

(1) பக்கங்களின் எண்ணிக்கை 10

(2) புதுக்கித் திருப்பிய நாள் 8/89

(3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம் 10/89

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

பெளத்யபணித்
துறை

அரசாணை எண். 130
மு. கோப்புத் தாள் எண்.

அச்சகம்
பலவகை

நாள் :

16-1-1890

5

மடிக்கவோ கண்டபடி கையாளவோ கூடாது

சுருக்கொப்பம்

✓ 3 Letter from the Executive Engineer
Lucknow Division to the Suptg.
Engineer Civil No. 410 SE of 5th Dec/89

In reference to your endorsement
No. 815 TC of 2. 12. 89, on my letter No. 392 SE
of 26. 11. 89, herewith returned I have
the honor to request that you will con-
sider that letter cancelled - the informa-
tion required is again stated in this
letter.

2. In para 4 of the letter No. 540 dated
21. 10. 89, from the Government Solicitor
printed with G.O. No. 3075 W of 31. 10. 89, it
is not clearly stated when time is to be
held as of the essence of a contract.

The Government Solicitor refers to para
3 of the Executive letter also printed
with the G.O. and remarks that in
cases where time is not of the essence
of a contract he agrees with the
remarks contained therein - but
these remarks refer to cases where
a time is specified in the bond for
the completion of the work - thus it
may be inferred that although
a date may be specified in the bond
for completion of a work yet time is not

usually of the essence of the contract. This is further supported by second sentence of para 3 of the Government collector's letter -

3. I should therefore wish to be informed for my guidance.

(1) Under what conditions time is to be considered the essence of a contract.

2) When time is not of the essence of the contract - although a date for completion may have been fixed in the letter it would be necessary.

to prove the actual direct money loss caused by non-completion within the specified time before fine or compensation could be exacted.

In most cases it would not be possible to state the actual loss although there might be heavy indirect loss -

874.T.C.
Copy submitted to the Chief Engineer P.W.D. for order of Govt on the points raised by the Executive Engineer -

It is certainly quite impossible

7/130

to state, in many cases the direct or actual loss entailed from failure to complete a work by the stipulated period; from the Govt. Solicitor's letter it would appear that in such cases no compensation could be recovered. Then the stipulation or condition as regards time in the contract must virtually remain a dead letter. In almost all P.W. contracts time is one of the essential conditions & specific mention of the same is therefore made therein, as admitted by the Govt. Solicitor in para 5 of his letter. If this stipulation is to be of no avail it seems that 50 per cent of our contracts will be quite useless.

Al Smith
Supt. Engineer
Supt. Engineer's Office.

Trichinopoly
12th Dec 1889.
D 73/-

From
The Supt. Engineer
VI Circle,
To,
The Chief Engineer
P.W.D.

No. 87470
Dated 12th 3 December 1899.
Dep^d 13 3

Submits for orders
of Govt. questions in con-
nection with contracts
when time is the condition
specified as essential
to a contract &c -



No. 1436
4
No. 5987. C d/21 December/89
Referred to the
Govt. Solicitor for favour
of remarks with reference
to his letter No. 540
dated 21st October/89.

P. W. D. - K. B. S.
Lt. Col. K. B.
Ag. Jt. Secy. to Govt.
P.W.D.
Wm
19.12.89

NO. 14

MADRAS. 9TH JANUARY 1890.

FROM,
ERNEST BARCLAY,
GOVERNMENT SOLICITOR
MADRAS.
TO,
THE ACTING JOINT SECRETARY TO GOVERNMENT
PUBLIC WORKS DEPARTMENT
SIR,
1. WITH REFERENCE TO YOUR DOCKET NO. 5987 DATED 21ST ULTIMO I
HAVE TO ADVISE AS FOLLOWS.
2. TIME IS SAID TO BE OF THE ESSENCE OF A CONTRACT WHERE THE INTEN-
TION WAS AT THE TIME THE CONTRACT WAS ENTERED INTO THAT TIME SHOULD BE OF
THE ESSENCE OF THE CONTRACT AND IF THE CONTRACT IS NOT PERFORMED BY THE
DATE FIXED THE WHOLE CONTRACT BECOMES NULL AND VOID & SUBSTANTIAL PERFORMANCE
HAVING BECOME IMPOSSIBLE, DAMAGES WOULD GIVE NO ADEQUATE COMPENSATION. FOR
INSTANCE IF A WORK HAS TO BE COMPLETED BY A PARTICULAR DATE & IF NOT COM-
PLETED BY THAT DATE IT WOULD BE OF NO USE TO COMPLETE SUCH WORK AT ALL,
THEN THE TIME FIXED FOR THE COMPLETION OF SUCH WORK WOULD BE OF THE
ESSENCE OF THE CONTRACT. IN SUCH CASES IF THE CONTRACT IS NOT PERFORMED
OR SO MUCH OF IT AS MAY NOT HAVE BEEN PERFORMED BY THE TIME SPECIFIED
BECOMES VOIDABLE AT THE OPTION OF THE PROMISEE.
3. IF IT WAS NOT THE INTENTION OF THE PARTIES THAT TIME SHOULD
BE OF THE ESSENCE OF THE CONTRACT, THE CONTRACT DOES NOT BECOME VOIDABLE
BY THE FAILURE TO DO THE THING CONTRACTED TO BE DONE AT OR BEFORE THE
TIME SPECIFIED; BUT, THE PROMISEE IS ENTITLED TO COMPENSATION FROM THE
PROMISOR FOR ANY LOSS OCCASIONED TO HIM BY SUCH FAILURE.
4. IN CONTRACTS ENTERED INTO WITH YOUR DEPARTMENT IT IS, IN MOST
CASES I THINK, PROVIDED THAT IF THE WORK CONTRACTED TO BE DONE IS NOT COM-
PLETED BY A PARTICULAR DATE, THE GOVERNMENT MAY ANNUL THE CONTRACT & THE
SECURITY DEPOSITED BY THE CONTRACTOR SHALL BE FORFEITED TO GOVERNMENT.

