G.O. No. 72 W of 11.1.1889

~~The Hon. H. G. Sullivan~~

30 NOV 85

Issue
letter as on
in bd
30/11

No. 2851 W of 30th Nov. 1885

Vide C No. 556/86

Sd/ [illegible]

Circ. 26.11.85 [illegible] 30/11/85 [illegible] 3/12 [illegible] 12 thereof, all the enclosures will be retained in the Gov^t. Secretariat for the present, in view to their return to the Gov^t. Solicitor should they be required.—

26/11/85

26.11.85

Despd
~~30/11/85~~
1-12-85-

S.E. II Circle ✓

Gov^t. Solicitor— ✓

No. 81 C

Superint^g Engg a
2nd Circle, Camp Li
9th July 18

From

The Superintending Engineer
2nd Circle

To

The Chief Engineer,
Public Works Department.
Madras.

Enclosures 29. Vide List at end of Letter.

Sir,

I have the honor, with reference to G. O. No. 550 W: of the 9th March 1885, to report that on receiving it, I at once wrote to Kazim ali Nakvi Sahib and informed him, that I was directed to settle accounts with him and requested that I might be furnished with details of his claims.

2 In his printed letter dated the 13th October 1884, Kazim Ali Sahib gave only the totals of his claim and furnished no details.

3. On the 18th May, I received from the late Contractor a letter dated the 8th idem, in which a total payment of Rs 31,010-11-11 is claimed, or Rs 10,509-1-1 more than Kazim Ali Sahib stated to be due to him

er dated the 13th October 1884. The
to me was accompanied by certain state-
ts and accounts prepared by Kazim Ali
hib, and by a printed Abstract of the various agreements between Captain Campbell and himself with a running Commentary by the Contractor.

4 I sent these papers to the Executive Engineer, Laugam Project Division to have the accounts examined, and the references quoted looked out. Mr Malet has had this done and also drawn up some Memoranda to assist me in going through the papers.

5 I find that there are only a few items, not entered in Captain Campbell's final Bill, which should, in my opinion, be admitted and paid to the Contractor. There are further a few claims which may be doubtful, they turn on the legal interpretation of Captain Campbell's agreements.

As Kazim Ali Sahib has not, as was hoped by Government, evinced any desire to facilitate a settlement, but as I shall show hereafter, has advanced several unreasonable claims, and has misquoted letters, I think

this
it would be a mistake to carry on a co
-es with him.

I therefore venture to recommen
the papers be placed in the hands of
Government Solicitor, that this gentleman's opinion be taken as to the exact sum to be offered to Kazim Ali Sahib, and that if the Contractor will not accept this, that he be left to bring a suit.

8. The Laugam Project Division accounts are quite clear. Kazim Ali Sahib evidently does not set up his own accounts against the Division Office accounts, as all his figures as regards quantities are based on the Executive Engineer's Bills. The detailed measu-
-ments are clear and the Laugam accounts may, I beg to state, safely be produced in support of the accounts as prepared by us.

9. As I am about to proceed on leave I think it better to lay before you de-
-tailed information with regard to the m
Contractors' claims, so that the matter may be made clear should Government be pleased to approve of my proposals

place the Correspondence in the hands he Government Solicitor.

I will take up each of the 3 claims tioned in the last para of Kazim ali Sahib's letter to me, and the explanatory statement prepared by him. I will then deal with the printed abstract of Specifications marked K. and finally I will reply to the covering letter itself.

Statement A

11 A paper marked A has been sent up, but this merely gives the details of the sum of Rs 8,708-3-2, mentioned as the sum due to him in para 11 of the contractor's letter of the 13th October 1884, and the sums entered therein are all brought forward in Statement D.

Statement B
Tools.

12. The Contractor has been credited with the issue or book value of all Government Tools returned by him. In some cases tools sent in were rejected, for instance 1" and $\frac{3}{4}$" crowbars were rejected, as $1\frac{1}{4}$" was the size ssued to the Contractor; Similarly 7" mamoties were rejected, when mamoties 9" broad were issued to the Contractor. Kazim ali Sahib states that he was promised

Statement B
(continued).

this

tools and quotes the original Memo drawn up by Captain Campbell; but garbles the quotation, leaving out that of the sentence which tells against him. The whole sentence is as follows:- "The Contractor will be supplied free of cost with the necessary Tools and Plant on furnishing receipts to the Executive Engineer". They were not to be made a present of, they were to be given for work and the receipts were to make the contractor responsible for their return. Fair wear and tear will of course be allowed for and provided Kazim ali Sahib returns even now, tools of the same dimensions as those supplied to him, they will be accepted. The deduction on account of Tools is I think legitimate and cannot be waived by us. We cannot be responsible for the Contractor's failure to get the tools back from his Sub contractors.

