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MADRAS RECORD OFFICE

Government of Madras

Public works

DEPARTMENT

G.O. No.	887	Press
B.P. No.		Mis.
512-513		
Dated	21-3	1873.

Not to be folded or roughly handled

No. 512. Read the following letter from the Acting Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 22nd February 1873, No. 96:—

With reference to Lieutenant Shepherd's letter of the 3rd instant, No. A, I have now the honour to forward the opinion of the Advocate General regarding the several claims of the late Contractor Ragavacharry.

OPINION.

If as Lieutenant Shepherd considers, and as appears to me from the Mookh-tarnama of 22nd April 1871, to have been the case, Mr. Prince was competent to come to the arrangement set forth in his letter of 5th August 1871, to the Acting Superintending Engineer, that document would appear to be the basis on which any settlement with the contractor ought to rest. I presume, however, that the contractor now repudiates Mr. Prince's acts on his behalf, as several of the matters now in dispute, notably the claim mentioned in Mr. Shepherd's memorandum No. 1, were disposed of in the agreement concluded with Mr. Prince, 5th August 1871. This point, therefore, would be the first to be raised in case the matter were brought into Court.

2. Leaving this aside, I proceed to observe upon the several claims discussed in Mr. Shepherd in the several memoranda appended to his letter, 3rd February 1873. The first claim mentioned by Lieutenant Shepherd (Rupees 4,200 for the ancient foundations) appears, according to his account, to be clearly unsustainable. He says that it is the practice in measuring any piece of work to measure up the whole of the work done, deduct that already paid for, and pay for the residue; that on checking the measurements of work executed in June 1870, he found that some of these deductions had not been made; that he pointed this out to the contractor, who acquiesced and signed the contract certificates of that and the following months. If this be so, there can, of course, be no doubt that the claim is a bad one.

It appears, however, from clause 8 of Mr. Prince's agreement of 5th August 1871, that, apart from the 4,200 Rupees just mentioned, there may be a claim on the part of the contractor in respect of savings on the estimated cost of certain portion of the anicut work. When the work has been fully completed, this point can be decided, as provided by the agreement, by the Acting Superintending Engineer; and I understand from Mr. Shepherd that there is no reluctance on the part of the Public Works Department to pay the contractor whatever sum may be so found by the Acting Superintending Engineer to be due. This, however, is a matter quite distinct from the Rupees 4,200, to which Mr. Shepherd's memorandum No. 1 refers, and is not at present urged by the contractor.

3. The claim next referred to (memorandum No. 2) is fourfold. One item is for Rupees 3,200 (about) deducted as having been twice paid for.

As to this Mr. Shepherd says that the fact of the work having been twice paid for is evident from a comparison of the measurements for July with those for October. Indeed, the deduction appears to have been too small; it ought to have been in respect of 65,756 cubic yards instead of 39,306. This was occasioned,

Mr. Shepherd tells me, by a mistake in the office, and the contractor has accordingly received over-payment in respect of the difference of the two measurements. In any adjustment of accounts, therefore, Government would have a right to deduct this amount.

The second item is Rupees 3,200, or, as Mr. Shepherd says, it should be Rupees 2,636, deducted on account of work left unfinished by the contractor.

The contractor does not explain in his claim (dated 16th February 1872) what are the grounds of this claim, and we have therefore only Mr. Shepherd's conjectures as to what they may be. He may, Mr. Shepherd suggests, allege that the work was actually completed; but that the channel, when finished, was filled up by the water being let down it for cultivation purposes. As to this Mr. Shepherd says that the deduction made was only in respect of widening the channel, not of deepening it, and that the water passing down the channel could not decrease the width, though it is conceivable that it might have increased it. This allegation therefore would be, in Mr. Shepherd's opinion, wholly groundless; except this Mr. Shepherd cannot conjecture on what ground the contractor can object to this deduction. This item and the preceding one relate to the first 12,500 feet of the channel. The third claim relates to the portion of the channel between 12,500 feet and 22,500. For this at present the contractor advances no very distinct claim; but Mr. Shepherd considers it probable that he will endeavour to establish his right to payment of the whole estimated quantity of work at the agreed rates. Mr. Shepherd is prepared to admit so much of this item as represents the cost of deepening the channel throughout the entire distance 10,000 feet; but he is not prepared to admit the cost of widening about Rupees 1,000, because both he and his Assistant Engineer, Department Public Works, is now in the Presidency, and would be available as a witness on this point if it were necessary.

