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

Revenue DEPARTMENT

G.O. No. / B.P. No.	2343	Press / Mis.	
Dated	16-8-	1950	

Not to be folded or roughly handled

No. 242. Read the following letter from T. D. HARRIS, Esq., Officiating District Engineer, Malabar, to Lieutenant-Colonel J. MULLINS, R.E., Officiating Secretary to Government, Public Works Department, dated Calicut, 2nd August 1875, No. 72 :—

WITH reference to your endorsement, dated 24th November 1873, upon the letter No. 583, dated 4th November 1873, from the Consulting Engineer for Railways to your address, regarding the chuttrums at Beypore, I have the honor to bring to your notice that on receipt of the above my predecessor inspected the family and general chuttrums at Beypore, both of which were sanctioned in 1865* and 1867, respectively, and work commenced in 1867 and 1868 and carried out up to 1869-70, and then stopped; but it was recommenced in 1873-74, as Rupees 995 and 485 were allotted in the Local Fund Budget of that year.†

* G. O., No. 201, dated 21st January 1865, and G. O., No. 3,958, dated 21st December 1867.

† Items 20 and 21 in the Local Fund Budget of 1873-74.

2. My predecessor on his inspection in January 1874, with the Calicut Range Officer, having found that two contractors had failed to deliver roofing materials, amounting to Rupees 840-2-0, for the above buildings on account of advances made in 1868 by Overseer Vedamootoo, and he having also found that this would be lost to the works if it was not recovered, he thereupon reported the circumstances to the President, Local Fund Boards, who upon the authority granted by Government in their Order, No. 106, dated 18th January 1875, Revenue Department, asked my predecessor to sue the two contractors. The advances were given by Overseer Vedamootoo without the permission of the Range Officer, and as the roofing materials were in the possession of the contractors themselves upon the responsibility of the Overseer, as mentioned in the transfer certificate passed between Overseer Vedamootoo and Overseer Hyde, he was made 2nd defendant in the case, and a suit* for Rupees 646-1-7 was filed in the District Munsif's Court at Calicut; in this case the District Munsif decreed for Rupees 378-3-7, *viz.*, Rupees 139-6-7 to be paid by 1st defendant Noocheperra Velloo Cootty, one of the contractors, and Rupees 238-13-0 by both the 1st defendant and Overseer Vedamootoo, the 2nd defendant.

* No. 351 of 1874.

3. I beg to enclose copy of the decree passed by the District Munsif at Calicut, to show how far Overseer Vedamootoo was concerned in the transaction, and how far he is responsible for the advances he made, and how he tried to make Overseer Hyde responsible in the absence of any materials having been actually made over to the latter when the transfer took place.

4. Independent of the above suit* another one for the recovery of Rs. 397-4-9 was filed in the Munsif's Court at Calicut against the 2nd contractor,

* No. 487 of 1874.

Mokayar Patchu, 1st Defendant, and *Overseer Vedamootoo*, 2nd Defendant; but this suit still remains undecided; it was transferred from the Munsif's Court to that of Sub-Judge's.

5. I now beg to enclose a letter from Overseer Vedamoottoo to your address, touching upon the suit referred to in paragraphs 2 and 3; what caused him to address

you I am unable to say, but by his own statement I find that he himself is responsible for the roofing materials when transferring the charge of the Calicut Taluq to Overseer Hyde, *vide* transfer certificate attached with Overseer Vedamoottoo's letter.

6. I do not think that Overseer Vedamootoo had any business to address you; his object in doing so is to show that he has had nothing to do in the matter, when he himself took the responsibility of allowing the roofing materials to remain in the possession of the contractors. Overseer Vedamootoo's conduct is no doubt very reprehensible, and I certainly can say nothing in his favor. I leave to you to dispose of the case.

No. 243.

ORDER THEREON, 16th August 1875, No. 2,343.

ESTABLISHMENT, No. 17-A.

TALUQ Overseer Vedamootoo having made unauthorized advances to contractors, who failed to carry out the work entrusted to them, has properly been made 2nd defendant in the suits brought by the District Engineer for the recovery of the sums due to Government, and will bear the consequences.

(True Extract.)

Major-General, R.E.,
Secretary to Government.

