

(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.	742	Press
		Mis.
Dated	2-1-77	18 77.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.
PUBLIC WORKS DEPARTMENT.

17th September 1877, No. 742 W.

Buildings and Roads.
Civil Works.

Read the following paper:—

No. 126. From J. O'SHAUGHNESSY, Esq., District Engineer, Nellore, to the Secretary to Government, Public Works Department, dated Camp at Pulicat Lake, 3rd September 1877, No. 1,922.

IN reference to G.O., dated the 30th August 1877, No. 251 W, in which the delay in settling the accounts of contractor Chockalingam Pillay is attributed to want of proper arrangements being made by me for the receipt of the rice in question, I beg respectfully to draw attention to G.O., dated 19th December 1876, No. 3,485, which distinctly entrusted this duty to the Revenue Department.

2. I beg also to enclose copy of a letter addressed by me to the Collector on the subject, which shows that I was under the impression I had no authority, and that I was not expected to interfere in taking delivery of the rice in any way.

3. Under these circumstances and with this explanation, I trust Government will be pleased to remove the censure conveyed to me in the Government Order under reference.

No. 127. ORDER THEREON, 17th September 1877, No. 742 W.

THE instruction contained in G.O., No. 3,485, dated 19th December 1876, to the effect that the Revenue officials should "take delivery of the cargoes as they are landed" was obviously intended only to prevent delay in landing and demurrage. It in no way relieved the Public Works officials from at once ascertaining that as regards the terms of the contract which had been entered into by the Public Works Department, performance was satisfactory. It is no part of the duty of petty customs officers at outports to test and certify to quality of grain imported by another department.

2. Mr. O'Shaughnessy's explanation however that he misunderstood the order is accepted.

(True Extract.)

Colonel, R.E.,
Secretary to Government, P.W.D.

To the District Engineer, Nellore.

Exd. A. Grubert.
Spare Copies

[Exr. Wks. Form No. 111.]

GOVT.
OF MADRAS.

1877. 78.

P. W.
DEPT.

EXAMINER, P. W. ACCOUNTS.

Madras, 24th October 1877.

OFFICE NOTE.

To

H.

Please forward the Govern-
ment Solicitor's letter stated
by the District Engineer, Kallur
to have been returned to you
with his No 1922 dated 9th
September 1877.

KEEP WITH

Genl. No.

dated

187

Recd.

Off. Secy.

Wm.

24.10.77

To C.

Herewith

Wm.

By Mr.

24.10.77

24.10.77

Please see Para 17:

Chackalaja has billed for interest
at the rate of 12 p.c. which seems
high in transactions of this nature.
Shall I reply to you officially

for instructions as to what
rate of interest I am to
admit. or can you suggest
any shorter procedure, as
the interest is accumulating

every day.

Agro
BOSC
24-10

To C.

Beats apply
officially at once

By order Wk

D. W.
24-10-77

To Mr.

I may have given you a false
impression in stating above
that interest is accumulating
every day. The interest claimed
by the contractors N. 3825 is
calculated up to the date of
of bills
payment: and on this sum
(N. 3825) could they further claim
only be made. I do not suppose
they will advance it.

The Gov. Solicitor's letter is returned
and an official affidavit made
as reported.

Agro
25-10

N^o 373.

Madras 18th August 1877.

From
Ernest Barclay
Government Solicitor
Madras.

To
Col. E. A. Ford, R. E.
Secretary to Government,
Public Works Department,
Fort St. George.

Sir,

1. I have the honor to acknowledge receipt of the Order
of Government, Public Works Department, dated 11th
August 1877 N^o 128 with the file of papers connected
with Messrs. Chocalingum Pillay & Co's contract
for my report on their claim for interest.

2. By Act XXXII of 1839 it is provided that upon
all debts or sums certain payable at a certain time or
otherwise, the Court before which such debts or sums may
be recovered, may, if it shall think fit allow interest
to the creditor at a rate not exceeding the current
rate of interest from the time when such debts or
sums certain were payable, if such debts or sums
be payable by virtue of some written instrument at
a certain time, or if payable otherwise, then from
the time when demand of payment shall have
been made in writing, so as such demand shall
give notice to the debtor that interest will be claimed
from the date of such demand until the time of
payment provided that interest shall be payable

in all cases in which it is now payable by law.

3. Clause 12 of the Contract provides that the Contractor shall submit and deliver to your Department a bill or bills in the usual and proper form for all Rice supplied by him to and accepted by the Department and Clause 15 provides that within seven days after the delivery and acceptance of any Rice supplied under the Contract and the submission and delivery to the Department of the Bill or Bills for the same the Purchaser shall pay the Contractor for all such Rice so delivered and accepted.