This claim however, even if good, would appear to be barred by the Limitation Act, the cause of action having arisen more than three years ago.

The fourth item discussed in memorandum No. 2 is for an increased rate over certain portions of the entire channel, on the ground of the nature of the soil. As to this Mr. Shepherd says that, though it is true that the contractor was promised 1-8 per cubic yard for kunkur, the soil in the channel throughout was not kunkur and might strictly have been paid for as earth at 2 Annas per cubic yard. There were, however, portions of the channel where the soil was of a kunkurous character nearer earth than kunkur, and for these portions a rate varying from 8 Annas to 1 Rupee was offered and accepted by the contractor. His acceptance is proved by his signing the certificates in which those rates appear, and cannot therefore be now considered as open to discussion.

Memorandum No. 3.—This is an item of Rupees 3,800 for which the contractor alleges that credit has not been given to him. Mr. Shepherd says that the books of the department sufficiently show that credit has been given, and that Mr. Hughes, who prepared the estimates and understands the books, would be able at once to establish the point if necessary.

Memorandum No. 4.—This refers to a claim in respect of certain unserviceable tools sent by the contractor into store. The arrangement appears to have

been that the contractor was at liberty to buy Rupees 15,000 worth of tools for the entire contract of 8 lakhs, and he was to receive credit for a fair amount of tools which the contractor might bring into store as having become unserviceable. Mr. Shepherd wrote to the contractor early in 1869, reserving his right to object to too large a proportion of unserviceable tools. The copy of this letter appears to have been stolen from the office records; but Mr. Rundall and Mr. Prince and the clerk who wrote it can speak to its existence. Under this arrangement tools used to be brought to the store by the contractor, the storekeeper giving a receipt, and Mr. Shepherd then passed what he considered a fair proportion of unserviceable tools and gave a receipt for them, distinct from the storekeeper's receipt, which was a mere acknowledgment of the tools having been deposited in store for Mr. Shepherd's inspection. The contractor now claims Rupees 14,000 in respect of unserviceable tools; Mr. Shepherd has passed tools to the value of 7,700 Rupees, but he refused to pass more on the ground that, as only about half the contract had been completed, more than half the estimate of 15,000 Rupees for tools ought not to be allowed. It is, of course, difficult to say anything precise as to a matter the chief evidence upon which is a lost letter; still, as Mr. Shepherd states the case, it appears reasonable enough that credit should be allowed only for a proportion of spoilt tools fairly corresponding to the amount of work done, and the storekeeper and Mr. Shepherd's respective receipts appear to indicate that such was the course actually pursued. I think, therefore, that the Government are right in refusing to allow credit for the balance of tools, for which Mr. Shepherd's receipt has not been given, except for the few which I understand he consented, with Mr. Prince, to pass at the rates then agreed.

Memorandum No. 5.—This is a claim in respect of about Rupees 2,500 deducted from the contractor's credit account under the following circumstances:—He was allowed a certain amount of fuel, 3,500 loads, and Rupees 5,000 (2,000 loads at 2-8 per load) in respect of his contract to supply bricks for the anicut and head sluices, and he actually received these amounts. But he failed to complete the supply of bricks for the works in question, and Mr. Shepherd has therefore deducted from his account the value of the firewood employed in order to burn bricks enough to complete the work at the rates allowed to the contractor.

The whole of this arrangement about the bricks was oral; but the accounts of the department will show the amount of fuel received, and the payment of the Rupees 5,000 for the balance of fuel unsupplied and the deficiency in the supply of bricks by the contractor. The deduction seems therefore to be quite right.

Memorandum No. 6.—This refers to a number of petty claims, arising out of the matters of account, which Mr. Shepherd says were fully discussed and adjusted with Mr. Prince, and are, if Mr. Prince's argument is to be upheld, met by clause 11 of that document. If, however, the agreement is to be disregarded, the office accounts will, Mr. Shepherd states, clearly establish the groundlessness of the claim in each instance.

