

22ND APRIL 1887, No. 173, MARINE.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

ORDER—dated 22nd April 1887, No. 173, Marine.

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(True Extract.)

H. E. STOKES,
Ag. Chief Secretary.

To the Chairman, Harbour Trust Board.
„ Public Works Department, with G.O.,
Mis. No. 70, dated 15th February 1887.

Exd. T. O'Connor.

Gobt. of {1887} Madras.

MARINE.

Issued

Recd.

Encl.

G.O., 22nd April 1887, No. 173.

B. No. 1282 Wd/H May 1887

Recorded

APRIL. (sd) J. O. H.
W.

Harbour Trust Board.

Passing orders in regard to the nature of the communications relating to Harbour matters that should be addressed to the Marine Department.

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15TH FEBRUARY 1887, MIS. No. 70, MARINE.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following papers:—

From the Hon. R. W. BARLOW, C.S., Chairman, Harbour Trust Board, Madras, to the Chief Secretary to Government, dated Madras, 25th January 1887, No. 1986.

I have the honor to forward, for the very early orders of Government, extract from the resolution of the Harbour Trust Board at a meeting held on the 20th instant, and the correspondence (in original to be returned) as per annexed list between the Board and the Superintendent of the Madras Harbour Works that gave rise to the same, and am desired to submit the following remarks as the opinion of the collective Board.

2. On the 9th December 1886, the Superintendent reported the death of Kazim Ali Nakvy, quarrying contractor at Pallavaram, and the Board passed a resolution thereon, No. S, at their meeting on the 16th idem, that fresh tenders should be called for "forthwith," and hoped that Mr. Thorowgood "will in the mean time be able to carry on the work without interruption."

3. The Trustees were anxious to call for tenders as soon as possible, because most of them had, for some time, held the opinion that the rates of the old contract were very unduly high and a heavy and needless drain on harbour construction funds. To the letter conveying this resolution the Superintendent replied on the 20th December 1886 (No. 493 M.) stating that "I propose" to extend the contract, subject to certain conditions at the old rates, for six months to the father of the deceased contractor.

4. Had the Superintendent in this letter informed the Board, as he has since done, that he considered that he had the power, in virtue of the terms of his own appointment, so to extend the contract, and—what was far more important—that he had already done so verbally, and further that on the very date on which he was then replying he confirmed such verbal contract in writing, the Board would have understood the position and could have written to Government sooner; as it was, the letter was most carefully discussed, and the Board decided to adhere to their decision, but expressed their willingness to accept at the old rates certain stone, 20,000 tons approximately, which the Superintendent stated the deceased contractor had already quarried.

5. In communicating this resolution on the 22nd December 1886, the Secretary, by my directions, informed the Superintendent that no temporary arrangement should last beyond the 31st January.

6. In reply, the Superintendent, in his No. 508-M., dated 24th December 1886, asked for "direct and definite orders" before cancelling what he had "with much deliberation done," and deprecated the Board's insisting on a change of arrangements by January 31st; but the authority of the Board to do so, if they should so desire, was then in no way disputed.

7. On this the Board, on the 7th January 1887, having regard to their previous very clear instructions, adhered to them, and fixed a date from which the new contract should take effect. The trustees were more than ever confirmed in their former decision by the perusal of a schedule forwarded by the Superintendent with the letter above quoted, showing that certain lower tenders had been rejected when the late contract was renewed in 1885, and this without any deposit having been demanded from the late contractor, in accordance with the terms of the specification, or any

written contract entered into; and the Board further noted from certain papers just then laid before them by a would-be tenderer, that a large portion of the recent contract had been sub-let to him at much reduced rates.

8. On this Mr. Thorowgood, having got the definite instructions he asked for, declined to obey them and stop further quarrying, at the old rates, so as to enable the new contractor to make his arrangements in good time, and for the first time began to question the Board's authority, and wrote his letters, No. 441 M., of 10th January 1887, and No. 549-M., dated 12th January 1887.

9. It is difficult to reconcile Mr. Thorowgood's argument that he was obliged to make the arrangement he did, because of the Christmas holidays, during which time he "could get no precise order from the Board as to what was to be done" (he had their precise instructions), with his contention that he had full authority, under the terms of his appointment, to make the arrangement he did, at his own instance, on an emergency, though the extension of a very important contract for a period of six months can hardly be viewed as a temporary arrangement justified by emergency. Copy of the papers showing the terms under which Mr. Thorowgood was engaged are herewith submitted. He appears to have misapprehended the scope of G.O., No. 3099 W., dated 23rd November 1886, and fails to see that his position is altered now that there is a responsible Board on the spot.

10. The Board's resolutions, Nos. 3 and 4, dated 14th January 1887, on these two letters above quoted, are clear and speak for themselves; and no argument is needed to show that the Superintendent had definite instructions before the holidays. Equally unreasonable is the Superintendent's complaint that he was not consulted about the specification, though a resolution was recorded that he should be. True it was drawn out before the resolution was forwarded to him, but in the week intervening between its being passed and confirmed by the Board, the purport of the same was communicated to him in my letter, No. 1752, dated 8th January 1887; and he was further present at a special meeting when the specification was discussed, and his own figures were embodied in it before its issue.

11. The Board do not think it necessary to go further into details, and leave the matter in the hands of Government, but desire to draw attention to the tone that Mr. Thorowgood has thought fit to adopt when addressing them in several of the more recent letters enclosed.