13 Moreover the preliminary agreement was superseded by a subsequent and more definite agreement. In the specification attached to the agreement for the Anicut, dated 31st July 1882, there is the following clause

y to Tools.

Statement B.
(Continued).

he Contractor will be supplied with tools, the value of them will be deducted from bills, till they are returned. No deductions will be made for tools worn out by fair usage".

14. In his note at the bottom of Statement B, the Contractor Complains that the rates of tools given by the Executive Engineer in his list of the 13th August 1883, was subsequently altered in the last account dated 5th May 1884. The explanation is that the Project book value had in the meantime altered, it is for some tools more and for some tools less. The rates having been once furnished to the Contractor, should not I think be altered. I consider that the sum to be recovered should be Rs 1,338-15-6, not Rs 1,822.15.0.

Statement C.
Advances.

15. The Contractor contends the Government are responsible to repay him the sum f Rs 9970-12-8 which he alleges to be the mount of advances outstanding which he cannot recover. He offers no proof as to the Correctness of the amount. Kazim Ali Sahib forwards copy of a letter from the Executive

this

Statement C.
(Continued)

Engineer to Mr Lalor Sub Engineer d the 22nd June 1882, and contends tha was an order to stop work. The Correspondence on which the letter was based, together with the wording of the letter itself show conclusively that it cannot be made to bear this interpretation. The letter in question was in reply to one from Sub Engineer Lalor dated 20th June, reporting that very few coolies belonging to the Contractor were working on the Quarries, and asking the Executive Engineer to order the Contractors' Agent to employ more coolies. Captain Campbell in reply, on the 22nd June 1883 says "for the present" he does not want any more stone quarried by Kazim Ali Sahib. Moreover this reply was simply for Mr Lalor's information and guidance, and was in no way an order to the Contractor or to his Agent, and was not intended to be Communicated to the Agent. The formal notice was given to the Contractor himself on the 27th June. This Correspondence shows that the stoppage of the work could not have entailed the severe loss on the Contractor he contends he suffered. The notice Correct according to the terms of the tract, and the fact that there were but Coolies employed, which the reference quoted, by Kazim ali Sahib brings out, shows that there were but few Coolies to oust. The Contractor asserts that his Coolies were turned out of the Quarries, but Captain Campbell in his letter of the 5th February 1885 No. 398, emphatically denies that Coolies were ousted.

16. As regards the Contractor's Para 3. The reasons for stopping work were numerous. Mr. Malet states that had Kazim ali Sahib's quarry arrangements been properly made, there would have been ample room to stack stone, the quarries were rigorously worked departmentally after Kazim ali Sahibs contract had been stopped, and yet all the new stone, and all Kazim ali Sahib's stone which was accessible, was cleared off by the middle of April 1884.

17. Para 4. Mr. Malet can prove an insufficient supply of stone to the Anicut in May and June 1883, when it was urgently required, that at this time the baling and labor employed were for many days for want of materials; also that the Qu arrangements were disgraceful that there no order. Large and small stone were lying unstacked and blocking further operations. It was impossible to judge whether the Specifications were being worked to, and the measurement and appearance of the quarry indicated too large a proportion of small stone. The Contractor contented himself with picking up stone from the surface or blasting boulders, and never opened a quarry.

18. Para 5. The contract for carriage of stone dated 5th April 1883 referred only to the Anicut, it had nothing to do with the Head and Under Sluices. It is true that writing on the 1st May 1883, Kazim ali Sahib claimed the same rate for carriage of stone to the Head and Under Sluices, as to the Anicut, but in reply Captain Campbell in his No. 19 of the 2nd May, used these words, "I inform you finally that the rate for carriage of stone to the

Statement C.
(Continued).

and Under Sluices is 4 annas per ic yard, according to the specification ted 31st July 1882. × × Should you there e refuse to cart to the Head Sluices and Under Sluices, the carting will be done departmentally and steps taken to recover from you any extra cost." Kazim ali Sahib continued to convey the stone to the Head and Under Sluices.