I have now endeavoured to set out each claim as I have elicited the facts connected with it from Mr. Shepherd in conversation. I desire, in conclusion, to invite attention to the very loose informal and inadequate agreement made by Mr. Shepherd with the contractor, 21st December 1868, which is the document on which Government must now take its stand. This document contains a

provision for penalties in case of the work not being complete, by 1st April 1871 and 1st April 1872, and if the contractor offers any resistance it will of course be well to show him that he is exposed to this liability, if Government chooses to stand strictly on its rights. The whole instrument is, however, so vague and irregular, that it would be really desirable not to have to rely upon it, if this can be avoided. It would be most desirable that any documents of this kind should be drawn up in a proper and business-like form, and not be allowed to assume whatever form a subordinate official may choose to give them. The document now in question is so framed as almost inevitably to lead to dispute and to be almost useless in case of litigation.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

21st February 1873.

No. 513.

ORDER THEREON, 21st March 1873, No. 887.

ESTABLISHMENT, No. 57.

THESE papers will be communicated to the District Engineer, Tinnevely, and that Officer will inform Ragavacharry, late Contractor of the Streeviguntum Anicut Works, that the Government must decline to re-consider any of the claims which were settled with Mr. Prince, acting as the Contractor's Agent. The agreement then arrived at should be carried out, and, if Ragavacharry declines to accept the amount due to him under that agreement, together with any sums on account of admitted claims not included in the agreement, and to grant a receipt in full of all demands, he should be informed that the penalty of 5 per cent. on the value of work done will be enforced, and that he will not again be offered the amount now sanctioned to be paid.

1. The District Engineer is requested to forward, as soon as possible, a complete list of the admitted claims, showing the amount to be paid under each, when that has been determined; and the probable amount for work which has not yet been completely measured, or which, as regards rates to be paid, is dependent upon work yet to be carried out. The total amount thus exhibited, subject to such modifications as may be requisite where the claims have not been finally determined, will be the sum to be offered to the late Contractor, and should this settlement be rejected and a suit be filed, this amount, less that for penalty incurred, which should be reported, will be the sum to be paid into Court when filing the answer.

2. The District Engineer is requested to forward, as soon as possible, a complete list of the admitted claims, showing the amount to be paid under each, when that has been determined; and the probable amount for work which has not yet been completely measured, or which, as regards rates to be paid, is dependent upon work yet to be carried out. The total amount thus exhibited, subject to such modifications as may be requisite where the claims have not been finally determined, will be the sum to be offered to the late Contractor, and should this settlement be rejected and a suit be filed, this amount, less that for penalty incurred, which should be reported, will be the sum to be paid into Court when filing the answer.

3. Instructions will be issued shortly to the department generally, with reference to the remarks of the Advocate General, in the concluding paragraph of his opinion, on the subject of the informality and inadequacy of the agreement entered into with the Contractor for the Anicut works.

(True Extract.)

Lieut.-Colonel, R.E.,
Joint Secretary to Government.

To the Chief Engineer for Irrigation.
District Engineer, Tinnevely.
Controller of Public Works Accounts.
Exd. E. C. Shunker.

Opinion.

1. If as Lieut. Shepherd considers, and as appears to me from the Markharnama of 22.4.71 to have been the case, Mr. Prince was competent to come to the arrangement set forth in his letter of 5th August 1871, to the Acting Superintending Engineer, that document would appear to be the basis on which any settlement with the Contractor ought to rest. I presume, however, that the Contractor now repudiates Mr. Prince's acts on his behalf, as several of the matters now in dispute, notably the claim mentioned in Mr. Shepherd's Memo. No. 1 were disposed of in the agreement concluded with Mr. Prince, 5th Aug. 71. This point, therefore, would be the first to be raised in case the matter were brought into Court.