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

Exd. S. T. Austin.
Spare Copies

To

The Chief Engineer and Secretary to
Government P. P. W.
Madras

Respected Sir,

Circumstances having occurred that I should presume most respectfully to lay the following statement of my case connected with the work of Chuttrums at Beypore, of which, I understand attention is now being given, I beg to submit the following brief and explanatory statement, so that a proper opinion may be formed before a final decision is given. —

1. That in February and March 1868, I have received instructions to collect materials for the construction of two Chuttrums viz. one for Family men and the other a General one at Beypore. In obedience to orders I set out in collecting stones at Beypore river side and entered into a Contract for the preparation of Roofing materials fitted on ground deliverable at site within 3 months & stipulating at the same time to convey them at the moment the walls were raised. —

— whenever I or D/- was ready and willing

2. In May or June 1868 I received an order from the Range Officer at Calicut to stop works and also payments until such time further instructions are received with regard to the question of the site for the construction of Chuttrums is decided.—

3. At the middle of 1868 I was transferred to Ponany and Overseer Hyde was deputed to relieve me, who(m) (with me) inspected all the works that were then in progress as also the materials collected for the Chuttrums. Meanwhile these materials were not taken over from the Contractors, as will be seen in the 4 Para of the Transfer Certificate which runs thus. x

x Copy enclosed.

"There being no place for storing the roofing materials paid for, these have been left in the hands of the suppliers and Overseer Kesavanotty agrees to be held responsible for them."—

In the face of the above it is evident that although the materials were paid for, yet, a place was not obtained to keep them with safety, in consequence of which they were left in charge of the Contractors till such time proper arrangements were made for their safe keeping. In case they were taken over from the Contractors it would have entailed an unnecessary heavy expense to Government for erecting a shed, employing Watchmen & pay the rent of the premises. In consideration of these difficulties & expenses, it was thought expedient to leave them in their hands. During this interval I was transferred to Ponany (a distance of 36 miles from Calicut) and Overseer Hyde was deputed to relieve me, although it was not a portion of my duty to have been responsible for any thing during the time that I was vacating the Taluk, yet, I did not like to refuse the urgent request of Overseer Hyde who being a new man to the Taluk and quite unacquainted with the manner & Customs of the people, has asked me to be responsible for the Roofing materials of Chuttrums till such time the work is resumed & besides the accounts of them were not finally closed, this is my cogent reason of complying with his request & besides it was verbally agreed that any time the work is resumed I should make over the materials to any Officer who may be posted to carry on the work.—

4. In May 1869 the work was ordered to be carried on and the Range Officer at Calicut ordered Overseer Hyde to make over charge of the Chuttrums as well as other works in the Taluk which were under progress to Sub Overseer

Rarrchen - According to the sum and substance of the Transfer Certificate Overseer Hyde could not have made a mistake, or possibly ignores that I was not the responsible party for the Roofing materials of Chuttrums and that it was his bounden duty to have applied officially to the Range Officer to direct me to make over the materials to Sub Overseer Rarrchen of which I stood responsible, instead of which I regret extremely to state that I was kept in total ignorance of this irregular proceeding till January 1874 when I came to understand that Sub Overseer Rarrchen has taken the authority to order the Contractors Officially to bring over the materials at the Site and they have. I believe complies with his request, at the same time; I understood from them that Sub Overseer Rarrchen used a portion of the materials such as Doors and Windows that were included in the Contract for the work and paid them about Rupees 60 as their value without consulting me as well as the state of the accounts -

5. At the end of 1869 these works were owing to some reason or other ordered to be stopped again and during which time it was the implicit duty of Sub Overseer Rarrchen to have seen that the materials were lodged in safe custody or obtained the sanction of the Range Officer as to the best and safest mode in which they were to be secured, knowing too well that the Site in which they were kept not being a safe one owing to its being on the bank of the River where people had free possibility of making away with any quantity that they could get hold of - this is another piece of flagrant dereliction of duty of Sub Overseer Rarrchen which deserves the serious Consideration of Government. -

6. After a lapse of 4½ years (January 1874) the District Engineer in Company with the Range Officer & Sub Overseer Rarrchen inspected the materials at Site & formed a judgment that the value of them was Rupees 175 and they were also mostly couples a thing that could not be easily removed. -

7. In Conclusion in order to show there has been no negligence on my part and how unfavorably situated on account of the irregularity of Sub Overseer Rarrchen, I have brought the whole circumstance to your kind notice and respectfully beg that you will after using your impartial judgment exonerate me from the blame of which I am not in the least guilty - My responsibility ceased from the date in which Sub Overseer Rarrchen has taken over the materials - This case is now pending before the Sub Judge and Munsiff's Court at Calicut for decision - a report I believe will be shortly forwarded to Government when it is decided. -

Further to point out how far this irregularity is based you will see that an anonymous communication has

[illegible] was ready and willing

to

been received under date 29th January 1876
against Sub Overseer Ramchem which is
submitted for your perusal.

I beg to remain
Respected Sir.
Your most obedient Servant
A Wanmoottoo
Overseer D.P.W.

