M.R.O. 1—10,006—28-2-50.

(1) Number of pages_____

(2) Date of repair_____

(3) Initials of the Referencer_____

MADRAS RECORD OFFICE

Government of Madras

Public works DEPARTMENT

G.O. No. / ~~B.P. No.~~ 6R1185	2259	Press / ~~Mis.~~	
Dated	13 9.	1873 ~~195~~.	

Not to be folded or roughly handled

16

Proceedings of the Madras Government, Public Works Department,
13th September 1873.

No. 184. Read the following letter from J. W. RUNDALL, Esq., District Engineer, Tinnevelly, to Lieutenant-Colonel J. MULLINS, R.E., Chief Engineer for Irrigation and Joint Secretary to Government, Public Works Department, dated Palamcottah, 5th August 1873, No. 62 :—

WITH reference to G. O., No. 1,525A, of the 9th June, regarding the sum due to late Contractor Ragavacharry, I have the honour to state that I regret I omitted to report the amount of the penalty to which Ragavacharry had become liable for non-fulfilment of the contract.

2. The words of the contract* are as follow :—

"The whole work to be completed before the 1st April 1871, April first, eighteen hundred and seventy-one, under a penalty of 5 per cent. on the full rates of the estimate, but if the work is still incomplete on the 1st April 1872, a further penalty of 5 per cent., or a total of 10 per cent. on the rates of the estimate will be enforced."

* Printed in G. O., No. 1,095 of 19th April 1871.

3. The amount of work done by Ragavacharry including all payments is (excluding the bridge, paid for from contributions) Rupees 4,33,286, the penalty thereon at 5 per cent. is Rupees 21,664.

4. Lieutenant Shepherd understood the penalty to amount to 5 per cent. of the whole amount of the contract, viz., Rupees 8,32,000, but I doubt whether the words of his agreement would bear that construction.

5. With reference to paragraph 3 of the Government Order under reply, requesting further explanation regarding the amount of Rupees 891-0-7, shown as a deduction in the abstract account prepared by Lieutenant Shepherd, R.E., I have the honour to state that I think it would more clearly explain the nature of the deduction to call it "sum allowed by way of compromise in agreement of August 5th, 1871 (not November), but which subsequent measurements showed to be over-payment."

6. The deduction is on two items of the estimate—

(1.)	South channel	Rupees	649 12 · 0
(2.)	Keelavoycal	,,	241 4 7
		Total Rupees	891 0 · 7

When the agreement was made it was not possible to measure the south channel with accuracy, as it was and had been full of water for some time past, but Lieutenant Shepherd estimated that it would cost Rupees 2,636 to complete it, and this sum was assumed to be correct, and deducted in the bill prepared on the basis of the August agreement. The work was carried out last year (May 1872), when the actual cost was Rupees 3,285-12-0, or Rupees 649-12-0 more than deducted.

7. The Keelavoycal is similar, Rupees 241-4-7 was allowed more than required to complete the work.

8. Please instruct me whether, under the above explanation, the deductions are to be enforced.

9. With regard to the remark that paragraph 6 of Colonel Roberts' letter, No. 3,142, of the 8th October 1872, does not agree with my account of the way in

which the sum due for emergent works was calculated, I have the honour to point out that the error is in Colonel Roberts' statement that he had made a "*pro rata*" deduction on the unchecked bills, whereas his memorandum of the 23rd October 1871 clearly shows that no "*pro rata*" deduction was thus made, but the total of the unchecked bills was admitted.

10. As the Government in paragraph 5 of their order hope that a settlement will be effected without delay, I shall pay to Ragavacharry the sum due for the emergent repairs, provided he signs a receipt in full of all further demands on that account, and will report whenever the payment is made.

11. It will be observed that the penalty at only 5 per cent. of work done is in excess of the sum due on the anicut account, which is Rupees 14,992-7-1, or if the sum of Rupees 891-0-7 be not deducted would be Rupees 15,883-7-3.

12. Ragavachary has returned to the district from Madras, but I have not seen him since my return from leave, as I cannot make him any offer with regard to the anicut claims till I receive orders on this letter. I request the favour of an early reply.

