

Public Works (1897) Department.

G.O., No. 8 W

DATED 4. January

[Despatch Abstract.]

Conduct of the P.W. Officers: Letter from
S.E. to Civils Report regarding the in connection
with the remarks of the High Court on Contractor
Yelagadda Naidu's appeal, ~~claiming~~ recorded.

BACK PAPERS.

G.O.	No.	Department.	Date.
memo	3446C	P.W.	28-9-96 ✓
S.O.	2694W	"	22-8-96 ✓
"	2182W	"	29-7-96 ✓
"	2943W	"	18-11-95 ✓
"	1071W	"	6-5-95 ✓
"	954W	"	24-4-95 ✓
"	593W	"	12-3-95 ✓
"	2727W	"	26-10-94 ✓
"	2651W	"	19-10-94 ✓
"	1720W	"	10-7-94 ✓
memo	1779C	"	26-4-94 ✓
"	1661C	"	12-4-94 ✓
S.O.	2854W	"	6-11-93 ✓
"	2634W	"	16-10-93 ✓
"	45W	"	11-1-93 ✓
"	3296W	"	2-12-92 ✓
"	2797W	"	7-10-92 ✓
"	1229W	"	13-4-92 ✓
"	2507W	"	18-9-91 ✓
"	429B	"	23-6-91 ✓
"	1617W	"	15-6-91 ✓
"	3366W	"	26-11-89 ✓
"	2914W	"	16-10-89 ✓
"	4389C	"	1-10-89 ✓
"	4262C	"	23-9-89 ✓
"	4204C	"	19-8-89 ✓

FURTHER PAPERS.

P. W. Dyer

Cum 11207.

note for this day. The Governor

Letter from the
Superior Court at Circle
1534 W.D. dated 9 Dec
1896 is submitted with
reference to His Honor's note
of 9-9-96 on the paper
flagged A-

Having considered the explanation
offered by the Supt. Engineer,
I remain of opinion that the
structures of the High Creek were
deserved. Town surmised that
P.W. should have ~~accepted~~ allowed
the Dept. ~~with~~ such structures to be
based upon it, without an attempt
either to justify itself or to bring
the offending officer to book.

794 20.12.96

In the appeal
suit filed before the
High Court by Contractor
Yerla gadda Nayudu
in connection with claims
for work done on the
Perjan channels, the High
Court observed in its
judgment that everything
done by the P.W. Officer
was not done above board
& that the plaintiff has
been unjustly & venally
dealt with from the very
beginning. The Super-

+
Engl. answers these state-
ments so far as he can
do so from the records
in his office. He appears
to have gone most carefully
into the matter, and
the undersigned considers
that the conclusions
arrived at may be
accepted - There seems
no doubt that the
officers of the P.W. Dept
were hampered, & that
their work retarded by
quarrels & law proceedings
between the contractors.

The Sup^r, ^{supra}
was not asked to make
any inquiry into the
transaction relating to
the sale of Mr Targett's
furniture - that matter
was most fully sifted
in 1889, and Mr Targett
& the supervisor, Abdul
Latif Sahib, were held

+ Letter No 1534 und. 7
9.12.96 (Flagged B)

This puts the finding in a way that is not
quite correct, to my mind. Mr Targett was
found guilty of a serious indiscretion,
and was warned to be careful not to use
his subordinates as agents for his private
affairs. The matter has, however,
been disposed of.

REH 28.12.96

by Govt. to be practically
blameless, - please see
No. 4. 3366 W 7 26.11.89
[Flagged C] & the papers
attached thereto.

11/12/96
W

W

Submitted with
reference to H.E.'s note
of 20.12.96.

Apparently nothing
more can now be done
except to record the
proceedings.

As regards H.E.'s
note at the end of your
note of 14.12.96, it is
submitted that the
words "practically blame-
less" referred to the
decision in the S.C. of
Nov. 1897 (H.E. 10)
that there was no ground
for imputing any
corrupt dealing in
the matter of the sale
of the Targeti furniture.

