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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No.	234	(W)	Press
			~~Mis.~~
Dated	14-6-	1877.	

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

14th June 1877, No. 234 W.

General.
Account.

Read the following paper:—

No. 113. Circular from the Government of India, Public Works Department,
(Account—General,) dated Simla, 28th May 1877, No. 24.

NECESSITY for Legal advice in framing Security Bonds, Contract Agreements, &c.

Read—

Letter from the Inspector-General of Military Works, No. 5,450, dated 31st July 1875.

OBSERVATIONS.—This case has occasioned much trouble. It was unavoidably intricate to a considerable extent, but its intricacy, the difficulty of dealing with it, and such loss as has resulted from it, have been increased by laxities in the conduct of the business, chiefly in respect of want of strict regard to the requirement of legal procedure and of adherence to the code regulations on this point.

2. The case is this:—Disputes having arisen between Government and a Contractor, the matter was referred to arbitration, both as to the award or settlement of account for past operations, and also as to the arrangements and terms for further operations if the contract was to be continued. In arranging for the future, the arbitrators drew up a deed for the terms and particulars of the contract, and a bond for signature by the contractor for its due fulfilment. The laxity that occurred was in respect of this bond, and was two-fold—1st, the provisions of the bond were defective, and 2nd, the steps taken in the preparation of the bond did not include the necessary and proper reference to legal advice.

3. The bond as drawn up and eventually signed, simply recognized the liability of the contractor to forfeit a certain sum if he failed to fulfil his part of the agreement. It did not arrange or promise, or engage either to deposit the amount or to afford security of any kind for the same being forthcoming. This was the defect in the bond itself, and the result of it was that on the contract collapsing and a decree being given by Court against the contractor, it was found futile to attempt to recover the amount due to Government.

4. But the second defect, the omission to refer the preparation of the bond to the proper legal advisers, was the really important one. It is not known with certainty who drafted the bond, or recommended it to the arbitrators for adoption. The terms used in the contract deed indicate that it was meant that security should be deposited. And the proper course to adopt was clearly this, first, that it should be definitely settled whether the execution of the deeds should rest with the arbitrators or with the normal executive officers of the Public Works Department, and next, that the party thus invested with the responsibility should, in conformity with the

code rules quoted in the margin, have the deeds and bonds, in such an important case, drawn up by the Government Advocate the constituted legal adviser, or, what would be tantamount to it, send them to him for opinion and revision, if necessary.

Chapter XIV, paragraph 32.

5. What actually occurred was that the arbitrators sent the bond to the law officer, not for opinion or revision, but merely with instructions to obtain the contractor's signature to it. Consequently the bond never came under the law officer's review as to its fitness and propriety, and the contractor's signature was obtained to what was practically a worthless document.

6. These facts indicate how absolutely necessary it is that the responsible departmental officers should satisfy themselves thoroughly that that assistance from the constituted law officers on which Government requires that they shall depend in serious cases, has been really applied for and obtained.

The Governments of Madras and Bombay, in the Public Works Department, General, Irrigation and Railway Branches.
The Governments of Bengal, North-Western Provinces and Oudh, and Punjab, in the Public Works Department, General and Irrigation Branches.
The Chief Commissioners of the Central Provinces, British Burmah, Mysore and Coorg, and Assam.
The Resident at Hyderabad.
The Agents to the Governor-General for Central India and Rajpootna.
The Superintendent of Port Blair and Chief Commissioner, Andaman and Nicobar Islands.
The Director-General of Telegraphs.
The Inspector-General of Military Works.
The Accountant-General, Public Works Department.
The Director of State Railways: { Central System.
Western System.
North-Eastern System.
The Director of State Railway Stores.
The Director-in-Chief, Indo-European Telegraph.
The Director, Persian Telegraph.
The Deputy Director, Persian Gulf Telegraph.
The Consulting Engineers to the Government of India for Guaranteed Railways, Calcutta, Lahore and Lucknow.
The Financial Department.