Item No I. The contract of the 5th April referred to the Anicut only, there was not therefore any reference to a 5 anna rate.

Item No II. The definition of Anicut, only held good till separate agreements and Specifications were drawn out for the Head and Under Sluices, viz. on the 19th June 1882.

19 Para 6. This is simply a reiteration of the previous para (Item No II) and is answered above.

20. Para 7. The clause quoted refers only to the Anicut and South wing wall, it refers to only one rate and one agreement, viz. that of 31st July 1882 for the Anicut. It does not refer and never was meant to refer, to the agreement of the same date for the Head and Under Sluices.

Statement C.
(Continued)

21. Para 8. The Contractor gives number and date to the reference he g The facts which can be proved with re to the contractor's method of working are qu a sufficient reason for cancelling his contract, vide para 17 above.

22. Para 9. After the agreement of the 5th April, the quantity of stone carried to the Head and Under Sluices was:

Head Sluice Cyds. 3,205
Under Sluice " 808
Cubic yards 4,013

The whole amount in dispute therefore would be $\overset{\text{cyds.}}{4,013} \times \overset{\text{annas}}{6}$ or Rs 1,505. Yet Kazim ali Sahib would contend that Captain Campbell violated his agreements and tried to ruin the contractor to avoid having to pay this small sum. I have however clearly shown in para 18 that the 10 anna rate of carriage never referred to the Head and Under Sluices.

23. Para 10. This barely requires answer, but there is I think one satisfactory reply viz. that Government are in no way bound to repay the Contractor for losses due to

Statement C
(Continued)

wn method of working. He was not bound ive advances, and he certainly should be cleared off any advances originally made uring the 2 years (nearly) he was working at Langam. Since the Contractor ceased to work at Langam, the Executive Engineer has by task work or daily labor turned out a very much larger quantity of stone, than Kazim ali Sahib was able to do and that has been done without giving any advances. He has kept from 65 to 100 trucks constantly at work, whereas the Contractor was able to keep only 23. If the Executive Engineer by regular and steady payment has been able to do much more work without advances, it follows that advances are unnecessary and that the loss of the large sum Kazim ali Sahib alleges to be outstanding and to be irrecoverable, is due to his own vicious system of work.

Statement D

24. Statement D is an abstract of 9 detailed statements, with an addition of 15 Miscellaneous items. A number has been entered against each item and the Executive Engineer has drawn up a statement showing number of the Certificate or other document in which

Statement D.
(Continued)

the particular item is booked. This sta I forward. The contractor has claimed of deductions where none were made, as in Case of large stones individually measur and if stone built into the work, in neither of which cases was any deduction made in Kazim ali Sahib's Bills. He also claims refund of deductions made on materials in the quarry or at site of works, but not built in. These deductions must stand as according to the terms of his contract the full quantity without deductions was only to be paid for, after the materials were put in the work.

25. Where the materials on hand, when the Kazim ali Sahib's 3 months notice expired, had been removed from the quarry but not taken to the site of work, half the Contract rate of Carriage has been allowed. This I think is fair and such as a reasonable man, would agree to. We might of course contend that materials not carried to their final position were not really a the site of work.

26. Mr Malet's statement gives definite information regarding each item with one

Statement D.
(Continued).

tion, there are only a few items on which is necessary for me to make any remarks. e exception is that Mr Malet has not xplained the matter of a deduction of Rs 210-11-0. This sum deducted as a fine, because an average of 50 Trucks a day was not employed. The deduction is in accordance with the terms of the Contract of the 5th April 1883, and should be enforced. Items No 26 and 27. The Executive Engineer deducted 200 Cubic feet out of a total of 6,406 cubic feet, (or less than 3 per cent) of roughly dressed stone delivered for the under sluices. It would have been better to have rejected the stone altogether and thrown it on the contractor's hands, or to have had it dressed at the Contractor's expense. As it is the deduction is not based on actual cost or on a detailed measurement, and I am doubtful whether it can be enforced. This is a point on which a legal opinion is dvisable. The amount in dispute is Rs 241. The Executive Engineer bases the deduction on para 8 of the conditions of the contract of the 31st July 1882.