C

21.12.96

Record

22/12/96

From A. Joyce Esquire, Exe-
cutive Engineer, Madras Div, to the
Superintendent, M. S. R. S. R.
of 27 November 1896: —

With reference to your No. 1284
dated 17 October 1896, I have the
honour to state that from want of
personal knowledge of the case &
the distance of time that has now
intervened, I do not see what ex-
planation I can furnish to the
structure of the High Court regarding
the procedure of the P.W. officers in
the case of GERALAGUDDA RAIDEU apart
from what can be gathered from the
records available in my office. The
alleged irregularity does not appear
to have been intentional but was
apparently due to the undermentioned
circumstances which the officers in
the interests of Government were bound
to pay strict attention to before Govern-
ment money was paid away: —

(1) Injunction orders from Court
prohibiting payments to either

the original Contractor Shunmuga
Mudaliar or Zeralagadda Raida.

(2) The revocation by Shunmuga Mudali
of his letter to the Inspecting Engineer
asking him to transfer his Contract
in the name of Zeralagadda Raida
and also the power of attorney
given by the former to the latter
to draw money.

(3) The pronouncement by the Assoc.
Tant Collector, Madras, to whom
the question of validity of the
power was referred, that the do-
cument which was given under
certain conditions was invalid, as
the conditions were not fulfilled.

(4) Counterpetitions from Shunmuga
Mudali that amounts due to him
should not be paid to Zeralagadda
Raida or his agent.

(5) Objections by Zeralagadda Raida
to certain deductions for value
of work done or materials supplied
by the Department to the Contractor
which the officers thought were
correctly made.

2. As regards deductions made
from final bills in favour of Shan-
muga Mudali for departmental work
done &ca they amount to Rs 2123-6-0
as per vouchers and the deductions
for baking Rs 1076-15-0 and the bills
do not show that the Contractor was
given credit to the latter to warrant
recovery from his dues.

3. It is presumed that the decree
amount & costs will be paid by the
Examiner P.W. accounts and debited
to this Division in the usual course.

4. The decree and judgment are
herewith returned.

/ True Copy /

D. V. Boddie

Lt. Col. R. B.

Superintending Engineer
9.12.96. W. Birch

8/12

No. 1534md

Superintendent's Office, Merito.
Treichinopoly. 9th December 1896.
5/9/-

From.

Lt. Colonel. O. V. Boddy, R.E.
Superintending Engineer,
Merito

To.

The Chief Engineer &
Secretary to Government,
Public Works Department,
Madras.

Enclosures: 2.

- 1. Decree & Judg.
ment referred
- 1. Copy of Engineer's
letter.

Sir,

With reference to your Memo.
number No. 3446C dated 28th
September 1896, I have the honor
to forward herewith copy of letter
No. 452 S.E. dated 27 November 1896,
from the Executive Engineer, Madras
Div, to whom your Memorandum and
copies of Judgment and Decree in Appeal
suit No. 88 of 1894 on the file of the
High Court was forwarded for report.

2. The Executive Engineer could
only found his report on information
gathered from the records in his office

P.W.E. 3
12/07/96

He enumerates 5 circumstances to which he considers that any irregularity that may have occurred can be referred, and that such irregularity, if any, does not appear to have been institutional. I agree with the Incubine Euznius.

3. I have no personal knowledge of the circumstances of the case, which occurred between 7 and 8 years ago, but I have gone carefully over all the records in my office bearing on it, and I have further examined Supervisor Abdul Latif Sahib, who was in charge of the Sub Division in which was situated the works the payments on account of which formed the origin of the appeal suit under reference.

4. It will be noted that when the appeal came on for final hearing, there was only one question at issue, viz. whether any amount, and, if so, how much is due to the plaintiff and whether interest is payable thereon.

5. But in considering the conduct of

of the officers of the P. W. Department the exact relation in which they stood, or in which they considered that they stood, to the Plaintiff Gerralagudda Raidu must be examined.