2. Leaving this aside, I proceed to observe upon the several claims discussed in Mr. Shepherd's several Memoranda appended to his letter 3. 2. 73. The first claim mentioned by Lieut. Shepherd (Rs. 4,200 for the ancient Foundations) appears according to his account, to be clearly unsustainable. He says that it is the practice in measuring any piece of work, to measure up the whole of the work done, deduct that already paid for, and pay for the residue; that on checking the measurements of work executed

Shepherd cannot conjecture on what ground the Contractor can object to this deduction. This item and the preceding one relate to the 1st 12500 feet of the Channel. The 3rd claim relates to the portion of the Channel between 12500 feet and 22500. For this at present the Contractor advances no very distinct claim; but Mr. Shepherd considers it probable that he will endeavour to establish his right to payment of the whole estimated quantity of work at the agreed rates. Mr. Shepherd is prepared to admit so much of this item as represents the cost of deepening the channel throughout the entire distance 10000 feet, but he is not prepared to admit the cost of widening, about Rs 1000, because both he and his Assistant have a distinct recollection that the work was not done. Mr. J. M. Bell Assistant Engineer D. P. W. is now in the Presidency and would be available as a witness on this point if it were necessary.

This claim however, even if good, would appear to be barred by the Limitation Act, the cause of action having arisen more than three years ago.

The 4th item discussed in Memo: No 2 is for an increased rate over certain portions of the entire channel on the ground of the nature of the soil. As to this Mr. Shepherd says that

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though it is true that the Contractor was promised 1. 8. per cubic yard for Kunkur, the soil in the Channel throughout was not Kunkur and might strictly have been paid for as earth at 2 Annas per cubic yard. There were however, portions of the Channel where the soil was of a Kunkurous character, nearer earth than Kunkur and for these portions a rate varying from 8 Annas to 1 Rupee was offered, and accepted by the Contractor. This acceptance is proved by his signing the Certificates in which those rates appear, and cannot therefore be now considered as open to discussion.

Memo: No 3. This is an item of Rs 3800 for which the Contractor alleges that credit has not been given to him. Mr. Shepherd says that the books of the Department sufficiently show that credit has been given, and that Mr. Hughes, who prepared the estimates and understands the books would be able at once to establish the point if necessary.

Memo: No 4. This refers to a claim in respect of certain unserviceable tools, sent by the Contractor into store. The arrangement appears to have been that the Contractor was at liberty to buy Rs 15000 worth of tools for the entire contract of 8 lakhs - and he was to receive credit for a fair amount of tools which the Contractor

Contractor might bring into store as having become unserviceable. Mr. Shepherd wrote to the Contractor early in '86 reserving his right to object to too large a proportion of unserviceable tools. The copy of this letter appears to have been stolen from the Office Records, but Mr. Randall and Mr. Prince and the Clerk who wrote it can speak to its existence. Under this arrangement Tools used to be brought to the store by the Contractor, the store keeper giving a receipt, and Mr. Shepherd then passed what he considered a fair proportion of unserviceable tools and gave a receipt for them, distinct from the store keeper's receipt, which was a mere acknowledgment of the tools having been deposited in store for Mr. Shepherd's inspection. The Contractor now claims Rs. 14,000 in respect of unserviceable tools; Mr. Shepherd has passed tools to the value of Rs. 7,700, but he refused to pass more on the ground that as only about half the Contract had been completed more than half the estimate of 15,000 Rs. for tools ought not to be allowed. It is, of course, difficult to say any thing precise as to a matter the chief evidence upon which is a lost letter; still, as Mr. Shepherd states the case, it appears reasonable enough that credit should be allowed only for a proportion of spoilt tools fairly corresponding to the amount of work done, and the
storekeeper

store keeper and Mr. Shepherd's respective receipts appear to indicate that such was the course actually pursued. I think therefore that the Government are right in refusing to allow credit for the balance of tools, for which Mr. Shepherd's receipt has not been given, except for the few which I understand he consented, with Mr. Prince, to pass at the rates then agreed.

Memo: No. 5. This is a claim in respect of about Rs. 2,500 deducted from the Contractor's credit account under the following circumstances. He was allowed a certain amount of fuel, 3,500 loads and Rs. 5,000 (2,000 loads at 2. 8. per load) in respect of his Contract to supply bricks for the ancient and head sluices, and he actually received these amounts. But he failed to complete the supply of bricks for the works in question, and Mr. Shepherd has therefore deducted from his account the value of the firewood employed in going to town bricks enough to complete the work at the rates allowed to the Contractor.

