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MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 736	Press Mis.
260-261	
Dated 10 - 3 - 1864.	

Not to be folded or roughly handled

No. 260.

Read the following :—

MINUTE BY THE HONORABLE THE PRESIDENT.

1. I have gone carefully over the Indenture or Contract between the Secretary of State for India and the Madras Irrigation and Canal Company, for the purpose of arriving at a clear understanding of the relations which exist between the Government of Madras and the Company, and the following brief abstract will, I think, place the matter so clearly before the Government as to enable it to come to a decision as to the course to be pursued with relation to the irrigation works contemplated in certain Minutes of mine bearing on the state of the Districts of Bellary and Kurnool.

2. The Contract commences with a recital of the purposes for which the Company was incorporated by Act of Parliament, namely, "the construction, improvement, maintenance and management of works for irrigation of land combined, wherever practicable, with navigable canals, and of navigable canals and tramways within the Presidency of Madras, and the territories or places known by the names or designations following (that is to say) Berar, Mysore, Nagpore, Orissa and the South Mahratta country in the East Indies," or for such and so many only of the same as might be agreed upon by the Company and the East India Company, which latter body is now represented by the Secretary of State in Council. It then goes on to say that the said Secretary of State in Council did, in the month of December 1858, enter upon an arrangement with the Company to co-operate with them in the construction of the works for irrigation and navigation upon the following conditions :—

That the operations of the Company should, in the first instance, be confined to *one work or project*, approved by the local Government, the estimated cost of which should be *one million sterling*, on which sum the Secretary of State would guarantee minimum interest of five per cent. per annum. Other statements are then appended as to the right of the Secretary of State to purchase the stock of the Company, the conformity of the works with plans approved by the local Government, the division of profits between the Government and the Company, &c., &c.

3. It then proceeds to say, and "whereas with a view to carry the said arrangement into effect the Government of Madras, under the orders of the Secretary of State in Council, selected and recommended as the work or project to be constructed by the Company under the said arrangement, a certain work or scheme of works for providing irrigation and means of water transport to certain Districts of Southern India by means of the waters of the Toombuddra, Kistna and Pennar rivers and their tributaries, which work was described in a Memorandum dated 18th May 1858 (? 1859), drawn up by order of the said Madras Government by their Commandant of Engineers, and has since been known by the parties hereto as the *Toombuddra project, &c.*"

4. It then goes on to state that money has been expended upon the work, and that as it is estimated that the said sum of one million pounds will be insufficient to carry out and develop the said Toombuddra project, the Secretary of State has agreed that the Company, subject to the conditions of the Contract, might raise further capital on certain conditions.

5. The only question which can be raised upon the recital or preamble is this: what is the Toombuddra project?

6. Judging from the agreement entered into in 1858 by the Secretary of State and the Company, it must be considered to be *one work estimated to cost a million*, and the work submitted by the Company was a joint scheme of irrigation and navigation extending from Kurnool to the sea at or near Kistnapatam. When the estimates for this work were submitted they were found to involve an outlay of upwards of a million, and in accordance with the advice of the Government a portion extending from the Eastern Ghâts to the sea was cut off, so as to bring the work within the limit of one million. Later on, the Secretary of State, at the request of the Company, has allowed it to complete the work to the sea, although in so doing the limit of guaranteed

*Proceedings of the Madras Government, Public Works Department,
10th March 1864.*

capital is overpassed, and the Company is authorized to raise such money as may be necessary to complete this single work, that is, the irrigation and navigation from the Anicut above Kurnool to the sea. If, however, reference be made to Sir A. Cotton's Memorandum of 18th May 1859, the Toombuddra project is spoken of in vague and general terms, as embracing "the irrigation of half a million of acres in Bellary, Kurnool and Cuddapah by means of a canal from the Toombuddra, throwing water also into the Pennar from either the Toombuddra or the Kistna, and partly by the Pennar and partly by canal, to complete the connection of the upper Kistna and its affluents with the Eastern Coast Canal and so with Madras."

7. This is far too vague a description to justify the assumption that it formed part of the work comprised in the Contract; in the first place, the upper Kistna is altogether beyond our control, as it is within the territory of the Nizam; that portion of the work cannot, therefore, have been the subject of a Contract between the Secretary of State and the Company. In the second place the whole of the Toombuddra project, as sketched out by Sir A. Cotton, would form a scheme which at the lowest estimate would cost at least two millions instead of the one million mentioned as limiting the amount to be expended.