6. When the appeal first came on for hearing this point was considered but I cannot say, was decided. In the order made by the Court the possibility that the transfer of the Contract from Shanmuga Mudahar to the Plaintiff was not complete, is alluded to, since the possibility of suits being brought by the heir of Shanmuga Mudahar against the Defendant is admitted. The fact that these two Gerralagudda Raidu and the wife of Shanmuga Mudahar joined in bringing the appeal suit, secured the Defendant from such risks, but the question as to whether the contract was legally transferred by Shanmuga Mudahar to Gerralagudda Raidu does not appear to me to have been decided, nor, under the circumstances of

It is possible to bring suits. The point was not considered by the High Ct. because it was not relevant.

? See pp. 1+11 of judgment

of the suit was such decision requisite.

7. The circumstances of the transfer, or attempted transfer have already been reported to you, and I would refer you to this office letter No. 260 P.R. dated 13 August 1891 and to the copy of the letter from the Executive Engineer, ^{Nº 2. Periyar S.N.} ~~Madurai~~, No 1181 dated 24 July 1891, which accompanied it. No mention is made in those letters of the revocation⁽¹⁾ of the Power of Attorney by Shunmuga Mudaliar in a letter dated 2nd October 1889 but this is an important point in connection with the injunctions received on the 4th 7th October not to pay either Shunmuga Mudaliar or Zerralagudda Mudali pending settlement of their dispute.

8. It may be noted also that the Assistant Collector, Madurai, pronounced the power of attorney to be invalid, Vide para 1 (3) of Executive Engineer's letter now accompanying.

(1) Withdrawn 2 days later: see page 1 of Judgment

What on earth has the Asst. Collector to do with the validity of powers of attorney?

9. The state of the works at the time may be imagined:—

The officers of the Department anxious to push on with the works; the works more or less in abeyance, the Contractors quarrelling with each other and each claiming payment, while the Courts enjoined that payments should be made to neither.

It was, I think, a difficult position for the officers in charge of the works, and I consider that thus had ample justification in considering that the real contractor they had to deal with up to the end was Shunmuga Mudaliar.

10. The first question I have been directed to report on is contained in the following extract from the Judgment of the High Court:—

"From what has gone before, it is certain that everything done by the P.W. officers was not done alone board, but, whether owing to the furniture dispute or otherwise, we are unable to say."

The question of the furniture need not

I think he considered. It would be impossible at this time to throw any fresh light in the transaction. The Subordinate Judge went carefully into the question and he found "that everything was done openly and with due notice to the Public" and that no motive in this connection was established to account for the reductions made in the final bill by the Executive Engineer and Supervisor. The High Court indeed only refer to the question as a possible motive among others for everything not having been done above-board. The question of motive may, I think, be excluded from consideration, as what is desired to be arrived at is what were the things done by the P.W. officers which were not done above-board.

11. The claims made by the Plaintiff were on two accounts:-

First for a sum about Rs 3750 on account of work said to have been done by Shanmuga Mudaliar up to

30 July 1889.

Secondly for a sum of nearly Rupees 6000 for work alleged to have been done by himself from August to November. 12. As regards the sum of Rs 3750, the Plaintiff had absolutely nothing to advance in support of his claim. He was obliged therefore to fall back on the P.W. accounts. There is no suggestion that these accounts were other than perfectly correct. The Subordinate Judge carefully examined these, vide para 6 of his Finding, and the High Court accepted them. An examination of these accounts at once showed that the claim of about Rs 1627 out of the Rs 3750 was baseless.

13. There remained a sum of Rs 2123-6-0 which the P.W. Officers had deducted from amount payable to Shanmuga Mudaliar. Of this sum the deduction of Rs 1046-7-0 was held by the High Court to be correct. The balance Rs 1076-15-0 the High Court awarded to the Plaintiff. In

respect of this sum it is therefore necessary to see if the conduct of P. W. Officers was above-board or not. This amount was spent by the P. W. Department for baling purposes.