4. There is no provision in the contract for payment of interest, and I am of opinion that the debt due by Government is not payable by virtue of a written instrument at a certain time within the meaning of Act XXXII of 1839, so that interest can be charged from that time; for the time, when the amount of any bill would become payable would depend upon the time when it was submitted and the amount cannot therefore be said to be payable at a certain time.

5. The next point to consider is whether Messrs Chockalingum Pillay & Co. have given such notice of demand for interest as is required by Act XXXII of 1839. The only document which has been laid before me referring in any way to interest is a letter from Messrs Chockalingum Pillay & Co. to the District Engineer Nellore and dated 26th March 1877 and set out in the Proceedings of Government P. W. D. of 10th April 1877 N^o 1249.

in which letter Messrs Chockalingum Pillay & Co. say that the delay in passing their bill is causing them much loss by way of interest on the amount. This is clearly no demand for interest.

6. I am of opinion therefore, from the papers before me, that Messrs Chockalingum Pillay & Co. are not entitled to interest under Act XXXII of 1839, and it therefore becomes necessary to consider whether they are entitled to interest as special damages for breach of the contract to pay the amounts of their bills within the time specified in the contract, for the Act has not the effect of taking away the power of the Courts to allow interest in other cases in which interest was allowed before the Act. In the present case Government contracted to pay the amounts of the bills within 7 days from their submission, and if Government wrongfully withheld the money the Contractor would, I think, be entitled to interest by way of damages for such breach of contract. It is therefore necessary to refer to Mr O'Shaughnessy's letter of 10th August 1877 N^o 1669 to your address to see how it was that the amounts of the bills were not paid according to contract.

7. With regard to Kottapattam Mr O'Shaughnessy merely says there appears to have been no great delay by which I understand him to mean no great delay in delivering the rice. If there was no great delay in the delivery of the rice, and there was delay in paying for that rice, then I am of opinion that

that the Contractor is entitled to interest on the price of that rice for the period of such delay.

8. As regards Pakala, the Range Officer appears to have taken delivery of the Rice on the 14th February. But Mr. O'Shaughnessy says the Sea Customs Superintendent at that Port reported that he had taken charge on the 4th February. But the contract was to deliver to your Department, to which I apprehend the Range Officer belongs, and the Sea Customs Superintendent does not, so that the delivery to the Range Officer would be the delivery according to contract.

9. As regards Ramapatam Mr. O'Shaughnessy says the rice was landed on the 9th March, but because the Sea Customs Superintendent was "indisposed," it was not taken delivery of until the 28th idem. Now clearly the contractor is not responsible for the indisposition of the Superintendent and if he could not take delivery, some one who could, ought to have been deputed to do so.

10. With reference to the deliveries at the last two places I would point out that the contract provides that the Contractor shall supply to the department at the places named the quantities of rice mentioned and shall deliver the same to such person or persons and in such manner as the said Department shall from time to time and at any time direct. These words are very large in favour of Government but they must be construed reasonably. It would be no delivery of the rice

by

by the Contractor if he put it on the beach and left it there, but at the same time Government was bound to make such arrangements as would enable the Contractor to deliver his rice according to his contract and if Government did not do so I think they are responsible to the Contractor if he was delayed in delivering his rice and consequently in getting payment for it. The remarks of Mr. O'Shaughnessy in para. 4 of his letter are hardly applicable. I think, for if Government did not place a proper official at Ramapatam to receive the Rice that was not the Contractor's fault.

11. With regard to the payments your department was entitled to and I think bound to satisfy themselves that the rice had been delivered. Mr. O'Shaughnessy says a bill amounting to Rupees 112153.2 was presented to Government, and if it was presented to your department that would be a compliance with the terms of the contract in this respect, except that the bill was not receipted and therefore not in proper form. I doubt very much if Government were justified in directing the Contractor to produce the bill to the District Engineer with the receipts of the Agents who received the rice. I consider that Government should have kept such an account of the rice delivered as to be able to say within 7 days of the submission of a bill whether that bill was correct, and that such was the object of giving, in the contract, 7 days for payment.

12. On the bill however coming to Mr. O'Shaughnessy

make
by Govt

he seems to have made a number of enquiries as to the delivery of the rice the result of which appears from G. O. of 10th April 1877 N^o 1249 and Mr O'Shaughnessy's letter of 14th April 1877 N^o 179, to have been in favour of the Contractor, but it was not until by G. O. of 20th April 1877 N^o 1302 that the payment of the bill was sanctioned.