Cannanore
15th April 1876

Offg. Dt. Engr. Malabar.

I We the undersigned certify that
Overseer W. Hyde has received from Overseer
A. Nedamootoo the sum of Rupees
fifteen and annas twelve and pies ten
being the balance of cash in his hand
on the 28th July 1868.

II That Overseer W. Hyde has received
from Overseer A. Nedamootoo all the im-
-plements and mathematical instruments,
Drawing materials and Tools which ac-
-cording to the Returns are under the
immediate charge of Overseer A Nedamootoo

III That the Office Books in use have
been brought up to date & examined
by us.

IV That the following works in pro-
-gress have been inspected by us.

New jail at Tellicherry
Compound Wall of Stranger Putcherry
Approaches of Do
Repairs to Tellicherry Civil Dispensary
Repairs to West Hill Military Buildings
Repairs to the Road from Tellicherry to
Mamaly
Repairs to Road from Beyporr to
Tellicherry
Materials collected for Beyporr
Chuttrums.
Road from Poorangaddy to Kottakur
Reconstructing Wing Walls of a
Bridge at junction in Kottakur
Mundhom
Road from Tambracherry to Iravan-
-jee River and Kusathee Bridge.

I certify that Overseer A. Nedamootoo was ready and willing
to

Road from Chetticaavoo to Mottelh.
Road from Jambracherry to Jaleent
as far as 9 mile.

That we have examines the accounts of all unfinishes works and that Overseer W. Styde has compared the expenditure on them up to the end of July with their state of progress and is satisfied that the work has not exceeded the estimated cost thereof except on the Civil Dispensary at Jaleent on the Road from Pootrangaddy to Mottalurtha thoni, Othuvathai Bridge on the Road from Jambracherry to Areacode.

V That the materials in hand on each inspected work have been taken over by Overseer W. Styde that he has examined the accounts of them in company with Overseer A. Nevamootoo and that he is satisfied that they agree with the Returns shewn in the accounts of each work, except the fluttreno at Beypoor, there being no place for storing the roofing materials paid for, these have been left in the hands of the Suppliers and Overseer A. Nevamootoo agree to be held responsible for them.

VI That a list of outstanding advances and materials due from different persons has been drawn up and handed over to Overseer W. Styde, who will use his best indeavours to recover the same but not to be responsible for failures.

/ Sgd / W. Styde
Overseer D.P.W.

Jaleent
3rd Augt 1883

/ True Copy /

A Vanmootoo
Ovr. D.P.W.

29th January 1884

13

To Mr. Vathanmuttoo
Overseer
Catayam Tiluk

Sir

I humbly beg to state that I have been given to understand that you are making enquiry about the materials that were brought by the Contractors for the erection of the travellers Bungalow (Chettarum) which is now completing near the Beypoor Petty and found that the said materials were lost without the least knowledge of the Superintendent who took the Charge of it. If Mr Ranchen had not been the Supt. of the said work of course the Case may be fact but the

Said Rancheri who had the charge of the troops that
P Ranavoti, who took the contract of a
Cook House and some other works
at the Camp ground at Bellpoint and
sent almost all the materials to the Camp
ground for the benefit of the said contrac
tor who pretended as if he has an order
from the government to make use of the
said materials and they shared the profit
obtained by their dishonesty. Now his Subo
dicks known what they did is a down
right cheating of the government. Therefore, beg
if you are willing to prove the matter in ques
tion the men who were at work, as well
as the Contractors who supplied, are ready
to give you satisfaction in any way. If
have sent the copies of this to your Superiors

Yours faithfully

15

In a letter from the District Engineer, Madura, to the Secretary to Govt, D.P.W., Madras, dated 2nd August 1875, No. 72.

Rd 16 August 75
Mr. B. No 242

Mr. 8091/2/75.

Letter from the Taluq Overseer Vedamantos regarding the suit brought against him and another for the recovery of sums advanced on account of the Chuttrums at Bayapoor

In the Court of the District Munsif of Calicut—

Present—V. P. de Rozario—

Suit No 351 of 1874.

Judgment.

1 Suit to recover Rs. 646-1-7- on account of money advanced to 1st Dft on 20th Febry 1868 on an agreement to supply roofing materials for a Satrum at Beypoor and to put up the same- Failure to perform the Contract is alleged.

2. 1st Dft alleges delivery of the materials & pleads that he was ready and willing to put up the roof.

3. 2nd Dft an Overseer who became responsible for the delivery of the materials by 1st Dft pleads performance of the contract by 1st Dft.