No. 185. ORDER THEREON, 13th September 1873, No. 2,259.

IRRIGATION, No. 12.

THE Government observe that the explanation forwarded by the District Engineer, Tinnevelly, in the above letter, shows that the reason for the deduction of Rupees 891-0-7 from the amount due to late Contractor Ragavacharry was altogether incorrectly stated in the abstract statement of that amount prepared by Lieutenant Shepherd, and forwarded with the District Engineer's letter of the 28th April last, No. 14. It is there said to be made "in consequence of contractor's failure to sign agreement, dated 5th November 1871," while it now appears that it has been deducted because in an agreement, *dated 5th August* 1871, a greater allowance was made to the contractor for work done than subsequent measurement showed to have been due. If the agreement left the amount, supposed to be required to complete, open to correction, the deduction may be enforced, but otherwise it should be cancelled.

G. O., 9th June, No. 1,525 A.

2. With regard to the penalty incurred by the contractor for delay, it is to be noticed that to the first penalty of a deduction of 5 per cent. from the estimate rates, the contractor became liable on the 1st of April 1871, the date by which the whole of the works ought to have been completed. This penalty amounts, it is reported, to Rupees 21,664, being 5 per cent. on the value, Rupees 4,33,286, of the work done under the contract or agreement. About January 1871 the contractor stopped work, and as it appeared to be improbable that he would be able to resume it within a reasonable time, he being shortly afterwards under sentence of imprisonment, the work was ultimately gone on with departmentally. Under these circumstances the Governor in Council considers that the second penalty of 5 per cent. to which, under the contract, the contractor, had the work remained in his hands, would have been liable for the non-completion of the works by the 1st April 1872, should be considered not to have been incurred.

Proceedings of the Madras Government, Public Works Department, 13th September 1873.

3. The amount due on account of the Streeviguntum contract was reported in previous papers (G. O., 1,525A., 9th June 1873,) to be Rupees 14,992-7-1, and the Government, owing to the imperfect way in which information, regarding the sum of Rupees 891-0-7, above mentioned, has been given, cannot say whether or no this amount should be added to the contractor's claims. At any rate the amount Rupees 21,664 of the penalty incurred by the contractor considerably exceeds the sum due to him, and therefore, should he not be prepared to come to a settlement, and should he file a suit, there will be nothing to be paid into court.

4. The District Engineer should be careful to report very fully and clearly on all matters connected with the contractor's claims. The agreement of the 5th August 1871 has not been forwarded, neither has its exact tenor been explained, and this omission should be supplied. Inaccuracies have added much to the difficulty of understanding exactly what the contractor's admitted claims are, and too much care cannot be taken in securing precision in every detail connected with them.

(True Extract.)

Lieut.-Colonel, R.E.,

Joint Secretary to Government.

To the District Engineer, Tinnevelly.
" Officiating Controller of Public Works Accounts.
" Chief Engineer for Irrigation.

Exd. S. T. Austin.

Spare Copies.

Dr. Statement of Approved Contractor Rajavanchasy for Emergent works executed in 1869/70. Cr.

	Rupees	a	p		Rupees	a	
To Cash	42,743	14	8	By Bills	45,899	2	
Amount to be deducted for Superintendence	1,193	14	5	Recoveries in cash on the 26th March Rs 132-2-0			
				27 ditto " 115-0-0			
	44,237	13	1	11th April " 110-0-0			
Balances due	2,543	7	8	19 ditto " 211-0-0			
				19th May " 314-0-0	882	2	
Total	46,781	4	9	Total Rs	46,781	4	

District Engr's office, Tinnevelly
Palamcottah 28th April 1873

Wm Rundall
District Engineer
Tinnevelly.

Executive Engineer

Stuvigundam Anicut Project.

Abstract of amount due to the late Contractor Ragavacharry for the Stuvi=gundam Anicut Project and the Bridge over the Anicut.

