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

pub. works. DEPARTMENT

G.O. No. 2868 Press
B.P. No. 392 & 393 Mis.

Dated 27-11-1873 195 .

Not to be folded or roughly handled

No. 392. Read the following letter from Captain H. M. VIBART, R.E., District Engineer, Bangalore, to Colonel G. W. WALKER, R.E., Chief Engineer, Public Works Department, dated Bangalore, 11th October 1873, No. 180:—

WITH reference to my letter, No. 116, of 19th July 1873, regarding the Civil Suit brought against me by late Road Contractor Moonevencatappah, I have now the honour to forward the judgment and decree in the case. It will be seen that each party has been required to pay his own costs. I would recommend an appeal against the decision regarding costs, as I am firmly of opinion that there was no necessity for the suit, as the contractor might, by coming to my office, have obtained every information he required, including copies of the entries in the book. Moreover, it is evident that these entries were not required by the late contractor to make up his bill as his bill had been already made up and sent into my office.

2. Perhaps the Government may not consider it desirable to appeal, but certainly if I was engaged in this case, as a private individual I should appeal against the decision as regards costs.

3. With that portion of the judgment which relates to the copy of the entries in the book, I in no way concern myself, as had the late contractor come to my office he would have been permitted to take a copy at any time. The last letter of the contractor was not answered, as I had already informed him in a previous letter that he could have all the information he required by attending at my office.

4. The judgment states that "there had been some misunderstanding between them" (that is the late contractor and myself). The fact is the late contractor made out a bill which it was utterly out of the question to pass, and the contractor having been already informed that he could have every information at the office, wrote the letter, dated 19th June, for the purpose of bringing the action.

5. The judgment again states that "after the order book was withdrawn from defendant's custody, plaintiff was in need of the requisite information to enable him to prepare the bills." This was not the case for (as above stated) the bill had already been sent in by the contractor.

6. Again, it is stated that "he (Captain Vibart) has no recollection of plaintiff having ever personally requested him for the grant of copies." Whereas my reply to the query, "did the plaintiff ask you personally for the grant of a copy?" was, "certainly not."

7. I again declare that had the late road contractor come to my office he could have had every information he required; but that he did not do so for reasons best known to himself.

8. Mr. Overseer Taylor took over charge of the roads on 4th July 1872, and declares that ever since that date he retained possession of the book, so that the allegation of the contractor regarding his being in possession of the book in September is false.

9. The orders in the book could be no guide to the contractor so far as framing a bill for work done was concerned. They merely show to what road repairs were at the time required; but no reference is made in them to the nature

or extent of the work, these particulars being invariably pointed out to the contractor (or a person deputed by him) by the Overseer; neither is it evident from the orders that the work pointed out from time to time was ever executed.

10. The probable motive of the contractor in asking for the order book was to fabricate an excessive bill against Government for work which was never done. He never took measurements himself when work was being given out, and had he done so when the work was being done, or immediately after it was executed, there would have been no necessity for his asking for the book. The book shows merely to what roads work was ordered to be done.

11. I shall be obliged by your informing me as soon as possible whether the Government wish an appeal made on the subject of costs, as if so it must be lodged before 4th November next.

12. The Government costs amount to Rupees 53 in addition to which there is a further sum for copies of judgment, stamps, etc.

No. 393. ORDER THEREON, 27th November 1873, No. 2,868.

ESTABLISHMENT, No. 32.

His Excellency the Governor in Council declines to allow an appeal against the decision arrived at, and directs the payment of the costs and other expenses involved. He remarks that this penalty has been incurred by neglect to give an official reply to the plaintiff's letter of the 19th June, on which neglect the question of the costs hinged. It is therefore in recognition of the District Engineer's general good management of his work that he is exempted from personally bearing the charges incurred by his want of judgment in this instance.

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the District Engineer, Bangalore.
" Officiating Controller of Public Works Accounts.

Exd. S. T. Austin.
Spare Copies.

13

27-9-73

27-9-73

In the Court of the Judicial Assistant Commr
Bangalore District.
Before J. R. A. Thumboo Chetty Esquire
Offg. Judicial Assistant Commr

O.S. No. 287 of 1873. on the file of this Court.
Bangalore 28th September 1873.

