(1) பக்கங்களின் எண்ணிக்கை 22

(2) புதுக்கித் திருப்பிய நாள் June 90

(3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம்

தமிழ்நாடு ஆவணக் காப்பகம்.

(94)

தமிழ்நாடு அரசு

P. W. D. துறை

அரசாணை எண். 3075

மு. கோப்புத் தாள் எண்.

அச்சகம்

பலவகை

நாள் : 31-10-1889 ~~198~~ .

மடிக்கவோ கண்டபடி கையாளவோ கூடாது

11 ~~(10)~~ Sheets

ஆவண, கா-1—18,006—15-6-87.

(5)

3075

31st October 1889, No. 3075 W., Public Works.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Account.

Read—the following papers:—

From J. W. MARTIN, Esq., Executive Engineer, Coimbatore Division, to the Superintending Engineer, IV Circle, dated Coimbatore, 1st October 1889, No. 3808 S.E.

At the suggestion of the Examiner, Public Works Accounts, I have the honor to forward, for the information and orders of Government, a copy of my letter No. 3476, dated 6th September 1889, addressed to him, and copy of his reply in letter No. 299 S.E. 4th, dated 17th ultimo, in the matter of the proper and legal procedure to be adopted when it is considered desirable to extend the time for completing a work beyond the date entered in the contract agreement.

Enclosures.

From J. W. MARTIN, Esq., Executive Engineer, Coimbatore Division, to the Examiner of Public Works Accounts, Madras, dated Coimbatore, 6th September 1889, No. 3476.

I have the honor to state that I cannot find in the Public Works Code any instructions in regard to the procedure to be followed when it is considered desirable to extend the time for completing a work beyond the date entered in the contract agreement.

2. The practice I have adopted is to cancel on the bond the original date and enter on it the new date and make the contractor initial the alteration and then I initial it myself. I am not, however, certain whether this practice is correct and in accordance with the Stamp Act. I therefore request you will be good enough to give me your opinion on the subject.

From Major C. H. P. CHRISTIE, R.E., Examiner of Public Works Accounts, to the Executive Engineer, Coimbatore Division, dated Madras, 17th September 1889, No. 299 S.E. 4th.

In reply to your letter No. 3476, dated 6th September 1889, I have the honor to state that in my opinion the procedure to be adopted when extending the time for completion of a contract should be governed by section 55 of the Indian Contract Act (Act IX of 1872).

2. Under the first and second clauses of that section, as I understand it, if the contractor does not complete the work by the specified time, the contract is voidable at your option; and if you elect not to void the contract, and you allow the contractor to go on with the work, either with or without a definite understanding as to some new date of completion, then, I take it, you cannot afterwards claim compensation for non-completion by the original date, unless you at once give notice to the contractor that you intend to do so.

3. If this view is correct, it would seem that, if a contract is not completed by a specified date, and you do not wish either to void the contract, or to oust the contractor and complete the work by other agency, all that you need do is to give the contractor notice in writing that you are prepared to allow him such and such further time for completion, but that you nevertheless intend to claim compensation, and that you reserve the right to void the contract, or to oust the contractor, if the work is not finished by the new date, of course you may always waive your rights afterwards.

4. The question, however, is not exactly one for me to decide, and I would suggest that you should refer it, through the Superintending Engineer, for the orders of Government. The revision of the rules for procedure in connection with contracts is now under consideration, and as the question raised by you is an important one, it is desirable that it should be provided for.

No. 439 E.W.

Submitted to the Chief Engineer, Public Works Department, with a request that he will be good enough to obtain definite orders of Government on the subject.

2. The procedure followed by the Executive Engineer, altering the dates on the original agreements, appear to be irregular, and he should have adopted the usual course, *i.e.*, to enter into a fresh agreement with the contractor, as the original agreement becomes, it is believed, void if the work was not executed by the time mentioned therein.

(Signed) H. M. VIBART, Colonel, R.E.,
9th October 1889. Superintending Engineer, IV Circle.

No. 4704 C.

Referred to the Government Solicitor for favor of opinion.

Chepâk, (Signed) R. R. E. DRAKE-BROCKMAN, Lt.-Col., R.E.,
16th October 1889. Ag. Chief Engineer, P.W.D.,
General Buildings and Roads Branch.

From E. BARCLAY, Esq., Government Solicitor, to the Acting Chief Engineer, Public Works Department, dated Madras, 21st October 1889, No. 540.

I beg to acknowledge receipt of your docket, dated 16th instant, No. 4704.

2. With reference to the letter dated 6th ultimo, No. 3476, from the Executive Engineer, Coimbatore Division, to the Examiner, Public Works Accounts, I am clearly of opinion that the practice therein referred to, viz., of alterating in a contract the date inserted therein for the completion of the work is erroneous.

