

(1) Number of pages 11

(2) Date of repair 27-6-1937

(3) Initials of the Referencer _____

MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No. 2824	Press
434-35	~~Mis.~~
Dated 23-11-	1870 .

Not to be folded or roughly handled

115

*Proceedings of the Madras Government, Public Works Department,
23rd November 1870.*

No. 434. Read the following letter from the Acting Superintending Engineer, 1st Division, to the Secretary to Government, Public Works Department, dated Dowlaishweram, 24th October 1870, No. 2,490 :—

As directed in paragraph 2 of G. O. of the 6th instant, No. 2,417, I have the honour to enclose copy of the judgment of the District Moonsiff's Court at Ellore, in the suit brought against Mr. Andrews when in charge of the Ellore Range of the Godavery District. I beg to observe Mr. Andrews was quite new to this country, and had no idea of the kind of people he had to deal with, and in the Delta Superintendent, B. V. Venkiah, he met with no favourable specimen, as already reported.

No. 435. ORDER THEREON, 23rd November 1870, No. 2,824.

ESTABLISHMENT, No. 44.

On a perusal of the judgment of the District Moonsiff of Ellore in the matter of the suit brought by a Firewood Contractor against Mr. Andrews, when in charge of No. IV. Range of the Godavery District, His Excellency the Governor in Council observes that the transaction which led to the institution of that suit was one in which the rules of the department regarding contracts were quite disregarded. As Range Officers are responsible for any losses which the Government may sustain by the neglect of the precautions which those rules so strictly enjoin, His Excellency in Council is not prepared to entertain the Acting Superintending Engineer's recommendation for the reimbursement of the whole amount paid by Mr. Andrews in satisfaction of the judgment of the Court, but, limiting Mr. Andrews' responsibility to the costs of the suit, he authorizes the sum of Rupees 105-11-0 to be repaid to that gentleman, the amount being written off to Profit and Loss.

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the Acting Superintending Engineer, 1st Division.
„ Controller of Public Works Accounts.

Govt. of Madras.

PUBLIC WORKS.

To

THE ACTING SUPERINTENDING

ENGINEER, 1st Division.

&c., &c., &c.

Dated November 23rd.

Recd.

Encl.

G. O., 23rd November 1870, No. 2,821.

NOVEMBER

Nos. 434-435

Suit.—Passing orders on the letter from the Superintending Engineer of the 1st Division forwarding copy of judgment of the District Moonsiff at Ellore in the suit brought against Mr. Andrews by a Firewood Contractor.

Original Suit No. 212 of 1870.

Raidu Ramachendrudu. Plaintiff.

W. Andrews Esq. Executive Engineer,
No. 4, Range, Godavery District } Deft.

Judgment

This is a suit for the recovery of Rs. 105-11- being the balance due to the Plaintiff on account of 3946 cubic yards of firewood sold and delivered to the subordinates of the De. partment in 1869.

2. The Defendant through his Vakool states that he ordered B. V. Venkayya a Datta Superintendent to procure some firewood, that an increase of 6 pice per cubic yard was made in the price as larger wood was required, that a deduction of 3 per cent was made by him in

in the quantity of the wood supplied by the Plaintiff as it was found to be too small & as it was very tightly stocked; and that therefore nothing is due to the Plaintiff.

3. The questions for my determination are I. was the wood supplied by the Plaintiff too small and was it so tightly stocked that a cubic yard did not contain as much as it ought.

II. Can the Defendant deduct 5 per cent on this account?

4. The first is a pure question of fact. Only two witnesses were examined in this case; the 1st witness B. V. Vinkayya was a mutual witness, and the 2nd a lascar was present when the Defendant measured some heaps of the wood.

I thought it unnecessary to examine the Plaintiff's witnesses as from the facts before me I believed that the Defendant's plea was not established.

At the request of the Defendant's Vakil, the

the case was postponed to the 18th instant, on which Mr. West was produced by the Defendant as a witness, but as he said he did not know anything about the transaction he was not examined.

5. B. V. Vinkayya at the request of the Defendant made an oral contract with the Plaintiff by which the Plaintiff had to deliver the wood at Radanipudi at 9 annas 6 pie. per cubic yard; there was no specification drawn up as to the precise terms of the contract; nor was there a sample of the wood to be supplied deposited by the Plaintiff. What, then, is the criterion which should decide that the Plaintiff's wood was too small?

The Defendant refers me to two printed lines in a Memorandum book "Firewood in billets not less than 3" thick & not more than 1-6" long, to be delivered; but here the actual thickness of the Plaintiff's wood is not established and the wood has long ago been appropriated for

for the intended purposes. I cannot therefore apply that rule to this case. B. V. Venkayya in his deposition plainly admits that the Plaintiff delivered such wood as he contracted for; further, he says that out of the wood brought down by the Plaintiff for delivery, he rejected ^{what} was crooked and too small. From this I cannot say as against the Plaintiff that the wood was too small.

6. As regards light stocking, I believe that the Plaintiff is blameless for stronger reasons. B. V. Venkayya says that it was his own cookies that stocked the wood and not the Plaintiff nor his men. Can this fact give any room to charge the Plaintiff with any deduction on account of light stocking? Certainly not; because, if there is any fault in that process it is of the Defendant's men & not of the Plaintiff.