4. The following issues were settled in this case:

I Whether the District Engineer is entitled to sue in the name of the Secretary of State for India.

II Whether the materials were delivered by 1st Dft to Overseer Raricheu as alleged by 1st Defendant.

III Whether Raricheu was competent to receive delivery on behalf of the Public Works Department

IV Whether 1st Dft was ready and willing to

to put up the roof.

Plfs: Exhibits

A. Transfer Receipt granted by Overseer W. Hyde to 2nd Dft - d/ 3rd August 1868.

B Certified copy of Duplicate of D: by D: d/ D:

C. Contract executed by 1st Dft to D: d/ 20th Febry 1868.

1st Dft Exhibits

I Letter addressed by Overseer P. Raricheu to 1st Dft —— d/ 22nd August 1868.

2nd Dft Exhibit-

I Letter addressed by Raricheu to Mr W. G. Cumming - d/ 6th September 1869.

Plfs. Witness

1. 2nd Defendant

1st Dfts. witnesses

1 Vachat Chatoo

2 Tayatvitil Ittamma

3. Illakel Kannukutti

2nd Dfts. witness

1 Potangadi Raricheu

3. 1st Issue - The power of the Secretary of State for India to sue for a claim of a public nature like the present is undoubted - The question for determination is whether the District Engineer can be recognized as the agent of the Secretary of State for bringing this suit - The provision in the Civil Procedure Code on which the Govt Pleader relies is Clause III of Section 17- which enacts that "persons being ex. officio or otherwise authorized to act for Government in respect of any suit or judicial proceeding" sh. ll be considered as recognized Agents - Now the difficult question arises whether the Secretary of State is included in the term "Government" - From Section 26 which prescribes that the Govt shall sue in the name of "the Government" it would appear that the Secretary of State was not contemplated by the term "Government", for Section 65 of 21 & 22 Vic: Cap: 106: provides that the Secretary of State shall sue in the name of "the Secretary of State in Council" - The omission of a Clause in the Civil Procedure Code to provide for the Secretary of State suing is no doubt due to the fact of the Civil Procedure Bill having been framed before the passing of the English act, & to the Bill having been passed into law without advertance to the provision of the English act - The clause (3) as it now stands obviously refers to suits to which Government as distinguished from the Secretary of State in Council is a party - Assuming that the Govt is the recognized agent of the Secretary of State still it is clear on the principle that <u>delegatus non potest delegare</u> the Govt cannot delegate the duty to represent the Secretary of State to the

the District Engineer, and the Civil Pro-
-cedure Code does not recognize the Agent
of a recognized agent- My impression there-
-fore is that the District Engineer is not
competent to bring this suit in the name
of the Secretary of State, but deferring to
the obter dictum of the late Chief Justice
Scotland in Subraya Hoodali versus
the Government (1. H.C. R. 286) and to
the ruling of Mr. Justice Wells in Rundle.
V. the Secretary of State (1. Hydes Rep. 37)
I hold that the District Engineer is en-
-titled to sue in the name of the Secretary
of State.

6. 2nd Issue- 1st Dfts has wholly
failed to prove that the materials were
delivered by him to 2nd Dfts 1st witness-
Overseer Raricheu- There is no documentary
evidence of the delivery & the two witnesses
who assert that the materials were conveyed
by them from Calicut to Beyapore are
not entitled to credit- One of these witnesses
states that he & the other witness carry
on Joint dealings, that the conveyance
of the materials was in pursuance of their
joint contract & that he has accounts of
their joint business- He admits however
that this transaction is not entered in his
accounts- As little weight is to be attached
to the evidence of 5th witness a Cooly who
states that he saw the materials at Beyapore-
Overseer Raricheu who gave his evidence
in a clear & straight forward manner shews
that the materials were never delivered by
1st Dfts though he was called upon (See
Exhibit I.) to produce them- Great stress
has been laid by Dfts on the fact mentioned
in Exhibit A that the materials were inspected
by Overseer Hyde & 2nd Dfts & that they
were left in the hands of 1st Defendant on
2nd Defendants responsibility- This may
be proof that the materials were ready,
not that they were delivered- I am not
satisfied that the materials were ready-
If they were ready it is unlikely that
2nd Dfts who was transferred to another
District would consent to their being left
with the contractor on his responsibility-
He had no interest to undertake this res-
-ponsibility nor had he the means from
his absence from the place to ensure delivery
of the materials. 2nd Dfts conduct is consis-
-tent with the hypothesis that the materi-
-als were not ready for the Contractor
was a person whom he had himself
selected, the contract was made with him
(2nd Dfts) & he had therefore an interest
to screen 1st Dfts & protect himself from
the charge of having made an improvident
contract- There is no evidence that the
materials

materials which Overseer Hyde are alleged to have inspected are the materials for the Satrum - a carpenter would always have wooden materials in his profession which a European Overseer new to the District could easily be induced to believe are the materials required - Ah is to 2nd Dfts credit that he has produced no evidence to prove that the materials were delivered - He does not even assert that they were delivered, but merely alleges that "he has heard that they were delivered"-