3. As pointed out by the Examiner of Public Works Accounts in his letter, dated 17th ultimo, No. 299, if the contract be not completed at the time named therein for its completion, the contract would be voidable at the option of Government, if time were of the essence of the contract. From what I have seen of Public Works contracts I am, however, very doubtful whether time is of the essence of the contract; in many cases a scheme is not in general frustrated if a work be not completed by the time fixed, nor are calculations based on the completion of a work by the date fixed. Of course it may be so in some cases; but I doubt if it is so in many.

4. In cases where time is not of the essence of the contract, I agree with what is said in para. 3 of the Examiner's letter as to the course that should be adopted, viz., that if the contract is not completed by the date therein mentioned to give the contractor notice in writing extending the time for completing the contract and that Government will claim compensation. No compensation could, however, be recovered unless actual loss were sustained.

5. If I am not mistaken, most Public Works contracts contain an express provision to the effect that if the work thereby contracted to be done be not completed by the specified date, Government shall have the right of determining the contract. In such a case it would be immaterial whether time were of the essence of the contract or not, and, if it were determined not to put an end to the contract, it would be sufficient to give the notice suggested by the Examiner.

6. I return the papers sent me.

3075

Order—dated 31st October 1889, No. 3075 W., Public Works.

Communicated for the information and guidance of officers of the Public Works Department.

(True Extract.)

Captain, R.E.,
Under-Secy. to Govt., P.W.D.

To the Chief Engineer for Irrigation.
,, Chief Engineer, Periyár Project.
To Superintending Engineers.
To the Examiner, Public Works Accounts
,, Consulting Architect to Government.
,, Consulting Engineer for Railways.
,, Examiner, Railway Accounts.

Exd. J. Moses.

Spare Copies

GENERAL
ACCOUNT.

Govt. of {1889} Madras.

PUBLIC WORKS.

Dated October, 31st.

Recd. *Encl.*

G.O., 31st Oct. 1889, No. 3075 W.

OCTOBER.

Contract Agreements

Opinion of the Government Solicitor on the question raised by the Executive Engineer, Coimbatore, regarding extension of time for completing works beyond the date specified in —, communicated to officers of the department.

No. 3808 S. E.

Executive Engineer's office
Coimbatore 1st October 1889.

From

3075 | P

J. W. Martin Esq,
Executive Engineer,
Coimbatore Division.

To

The Superintending Engineer,
Fourth Circle,
Coimbatore.

Sir,

At the suggestion of the Examiner, P. W. Accounts, I have the honor to forward for the information and orders of Government a Copy of my letter No. 3476 dated 6th September 1889 addressed to him and Copy of his reply in letter No. 299 S. E. 4th dated 17th Ultimo in the matter of the proper and legal procedure to be adopted when it is Considered desirable to extend the time for completing a work beyond the date entered in the Contract agreement

I have &ca

Signed / J. W. Martin
Executive Engineer

(True Copy)

Submitted

No. 439/E.W.

5-P

Submitted to the Chief Engineer P. W. Department with a request that he will be good enough to obtain definite orders of Government on the subject.

Encls: 2
1 Copy of Ex. Engr's letter
1 Copy of Exrs letter

2 The procedure followed by the Executive Engineer, altering the dates on the original agreements, appear to be irregular, and he should have adopted the usual course, i.e, to enter into a fresh agreement with the Contractor, as the original agreement becomes, it is believed void if the work was not executed by the time mentioned therein.

Col: R.E.,
Superintending Engineer,
4th Circle

9th October 1889.

D.S.

3075

E. 1

P.W. Cno ~~9535~~

9958/89

From

The Supg. Engr.

4th Circle

Dated 9th
Despd 10th } October/89

Recd 11

No. 439
E.W.

Enc. 2

Contract Agreements

Submitting copy of letter from the Ex. Engr. Coimbatore Dn. forwarding copies of letters to & from the Examiner P.W. Accounts regarding the extension of time for completing works beyond the date entered in the

Referred

No. 1295. 6P

No. 4704 Cd/ 16 October 1889

Referred to the Government Solicitor for favor of opinion.

Ruedraler-Brickmay
Lt Col RE

Ag. Chief Engineer P.W.D.
General Buildings & Roads Branch

14.10.89

P. W. Dept.
To be returned with reply.

3075

4

Encl 8
~~M 4585~~ 89
9963

Enclosure

No. 3476

Executive Engineer's Office,
Coimbatore 6th September 1889.

2 SP

From
J. W. Martin, Esq.,
Executive Engineer,
Coimbatore Division.

To
The Examiner,
of P. W. Accounts, Madras.

Sir,

I have the honor to state that I cannot find in the P. W. Code any instructions in regard to the procedure to be followed when it is considered desirable to extend the time for completing a work beyond the date entered in the contract agreement.

2. The practice I have adopted is to cancel on the bond the original date and enter on it the new date and make the contractor initial the alteration and then I initial it myself. I am not, however, certain whether this practice is correct and in accordance with the

5A

Stamp

stamp act. I therefore request you will be good enough to give me your opinion on the subject.

I have &ca

Signed/ J. W. Martin.
Executive Engineer

(True Copy)
Signed/ J. W. Martin.
Ex: Engineer.