The High Court finds that Shanmuga Mudali received nothing on this account. Still the Department deducted the amount from the dues to Shanmuga Mudali. The High Court says that the effect of the deduction is to have got the work done for nothing at Shanmuga Mudali's cost. Here then at first sight appears to be a most unjustifiable action on the part of the officers of the P. W. Department and one which might rightly be described as not being above-board. And indeed if the work of baling had for its end merely the transference of a quantity of water from the inside of a deep pit to the outside, this finding would be correct. But this work of baling was not an end in itself; it was

a means to an end.

Before Shanmuga Mudali could put two stones together in the bottom of the foundation pit, all the water in the pit had to be removed, and not only removed but the constant influx of water had to be combated with, as the building in of the foundations progressed. I personally know the site of these works, and I am absolutely certain that the influx of water must have been very strong and constant. Shanmuga Mudali himself confessed to his inability to combat with it, when he asked the officers of the P. W. Department to do the work for him. The effect therefore of the P. W. officers in doing this work has not, in my opinion, been to have got the work done for nothing at Shanmuga Mudali's cost, but it has enabled Shanmuga Mudali to proceed with his work and make use of his material, for which work he has been paid and on which he doubtless

Nonsense: the baling was an item distinct from the masonry. Even the Sub-Judge admits this. See pp. 4 & 10 of Judgment.

made considerable profit. There is another point; the cost of building depends greatly on the expedition used in getting in foundation and raising superstructure above water level. Shunmuga Mudali was most dilatory; it was on this account his contract was cancelled.

There can be no reasonable doubt but that on this account the cost of building was much higher than it should have been had Shunmuga Mudali quickly and expeditiously brought up his masonry to above water level. I am informed by Supervisor Abdul Latif Sahib that even when the contract terminated the masonry was not brought up to above water level, and looking to the cost of Shunmuga Mudali's work compared with the total amount of the estimates, I see no reason to disbelieve the statement. The effect was of course, that when a new Contractor was engaged building again had to be resorted to.

16. In these circumstances I consider that the deductions made from

This was not proved or even urged at the trial. See p. 10.

It is a common practice in all countries to make claim more than one expects to get.

Shunmuga Mudali's dues on this account to have been a perfectly justifiable one, and that there was nothing that was not quite above board in the conduct of the officers of the P. W. Department in this respect.

17. Coming to the claim of Rs 5996-1-9 it will be seen that of this amount the sum of Rs 3,200 said to be due for work done from 30 Sep. to 20 November 1889 was disallowed by the High Court. The Plaintiff entirely failed to prove that any portion of this sum was due to him. It was one of those imprudent claims, of which, I should think, most officers in the Department have had experience, put forward by a contractor who had nothing to lose and everything to gain.

18. There remained the sum of Rs 2796-1-6 which the High Court has awarded to the Plaintiff. With respect to the nonpayment of this amount by the officers of the P. W. D.

it has to be seen if their conduct was or was not above-board.

19. The sum of Rs 2796-1-6 is the total of 6 Bills on account of 6 different works. They were intermediate bills, that is, they were not intended to be final bills. One bill was for earthwork Rs 53-8-4.

20. In the 5 remaining bills supply of material was an item. One bill indeed was wholly for the supply of material Rs 483-4-0. It will be seen how largely supply of material entered into these bills. They were made up to the 30th September. Two days later, that is on the 2nd October, Shunmuga Mudaliar revoked the transfer. The Executive Engineer was therefore justified in assigning this as a reason for not immediately complying with Zerralagudda's demands for payments. Two days later still, that is on the 4th October and also on 7th October injunctions against paying either Shunmuga Mudali or Zerralagudda were received. The Executive Engineer

He cancelled the revocation on the 4th Oct.

was

Cancelled 2 days later.

4
was therefore justified in assigning this as a reason for not complying with Zerralagudda's written demand for payment.