IN SUCH CASES, THOUGH I DO NOT THINK TIME COULD BE SAID TO BE OF THE
ESSENCE OF THE CONTRACT UNLESS THE WHOLE SCHEME CONTEMPLATED THEREBY
WOULD BE FRUSTRATED BY NON COMPLETION AT THE SPECIFIED TIME, YET THERE
ARE SPECIAL PROVISIONS IN THE CONTRACT FOR ITS CANCELLATION IN CASE OF
NON COMPLETION BY THE SPECIFIED TIME, AND GOVERNMENT WOULD, IN MY OPINION,
BE ENTITLED TO ENFORCE THOSE PROVISIONS AND WOULD ALSO BE ENTITLED TO
SUCH COMPENSATION NOT EXCEEDING THE AMOUNT OF THE SECURITY AS THE COURT,
SHOULD THE MATTER GO INTO COURT, MIGHT CONSIDER REASONABLE WHETHER OR NOT
ACTUAL LOSS HAD BEEN SUSTAINED. THE PROPER COURSE FOR GOVERNMENT IN SUCH
CASES WOULD BE TO ANNUL THE CONTRACT, FORFEIT THE SECURITY & LEAVE IT TO
THE CONTRACTOR TO TAKE SUCH ACTION AS HE MIGHT THINK FIT WITH A VIEW TO
RECOVERING ANY PORTION OF THE SECURITY, AND IT WOULD THEN BE FOR THE COURT
TO DECIDE WHETHER THE FORFEITURE OF THE WHOLE OF THE SECURITY WAS REASON-
ABLE UNDER THE CIRCUMSTANCES OF THE CASE. IF ACTUAL LOSS OR DAMAGE TO
GOVERNMENT BY REASON OF THE BREACH OF THE CONTRACT COULD BE PROVED IT
SHOULD BE PROVED, OTHERWISE IT MUST BE LEFT TO THE COURT TO DECIDE WHAT IS
REASONABLE COMPENSATION TO BE ALLOWED FOR THE BREACH OF CONTRACT.

5. WITH REGARD TO PARA 4 OF MY LETTER NO 540 OF 21ST OCTOBER LAST
WHERE I SAY THAT NO COMPENSATION COULD BE RECOVERED UNLESS ACTUAL LOSS WERE
SUSTAINED, I FORGOT, WHEN WRITING THAT LETTER, THE PROVISIONS IN CONTRACTS
WITH YOUR DEPARTMENT FOR DEPOSIT OF SECURITY AND ITS FORFEITURE UNDER
CERTAIN CIRCUMSTANCES. THESE PROVISIONS BRING INTO FORCE A SPECIAL SECTION
(74) OF THE INDIAN CONTRACT ACT WHICH WOULD ENTITLE GOVERNMENT TO REASON-
ABLE COMPENSATION FOR BREACH OF CONTRACT WHETHER OR NOT ACTUAL LOSS WERE
SUSTAINED.

6. I RETURN YOUR DOCKET &

I HAVE THE HONOR TO BE,

SIR

YOUR OBEDIENT SERVANT,

Amos Barclay

GOVERNMENT SOLICITOR,

4/130

No. 3075W of 31-10-89

9/30

P. W. DEPARTMENT.

Current No. 277 ✓

From

Mr Ernest Barclay
Govt. Solicitor
Madras
ENCLOS.—

No. 14

Dated 9.1.90

Received 11.1.90

SUBJECT.

Advising in what cases time
should be held to be of the essence
of a P.W. contract and what
course shd be adopted by
Govt. for non-completion of a
work by the time specified in the
contract when time is provided
as the essence of it

DISPOSAL.

Handwritten: 10/10/89
No. 13044
Dated 12028/89 & 27/90
Read Cuz

15 Jan. 1900
Communicated to
offices of the P.W. Dept in
continuation of P.O. No 3075W
of 31. Oct. 1889.

Ch. S. for S.
C. S. for S.
Ch. S. for S.
11.1.90
P.W. Dept
11.1.90

Govt. of 18 Madras.

PUBLIC WORKS.

Submitted
11/11/18
11/11/18

G.O. 16th Jan'y 1890 No. 130 W.Contracts.

Opinion of the Govt.
 Solicitor as to ~~whether~~
 Cause should be
 adopted for non-
 completion of a work
 by the time specified
 in the Contract when
 time is provided as the
 essence of it. Commr.
 to opinion of the Mr. Depy.

22/11/18
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