Letter from H. D. PHILLIPS, Esq., Collector of Tanjore; to Major W. J. BIRDWOOD, District Engineer of Tanjore, dated Point Calemere, 29th July 1858, No. 463.

SIR,

24th July 1858, No. 187. I have had the honor to receive your letter marginally noted.

2. You request me in it to issue orders to the village authorities to supply you with certain materials required for the construction of three "Modussuls" in Talook Codavassul, as all the endeavours of your Department to obtain them at a reasonable price have been unsuccessful. You quote Act I. of 1858, as the authority under which this request is made, the works in question being declared emergent.

125 Cocoanut trees.
6,250 Do leaves.
375 Bamboos.

3. The Act adverted to, does not, I apprehend, apply to works of the Modussul class and I much regret being under the belief that I could not therefore legally interfere to the extent you desire.

4. I am sensible that the difficulty is an awkward one, and I conclude that it has partly been created by the great increase to the number of Modussuls which of late have been constructed. No doubt a strong dislike exists at all times in this District to the cutting down of Cocoanut trees; but Tanjore Meerassidars have a very keen perception of their own pecuniary interests and I incline to believe that if the rates allowed in the Estimates were raised, a portion of the difficulty at least might be removed.

5. It is at all times to my mind almost a sin to fell a productive Cocoanut tree, and I really cannot undertake to aid you in the manner pointed to in your letter unless I were clearly convinced that the proposed measure was in the proper course of my public duty.

6. But in the present instance the reverse is the case and without I had the law distinctly in my favor the Meerassidars of Talook Codavassul are the very men of all others who would oppose and render inoperative any instructions which I might venture on issuing.

7. It occurs to me that the use of Modussuls has been condemned by your Department as an auxiliary in its professional operations for the protection of the river and other banks in this province and with the known difficulty in procuring trees it may seem desirable that some other measure should be resorted to.

Letter from Major W. J. BIRDWOOD, District Engineer of Tanjore; to H. D. PHILLIPS, Esq., Collector of Tanjore, dated Tranquebar, 31st July 1858, No. 197.

SIR,

I have the honor to acknowledge the receipt of your letter of the 29th Instant, No. 463, refusing to aid me in procuring

125 Cocoanut trees,
6,250 „ leaves,
375 Bamboos,

materials required on emergency, for the construction of certain Modussul Works in the Codavassul Talook, and cannot discover on what plea you ground your refusal, as the Section V. of Act I. of 1858 clearly provides, that it is lawful to make requisitions upon the inhabitants of the village, "for the supply of materials, to wit, Trees, Leaves, Bamboos &c."

I beg therefore you will re-consider the matter and promptly.

At present, your refusal relieves me from the responsibility which you thereby take upon yourself, and it is only right to inform you that the case is reported as really emergent and the risk therefore considerable.

Letter from H. D. PHILLIPS, Erq.; Collector of Tanjore; to Major W. J. BIRDWOOD, District Engineer of Tanjore, dated Point Calemere, 3d August 1858, No. 478.

SIR,

I have had the honor to receive your letter marginally noted on the subject of supplying your Department under the provisions of Act I. of 1858, with materials required for the construction of certain "Modussuls."

31st July 1858, No. 197.

2. In this communication I find nothing to induce me to alter the view I have already had an opportunity of communicating to you, that the Act quoted will not justify me in an attempt to force the inhabitants of the District to give what they are stated to be unwilling to dispose of for the "reasonable price" which your Department appears to have offered.

3. If other reasons were deficient, the mere fact of your having had an opportunity prior to the 24th Ultimo of offering a reasonable price for what on this date is still wanting to meet the difficulty which then impended would seem sufficiently to shew, that the Modussuls now intended for construction are not works of the emergent class to which Act I. of 1858 has application.

4. If to "Modussuls" I can be required to extend the provisions of that Act, there clearly is not a single work liable to be executed by your Establishment to which the Act would not equally admit of application whenever from any cause whatever, there may be a necessity for the immediate execution of an Estimate.

5 Modussuls to my mind, should be put up in the working season prior to the arrival of freshes at those parts of the river where they may seem needed as protective agents. When, however, their construction has been deferred and the river is full, I fail to appreciate the propriety of emergent requisitions being addressed to a Collector for aid to remedy what should perhaps have been alluded to in an earlier part of the season. A similar course might with equal justice be taken as regards Bricks, Chunam, or other materials that the ordinary market may not readily supply at what your Department regards as a reasonable price; and whether you have tried the efficacy of the offer of enhanced prices does not appear.

