P.W.
~~Marine~~ (1898) Department.

Urgent.

G.O., No. 1607 W.

DATED 28 June 98

[Despatch Abstract.]

Bapatla Taluk Cutcherry Case.

Sanctioning the defence of the —— at Govt. expense, directing that the sum claimed by the Contractor be deposited in Court be [illegible] & remarking that Mr Lewis' share of responsibility for any loss will be considered after the decision of the Court is given.

Indexed.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department	Date.	G.O.	No.	Department.	Date.

---

3 / From Orders

[40/500]

Public Works DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 26th January 1898, No. 222W

Again G.O., dated 189 , No.

Current No. 873 of 1898, dated 1st February, from the Govt. Pleader, Madras
" " 2719 " 1898, " 24th March , " the S. E. II Circle
" " 3868 " 1898, " 4th May , " —— do ——
" " 4946 " 1898 " 11th June " the Govt. Pleader, Madras

ORDER. No. 1607 W. 28-6-98

The defence of the suit at Govt. expense is sanctioned.

2. The Govt. Pleader, Madras, considers that the Executive Engineer's two letters to the contractor do not amount to a notice of cancelment of contract, such as is contemplated by conditions 13 and 14 of the contract bond, and that the contractor is entitled to damages only to the extent to which he ~~prop~~ proves, he has actually sustained loss. The sum of Rs 500 claimed by the contractor as loss due to the cancelment of the contract should therefore be paid into the court before hand.

3. When the decision of the Court is given, Mr. Lewis' share of responsibility for any loss that may be

BACK PAPERS.

ceived against Govt. will be considered.

M. 6. 98

W

Maj

28/6/98

To

The Supdg. Engr. II Circle
with enclos. 7/4

" Examiner of P. W. Accounts

[43/500]

Public Works DEPARTMENT.

C. No. 4946

HIS EXCELLENCY THE GOVERNOR.

~~THE HON'BLE SIR HENRY BLISS, K.C.I.E.~~

~~THE HON'BLE MR. GROSE, C.I.E.~~

SUBJECT.

Bapatla Taluk Cutcherry Case

FOR ORDERS.

Submitted to His Excellency with reference to his remarks on the Note for orders dated 10th May 1898. (Flag C)

2. The Government Pleader is of opinion that the contractor is entitled to damages only to the extent to which he has actually sustained loss and that the onus of proving the actual loss rests with him.

3. In the above circumstances it is requested that the recommendations made in the concluding portion of my note for orders dated 10th May 1898 may be approved.

H. Bliss
15. 6. 98
W

Recommendations were approved.

A. H.
22. 6. 98

Flag Y

Maj

23 June 98.

H.E. 16.6.98 R 23.6.98

Note for the Government Pleader regarding the Bapatla Taluk case.

It is thought that the Contractor has no claim to dispute the measurements made by the Executive Engineer, nor the rejection of materials, which the Executive Engineer is competent to do under para 2 of Contract Bond.

2. The real point at issue seems to be whether the Contractor's claim for Rs.500, for loss sustained by cancelling the contract, will stand. The Executive Engineer states that the amount of damages depends on the fact whether the Contractor was working at a profit, and says he thinks he can prove he was working at an actual loss. If this can be done, is the amount decreed for damages likely to be merely nominal?. Secondly, would plaintiff's costs go with a nominal decree in his favour?.

Al Russell.

Under Secretary

Urgent.

Public Works (1898) Department.

CURRENT No. 873

His Excy the Governor

From

The Government Pleader
Madras.

for **Orders**

Submitted with reference to His Excy's note of 25-1-98, on the paper flagged B.

~~For orders~~ as to whether the Executive Engr. may now be told to endeavour to compromise the case.

No. 106

Dated 31st January 1898.
Received } 1.2.98
Registered }
Enclosures ~~returned~~
Spare copies

SUBJECT.

Stating that the two notes of th
Executive Engineer Kistna Western Dn. d
not amount to a notice as is contemplate
by conditions 13 and 14 of the contract bo

Send to G.P. II & say that
if Ex. Engr. has no further
evidence to ~~fix~~ lay foundation
of having given proper notice
sanction to defend it must be refused
2.2.98

to

BACK PAPERS.

No.	Date.

FURTHER PAPERS.

No.	Date.

Government Pleader's Office,
HIGH COURT,
Madras, 31st January 1898.

No.

From
E. B. POWELL, Esq.,
GOVERNMENT PLEADER,
Madras,

To
THE Secretary to Govt.
Public Works Department.

SIR,

With reference to the Proceedings of Government dated 26th January 1898 No: 222 W, I have the honor to submit the following:—

Opinion

1. The proper construction of conditions 13 and 14 of the contract bond appears to me to be that ten days notice in writing of his intention to cancel the contract and to take the work entirely into his own hands should be given by the Executive Engineer before he can lawfully cancel it.

2. Do the two notes to the Contractor dated 27th February and 12th March 1897 respectively amount to such a notice?

3

3. The first informs the contractor that it is impossible that he can complete the work in time and that unless he (the Executive Engineer) receives a report that the contractor is moulding three times as many bricks by March 10th, application will be made to the proper officer to cancel the contract.

4. I don't think the above amounts to a notice at all. But even assuming that it amounts to a conditional notice, it implies that the Executive Engineer considered there was a possibility of his being able to perform the work by increased activity in the moulding of bricks.