	Rs	A.	P.
Due as per contract Certificate No. 23.	6,521	6	6
Due on Bill for Bridge over Anicut	5533	3	.
Due on contract certificate No. 24	1,038	7	10
Due for Syphon Sluice at Yeraltv. as per Bill	1,231	1	10
Due for Carnam Drop as per Bill	1112	6	6
Do. for Rough Stone in front of Anicut	1575	"	"
Total Rupees	20,011	9	8
Deductions			
For Firewood as per Memo	4,128	2	-
In consequence of Contractor's failure to sign agreement dated 5th November 71	891	.	7
Total Rupees	5,019	2	7
Net amount due Rupees	14,992	7	1.

26—3.73. [Signed] F. D. Shepherd R.E.

28.4.73. W. Rundall District Engineer

Enclosure No. 1 in a letter from the District Engineer, Tinnevelly dated 28th April 1873.

No. 1873, dated 1st May 1873.

Copy of Security bond executed by Contractor P. N. Ragavacharry for Rs. 22,500 of his late Contract for Stuvigundam Anicut of accomplishment of works.

Grant worked.

No. 62. District Engrs Office, Tinnevelly
Palamcottah 5th August 1873.

From, J. W. Rundall Esquire
District Engineer, Tinnevelly

To, Lieutt: Colle J. Mullins R.E.
Chief Engr for Irrigation & Joint Secry:
to Government P.W.D.

Sir, With reference to G.O. No. 1525A of the 9th June regarding the sum due to late Contractor Ragavachary, I have the honor to state that I regret I omitted to report the amount of the penalty to which Ragavachary had become liable for non fulfilment of the Contract.

Printed in G.O. No. 1095 of the 19th April 1871.

2. The words of the Contract are as follows:-
"The whole work to be completed before "the 1st April 1871, April first Eighteen Hundred "and Seventy one, under a penalty of five per Cent "on the full rates of the Estimate, but if the work "is still incomplete on the 1st April 1872, a further "penalty of five per cent, or a total of 10 per cent "on the rates of the Estimate will be enforced."

3. The amount of work done by Ragavachary including all payments is(excluding the Bridge, paid for from Contributions) Rs. 4,33,286. the penalty thereon at 5 per Cent is Rs. 21,664.

4. Lieutt: Shepherd understood the penalty to

Enclosure No 2 in a letter from the District Engineer, Tinnevelly dated 28th April 1873. No. 116.

To, The Secretary to Govt P.W.D.

P.W. 2444/73.
GO No. 2259 dy 15th/23 Abstract of Amount due to this date to Contractor Ragavachary.

to amount to 5 per Cent of the whole amount of the Contract viz Rs. 8.32.000, but I doubt whether the words of his agreement would bear that construction.

5. With reference to para 3 of the G. O. under reply requesting further explanation regarding the amount of Rs. 891-0-7 shewn as a deduction in the Abstract account prepared by Lieutt: Shepherd R.E., I have the honor to state that I think it would more clearly explain the nature of the deduction to call it sum allowed by way of compromise in agreement of August 5th. 1871 (not November) but which subsequent measurements shewed to be overpayment.

6. The deduction is on 2 items of the Estimate (1) South Channel Rs. 649. 12. 0; (2) Kelavoycal Rs. 241. 4. 7. Total Rs. 891. 0. 7. When the agreement was made it was not possible to measure the South Channel with accuracy, as it was and had been full of water for some time past, but Lieutt Shepherd estimated that it would cost Rs. 2.636 to complete it and this sum was assumed to be correct and deducted in the Bill prepared on the basis of the August agreement. The work was carried out last year, (May 1872) when the actual cost was

Rs

Rs. 3285. 12. 0 or Rs. 649. 12. 0. more than — deducted.

7. The Kelavoycal is similar Rs. 241. 4. 7 was allowed more than required to complete the work.

8. Please instruct me whether under the above explanation, the deductions are to be enforced.

9. With regard to the remark that para 6 of Coll Roberts letter No. 3142 of the 8th October 1872 does not agree with any account of the way in which the sum due for emergent works was calculated, I have the honor to point out that the error is in Coll Roberts Statement that he had made a "pro rata" deduction on the unchecked Bills, whereas his Memo of the 23rd October 1871 clearly shews that no "pro rata" deduction was thus made, but the total of the unchecked Bills was admitted.