6. The few words of the Act which you have quoted certainly refer to a requisition being legal as regards the materials you specify in para. 2, but you appear to have overlooked the further portion of the Act which defines the necessity under which the requisition would be justifiable.

7, If there still remains to you an opening for providing what you want by raising your offers, I do not see how you can justly attempt to divest yourself of the responsible functions which attach to your office, still less can I apprehend how you are to be relieved of them on the ground, for it is simply that neither more nor less, that I, in the exercise of my own judgment, do not feel justified in attaching to the law the meaning which you have given to it.

8. Any how, however erroneously, I am under the impression that the circumstances under which you have addressed to me the requisition under notice, do not call for and would not support any forcible measures of supply, such as in very extreme cases might perhaps be adopted under Act I. of 1858. Should you on a re-consideration of the matter adhere to your own view of my liability to comply with your demand, it would seem to remain with yourself to cause me to be instructed accordingly.

No. 35. ORDER THEREON, No. 1853; dated 9th September 1858.

1. The Officiating Chief Engineer submits for the orders of Government, copy of a correspondence between the Collector of Tanjore and the District Engineer of that Province, regarding the refusal of the former to enforce the provisions of Act I. of 1858, in securing material, for the construction of certain Modussels for the protection of river banks.

2. It appears from the correspondence, that the District Engineer sought the interference of the Collector under the Act, because he could not obtain the materials required at what he considered reasonable prices; and that the Collector declined to interfere, because he did not regard the proposed works of such emergency as to warrant his forcible seizure of the materials under the provisions of the Act.

3. The Governor in Council observes that the powers conferred by the Act were evidently intended to be used only on critical and emergent occasions, such as where the embankment of a tank, river, or canal, was in imminent danger of breaching, and causing destruction to life or property, and that a Circular to this effect was addressed to all Collectors under date the 3rd June last. The question, therefore, under reference simply hinges on the point of emergency; and there is nothing to show that the circumstances of the case were of such an urgent nature as to call for the Collector's interference. Mr. Phillips' refusal, therefore, to interfere in the matter was correct, and in accordance with the spirit and intent of the Act.

4. It is not stated what measures were used by the District Engineer to procure the materials which he required, nor what the reasonable prices which he offered for them. But the Government cannot admit the argument* of Major Birdwood, that the refusal of the Collector to resort to compulsory means for obtaining materials which he should himself have procured in the open market at the proper time, removes the responsibility from himself to that Officer.

* To Collector 31st July 1858, para. 3.

5. The Officiating Chief Engineer will cause these views to be communicated by a Circular to all Executive Officers of the Public Works Department.

(Signed) T. PYCROFT,

Chief Secretary.

Central Office of Pn.
Fort St. George

No. 2678 10 August 1858

From

The Offg. Chief Engineer

To

The Secretary to Government Pro.

Public

Sir,

In submitting for the orders of Government the accompanying correspondence, relative to a difference of opinion between the Collector and District Engineer of Tanjore on the interpretation to be given to Act 1 of 1858, I have the honor to state my opinion that if Mr. Phillips's views are correct, the District Engineer will be prevented from executing the necessary repairs to the River banks in that Province.—

2. The demand made by Major Birdwood is one that would have been authoritatively carried out by the

District

† No. 4798 of 5th Augt 1858 from the Collr of Tanjore, with its enclosure

* Supplement to Fort St. George Gazette of 12th Feby 58.

No. 2.
2 Original letters with enclosure—

the Tahsildar under the former system and it was with the express view of meeting the very difficulty now felt by the District Engineer that the act in question was passed.-

3. It certainly will not be sufficient in cases of emergency to leave the Officers of Public Works dependent on the will of the Merasidars for the supply of trees for the protection of River banks, and there is no reason to suppose that such materials will be more lavishly used now than heretofore.-

4. The custom of the Country has hitherto sanctioned the forcible seizure of trees for repairs and under certain circumstances it is absolutely necessary.-

I have the honor to be,
Sir,
Your most obedt Servt

Fort St George
10 Augt 1858

To The Secretary to Govt
Genl Dept

Leopold Frajer
Offg Chief Secy

Copied

P.C.B. 1790/58.