Statement D
(Continued)

27. Item No 33. The Contractor deli
3,788 cubic feet of roughly dressed stone for
Head Sluice, but this was so badly dres
that Rs 1,871-4-8 was paid to masons, the cost of dressing the stone on task work. The Contractor admits Rs 559. 6. 9. as being a fair deduction, but the actual payment made to do the work in accordance with Specification should I consider be recovered. It is note-worthy that the total deduction of Rs 1871. 4. 8 was made in 2 Bills. In that for January 1883 Rs 1311-13-11 was deducted, in that for April 1883 Rs. 559. 6. 9 was again deducted. The contractor accepts the second deduction but not the first.

28. Items No 38 and 43.

259 Cyds of stone for the Drop in 4th Mile
1,083 — Do — do
1,342 Cubic yards were measured, paid for and subsequently deducted, as they cou
not be traced to any work. As however the stone was actually measured as having been quarried by Kazim Ali Sahib, it seem
to me its future disposal should have been

Statement D.
(Continued)

ked after, and we cannot hold the tractor responsible for the loss. The value the stone is $1,342 \times \overset{\text{annas}}{6}$ = Rs 503-4-0 and is should be added to the Contractor's Bills.

29. Items No. 55 to 59 are admitted and have already been included in the final account.

30. Item No. 60 is admitted, Rs 99-8-6 should be added to the Contractor's Bill.

31. Item No. 67. Mill stones. Here again a reduced rate was paid, it seems to me that the stones should either have been rejected entirely or a special arrangement made with the Contractor, whether the reduced rate entered in the Bill, can be forced on the Contractor seems to me doubtful, a legal opinion is required. The deduction is based on para 8 of the Condition of Contract of the 31st July 1882.

32. Item No. 68 can be added to Contractor's Bills viz Rs 18.

33. Item No. 69. This is admitted and can be added to Contractor's Bills.

34. The total extra payment admitted is therefore

Items No. 38 and 43.	503-4-0	
— do " 60 —	99-8-6	
— do " 68 —	18-0-0	Rs.
— do " 69 —	8-4-0	629-0-6

Statement D
(Continued)

35. The Items on which I conside Executive Engineer's deductions to be doubt in point of law are.

Items No. 26 and 27 —	Rs 241-0
Item No. 67 —	" 50-0-0
	Rupees 291-0-0

Statement K.

36. Abstract of Specifications with remarks by the Contractor — The abstract is incorrect in some details, a Correct abstract has been prepared by the Executive Engineer and is attached hereto, together with an explanatory Memorandum by the same Officer. Many of Kazim ali Sahib's remarks are brought forward in his Statement C, and have already been replied to; other assertions are either absolutely untrue or are perversions of facts. The Executive Engineer's Memo explains all these and all his facts can be proved. It is to be regretted I think, that there were so many agreements with Kazim ali Sahib, but each agreement stands good till a later one made, and the last of all holds good for final settlement. These are, the 2 agreements of 31st July 1882, viz (1) for Anicut,

Statement K
(continued)

for Head and Under Sluices for value and cription of materials, and (3) the agreement 5th April 1883 for Carriage to the Anicut. The final accounts are based on these agreements. Whether there is any legal flaw in the agreements is a point in which I consider a legal opinion desirable before a final offer is made to Contractor Kazim ali Sahib. It is to be noted that in the remarks of his printed statement K, Kazim ali Sahib quotes sentences &c entered in one specification against specifications of a later date, with which they have no connection.

37. Para 3. This is completely answered in paras 12 to 14 above. I have however stated that in my opinion the deduction for Tools should be Rs 1338-15-6, not Rs 1822-15-0

Contractor's letter to Supg. Engineer of 8th May 1885.

38 Para 4. I do not think Kazim ali Sahib can prove any breaches of contract, the question of our being liable to repay his advances has been replied to at length in paras 15 to 23.

39. Para 5. The rates were tentative at first. They were finally fixed in June 1882 and embodied in the agreements of 31st July 1882. These agreements were drawn up a one season's experience on the work. W the exception of one item on which ther was an increase of 1 anna per cubic yar over the rate in the specification of June 1882, the only subsequent alteration was to increase the rate of carriage to the Anicut, to the contractor's manifest advantage. I do not know what Kazim ali Sahib means by "at first", but his own words can be quoted against him that he was continually complaining of the rates.