12. The Board's object in insisting—which they believe they have authority to do—upon tenders being invited, without needless delay, was evident, and simply to lessen the expenses of construction; and the numerous tenders they have received from substantial parties show that their conclusion, as to the feasibility of lowering the late contractor's rates, was a correct one; and had Mr. Thorowgood not been known to be in opposition, the Trust believe that the tenders would have been still lower. As it is, a saving of about 25 per cent. will be the result of the new tenders.

13. The very earliest possible orders are requested, as on the new contractor applying to the Superintendent, who had been asked by the Board to give him every assistance in his power, he was informed by Mr. Thorowgood, he states, that he would have nothing to do with him, he had better go to the Board. So the contractor is powerless to make preliminary arrangements, and if any stoppage does occur, the Superintendent alone will be responsible for it. There are within the Board's knowledge numerous middlemen ready to serve any contractor, provided the doubt as to who is the coming man is removed.

14. The Trustees are further threatened with a civil action on Mr. Thorowgood's letter extending the contract, and which was written subsequent to the communication of the Board's resolution of 16th December 1886, desiring fresh tenders forthwith. Mr. Thorowgood's plea that he never objected to tenders being called for "forthwith," when at the same time he extended the old contract for six months, needs no comment.

P.S.—Letter, No. 585-M., dated 24th January 1887, from the Superintendent to the new contractor selected by the Board, referred to at paragraph 13, is submitted in original for information.

* In enclosure No. 24.

ENCLOSURE.

EXTRACT of Proceedings of the Harbour Trust Board at a meeting held at the offices of the Board on Thursday, the 20th day of January 1887.

5. Read again the whole of the correspondence, minutes of proceedings, and resolutions of the Board relating to the question of the contract for quarrying stone for the Madras Harbour Works at Pallavaram, together with all letters from the Superintendent not previously before the Board; received and circulated up to date.

Resolved that the whole correspondence be submitted to Government, with a request that the Superintendent's position, as regards the Harbour Trust, may be clearly defined, as the Trustees entirely disagree with Mr. Thorowgood's views of his relations to them.

In the present case the Superintendent arrogates to himself the right to enter into a most important contract in direct opposition to the clearly-expressed orders of the Board.

From the Hon. R. W. BARLOW, C.S., Chairman, Harbour Trust Board, Madras, to the Chief Secretary to Government, dated Madras, 7th February 1887, No. 2128.

I am desired by the Trust Board to offer the following remarks in continuation of this office No. 1986, dated 25th January 1887.

2. It is observed that the Superintendent states—in his No. 586-M., dated 24th January 1887, tendering his resignation—that the specification, as drawn out by the board, is "insufficient and misleading;" if so, the remedy was easy. The Board's object in inviting tenders forthwith was to effect a very considerable, and in their opinion feasible, economy,—not to hamper the Superintendent in his executive capacity as Engineer, with which they have no desire to interfere; and any alteration that Mr. Thorowgood might suggest would be promptly attended to, but it is manifestly useless to address him to this effect so long as he ignores the Board's successful tenderer, to guide whom this specification was prepared, and maintains that he has a right to appoint a contractor of his own choosing, both of which he has done.

3. It is requested that this letter may be read with this office No. 1986 above quoted. Very early orders are again solicited.

ORDER—dated 15th February 1887, Mis. No. 70, Marine.

With the first of the letters read above, the Chairman forwards, for the orders of Government, copies of certain resolutions of the Harbour Trust Board and correspondence with the Superintendent, Madras Harbour Works, with reference to contracts for quarrying stone at Pallavaram.

2. It does not appear to His Excellency the Governor in Council to be necessary that he should pass orders on all the matters involved in the dispute, and he will therefore confine himself to stating the opinion that Mr. Thorowgood is under a misapprehension as to his position in regard to the Harbour Trust Board. Such powers as he now claims cannot be considered within the scope of the clause in the Secretary of State's despatch recorded in G.O., Public Works Department, dated 23rd November 1886, No. 3099 W., on which he relies. As one of the terms which he alleges were saved when by this despatch his services were transferred to the Harbour Trust Board, he quotes a letter from Mr. Parkes intimating that his powers would of necessity be large, and in case of emergency unlimited, in all local matters. But the necessity disappeared when the Board was constituted, and what might well have been emergent before ceases to be so when the principal is at hand to be consulted and to give orders. In the opinion of Government, Mr. Thorowgood is an officer of the Board, and as such he has no power beyond what the Board sees fit to delegate to him. How far it is prudent to restrict the Engineer's powers in regard to an ordinary

contract, is a different question, and one which deserves the Board's most careful consideration. It is also desirable that his powers should be defined as soon as possible.

3. With regard to the two rival contractors, it is understood that Mr. Thorowgood is now prepared to co-operate with the man whose tender has been accepted by the Board, and is endeavouring to effect an arrangement regarding the stone quarried under the old rates. His Excellency in Council trusts that the Board will do their best to facilitate this arrangement.

4. A copy of these proceedings will be submitted to the Secretary of State.

(True Extract.)

H. E. STOKES,
Ag. Chief Secretary.

To the Chairman, Harbour Trust Board,
with original enclosures returned.

Govt. of (1887) Madras.

MARINE.

P.W. Secy 3499/87

Issued

Recd.

Encl.

G.O., 15th Feb. 1887, Mis. No. 70.

FEBRUARY.

Madras Harbour Works.

Passing orders on correspondence respecting the position of Mr. Thorowgood, Superintendent of the Harbour Works, with reference to the —.



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+ a spare copy.

Exd. T. O'Connor.

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to the Sec. P.W.A.

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