8. If we look into the Contract itself we find that in clause 3 power is given to the Company to raise any amount of capital which it may consider necessary to raise, to carry into effect all or any of the objects mentioned; but such capital is to be for other purposes than those mentioned in clause 20, that is for purposes other than those embraced in the scheme approved by the local Government, and for which a guarantee of interest upon a million is given by the Government.

9. The power, however, of raising more capital does not in the least exonerate the Company from the control exercised over it by the Government; it does not give it power to enter upon land or to commence any other works than those which have received the sanction of the Government, and this sanction has only been given to the works commencing at the Anicut about 18 miles above Kurnool to the sea at or near Kistnapatam. The whole of the clauses which refer to the mode of keeping capital and revenue accounts, and the mode of appropriating revenue, bear me out in this view of the powers given to the Company by the Contract.

10. Should the Government choose to enter into an agreement with the Company for the execution of any projects, either proposed by the Company or its own Officers, then of course it would be bound by the conditions of the Contract, and clause 30 would give to the Company the right to all the profits arising out of an undertaking carried through with unguaranteed capital; but till such a proposition is brought forward, and till it has been approved by the Government the Company can have no claim to enter upon it or right to consider it as part of their agreement. I do not, therefore, think that the Company has secured the sole right of undertaking works of irrigation from the Toombuddra and Kistna rivers, or indeed that it has secured the right of executing any works in the Madras Presidency other than those upon which it is now engaged under the sanction of the Government.

10th February 1864.

(Signed) W. T. DENISON.

No. 261.

ORDER THEREON, 10th March 1864, No. 736.

The subject of this Minute will be referred to the Right Honorable the Secretary of State for India.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

Exd. S. T. Augustin.

From the Preamble to the
Contract between the C^l
I Comp^y and the Sec^y of
State it seems that the
arrangement entered
into with the Comp^y in
Dec 1858 had in its main
condition ^{inter alia} that the Comp^y
operations should in the
first instance be confined
to the work to cost
£1,000,000 - that inter-
est should be guaranteed
upon that sum - that
the work selected for the
Comp^y by the Madras
Govt was that described
in a Memoir by Col A Cotton
18 May 1858 and known
between the parties as
the Toombuddra project -
and that as £1,000,000
was the maximum
to be raised and developed the said
Toombuddra Project
the Company was to
be able to raise such
further capital as might
be necessary but within

a guarantee of interest.

The contract itself provides - C 3 - that the Company shall be at liberty to raise further capital, beyond the limitation which they may deem necessary to carry out all or any of the objects herein mentioned - but with a guarantee - and the money to be raised on by C 30 to be paid apart from the guaranteed Capital - C 4 provides that money from the guaranteed liability is to be drawn by the C² from the S of State - or for of that - By Clause 5 the C² are to ^{put on} ~~submit~~ plans and estimates of the work after work comprehended in the Formbuden Project as they may deem it expedient to execute and of such further works as may be required or necessary, all the plans and also the estimates as to the work to be executed under the liability are to be submitted to the S of State.

The distinction between those estimates for work to fall within the liability and those which would have to be expected from additional capital is maintained in the next Clause 6 - Moreover by C 23 in the appropriation of the Company's net profits there are to be applied 1 in discharge of interest on guaranteed capital current - 2 in payment of interest on capital raised without a guarantee and 3rd and after that in payment of interest (guaranteed) previously advanced by the S of State.

That the project known between a particular as the Formbuden Project is - a kind of what is commonly termed the scheme of the upper Formbuden Canal. I think to doubt - In his Memoir Col A Collier states that the Formbuden scheme consists of the irrigation of 1/2 a million of acres in Belknap County N. Carolina to

means of a Canal from
the Tombudda - that is
of course the upper Tomb-
-budda from the above the
-land could be irrigated
and the soil is very fertile
green & pure & in the
imperial along the Tomb-
-budda about the confluence
of the Angkor - and also
the canal across the
Tombudda from Hosoon.