13. Now it appears to me that the Contractor has some cause of complaint regarding the delay in obtaining payment of this bill, for had proper officers been appointed to receive the rice and pass the bill or give vouchers as it was delivered, a considerable part of the delay in paying this bill might have been avoided. As it turned out the bill was correct when presented on the 28th February but it was not finally passed till the 20th April and this is not in accordance with the terms of the contract, which is in very much the same form as the Commissariat Contracts, and does not require vouchers to be sent in with the bill. On the amount of this bill therefore I think the Contractor could recover interest from the expiration of 7 days from its presentation receipted and in proper form till the date it was paid, which Mr O'Shaughnessy says was on the 11th May).

14. With regard to the bill for the rice delivered at Pichala, Mr O'Shaughnessy says the bill was presented at the same time as the bill for the rice delivered at Kottapattam, that is, if Mr O'Shaughnessy means when the latter bill was presented to him, about the middle of March, but for want of a certificate that

the rice was compared with the sample (a certificate the Contractor was not bound by his contract to produce and the rice could have been rejected if not according to sample) Mr O'Shaughnessy could not pass the bill. A certificate seems ultimately, but not till 24th April to have been sent by the Collector to Mr O'Shaughnessy so the rice evidently had been compared, but the certificate was lost sight of for nearly a month and was not forwarded to you until the 23rd May with the passed bill which was not paid till 9th June. I consider that the delay in payment of this bill was due entirely to Government Officers, that the Contractor did all he was bound to do by his contract, and that he is entitled to interest on the amount of this bill from the expiration of 7 days from the date it was first presented until the date it was paid.

15. The bill for rice delivered at Rannapattam was sent to Mr O'Shaughnessy, he says, on the 13th April and from the Contractor's letter of 11th idem this would appear to be correct. For some reason Mr O'Shaughnessy seems to have thought that the full amount of rice mentioned in the Voucher which accompanied the bill was not delivered, and he seems to have been confirmed in this, as it turned out erroneous impression by a letter from the Collector. However by the 30th May the Collector appears to have found out he had made a mistake and advised Mr O'Shaughnessy who on the 1st June forwarded the then passed bill to you, and it was paid only on the 21st idem.

Here

Here again the delay appears to have arisen in consequence of the mistakes of Officers of Government and the Contractor seems to have done all, if not more than, he was bound by his contract to do, and I consider that he is fairly entitled to and could recover interest on the amount of this bill from 20th April to 21st June.

16. I cannot concur with Mr. C. O'Shaughnessy that the Contractor was bound to produce proper vouchers with his bills, or that had he done so, all delay would have been avoided. According to his contract the Contractor was only bound to produce to such Officer as might be appointed for the purpose, the bills for the rice delivered, and it was for Government to check those bills in such manner as they might think fit, and to pay them, if in order, within seven days of their submission; and, that the delay in payment was not caused by want of such vouchers is clearly shewn by such portions of Mr. O'Shaughnessy's letter of 10th August 1877 N^o 1669 as I have referred to above.

17. I am not informed of the rate of interest claimed by Messrs. Chockalingum Pillay & Co., but I think they would be entitled to recover the average of the rates of interest ruling during the periods for which they are entitled to interest.

18. I return the file of papers forwarded to me with the Order of Government.

= ment of 14th August 1877 N^o 128^w and
I have the honor to be,
Sir,

Your most Obedient Servant,
James Hauley
Government Solicitor.

Turner papers vide Circulation Book.

Keep with 189 4/25

Report on the
Shockingam Pillay & Co
claim for interest on their
rice contract, and the
turning the file of papers
forwarded to him with the
Order of Government of
14th August 1877. O. 519 W.

1877.
The Government Secretary
to the Secretary of the
Public Works Department
Dated 10th August
1877. O. 519 W.

Keep with Genl N° 519 W. 27-10-77

40171 Sept. 1877. 126

True copy of a letter from the District
Engineer, Bellary, to the Collector of
Bellary, dated, the 11th February 1877. No
27. 1877.

Sir

I have the honor to bring to
your notice that Government rice is
reported to be lying on the beach at
Kannaparthi, Kottapattam, Pakala
and Pannapattam.

It is possible that this rice is
a portion of Shockalingam Pillay & Co's
Contract, which was ordered to be
delivered to the Revenue officials in
Proceedings of Government, O. 519 W.
dated 19th December 1876 No 3485.