Plaintiff. Defendants.
Mooroogi Venkatappah #1. Mr. J. W. Taylor
by by
Mr. Chengulroya Saudeber. Mr. J. W. Hayes.

Plaintiff prayed for a decree,
directing Defendants to return a bound
Foolscap Book containing entries of
measurements issued to him
in the handwriting of the overseers of
a bound Foolscap Book of his own

the L. C. W. specifying the nature and extent of the work to be performed by Plaintiff or pay Plaintiff Rs. 1050 with costs, or for the grant of such other relief as to the Court may seem fit and proper.

Decree

This cause coming on for final disposal on a adjournment this twenty sixth day of September 1873, before S. R. A. Thumboochetty Esquire officiating Judicial Assistant Commissioner of the Bangalore District, Plaintiff and Defendants appeared through their Pleaders; This Court doth order and decree, that Plaintiff be hereby allowed

record copies of all the entries in the order Book alluded to in Plaint and which Defendants have produced and filed in Court on Plaintiff producing the necessary stamp papers and paying the copying fees.

This Court doth further order and decree that each party do bear his own costs.

(Signed) S. R. A. Thumboochetty
Offg. Judicial Assistant Comr.
Bangalore District.

Memo

Plaintiff's Costs.

Stamp for Plaint Rs 80—

Summons to Defendants 1—8—

Do — to witnesses — 4—

Travelling batta — 4—2—

Carried over 89—10—

a bound Foolscap Book of his own

Brought forward Rs 1195

Power of attorney — 0 — 8

Pleader's fee — 52 — 8 —

Total Rs. 142 — 10 —

Defendants' Costs

Power of attorney — 0 — 8 —

Pleader's fee — 52 — 8 —

Total Rs. 53 — 0 —

(Signed) T. R. A. Thumboo chetty

2nd Judicial Assistant Commr

Bangalore District

True Copy

V. Mungapathi Naidu
Head Clerk

Copy applied for. 27th September /73.
Ready for delivery 6 October /73.
Delivered 8 " " 30 "

V. Mungapathi Naidu
Head Clerk

O.S. No. 2879/1873
Rupees 27-4

JUDICIAL ASSISTANT'S COURT BANGALORE DISTRICT

In the Court of the Judicial Assistant

Commissioner's Bangalore District

Before T. R. A. Thumboo Chetti Esqre

Asst Judl Assistt Commr

O.S. No. 2879/1873 on the file of this Court

Bangalore 26th September 1873

Plaintiff — Defendants

Moonee Venkatappiah — 1. Mr J. W. Taylor
by — 2. Captain W. M.
Mr Chengalroya Mudeliar — Vibart by
Mr J. W. Hayes

Judgment.

Plaintiff represented that he was a Contractor employed by Defendants for the Supply of road materials and for repairing the roads in the Cantonment of Bangalore; that he had a bound Foolscap Book of his own

O.S. No

Vol Nos

containing entries of orders or directions
issued to him in the handwriting of the
Overseers of the G. P. W, specifying
the nature and extent of the works to
be performed by Plaintiff; that, on the
23rd of September 1872, 1st Defendant
having required Plaintiff to send the
Books to him, the book was accord-
ingly sent; that Defendants subse-
quently refused to return the same
to Plaintiff, and Plaintiff has, in
consequence, been prevented from
making out his bills, for the recovery
of about Rupees 1050 from the Madras
Government. Plaintiff, therefore, prayed
for a decree, directing Defendants

to

to return the said books, or that Plain-
tiff Rupees 1050 with Costs, or such
the grant of such other relief as to
the Court may seem fit and proper.

2. Defendants pleaded that the
book which Plaintiff seeks to recover
belongs to Government, and not to
Plaintiff - That 1st Defendant is the
proper custodian of the same. That
Plaintiff was from time to time allow-
ed access to the Books and was never
denied it; that he was allowed access
to enable him to take Copies of the
orders therein entered; that he had a
Memo Book of his own, by reference
to which the Bills were prepared.
Defendants, in short, pleaded
that Plaintiff was not entitled to
the relief in the Plaint sought for.

and

and that they were not liable for
this action.