The Comp^y will proba-
-bly contend that the
agreement of Dec 1858
makes over to them the
execution of the whole
Tombudda Project, the
works for the irrigation of
the Battambang District inclu-
-ded - so much of it be-
-ing undertaken in the
first instance as could
be done for the million - but
the Comp^y being free to
do the rest if they could
raise with due pro-
-vantage of interest ca-
-pital sufficient for
the purpose -

I cannot say that

the matter seems to me
for you don't see but
as the Secretary of State
must be the best judge
of his own meaning
the question must be left to
him for an
authoritative decision.

If the Comp^y has
the right of executing
these further works they
should be required to
show what money
they have raised or
can raise without
a guarantee for the
purpose and when they
will commence operations
for of course they cannot
procure fort for under-
-taking the works un-
-less they can prove
that they are in a con-
-dition to execute them
themselves.

If the Comp^y has
no legal & equitable
right to carry on the

works
it seems to me very
undesirable that they
should be allowed to
do so - The experience
that we have had of
them does not lead
us to wish to see them
sphere of their action
enlarged -

I mean with any
advance that may
be made to the Engineers
whom they have sent
out to make surveys
in the Madras District
should be kept clearly
apart from disburse-
ment from the
guaranteed Capital

J.P.

I would prefer
advance for the decision of the Secretary for as men
are already employed in making surveys, and as
we have already also a party at work getting data
for the purpose the sooner the question "who is to do
the work" is decided the better -

The attention of the Secretary should
also be drawn to the fact that the Government
at present, the Government
advancing money for these additional surveys, out of the
guaranteed Capital and he should be requested to instruct the
Secretary to provide money for this -

The accompanying papers
are circulated for the consideration
and orders of the Government, as it
appears to the undersigned that
by the Contract which the Secretary
of State for India has entered into
with the Madras Irrigation and
Canal Company, that Company
has been secured the sole right
of undertaking works of irrigation
from the Tumbuddra & Krishna
Rivers above Tumacod, although interest
on one million sterling only has been guaranteed.

3 Feb 1864.

Amthor. Coll. R.
Sey to find M.

Re-circulated under orders

A.P.

minutes

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I have gone carefully over the
Indenture or Contract between
the Govt of India &
the Madras Irrigation and
Canal Company for the
purpose of arriving at a
clear understanding of the
relations which exist between
the Govt of Madras & the
Company. and the following
brief abstract will I think
to place the matter ~~before~~
~~clearly~~ clearly before the
Govt as to enable it to
come to a decision as to the
course to be pursued with
relation to the Irrigation
works contemplated in
certain ^{parts} ~~parts~~ of the
~~territories~~ ^{territories} of the state of the
districts of Bellary & Channarayana
enrol -

The contract commences
with a recital of the powers
for which the Company
was incorporated by act
of Parliament, namely
"The construction, improvement,
" maintenance & management
" of works for irrigation of land
" combined, wherever practi-
" cable, with navigable canals,
" and of navigable canals
" & railways within the Pres-
" idency of Madras, and the
" territories & places known
" by the names or designations
" following (that is to say)
" viz. Mysore, Rasse, Basse,

and the South Indian com-
munity in the East Indies".
or for such and so many only
of the same as might be agreed
upon by the Company & the
East India Company, which
latter body is now represented
by the Secy of State in Council.
It then goes on to say that the
said Secy of State in Council
did, within the month of Decr 1850
enter upon an arrangement
with the Company to co-oper-
ate with them in the
construction of the works
for Irrigation & Navigation
upon the following conditions:-
That the operations of the
Company should in the
first instance be confined
to one work or project
approved by the local
Govt. the estimated cost
of which should be one
million sterling, or
which sum the Secy of State
should guarantee at
minimum interest of
5 per cent per annum.
Other statements are then
appended as to the right of
the Secy of State to purchase
the stock of the Company.
The conformity of the works
with plans approved by
the local Govt. The division
of profits between the
Govt & the Company. &
It then proceeds to say &
whereas with a view to carry

the said arrangement
at the Govt of Madras, and
of the orders of the Secy of State in
Council selected & recommen-
ded as the work or project
to be constructed by the com-
pany under the said
arrangement a certain
work or scheme of works
for providing irrigation &
means of water transport
in certain districts of Southern
India by means of the waters
of the Loombuddra, Kistna
& Demain River & their
tributaries. which work
was described in a memo-
randum dated 10 May
1850 (2nd 1850) drawn up
by order of the said Madras
Govt by the Commr of Eng-
and has since been known
by the parties hereto as "the
Loombuddra project" &
it then goes on to state that
money has been expended
upon this work and that
as it is estimated that the
said sum of one million
pounds will be insuffi-
cient to carry out &
develop the said Loom-
buddra project. The
Secy of State has agreed that
the Company subject to
the conditions of the contract
might raise further
capital on certain condi-
tions