40. Para 6. This is a most misleading distortion of the facts which are as follows. Measurements were made at the quarries and $\frac{1}{5}$th deducted in the case of stone and $\frac{1}{10}$th in the case of Concrete and gravel. After carting to site, payments were made on fresh measurements, viz the capacity of the trucks. Supposing that 1,000 cubic yards were carted and the rates were As 6 at the quarry and R1 at site (Quarry payment having already been made) the Contractor was paid the difference between R1 and 6as on 1000 cubic yards. The deduction of 20 per cent

simply upheld, no fresh deduction was made.

regards (1). The Contractor's assertions are t borne out by the facts. In the Specifi- ations of June 1882, the rate for carriage varied from 4 to 6 annas, and the Contractor was paid at these rates for all stone carried up to April 1883, when the rate for carriage to the Anicut was raised. As regards item (2). If there was delay in payment, it was due to the Contractor's irregular method of working and neglect to have materials stacked for measurement. But the contractor's assertion is positively untrue, the Ledger shows that payments were made to him in every month during the currency of his contract except 3, viz November 1881, February 1882, and May 1882. As regards item (3). The Contractor cannot, I think, point out a deduction of quantity more than 20 per cent. The deduction for extra cost of dressing stone supplied for the Head Sluice floor amounted however to about 40 per cent of the contract rate. This has been explained in para 27. As regards item (4) Tools. The matter has been fully explained in paras 12 to 14.

No: 2857 W

B/cwe

Public Works Dept.

Proceedings of the Madras Government.

Under date the 30th Novr/85.

Read again G.O. No. 2340 W dated September 22d. 1884

" " letter from Kazim Ali Nakvy Saib, Contractor to the Supdt. M.H. Works d/ Octr 13th "

" " letter from the Supdt. M.H. Works d/ " 16th " No. 22 W.

" " letter from the S.E. II Circle d/ Feby 25th 1885 No. 916/S.G.

" " G.O. No. 550 W dated March 9th 1885.

" " letter from the S.E. II Circle d/ July 9th 1885 No. 81 C.

" " G.O. No. 1678 W dated July 18th 1885.

Read also:—

Letter from the Govt. Solicitor, Madras, d/ Novr. 16th 1885 No. 467/+

+ Vide C No. 886/86

These papers relate to claims made by Contractor Kazim Ali Kakvy Sahib against the Executive

Engineer, Sangam Project Division.

2. The contractor was employed on the Project works from August 1881 to September 1883, when his services were dispensed with. Having refused to settle the final accounts, he was called upon for Explanation, on which he accused the Executive Engineer of breach of contract, and claimed a large & sum of money as due to him. On being asked for details, he claimed a still larger sum, Rs [illegible] 4 - 11

& Rs 20,501-9-10.

that the smaller sum only should be claimed.—

9. After careful consideration of all the circumstances of the case, and perusal of the papers connected with it, the Govt have no hesitation in accepting the conclusions arrived at by the Govt Solicitor – The Supdg Engineer II Circle will communicate this ~~decision~~ order to the contractor, and will offer to him the sum of Rs 2528-6-2, which in the opinion of the Govt Solicitor is due to [illegible]

The contractor should be informed that, if he refuses to accept that sum in full settlement of all his demands on account of the Sangeen Project works, no further communication will be held with him on the subject.—

10. The Government Solicitors' letter will be forwarded to the Supdg. Engineer II Circle for perusal and return, and with advertence to the last paragraph [illegible]

the Executive Engineer and the contractor. In an exhaustive report, in which every detail has been carefully sifted, the Government Solicitor has given his opinion that there have been no breaches of contract on the part of the Executive Engineer, and that the sum due to the contractor is Rs 2528-6-2 as follows:—

Amount previously shewn to be due to the contractor, including value of tools	Rs 3188-5-2.
Further, amount that should now be admitted ...	" 679-0-6
	Rupees 3,867-5-8
Deduct Value of tools not returned	" 1,338-15-6
	Rupees 2,528-6-2

The sum of Rs 679-0-6 is made up of certain items which the Govt. Solicitor thinks are doubtful, and may therefore be admitted. The original sum claimed from the contractor on account of tools supplied was Rs 1822-15-0, but the book value has varied since the list of prices was furnished to the contractor, and as the cost of these tools according to that price list is only Rs 1338-15-6, the Government Solicitor advises [illegible]

5

And that the sum due to the Contractor is

Rs 2528-6-2

This sum is made up as follows.