3. Several issues were raised, and,
at the final hearing, it was agreed
to by pleaders for both parties, with
a view to prevent protracted and
unnecessary enquiry, that copies of
the entries in the Books in dispute,
which has been produced into Court
by Defendants, should be furnished
to Plaintiff, and that the question of
Costs alone should be reserved for the
determination of Court. And, with
reference to this question, Plaintiff and
2nd Defendant were examined.

Plaintiff stated that after Defendants
refused to return the order Book
to him, he addressed a letter to 2nd
Defendant on the 17th June 1873
requesting that he may be furnished

with copies of all orders and instruction
entered in the order Book, that he
(Plaintiff) received no reply to this
Communication; that he called at the
Office of 2nd Defendant, a few days
afterwards, and personally requested
2nd Defendant either to furnish him
with the copies of the entries or allow
him to take copies; that as his request
was refused, he was obliged to bring
this Suit. The 2nd Defendant,
Captain Wibaut, in his examination,
while admitting the receipt of Plaintiff's
letter dated 19th June 1873, stated that
Plaintiff never called on him and applied
for permission to take copies;
that if Plaintiff had chosen to come to
his

this Office, there was nothing to prevent
his (Plaintiff) obtaining the Copies or
the information he wanted. Captn Vibart
further stated that he believed he sent
Plaintiff a reply to his letter, but that
he was not quite sure he did so.

1. An adjournment was granted
till this day, to enable Captain Vibart
to produce copy of the reply, if he sent
one; the pleader for Defendants did
not appear this day; but 2nd Defendant
appeared and stated that no reply
was sent to Plaintiff's last letter.

5. Now it has to be decided,
whether Plaintiff had a good and
sufficient Cause for bringing this
action. The Correspondence which
took place between Plaintiff and
Defendants, shows that there has been
some misunderstanding between them,
and

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and that after the order book was with-
drawn from Defendants Custody
Plaintiff was in poss of the requisite
information to enable him to prepare the
Bills. As a last resort Plaintiff applie-
ed for Copies being furnished to him
No reply was sent to this application
Although 2nd Defendant was not bound
to furnish the Copies applied for, yet
it would have been well if Plaintiff
had been informed that he would be
allowed to take Copies if he wished to
do so. Plaintiff swears that he called
over at the Office of 2nd Defendant and
made a personal application to per-
mit him to take Copies. Captn Vibart,
on the other hand, swears that he has
no recollection of Plaintiff having ever
personally requested him for the grant
of Copies. Here is oath against oath.

Although

Although I am inclined to believe Capt. Vibart's
Statements in preference to that of Plaintiff's
yet I am inclined to think that Plaintiff
must have really met with some difficulty
in obtaining Copies of the entries, or other
information he wanted for the preparation
of the Bills for the work executed by
him— The question as to Costs could
not be Satisfactorily determined upon
the evidence before me— But as it
was agreed to by pleaders for both
parties that the Suit may be put
an end to without further enquiry
by ordering Copies of the entries in
the Order Book to be furnished
to Plaintiff, and as the other issues
were not gone into, I think each
party should bear his own Costs—

The decree will Simply
declare

O.S. No. 287 of 1873

Declare Plaintiff entitled to obtain
Copies of all the entries in the Order
Book produced by Defendants
on his producing the necessary Stamps
papers and paying for the copying
fees.

(Signed) V. R. A. Thumboo Chetty
Off. Judl. Agent Commissioner
Bangalore District

"True Copy"
V. Munuzapathi Naidu
Head Clerk

Date copy applied 27th September 73
Ready for delivery 6th October 1873
Delivered —"— 8 —"— 0 —

V. Munuzapathi Naidu
Head Clerk

P.O. Rec. 2868-27.
Dated 4th Dec. 73.
Rd. 4th Dec. 73.

No. 180

DISTRICT ENGINEER'S OFFICE.

Bangalore 1st Dec. 1873

From

The District Engineer,

Bangalore.