21. Similarly, I consider that the revocation of the Power of Attorney is a sufficient justification for entering Shunmuga Mudali's name in the place of Zerralagudda's in the bills. As before said I consider that the officers of the P. W. Department were justified in dealing with Shunmuga Mudali as the real Contractor. From para 14 of the Finding of the Subordinate Judge it will be seen that he is of the same opinion. If they were not so justified it has taken 7 years to decide so and the officers of the P. W. Department may therefore be excused for having looked at the transaction from the point of view they did when the demand for payment was first made. In my opinion there was nothing that was not quite above board in the transactions.

22. The question now comes as to the

deduction made from the bills of
Rs 2796-1-9. They were made on final
measurements, in which certain material
billed for in intermediate measurements
were found wanting. Supervisor Ab-
dul Latif Sahib informs me that he
included in the bills certain mate-
rial he found stacked in certain
quarries, on the representation of
Zerralaquada that the material was
his, prepared for the works. On the
final measurements the owners of the
quarries claimed the material as their
own, and refused to allow the mate-
rial to be taken from their quarries.
This material was therefore not in-
cluded in the final bills, which
would account for ^{seeming} overpayments.
It seems to me that a contractor who
was capable of claiming Rs 3,200
for non-existent work, would be
capable of entering in bills prepared
by himself the value of material which
did not belong to him.

23. I cannot find that there is
any proof that the deductions were

This may or may
not be true, but it
has nothing to do
with the plaintiff's
claim, for the alleged
overpayments were
made not to him
but to Shennungam
Pillai. The High Ct.
doubts the fact of
overpayment. It
is true it is not
creditable to the
Dept.

made otherwise than bona-fide,
and I cannot find that the of-
ficers of the P.W.D. acted in a
manner that might be called not-
above-board in their transactions.
24. The next question I have been
directed to report on is contained
in the final words of the High
Court Judgment:—

"The plaintiff has been un-
justly and vexatiously dealt
with from the very beginning."

25. The period covered during
which relations existed between the
officers of the P.W. Department and
the Plaintiff was from the 3rd August
1889 to 25th November 1889. "From the
very beginning" therefore is from the
3rd August 1889 on which date Shennungam
Pillai wrote to the Executive
Engineer asking that his contract
might be transferred to Zerrala-
quada Raide; on the 7th August 1889
the Executive Engineer replied that the
"Superintending Engineer does not
object to your effecting the transfer

"on the same conditions as are contained
in the present Contract now in force".

On the 20th August Zerrala gadda
wrote to say that he would accept
the Contract, but asking that addi-
tional works not mentioned in the
Contract should be given to him. This
request was wisely refused by the
Executive Engineer on the 22nd August.

Then on the 20th September the
Power of Attorney to make payment to
Zerrala gadda Raide was received, and
on the 30th September he presented cer-
tain bills for the countersignature
of the Sub-Divisional Officer and
subsequently he presented them for
payment to the Executive Engineer.
Thus far, for a period which covers
nearly 2 months I cannot find that
any unjust or vexatious act was
committed by the officers of the P.W.
Department.

26. After this date I have already
detailed what happened. On the 2nd
October the transfer was revoked, on
the 4th & 7th October injunctions against
paying

paying the contractor was received. In
the face of these the Executive Engineer
could only have made payments at his
own peril. Then come the final mea-
surements, & adjustments of missing
material. Possibly Zerrala gadda
considered it to be vexatious that he
was not paid for work which he did
not do.

27. I am however unable to disco-
ver any act of the officers of the
P.W. Department in their relations
with Zerrala gadda to which I would ap-
ply the terms "unjust and vexatious".

28. I have therefore to report that,
to the best of my judgment, & with the
material before me, I consider the
conduct of the P.W. officers to have
been wholly free from blame.

I have the honor to be
Sir,
Yours most obed^t & Servant,

D. V. Duddy, Lt. Col. R.E.
Superintendent, Works

[Signature]
8/12.