7/8
I have therefore to conclude that the Plaintiff is not successfully charged with any blame to charge him with any deduction. Upon the word of Mr. Andrews I believe that there was a loss in the contract, but I feel it my duty not to charge the Plaintiff with it when thus he is found blameless.
8. As to the second issue the Defendant refers me to sections 2-3 & 4 of the New Code D. P. W. pages 55 & 56 and to a publication in the above-mentioned Memorandum Book. Section 2 para 4 says "The Executive Officer or agent shall have power to reject any materials which he may consider inferior to those detailed in the specification, and to have the same replaced by the contractor or if he please, he may receive them at lower rates to be agreed on between himself and the contractor". Of all the Departmental Rules to which the Defendant refers, this is the most important one; a specification

specification seems to be absolutely necessary to see whether the materials supplied are of an inferior kind; but, in the present case B. V. Venkayya's de-
position is the specification and it says that the wood was not inferior to what was contracted for; this rule cannot therefore apply to this case. If it should apply at all the proper course therein laid down is to reject the materials and not to deduct a percentage which amounts to lowering the rate without the consent of the Plaintiff. The rule of deduction found in the Memorandum Book applies to laterite stones, even that rule cannot be availed of unless it be specified at the time of the contract; here, the Plaintiff does not seem to have been intimated of any such deduction before it was actually made. I therefore believe that the Defendant should not have deducted the percentage.

Lastly

9. Lastly it is hinted on behalf of the Defendant that because he did not enter into any contract with the Plaintiff, he ought not to have been sued. This plea is not expressly set forth in the Defendant's statement; even if it were, it would not hold good. B. V. Venkayya was no doubt a general Agent of the Defendant throughout the whole transaction; he made the contract; he accepted delivery of the goods; he rejected what was unfit for use; he measured all the heaps at different times and paid the Plaintiff for most of them; delivery to him was considered delivery to proper person - his acceptance & rejection of the wood and his measurements of the heaps needed no confirmation of the Defendant except on the last occasion which is the source of this action. All these facts tend to show that he was acting as an Agent of the Defendant.

No. 2490

From Major J. F. Fischer R.E.

Ag. Superintending Engineer

1st Division

To Colonel C. A. Orr R.E.

Secretary to Government-D. P. W.,
Madras.

SIR,

I directed in para 2 of G.O. of the
6th Instant No 2417. I have the honor to enclose
copy of the judgment of the District Munsiff's
Court at Ellore in the suit brought against
Mr Andrews when in charge of the Ellore
Range of the Godavery District. I beg to observe
Mr Andrews was quite new to this country and
had no idea of the kind of people he had
to deal with, and in the Delta Superintendent
N. V. Venkata he met with no favorable spe-
cimen as already reported.

I have the honor to be

Yours Most Obedt Servant

W. T. Fisher Major R.E.

Ag. Superintending Engineer

Defendant with a wider scope of
authority; I am therefore of opinion
that the Plaintiff is right in suing
the principal, the Defendant.

10. The Plaintiff prays for interest
which from the circumstances of this
case I cannot allow. The Defendant
seems to have been acting on good
faith.

11. I therefore decree that the Defendant
shall pay the Plaintiff Rupees 105-11-
with costs.

19-4-70 (Signed) G. Ramachendrarow.
District Munsiff.

(True Copy)

H. Morris

Civil Judge

Letter No 2490
dated 24 Oct 70
from the Deputy
Superintending Engineer
to the District Munsiff
at Ellore
for the purpose of
enclosing a copy of the
judgment of the District
Munsiff's Court at Ellore
in the suit brought against
Mr Andrews when in charge
of the Ellore Range of the
Godavery District.

No 2824

Proceeding of the

Madras Government
Order date the 23 Nov 1870

Read the following.

From the S. Engrs. 1st Div.

(H. S. No. 24908/21st Dec/70)

On a perusal of the
Judgment of the District
Munsiff of Ellore in
the matter of the suit
brought by a firewood
Contractor against Mr.
Andrews when in charge
of No. IV Range of the
Godavery District His
Excellency the Governor
in Council observes that
the transaction which
led to the institution of
that suit was one in which
the rules of the Department
regarding contracts were
quite

I think we must admit
Mr. Andrews' responsibility
but I would limit it to
the costs of the suit.

N

1870 Dec 24
No 24908/21st Dec/70
H. S. No 24392
M. S. Engrs. 1st Div.
for business

To The Secy to Govt
H. S. No

1870 Dec 24
H. S. No 24390

Enclosure One
Forward Copy of Judge
Munsiff's Court
at Ellore in the suit
brought against Mr.
Andrews when
in charge of the
Range of the
Godavery District
H. S. No 2824-23
H. S. No

1870 Dec 24
H. S. No 2824-23

quite disregarded. As

Range officers ^{are} responsible

for any losses which the

Govt. may sustain by

the neglect of the precau-

tions which those rules

so strictly enjoin. His

Excellency in Council

is not prepared to

~~assume~~ ^{for} enter-

taining the Acting Supg

Engineer's recommendation

for the reimbursement

of the ^{whole} amount paid by

M^r. Andrews in satisfac-

tion of the judgment of

the Court, but, limiting

M^r. Andrews' responsibility to the costs of the suit, he

authorizes the sum of Rs 105-11 to be repaid to that gentleman,

the amount being written 2 to Profit and Loss.

W.B.

The Supg Engr. 10th Div ✓
Controller ✓

Decr 24/11/10

57.11.1902.125

168 C/4392
Govt. of 1870: Madras.

PUBLIC WORKS.

To the Superintending Engineer
P. Division

Date

Recd.

1871

G 23/10/71 2824.

Nos. 4174 & 4175

Sub. Papering orders on the
letter from the Superintending Engineer
re forwarding copy of
Ind. ment in the suit of the
District Manager at Ellore
for the suit brought against
Mr. Andrews by a Firewood
Contractor.