10. As the Government in para 5 of their order hope that a settlement will be effected without delay, I shall pay to Ragavachary the sum due for the emergent Repairs, provided he signs a receipt in full of all further demands on that account, and will report whenever the payment is made.

11. It will be observed that the penalty at only

5 per Cent of work done is in excess of the sum
due on the Anicut account, which is Rs 14,992.7.1
or if the sum of Rs 891.0.7 be not deducted
would be Rs 15,883.7.3.

12. Ragavachary has returned to the
District from Madras, but I have not seen
him since my return from leave, as I can-
not make him any offer with regard to
the Anicut claims till I receive orders on this
letter, I request the favor of an early reply.

I have the honor to be
Sir
Your most Obd. Servt.
W. Rundall
District Engineer
Tinnevelly.

P.W. 1873 Department
Pro: of Govt. [illegible] 62.
From [illegible] No. 1322
The Dist. Engineer
Tinnevelly
To No. 4409
The Chief Engineer for
Irrigation and
Joint Secy. to Govt.
P.W.D.

Dated 5th } August /73.
Recd. 15th }
Enc: 2
Written Papers

Reports further on
late Contractor Raga-
-vacharry's claims and
requests orders on the
subject.

21/8 [illegible]

No. 2259 - 13th Septr./73

No. 184
R. 6 Sept./73

No. 2259 P.W.D. 15a

Pro: of the Madras Govt:

Read the following:-

From the Dt. Engr. Tinnevelly (H.E. No. 62) 5th Augt./73/

I have put a note on this paper - [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] of the Augt. [illegible]
26/8

[illegible]
4/9.

The Government observe that the explanation, forwarded by the District Engineer Tinnevelly in the above letter, shows that the reason for the deduction of Rupees 891-0-7 from the amount due to late Contractor Ragavacharry was altogether incorrectly stated in the abstract statement of that amount prepared by Lieutenant Shepherd, and forwarded with the District Engineer's letter of the 28 April last, No. 14. [G.O. 9th June No. 1525-A] There is

is said to be made "in consequence of contractors failure to sign agreement dated 5th November 1871," whilst it now appears that it has been deducted because in an agreement dated 5th August 1871 a greater allowance was made to the Contractor for work done than subsequent measurement showed to have been due. If the agreement left the amount supposed to be required to complete, open to correction, the deduction may be enforced, but otherwise it should be cancelled

2 With regard to the penalty incurred by the Contractor for delay

delay, it is to be noticed that to the first penalty of a deduction of 5 per cent from the estimate rates, the contractor became liable on the 1st of April 1871, the date by which the whole of the works ought to have been completed. This penalty amounts, it is reported, to Rupees 21,664 being 5 per cent on the value, Rupees 4,33,286 of the work done under the contract or agreement. About January 1871 the contractor stopped work, and as it appeared to be improbable that he would be able to resume it within a reasonable time, he being shortly afterwards under sentence of imprisonment

ment, the work was ultimately gone on with Departmentally. Under these circumstances the Governor in Council considers that the second penalty of 5 per cent to which under the contract, the Contractor, had the work remained in his hands, would have been liable for the non-completion of the works by the 1st April 1872, should be considered not to have been incurred.

3 The amount due on account of the Strengthening Contract as reported in previous papers (G.O. 15-25-A-9th June 1873) to be Rupees 14,992-7-1, and the Government, owing to the imperfect way in

in which information, regarding the sum of Rupees 891-0-7, above mentioned, has been given, cannot say whether or no this amount should be added to the Contractors' claims At any rate the amount Rupees 21,664 of the penalty incurred by the Contractor considerably exceeds the sum due to him, and therefore, should he not be prepared to come to a settlement, & should he file a suit there will be nothing to be paid into Court.

4

4 The District Engineer should be careful [in] expressing his meaning clearly in matters relating to Contractors' claims. In para 10 of his letter recorded in these Proceedings, he says he will "pay to Rajavachary the sum due for the emergent Repairs, provided he signs a receipt in full of all further demands on that account." The word "further" is out of place, and should be struck out of the condition.] Inaccuracies have added much to the difficulty of understanding exactly what the contractor's admitted claims are,

[to reject very fully & clearly small matters connected with the Contractors' claims - The agreement, the 5 August 1871 has not been forwarded, neither does it appear to have been referred to in this enquiry in Chamberlain Supplies] Engr.