To

The Chief Engineer

Public Works Department

Madras

Sir

With reference to my letter No. 1162 dated 19 July 73 regarding the Civil Suit brought against me by late Road Contractor Koonvenca Attah I have now the honor to forward the judgment and decree in the case. It will be seen that each party has been required to pay his own costs. I would recommend an appeal against the decision regarding costs, as I am firmly of opinion, that there was no necessity for the suit, as the Contractor might by coming to my Office have obtained every information he required

including copies of the entries in the book. Moreover it is evident that these entries were not required by the late contractor to make up his bill as his bill had been already made up and sent into my Office.

Perhaps the Government may not consider it desirable to appeal, but certainly if I was engaged in this case, as a private individual I should appeal against the decision as regards costs.

With that portion of the judgment which relates to the copy of the entries in the book, I in no way concern myself, as had the late contractor come to my Office he would have been permitted to take a copy at any time. The last letter of the Contractor was not answered as I had already informed him in a previous letter that he could have all the information he required by attending at my Office.

The Judgment states that "there had been some misunderstanding between them" (that is the late contractor and myself). The fact is the late contractor made out a bill which it was utterly out of the question to pay, and the contractor having been already informed that he could have every information at the office, wrote the letter dated 19 June for the purpose of bringing the action.

The Judgement adjudges that "after the order was withdrawn from book was in the Defendants custody, Plaintiff was in need of the requisite information to enable him to prepare

prepare the bills." This was not the case for (as above stated) the bill had already been sent in by the Contractor.

Again it is stated that "he (Captain Vibart) has no recollection of Plaintiff having ever personally requested him for the grant of copies." Whereas my reply to the query Did the Plaintiff ask you personally for the grant of a Copy? was "Certainly not."

I again declare that had the late road Contractor come to my Office he could have had every information he required; but that he did not do so for reasons best known to himself.

Mr Overseer Taylor took over charge of the roads on 4 July 1872, and declares that ever since that date he retained possession

possession of the book, so that the allegation of the Contractor regarding his being in possession of the book in September is false.

The orders in the book could be no guide to the Contractor so far as framing a bill for work done was concerned. They merely show to what road repairs were at the time required, but no reference is made in them to the nature or extent of the work, these particulars being invariably pointed out to the Contractor (or a person deputed by him) by the Overseer; neither is it evident from the orders that the work pointed out, from time to time was ever executed.

The probable motive of the Contractor in asking for the Order book was to fabricate

I am excessive bill against Govt.
t for work which was never done.
He never took measurements him-
-self when work was being given
t out, and had he done so when
h the work was being done, or im-
-mediately after it was executed,
h there would have been no necessity
h for his asking for the book.
The book shows ~~merely~~ merely to what
p road, work was ordered to be
C done.

I shall be obliged by
t your informing me do com
ad possible whether the Govern
-ment wish an appeal made
c on the subject of costs, as if
r so, it must be lodged before
4th November next.

The Government costs
amount to Rupees 53 in
addition to which there is a
further

further sum for copies of
judgment, stamps &c.

I have the honor to be
Sir
Your most Obt. Servant

Geo. Th. Nibbett Captain R
District Engineer, Bangalo

P. W. 1873 Department.
Judicial Proceedings 1873
Received No. 6194.

The Secretary
to Government
of
The Chief Engineer
P. W. Madras
Dated 11th October 73.
Rec'd 13th November 1873.
Encl. 2.

Forwarding
Judgment and
decree of the Case
of Thommen and others
late Road Contractors.

Ans. 28th 27th Nov. 1873.

which neglect the question of the costs hinged. He is therefore Govt. in recognition of the District Engineers general good management of his ~~work~~ department that he is exempted from personally bearing the charges incurred by his want of judgement in this instance.

Govt

Dept. nett. I.C.
28/11/73

Ch 6194

Govt. of {1873} Madras.

PUBLIC WORKS.

To The District Engr
Bangalore

Date:

Recd. Encl. 2

G. O. 27 Nov. No. 2868.

Nov 3921 89

Suit. Passing orders on
letter from the Dist Engr.,
Bangalore, submitting
copies of the judgement
& decree in the case
brought against
him by a Road
Contractor for the
recovery of Rs. for the payment
back of Rs: 1050.