The whole of this arrangement about the bricks was oral, but the accounts of the Department will show the amount of fuel received, and the payment of the Rs. 5,000 for the balance of fuel unsupplied and the deficiency in the supply of bricks by the Contractor. The deduction seems therefore to be quite right.

Memo:

Memo: No. 6. This refers to a number of petty claims, arising out of the matters of account, which Mr. Shepherd says were fully discussed and adjusted with Mr. Prince, and are, if Mr. Prince's agreement is to be upheld, met by Clause 11 of that document. If however the agreement is to be disregarded, the Office accounts will, Mr. Shepherd states, clearly establish the groundlessness of the claim in each instance.

I have now endeavoured to set out each claim as I have elicited the facts connected with it from Mr. Shepherd in conversation. I desire in conclusion to invite attention to the very loose and informal and inadequate agreement made by Mr. Shepherd with the Contractor, 21st December 1868, which is the document on which Government must now take its stand. This document contains a provision for penalties in case of the work not being complete by 1st April 1871, and 1st April 1872. Contractor offers any resistance it will of course be well to show him that he is exposed to this liability, if Government chooses to stand strictly on its rights. The whole instrument is, however, so vague and irregular that it would be really desirable not to have to rely upon it, if this can be avoided. It would be most desirable that any documents of this kind should be drawn up in a proper and businesslike form, and not be allowed to assume

assume whatever form a subordinate official may choose to give them. The document now in question is so framed as almost inevitably to lead to dispute and to be almost useless in case of litigation. —
/Signed/ W. J. Cunningham.
Adv. Genl.

202-1/3.

/True Copy/
Lust Barlay
Actg. Government Solicitor.

No. 96.

Madras, 22nd February 1873.

From Ernest Barclay
Actg. Government Solicitor,
Madras,

To Colly. W. Walker, R. E.
Secretary to Government,
Public Works Department,
Fort St. George,

Sir, With reference to Lt. Shepherd's letter of
the 3rd instant No. A, I have now the honor to
forward the opinion of the Advoctate General -
regarding the several claims of the Late Com-
= tractor Ragavacharry.

I have the honor to be,

Sir,
Your most Obedient Servant,
Ernest Barclay
Actg. Government Solicitor.

M/21/1/13/11:
572

M/12/19/73

Enclosure in letter from
the Acting Govt. Secretary,
Madras, to the Secretary
to Government, P. W. D.
dated 11th March, 1873.
No. 96. -

21 February 1873

Divisional P.O. No. 14

No 512

No 887-21 Clearing

Enclosed a copy of the
Statement of the
Revenue Department
regarding the
claim of the
contractor
—

For 1873
Office of the
Government
of Madras
Dated 22nd February
Read 24th February



No 887 P.O.D.
Proceedings of the Madras Govt.
Read the following:-

From
The Agt Govt. Solicitor
Madras

(H. E. No 967 22 Feb 73)

These papers will be
communicated to the Dis-
trict Engineer, Tinnevely,
and that officer will in-
form Nagavachary, late
contractor of the Shree-
guntur ancient works,
that the Government
must decline to reconsider
any of the claims which
were settled with Mr.
Prince, acting as the Con-
tractor's agent. The agree-
ment then arrived at
should be carried out,
and, if Nagavachary
declines to accept the
amount due to him
under that agreement,
together with any sums
on account of admitted
claims

M.C.

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3. Instructions will be issued shortly to the Department generally, with reference to the remarks of the Advocate General, in the concluding paragraph of his opinion, on the subject of the informality and inadequacy of the agreement entered into with the Contractor for the ancient works.

W. 4/3/73 Gunn

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5th the Charge for h^{rs} ✓
 --- Dr Exp Turnovers ✓
 --- Contables Pr-a-cts ✓

Rec'd 224/3/73.

C/1219

Govt. of 1873
PUBLIC WORKS.

The Chief Engineer
for Irrigation

Date

Recd.

Encl. 1

21st Decr 1887.

No. 512 & 513

Strivignaturn Ancient
Works, Tirunelveli Dist.

Passing orders on letter from
the Govt. Solicitor forming
my opinion of the Ad-
vocate General on the
claims preferred by
Rajachari, late
contractor for the Stri-
vignaturn Ancient works.

N. 512. 13.

10 Mar 1888.