Approved

are, & too much care cannot be taken in securing precision in every detail connected with them.

Engr. 22/8/73

EWC

3 1/4
4

To The Dist Engr Tinnevelly ✓
— Controller Madras ✓
— Chief Engr for Irrigation ✓

Dated 13/9/73.

Papers
Jarrow Contract
Questions to
Director of Supply
Lord Privy Seal's Office
25 MAR 1973

Returned to Secretary
25/3/73

Received to
Mr. Wilkinson for
Minute sheet No 889 of 27th March
1973
J-3-73

23a

Mr Director Workers

Thanks for letters about the Strivingstone Ancient Contractor is not complete enough to enable me to quote documents but my accompanying memo shows I think Correctly how the case stands -

Perhaps I can let the draft order and letter be struck out altogether but first the Brief Contract and the modifications noted

Yours sincerely
Donald Rollins

25 March

15?
26-3-1973

Memorandum 25a

Mr Robinson considers that a legal opinion should be taken as to the validity of the agreement under which this Department is claiming the penalty incurred by the late Contractor Rajaratnam, in the event of his refusing to settle, out of Court, his claims for work done under that agreement.

2nd I have not the papers with me, but the Advocate General has advised the Government already regarding all the Contractors' claims which were known to Dillistone; and in doing so he communicated with the Department and (I write from memory) I said that it was very doubtful what view a Court would take of it.

I do not think, were a legal opinion again asked for, that the Court would require additional information.

If the Contractor sues under the Agreement I suppose a Court would consider it to be valid in support of the Government claim as of those of the Contractor

the exact amount of which

Before any
Conclusive orders
can be regarded
in this matter, we
must, it appears to
me, have legal opinion
on the validity of the
Agreement under
which we claim to
set off a sum which
will more than extinguish
the Contractor's claims,
and I would not let
the matter go before
a Civil Court till we
are clear on this point.

It is admitted
that the Contractor
has unsatisfied claims,
the exact amount of
which

I do not think it desirable to bar even just claims of the Contractor and to shelter as carefully as possible, but I also am disinclined to repudiate the settlement, made by Mr Prince with Colonel Robinson, of the Quarter Master's claims, and if he does file a suit, it would seem to be advisable to plead the penalty as a set off.

With respect to the matter commented on by Mr Robinson, the draft order contains nothing new - I have already said that the penalty will be enforced if a settlement such as I want be not come to, and, unless I am mistaken, the District Engineer has been told to intimate this to the Contractor - The 30 of the 21 March 1883 will probably explain whether I have been directed on this point.

WMD 25/5/83

The papers re Sierra Leone show that every reasonable has been done but I cannot see what remains for the Secretary of State to do. I cannot see this matter

21 March - now

I cancel this

4/9

which does not matter now: and may after all need to become the subject of a Civil Suit, for the Government ought to account with this fraudulent individual with a stringency, which he may probably dispute.

The claim to set off a Coulter penalty for breach of Contract, which at the minimum would amount to Rs. 22000 (more or less) and may be 10 per cent on Rs 8,52,000 — for the work, I conceive, has never been touched by the Contractor since the early part of 1871.

But I admit that the Agreement under which we claim to set off this large sum

seems

seems to me ambiguous and obscure in its terms, and I think it is just possible that a Civil Court might hold that by G. O. dated 19th April No 1045, the Government declared it informal and repudiated the acts of their agents.

I think that it would be unsafe to proceed further in this matter without legal opinion.

26/8 [illegible]

No 4909 ☆

Govt. of {1873} Madras.

PUBLIC WORKS.

To Chief District Engr
Tinnevelly

Dated

Recd. Encl. 2

G. O. 13 Sept. 73. No. 2259.

Nos. 184 & 185

Strivigunturm Anicut

works. Paper enclosing a letter from the Dist. Engr, Tinnevelly, reporting further on the claims of the late Contractor Ragavachary in connection with the works.

No. 184-85