Amount previously shown to be due to the Contractor including value of tools	3188-5-2
Further amount that in the opinion of the Govt Solicitor should now be admitted	679-0-6
	3867-5-8
deduct value of tools not returned	1338-15-6
Net sum due to Contractor	2528-6-2

The sum of Rs 679-0-6 is made up of items No 60, 68, 69 ~~to~~ & parts of items 43 & 38 of the Contractor's Statement D [illegible] the Govt Solicitor thirty are doubtful & may therefore be admitted see paras 243 to 261.

It will be observed that the original sum deducted on account of tools supplied to the Contractor was Rs 1822-15-1 but as the book value has varied since the list of prices was given to the Contractor the cost of these tools according to that price list is Rs 1338-15-6 & this is therefore the sum to be now deducted ~~the~~ Govt Pleader: para 229.

After a careful consideration of all the circumstances of this case & perusal of the papers connected with it, there can be no hesitation in accepting the opinion of the Govt Pleader viz that there has been no breach of Contract on the part of the E.E., ~~and~~ that the sum claimed by the Contractor is inadmissible & that the full amount to which he is entitled is Rs 2528-6-2

21/11/85

(2) No reason being assigned for the stoppage.

(3) Frequent alteration of rates and terms.

(4) Employing other contractors on the work.

The records of the case however show that the charges are based on misrepresentations on the part of the contractor, and that the Executive Engineer has been able to justify his action in every particular.

7. In support of his third claim of Rs 19,217-6-3 on account of work done, the contractor,

with his letter of 8th May 1885, submits a statement D, each item in which has been fully explained by the Executive Engineer in his remarks thereon dated 29th June 1885.

8. The whole of the contractor's claims have been most carefully investigated by the Deputy Engineer Mr. Rundall, and the Government Solicitor has reviewed in a most thorough and complete manner all the transactions between

~~of remonstrance, and by fears of delaying the work.~~

4. According to the Executive Engineer's accounts, the amount due to the Contractor, including the value of tools supplied, is Rs 3,188-5-2, while the amount claimed by the contractor, is, as already stated, Rs 31,010-11-11, made up as follows:—

Value of tools returned to Govt.	Rs 1,822-9-0
Advances outstanding . . .	" 9970-12-8
Work done	" 19,217-6-3
Rupees	31,010-11-11.

5. The claim with respect to the value of tools, has been gone into

most carefully by the Government Solicitor in his paras 85, 115, 154, 155, 186, 191, 205, 210, & 229; and it seems clear that ~~it~~ such claim is untenable.-

6. The claim of Rs 9970-$\overset{A.\ P.}{12-8}$ on account of advances to work people is made by the contractor on the ground that he was put to loss by breaches of contract on the part of the Executive Engineer. The breaches of contract complained of appear to be:-

(1) Sudden stoppage of work.-

received.

3. A perusal of the papers shows that the contractor worked in a very unsatisfactory manner, and that it was chiefly his conduct that necessitated the frequent alterations in rates and terms, which he now makes one of his grounds of ~~in~~ complaint.-

These claims — were repudiated by the Executive Engineer and the Superintending Engineer, and in G.O. No. 1678 W dated 18th July 1885, the whole matter was referred to the Government Solicitor, whose report No. 467 dated 16th November 1885 has now been —

Pro D.W.

It seems to me that the correc disposal of these voluminous papers will be by a G.O.

Such G.O. should set forth as briefly as possible the main facts of the case (epitomised from your summary) and conclude by directing the Supt. of Works to make to the Contractor the offer suggested by you overleaf, of the sum which, in opinion of the Govt. Solicitor, is due to him.

The draft of the G.O. in question can easily be made in the office, from your papers.

21.11.85

The draft G.O. will of course go to the Hon: Member for approval.

W.

I think a short summary of the chief points of dispute with the Contractor something like what I have written should be made out & forwarded to the Supt of Works II Circle to be communicated to the Contractor. The Supt of Works will at the same time offer the Contractor the sum settled by the Govt Solicitor as due & inform him that if he refuses to accept this in full settlement of all demands on account of the Sangam [illegible] Works no further communication will be held with him on the subject.