So far as I can learn no arrange-
ments appear to have been made for
the storage of this rice, and the
importers or your subordinates appear

15^a

Letter from the District Engineer, Bellare
No. 1922 dated 3rd September 1877.

FOR ORDERS.

I do not consider that the
instruction in the G.O. 19. Dec. 76.
that the Revenue officials at
the above mentioned ports will be
instructed to take delivery of the
cargoes as they are landed. It
obviously was only intended to
bar delay in landing & drainage.
It is any way evident that the
from a person ascertaining that
as regards the terms of the contract
it has not entered into. It is no part
of the duty of the Customs officers
at outports to test the quality
of goods imported by another Dept.
at St. George
14th Sept 1877

Submitted with reference
to the remarks of the Honble
Mr. Huddleston on which
G.O. No. 251 W dated 30th
August 1877 was based.

Ed. Mil. Colonel R.

Secy. to Govt. P. W. D.

As I have already have arranged
for this matter - I accept Mr. J. L. Llanthan
that he has kindly look the
G.O. L.H.

Richd. R.

I think that such arrangements
should be made by the Canal Officers.
If the G.O. above referred to
did not indicate that this would
be done by your Department, I should
have made the necessary arrange-
ments in good time, as it is
now to mention to you the present
state of affairs in connection with
this important subject. If it will
save time and secure the necessary
storage of rice, to have it done by
the Canal officers it shall be done
at once on hearing from you that you
wish them to do so.

I have etc

Signed J. O'haughmurry

District Engineer

True copy

H. Hopale

Head Clerk

District Engineer's Office, Bellare

FOR ORDERS.

N^o 1922

District Engineer's Office
Camp Belia Lake 3rd September 1877
Aug 28/77

From,

The District Engineer
Beloon

to,

The Secretary to Government.
Public Works Department
Fort St George

Sir,

In reference to G.O. dated the 30th
August 1877 No 251 W in which the delay
in settling the accounts of Contractors
Chockalingam Pillay is attributed to
want of proper arrangements being made
by me for the receipt of the rice in question
I beg respectfully to draw attention to
G.O. dated 19th December 1876 No 3485 which
distinctly entrusted this duty to the
Revenue Department.

I beg also to enclose copy of a letter
addressed by me to the Collector on
the subject which shows that I was

under the impression I had no
authority and that I was not expected
to interfere in taking delivery of the
pieces in any way.

Under these circumstances and
with this explanation I trust Govern-
ment will be pleased to remove the
censure conveyed to me in the G.O.
under reference.

I have the honor to be
Sir,
Your most Obedient servant.
Wm. H. H. H.
District Engineer

copy
1896

Former papers vide Cir. Book against
Ch. 8088 Cir. 21-8-77

From
The District Engineer
Mellore

To
The Secretary to Govt.
Public Works Department
Madras

N^o. 1922. Encl. 1

Dated 3rd September 1877
Despatched 8th September 1877
Received.

Explains the circumstances
under which he was precluded
from making arrangements
to raise the price on the
Muckingham's Canal

4017: Sept 7/77 J.B.K. 126

Cir. 16-9-77

N^o. 7428 B 7 H
C works

Public Works Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the 17th Sept 77.
Read the following:—

Letter from the District Engineer
Mellore. (H.E. No 1922 of 3 Sept 1877)

The instruction
contained in G.O. No 3485-
dated 19th Decr 1876. to the
effect that the Revenue officials
should "take delivery of the
cargoes as they are landed"
was obviously intended only
to prevent delay in landing
and demurrage. It in no
way relieved the Public
Works officials from ascer-
taining that as regards
the terms of the contract
which had been entered into
by the P.W. Department,
performance

performance was satisfactory

It is no part of the duty of

petty customs officers at

outposts to test and certify

to quality of grain imported

by another Department.

Mr O'Shaughnessy's

explanation however

that he misunderstood the

order is accepted.

607

7/9

To The District Engineer
Mellore &
Dated - 24.9.77 '17

W. H. S.

Class 8771



Govt. of India
PUBLIC WORKS.

To

Dated

Issued

Recd.

Encl.

W. J. L. Kellere
19
in reply
to
paper
7 Apr

G. 1877, No. 742 W

SI
No. 126-127

Rice supplied to Buckingham
Canal Mr O'Changnessy's
Explanation that he intended
to stand the order of 19th Decr 76
regarding the delivery and land-
ing of — accepted.

L. D. W. R. C.
26.5.77.