7. My finding on the 2nd Issue being against Dfts, the questions involved in the 3rd & 4th Issues do not arise -

8. The final question for determination is what are the sums respectively payable by 1st & 2nd Dfts - 1st Dft agreed to deliver the roofing materials & put up the same for Rs. 15 for 100 square feet - He further contracted to supply wall plates at 1 R per cubic foot - He received an advance of Rs. 364 for 2,800 sqr feet contracted for at Rs. 13 for 100 sqr feet - If he had performed his contract he would have been entitled to receive a further sum of Rs 76-11-0 viz Rs 20-11-0 for wall plates and Rs. 56 on account of the balance price of roofing materials - In case of breach of contract he agreed to be liable for loss

sustained by Government thereby - The damages are therefore the advance received by 1st Dft plus the difference between the contract price Rs. 440-11-0 & the price paid by Govt for materials and labour subsequently procured Rupees 154-11-9 - The correctness of the latter item is not disputed by Dfts - There is no pretence for Plf: in a contract especially providing for a particular compensation for its breach, claiming interest - 1st Dft is therefore liable to pay Plfs Rs. 364 plus Rs. 14-3-9 or Rs. 378-3-9 - 2nd Defendant who agreed to be liable for the delivery of the materials only & not for performance of work by Dft is answerable for the value of such materials proved to be Rs. 238-13-0

9. I decree therefore that 1st Dft pay Plf: Rs. 378-3-9 & that 2nd Dft be jointly answerable with 1st Dft for the payment of Rs. 238-13-0 of this sum - Plfs costs on Rs. 238-13-0 will be paid by 1st & 2nd Dfts and on the balance by 1st Dft - Dfts costs on the amount disallowed will be paid by Plf:-

31st March 1875.

(sd) V. P. de Rozaris
District Munsif

True copy
(sd) V. P. de Rozaris
Distt: Munsif

In a letter from the
District Engineer, Malabar
to the Secretary to
Govt. W. P. W., Madras
dated 2nd August
1875, No. 72.

GO- 16 August/75
No 3 No 242

P.W. 5091/1/75.

Copy of the decree
passed by the Dist.
Munsiff at Calicut
in original Suit
No. 351 of 1874 filed
for the recovery of
certain sums ad-
vanced on account
of the Chattrams
at Beypore

Public Works Dept.

No. 2343

Proceedings of the Madras Government

Under date the 16 Augt. 1875

Read the following

From

The Dist. Engineer
Malabar } (No. 72 dt 2nd August 75.

Taluq Overseer

Vedamoolas having made
unauthorized advances
to Contractors, who failed
to carry out the work
entrusted to them, has
properly been made
2nd defendant in the
suits brought by the
District Engineer for the
recovery of the sums due
to

5-8-16-5[illegible]

Dr. W. 1875 Dept.

From

The District Engineer
Malabar

To

The Secretary to Govt.
P. W. Dept.
Madras.

No. 5071

Dated 2nd August 1875
Rec'd 5th August —

No. 72

Encls. 2

Reporting on 2 suits
for the recovery of cer-
-tain amounts ad-
-vanced on account
of the General and
Family Chattrums
at Beypore —

No. 242

Cir. 12.8.75 Rlt 16.8.75
Desp to Govt 6-8-75

G.O. Ms 2343 P.W. 16 August 1875

G.O. 22nd Jany/65 No. 423-424
" 13th Dec/67 " 471-472
" 7th June/74 " 563 Revd Copy
" 21st " " " 605 —
" 21st Dec " " 1601 —
" 18th Jany/75 " 106 —

to Government, and will
bear the consequences -

John

Lieut. H/S

№ 242/3

D.C. Nuclabar 32/3 8

Cust Mtrl/c 5

SC Sept - 30 - 8 - 75

5071

Govt. of 1875 Madras.

PUBLIC WORKS.

To

The Chief Engr.

Malabar

Dated

Issued

Recd. Encl.

G. O. 16 August 1875, No. 2343

Nos. 242—243

Advances on account of the General & Family Chuttrams at Beypore. — Passing orders on letter from the Chief Engr: Malabar, reporting on the two suits instituted against certain contractors & Taluq Overseer Vedamoor for recovery of certain —.