21/11/85

T. O.

These claims were repudiated by the Ex: Engineer and the Supdg Engineer, and in G.O. No. 1678 W d/ 18th July 1885, the whole matter was referred to the Government Solicitor, whose report No. 467 dated 6th November 1885 has now been received.-

3. From a perusal of the papers, it is observed that general agreements were made with the contractor. This is to be regretted, as it complicates matters, and gives the contractor opportunity to make the frequent changes one of his grounds of

3. A perusal of the papers shows that the Contractor worked in a very unsatisfactory manner and that it was chiefly his conduct that necessitated the frequent alterations in rates & terms, which he now makes one of his grounds of complaint.

complaint. It is noticed however that the several changes were chiefly due to the conduct of the contractor, who appears to have been continually endeavouring to get the rates and terms of previous agreements altered. The correspondence shows that the contractor worked in a very unsatisfactory manner, and it is ~~much~~ to be regretted that his services were not dispensed with sooner; but the Executive Engineer was apparently influenced by the contractors' promises

I think all para 3 may be omitted & what I have written in the margin inserted instead. Yes.

the Executive Engineer and the contractor. In an exhaustive report, in which every detail has been carefully sifted, the Govt. Solicitor has given his opinion that there have been no breaches of contract on the part of the Executive Engineer, and that the sum due to the contractor is Rs. 2528-6-2 as follows:—

Amount previously shewn to be due to the Contractor, including value of tools	Rs. 3188-5-2.
Further amount that should now be admitted . . . "	679-0-6
Rupees	3867-5-8
Deduct value of tools not returned . . . . "	1338-15-6
Rupees	2528-6-2

The sum of Rs 679-0-6 is made up of certain items which the Government Solicitor thinks are doubtful, and may therefore be admitted. The original sum claimed from the contractor on account of tools supplied was Rs 1822-15-0. ~~owing to~~ ~~the book value having varied since the list of prices was furnished to the contractor, but as the cost of these tools according to that price list is Rs 1338-15-6 the~~ but the book value has varied since the list of prices was furnished to the Contractor, and as the cost of these tools according to that price list is only Rs 1338-15-6, the Government Solicitor advises

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1

The accompanying papers relate to claims made by a Contractor by name Kazim Ali Nakoz Vakil against the Executive Engineer Sarsar Project Div.

This Contractor was appointed to the Project Works in Aug/81, and was employed till Sept/83 when his services were dispensed with.

The Contractor having refused to settle the final accounts was called on to submit an explanation, on which he wrote accusing the C.E. of breach of contract &c and claiming a large sum of money as due to him. these claims were refuted by the P.E and S.E and the latter under orders of the Chief Engineer ordered the Contractor to submit details of his claims; on this the Contractor submitted a letter in which he claimed a larger sum than hitherto; these claims were again refuted by the E.E & S.E and the whole matter was then laid before the Govt Solicitor, and his report No 467 dated 16th Nov/85 has now been received.

From a perusal of the papers it is observed that there were several agreements made with the Contractor this is to be regretted as it tends to complicate matters and the Contractor makes the frequent changes one of his grounds of complaint, it is noticed however from the correspondence that the several alterations were chiefly due to the Conduct of the Contractor who was continually trying to get the rates and terms of previous agreements altered, the specification and agreements are reviewed by the Govt Solicitor in his letter paras 3 to 45

The correspondence shows clearly that the Contractor worked in a very unsatisfactory manner while employed at Sangam and it is much to be regretted, as stated by the S.E., that the E.E. did not dispense with his services long before but he was apparently prevented from doing so by the Contractor's promises of amendment and by the fear of delaying the work.

In his letter dated 13th Oct/84 the Contractor lays claim to certain sums which he says are due to him on account

of breaches of Contract on the part of the E.E. but these claims need not be discussed as in his letter dated 8th May 1885 he claims a still higher sum, in support of which he furnishes detailed statements.

The amount due to the Contractor including value of tools supplied is according to the E.E.'s accounts Rs 3188-5-2, the amount claimed by the Contractor is Rs 31010-11-11 made up as follows

Tools returned to Govt	1822-9-0
Advances outstanding	9970-12-8
Work done	19217-6-3
	31010-11-11

As regards the money for

tools, the Contractor bases his claim on the assumption that they were to be given to him free, and he quotes the original memo of terms drawn up by the E. E. but garbles the quotation leaving out the part which tells against him. thus he quotes as follows "the Contractor will be supplied free of Cost with the necessary tools and plant" and he omits the last part which is "on furnishing receipts to the E. E." The Govt Solicitor has gone most carefully into the claim for tools in his paras 85, 115, 154, 155, 186, 191, 205, 210, 229 and after perusal of these it is impossible to arrive at any other conclusion but that the claim is untenable.