ORDER.—Ordered that the above observations be communicated to the Local Governments and Administrations and Officers noted in the margin, for information and guidance.

(Signed) J. J. McLEOD INNES,
Dy. Secy. to the Govt. of India.

To the Secretary to Government, Public Works Department.

No. 114. ORDER THEREON, 14th June 1877, No. 234 W.

ORDERED to be recorded.

(True Extract.)

(Signed) E. A. FOORD, Colonel, R.E.,
Secretary to Government, P.W.D.

To District Engineers.
To the Examiner of Public Works Accounts.
" Chief Engineer for Irrigation.
" Consulting Engineer for Railways.
" Consulting Architect.
" Superintendent, Madras Harbour Works.
" *Judicial Dept.*

Exd. T. O'Connor.

Spare Copies

Circular No. 24 Public Works.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

ACCOUNT.

General.

Simla, May 28, 1877.

Necessity for legal advice in framing security bonds, contract agreements, &c.

Read—

Letter from the Inspector General of Military Works, No. 5450, dated 31st July 1875.

OBSERVATIONS.—This case has occasioned much trouble. It was unavoidably intricate to a considerable extent, but its intricacy, the difficulty of dealing with it, and such loss as has resulted from it, have been increased by laxities in the conduct of the business, chiefly in respect of want of strict regard to the requirement of legal procedure and of adherence to the code regulations on this point.

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• Chap. XIV, para. 32.

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Nicobar Islands.

Nicobar Islands. General of Telegraphs.

Nicobar Islands.
The Director General of Telegraphs.
The Director General of Military Works.

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The Inspector General of Military Works Department.
The Accountant General, Public Works Department.

The Director of State Railways { Central System.
Western System.
North-Eastern System.

The Director of State Railways }
Railway Stores.

The Director of State Railway Stores.
Chief, Indo-European Telegraph.

The Director of State Printing.
The Director-in-Chief, Indo-Euro
The Director, Persian Telegraph.

The Director, Persian Gulf Telegraph.

The Deputy Director, Persian Gulf Telegraph.
The Consulting Engineers to the Government of India for Guaranteed Railways.

The Consulting Engineers
Calcutta, Lahore and Lucknow.

The Consulting Eng.
Calcutta, Lahore and Lucknow.
The Financial Department.

Mr Lead Lines

Depy. Secy. to the Govt. of India.

To
The
Secretary to the Govt of Madras
P.W. Department.
Railway Branch

12 JUN 77
5800
GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

ACCOUNT.

General.

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The Governments of Madras and Bombay,
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{ North-Eastern System.

The Director of State Railway Stores.

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The Deputy Director, Persian Gulf Telegraph.

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Lahore and Lucknow.

The Financial Department.

Circular No. 24 Public Works.

Dated SIMLA, May 28, 1877.

Received

Necessity for legal advice in framing security
bonds, contract agreements, &c.

Circular No. 24 Public Works.

GOVERNMENT OF INDIA.
PUBLIC WORKS DEPARTMENT.

ACCOUNT.

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P. W. D. No. 183, G. C. B. Press—31-5-77—1,083.

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M. S. S. S.
Depy. Secy. to the Govt. of India.

To The Secretary to the Govt. of Madras
P.W. Department

NR 5000

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

ACCOUNT.

General.

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Circular No. 24 Public Works.

Dated SIMLA, May 28, 1877.

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Necessity for legal advice in framing security bonds, contract agreements, &c.

J. L. S. Dis^d. 22-6-77
L. P. H. A. ~~*S. by Arch*~~
Adm. J.
Cms. Surg. Genl. S. *Supt. M. H. Bk.*
Ind. Aut. C. *India & Co.*

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1881
PUBLIC WORKS.

To District Engineers.

Dated 15/1

Issued

Recd. Encl.

U. P. 11/3 June 1881 234 W

Nos. 11/3-11/4

Security Bonds, contract
Agreements, &c. Circular
from the Public India
on the subject of the
necessity for legal
advice in framing
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But no Ref.