Bruno.

Du Jours confirmed by telegraph
evidently intended to have made
official and simple communi-
cation public. Hence has been told to-
day by Mr Hotel Proprietors
Victoria Station Category
Jno. Du Jours Hotel Proprietor
Victoria Station

Distinct

the Local Engineering Applications
he says for that they ought to be considered
at when the sum is £20 and not
dispensed until the Justices have come
down.

There is nothing to show that even
the Minister and the District Engineer
to provide the necessary machinery
and it is not to be thought that
when an Engineer finds any
[illegible] that he would not
[illegible] he seems fairly to
have acted on the Collective Station
[illegible]

but think proper to resist a compulsory
measure

JPP

19.8.58

The whole question turns on
the point of emergency
Prior to the Inspection to
permit forcible seizures except under
circs of extreme emergency i.e. where
there is not time to procure the articles
by open purchase.
I can see no such pressure
on this case. The Engr must have knowd
before time before him to get materials
in the market & cannot be allowed
to divest himself of responsibility of the
failure to do so.
It was one of the main objects of
the establishment of the D.P.W to get rid of
all this system of unlawful seizures & substitute
by Sunderland it was only when a tank or channel was in danger of bursting
when a tank or channel was in danger of bursting

the correspondence, that the
District

Nº. 1853.

Extract from the Minutes of Consultation
Under date the 9th ~~August~~ Sept., 1858.

Read the following
letter from the Officiating Chief
Engineer.

/ Herewith 16 10 August 1858 N 2678 /

1 The Officiating Chief
Engineer submits for the orders
of Government, copy of a corres-
pondence between the Collector
of Tanjore and the District
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regarding the refusal of the
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protection of river banks.

2 It appears from
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District Engineer sought the interference of the Collector under the Act, because he could not obtain the materials required at what he considered reasonable prices; and that the Collector declined to interfere, because he did not regard the proposed works of such emergency as to warrant his forcible seizure of the materials under the provisions of the Act.

3 The Governor in Council observes that the powers conferred by the Act were evidently intended to be used only on critical and emergent occasions, such as where the embankment of a tank, river, or canal, was in imminent danger of breaching, and causing destruction to life or property; and that a Circular to this effect

effect was addressed to all Collectors under date the 3rd June last. The question therefore under reference simply hinges on the point of emergency; and there is nothing to show that the circumstances of the case were of such an urgent nature as to call for the Collectors interference. On the contrary, Mr. Phillips + states that the fact of Major Birdwood having had an opportunity prior to the 24th July last, of offering a reasonable price for what on the 3rd August was still wanting to meet the difficulty which had originally impended, was sufficient to show that the proposed works were not of the character to which the Act applies. Mr. Phillips

+ Letter to Dist. Engr. 5th Augt. 1858 para 3.

There is nothing to show why the materials required should not be obtained by the Collr. at the usual prices. as suggested by the Collr.

Phillips refusal therefore to interfere in the matter was correct ~~judicious~~, and in accordance with the spirit and intent of the Act.

It is not stated what measures were used by the District Engineer to procure the materials which he required, nor what the reasonable prices which he offered for them. But the Government cannot admit the argument of Major Birdwood, that the refusal of the Collector to resort to compulsory means for obtaining materials which he should himself have procured in the open market at the proper time, removes the responsibility from himself to that Officer.

The

† To Collr 31st July 1858 para 3

The Officiating Chief Engineer will cause these views to be communicated by a Circular to all Executive Officers of the Public Works Department.

10 Orders to the Offg Chief Engr 2 Oct 1858

Rev. Cons: 8th June 58.
22.

Publics Works 1858 Dept.
Dft. to Cons: 14th Sept.

No. 1853.
Exhibit Instrs. of Govt
Dt 9th Sept. 58.

Observe that the Act. of 1858 can only be put in force in cases of emergency - Mrs. Thirlle's refusal to comply with the requisition of the Dist. Engr. of Tanjore, does not warrant the provisions of the Act - in procuring materials for the Construction of certain River Embankments in Tanjore was therefore irregular & not in accordance with the spirit of the Act. the materials should be collected, & the Communication made only by a Circular to all officers of the P. W. Department.

No. 34 of 35.

C 31 Aug 59 Dept Sp