(True Copy)

Col: R.E.,
Superintending Engineer, IV Circle.

9-10-89

P.D.S.

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3 8

From

Major C. H. P. Christie, R.E.,
Examiner of P. W. Accounts,
Madras.

To

The Executive Engineer,
Coimbatore Division.

No. 299 S.E.4th. Madras 17th Septr. 1889.

Sir,

In reply to your letter No. 3476 dated 6th September 1889, I have the honor to state that in my opinion the procedure to be adopted when extending the time for completion of a contract should be governed by section 55 of the Indian Contract Act (Act IX of 1872)

2. Under the first and second clauses of that section, as I understand it, if the Contractor does not complete the work by the specified time, the Contract is voidable at your option; and if you elect not to void the contract, and you allow the

Contractor

Contractor to go on with the work, either with or without a definite understanding as to some new date of Completion, then, I take it, you cannot afterwards claim compensation for non-completion by the original date, unless you at once give notice to the Contractor that you intend to do so.

3. If this view is correct, it would seem that, if a contract is not completed by a specified date, and you do not wish either to void the Contract, or to oust the Contractor and complete the work by other agency, all that you need do is to give the contractor notice in writing that you are prepared to allow him such and such further time for completion, but that you nevertheless intend to claim compensation, and that you reserve the right to void the contract, or to oust the Contractor, if the work is not finished by the new date, of course you may always waive your rights afterwards.

The

4. The question, however, is not exactly one for me to decide, and I would suggest that you should refer it through the Superintending Engineer for the orders of Government. The revision of the rules for procedure in connection with contracts is now under consideration, and as the question raised by you is an important one, it is desirable that it should be provided for.

I have &ca

Signed/ C. H. P. Christie. Major R.E.
Examiner of P.W. Accounts
Madras.

(True Copy)
Signed/ J. W. Martin
Executive Engineer

(True Copy)

Col: R.E.,
Superintending Engineer, IV Circle
9/10/89

Encl 2

P.W. 9535/89 9953

No 549

Madras 21st October 1889

3075 7P

From,

Ernest Barclay,

Government Solicitor,

Madras.

To,

The Acting Chief Engineer,

Public Works Department,

Madras.

Sir,

I I beg to acknowledge receipt of your docket dated 16th instant No 4704.

2 With reference to the letter dated 6th ultimo, No - 3476, from the Executive Engineer Coimbatore Division to the Examiner Public Works Accounts, I am clearly of opinion that the practice therein referred to, viz of alterating in a Contract the date inserted therein for the completion of the work is erroneous.

3 As pointed out by the Examiner of Public Works - Accounts in his letter dated 17th ultimo No 299, if the contract be not completed at the time named therein for its - completion, the contract would be voidable at the option of Government, if time were of the essence of the contract - From what I have seen of Public Works contracts I am however very doubtful whether time is of the essence of the contract in many cases, a scheme is not in general frustrated if a work be not completed by the time fixed, nor are calculations based on the completion of a work by the date fixed.

8

P.W.Cns. 9953.

Of course it may be so in some cases, but I doubt if it is so in many.

4 In cases where time is not of the essence of the contract I agree with what is said in para 3 of the Examiners' letter as to the course that should be adopted, viz: that if the contract is not completed by the date therein mentioned to give the contractor notice in writing extending the time for completing the contract and that Government will claim compensation. No compensation could however be recovered unless actual loss were sustained.

5 If I am not mistaken, most Public Works Contracts contain an express provision to the effect that if the work thereby contracted to be done be not completed by the specified date Government shall have the right of determining the contract. In such a case it would be immaterial whether time were of the essence of the contract or not, and, if it were determined not to put an end to the contract, it would be sufficient to give the notice suggested by the Examiner.

6 I return the papers sent me and

I have the honor to be,

Sir,

Your Obedient Servant,

Ernest Barclay

Government Solicitor.

3075

9

188 3075

P. W. DEPARTMENT

Current No. 9953 b

From

Mr. Ernest Barclay
Govt Solicitor
Madras

ENCLOS.—

No. 540

Dated 21.10.89

Received 22.10.89

SUBJECT.

Rel. to the procedure for extending the time for the completion of P.W. contracts

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DISPOSAL.

No. Dated

With order

9

A No. 3075 W of Octr 31, 1889

9535 & 9953.

Communicated for the information and guidance of officers of the P.W.D.

W. 10.89

Recd 30.10.89

C. E. for I.
C. E. P. Br
S. E.
Ex P.W.A.
C. A. to Govt
C. E. for Rys
Ex Ry Accts

Delivd 8/11/89

Hw. 28.10.89

R 31/-

3075

10

Gobt. of 18 Madras.

PUBLIC WORKS.

31/10/89

Dated

Recd. Encl.

G.O., 31 Octr 1889 No. 3075W

Contract Agreements

Opinion of the Govt Solicitor on the question raised by the Ex Eng, Coimbatore, regarding extension of time for completing works beyond the date specified in —, circd to officers of the Dept.-

(10)

200/15

Ed 31/10-

E. 31