The only question which can
be raised upon the section
or preamble is this -
What is the Loom Buddha
project?

Judging from the agreement
entered into in 1880 by the
Leygata & Co. Company
it must be considered
to be one work estimated
to cost a million, and
the work submitted by
the Company was a
joint scheme of Irrigation
and Navigation extending
from Kurnool to the sea
at or near Kistnapatnam.
When the Estimates for this
work were submitted
they were found to involve
an outlay of upwards
of a million, and in
accordance with the ad-
vice of the Govt a portion
extending from the Eastern
Shore to the sea was
cut off, so as to bring the
work within the limit
of one million - later on
the Leygata at the
request of the Company
has allowed it to com-
plete the work to the sea
although in so doing the
limit of one million
capital is overpassed -
and the Company is
authorised to raise such
money as may be needed.

... migration & Nav-
igation from the Ancient about
Kurnool to the sea. - shown
since he made to the Alder
memorandum of 10 May 1880.
The Loom Buddha project is
shown of its value & general
as embracing the Irrigation
of a million of acres in Ballary
& Chiddapur, by means
of a canal from the Loom Buddha
by water also into the
area from either the
Loom Buddha or the Kistnah,
and partly by the Desman,
partly by Canal, & complete
the connection of the upper
Kistnah and its affluents
with the Eastern coast Canal
at or near Madras -
this is far too vague a descrip-
tion to justify the assumption
that it formed part of the
work comprised in the con-
tract - in the first place the
upper Kistnah is altogether
beyond our control as it is
within the territory of the
Nizam - that portion of the
work cannot therefore have
been the subject of a contract
between the Leygata &
the Company - In the second
place the whole of the Loom
Buddha project ~~is~~ as
outlined out by Sir Alder
relates form a scheme which
lowest estimate would
at least two millions
and of the one million mentioned.

expressed -
we look into the Contract
itself we find that in clause
3 power is given to the Company
to raise any amount of capital
which it may consider necessary
to carry into effect all
or any of the objects mentioned
but such capital is to be for
other purposes than those men-
tioned in clause 20 that is
for purposes other than those
embraced in the scheme
approved by the local Govt.
I should be prepared to
interest upon a million
given by the Govt.
The power however of raising
from capital does not in
the least exonerate the Com-
pany from the Contract ex-
posed over it by the Govt. who
it does not prevent power
to enter upon land or to
commence any other work
than those which have received
the sanction of the Govt. &
the sanction has only been
given to the works com-
mencing at the present
about 10 miles above the town
of the sea at the new district
the whole of the clause which
refers to the mode of keeping
Capital & Revenue accounts,
of the mode of appropriating
Revenue bear me out in
the view of the power given
to the company by the
Contract -

Capital - now a
proposition is brought
forward, and that it has
been approved by the Govt.
The company can have
claim to enter upon a
right to consider it as
its own agreement
about the present
the view taken by the
Govt. & the
company has secured the
rights of the
identifying works of
navigation from the town
of the sea at the new district
I indeed that it has
secured the rights of ex-
isting any other works
of the Madras Presidency
than those upon which
is now engaged under
sanction of the Govt.

10th Feb. 7 1864

M.

40 W 1864 Dept
Pro: of Govt for March
No 860

note by the Hon^{ble}
President.

Subst 10
Received 26

Noticing the grounds
from which he has arrived at
the conclusion that the Irrigation
Company has not secured to
itself the ^{sole} right of undertaking
works of Irrigation from the
Tosabadda & Rishma rivers
in Pursuance to the op-
inion of Govt. —

80-86-10^m March

With an Order

Elphinstone
12th March 1864

more to the Secretary of State for India -

No 260 2d