The claim for advances to workpeople is made by the Contractor on the grounds that there were breaches of Contract on the part of the E. E. the breaches of Contract complained of appear to be

1 Sudden stoppage of the work
2. No reason being assigned for the stoppage
3. Frequent alteration of orders & terms
4. Employing others on the work

As regards number 1 According to the terms of the Contract the E. E was bound to give the Contractor 3 months notice before stopping his quarrying work and 30 days notice before stopping his carrying work, that the E. E. did do so is clearly proved by the records; but in his letter of 13th Oct. /84 the Contractor states to the effect that though the E. E. nominally gave him three months notice he took such action as to make that notice nugatory by ousting his men from the quarries and putting on his own men before he received the notice. The E. E. denies point blank that he ousted the men from the quarries

and the ~~statement~~ evidence of the Contractor himself in his statement C which accompanied his letter of 8th May /85 shows that such was not the case as he there says that his people were compelled to leave the places they were working at and open out fresh places; — it is evident from this that they did not stop work, and it was of course perfectly within the power of the E. E. to order the Contractor to work at any part of the hill he thought fit. see Sir Charles page 98 In support of the sudden stoppage of work the

Contractor lays great stress on a letter written by the E.E to his sub-Engineer in which he states that "for the present he does not want any more stone quarried by Kazim Ali Naby Wali" the words "for the present" of course utterly preclude the letter from being an order to stop the contract and if the E.E was not in want of stone at the time he was perfectly justified in ordering the Contractor not to quarry more, and it is moreover absurd that the E.E would stop a large contract by an order to his sub-Engineer the real facts regarding this letter are given in paras 193 & 223 of the Govt Advocates letter

As regards No 2 that no reason was given for stopping the work, the correspondence shows conclusively that the E.E had good grounds for doing so, and if he was dissatisfied with the Contractor's conduct he was perfectly justified in giving him 3 months notice to stop work without assigning any reason for ~~doing so~~ his action but the fact was that he informed the Contractor that he had only to look at the enormous quantity of

See para 110 of E.E letter

small & useless stone
lying all over the Site
to see why his work was
stopped, & is therefore
not understood what
grounds the Contractor
has for complaint see
Spec sheets pages 97. 98
The reason for stopping the
carriage of stone was clearly
given to the Contractor, viz
that he had never em-
ployed a daily average of
50 trucks according to
his agreement: the statement
of the Contractor that at
the time his carrying work
was stopped he was employing
an average of 61 trucks is
proved by the records to be
incorrect, the real average
employed by him being 26

As regards No 3 the frequent
alterations of rates and
terms: the Contractor
has submitted a statement
to which he calls an
abstract of specification,
this the C.E has answered
by another statement accompanied
by a letter of 30th June '85
which shows that many of
the Contractor figures and
deductions are wrong: but
this change of rates and
terms; of which there were
no doubt several; seems
immaterial as the C.E
had [illegible] power to alter
these as he wished and
it was for the Contractor

to refuse to do the work
this subject is dealt with
in paras 49, 182, 179 of
his letter. There is one
point on which the
Contractor lays great stress
and that is that though
he was promised one rate
for carriage of stone to
the Sluices & Head and
under Sluice, he was paid
at a reduced rate for
stone carried to the latter
two works, the Govt Solicitor
goes carefully into this
matter in his paras 197, 199
213, 219, 234, 235 and decides
that the reduced rate
complained of was according

to agreement
As regards No 4 or em-
-ploying others on the work
it is of course obvious
that the E.E. was quite
justified in employing any
number of other persons on
the work so long as he did
not stop the Contractor's work
regarding this point see the
Govt Solicitor paras 113, 131
The third claim of the
Contractor is Rs 19217-6-3
on account of work done
in support of this claim
a statement D is submitted
by the Contractor with
his letter of 8th May/85
each item in this has
been fully explained by

Ex. Enr in his remarks
on their statement dated
28th June/85.
The whole of the Contractors
claims have been
most carefully investigated
by the S.E. Mr Rundall
and the Govt Solicitor
has reviewed in a most
thorough and complete
manner the whole of the
transactions between the
E.E and the Contractor
and in a most exhaustive
report in which every little
detail is carefully sifted
has given his opinion that
there have been no
breaches of Contract on
the part of the E.E