5. When the contractor found that the Executive Engineer was under a misconception as to the date by which the work was to be completed and that there was an additional year's time in which it could be completed he was justified in supposing that the threat of cancellation held over him was practically withdrawn.

6. The second note from the Executive Engineer admits his previous error as to the date in the contract bond and merely warns the Plaintiff that his work may be interrupted by the rains.

7. Reading the two notes together it is impossible to

say

say that they amount to a notice such as is contemplated by conditions 13 and 14 of the contract bond.

I have the honor to be,

Sir,

Your Most Obedt. Servt.,

E. H. Powell

Government Pleader.

to

No. 352 S

SUPG. ENGINEER'S OFFICE
No. 18 K

From
Wm. Lewis Esq
Executive Engineer
Kistna Western ~~~~

To
The Superintending Engineer
II Circle

Dated 13th January 98.
Respd.

Enclosures: 5.

Subject.

Suit filed by Annavarlapudy Sriramulu contractor Bapatla Taluq office. Submitting draft answer to the plaint in the ——

No. 160 KW / 17.1.98

Enclos: 5

Forwarded in original (to be returned) to the Chief Engineer Public Works Depmt. for favor of obtaining the sanction of Government to the suit being defended at the public expense.

Supdg. Engineer
II Circle

W.
/1

obtain sanction of Govt. to defend the suit

OWS / 878/98

H / 14/1

No. 3528. Kistna western Division,

Office, 13th January 1898

FROM,
W. C. Lewis Esquire,
Executive Engineer,
Kistna Western Division.

TO,
THE SUPERINTENDING ENGINEER,
II CIRCLE.

SIR,

Ref His No 22 P.W. d/7-1-98

Enclosures. 5
Draft answer.
Copies of this office Nos 1704 & 1793
Plaint with translation
Contract bond.

I have the honor to submit herewith my draft answer to the plaint in question.

2. The real facts of the case seem to be that the plaintiff was an inexperienced man with no capital and took the contract at estimated rates without knowing what the difficulties of brick manufacture really were and probably hoping to have inferior bricks passed and thereby make his profit.

3. There is a vast bulk of reports from officers and subordinates of the Department including Messrs R A Srinivasa Iyengar and Kalyanarama Iyer Asst Engineers to shew that the bricks were inferior and I myself inspected them

to

and Considers them very inferior whereas seeing that they are meant to stand without plastering and on an important work, the quality had to be most strictly insisted upon

4. It will probably be a very troublesome case to defend involving much travelling of witnesses and a long hearing and in point of direct cost it would probably be cheaper to compromise it; but as it is a representative case, of an incompetent contractor taking a contract, and hoping to make a profit out of bad work and the inertia of a Govt. Department I consider it should be fought out.

I have the honour to be
Sir,
Your most obedt Servt
W. Lewis
Executive Engineer

10/1/98

P.W.S.

No. 636 C of 3-2-98

Memo.

With reference to W. P. Memo 222 W dated 26 January 1898, the undersigned has the honour to forward copy of the Govt. ~~Re~~ + Pleader's opinion on the case of Contractor A. Sriramulu, and to state that if the Ex. Engr. Kistna Western division has no further evidence to bring forward of having given proper notice to the Contractor of the cancelment of his contract, sanction to defend

+ Letter No. 106 of 31-1-98.

INDEXED.

4/2/98

the suit must be refused -

2.2.98

No 222 W. 26-1-98

S.S. II circle, with copy of Govt. Pleader's letter & genl. enclos.

D 3/2/98

Public Works (1898) Department.

CURRENT No. 2719

No 1868C d/25/3/98

From The Supdg. Engineer 2nd Circle

No. 812 KW

Dated 21st March 1898
Received }
Registered } 24.3.98
Enclosures
Spare copies

~~Order~~ Deferred telegram

To the S.S. II circle
Bezwada

Your 812 K.W. twenty first instant - Please send again eight enclosures returned with my 636C third instant -

25.3.98

Telegram despatched - 25/3/98

I have written D.O to Mr Lewis advising him to compromise the suit if possible

25.3.98

SUBJECT.

Suit brought by A. Sreeramulu - Contractor for Constn. Taluq Cutcherry at Bapatla - Forwards for orders Mr. Lewis' letter asking for further instructions regarding the

INDEXED
28/3/98

BACK PAPERS.

No.	Date.

FURTHER PAPERS.

No.	Date.

Copy of the letter from W. C. Lewis Esquire Executive Engineer, Kistna Western Division, to the Superintending Engineer, Second Circle, No. 381S. dated 15th February/98.

---

unicating E.Ws.
o. 636c d/3-2-98

Reference His No 379K.W. d/7-2-98.

I have the honor to point out that the suit is brought against the Secretary of State as well as against me, and I am not aware of what is the proper course to pursue.

2) The contractor's claims include damages for breach of contract, and also a number of claims for items of work which are not due to him and also for some claims which are due to him.

3) Does the order of the Chief Engineer mean that the whole amount should be paid into court, or that the amount admitted should be paid into court, and the breach of contract admitted, and the court asked to assess the amount still remaining to be paid if any, 1st on measurements incorrectly made. 2nd for loss due to breach of Contract.

4) To what extent am I personally responsible for the amount decreed by the Court if any.

No 812 KW
21.3.98

Forwarded to the Chief Engineer Public Works Department for favour of orders.

In reply to a further reference, Mr Lewis states that he has no other evidence to offer as to formal warning having been given to the Contractor.

Mostokles
I/c
Executive Engineer
for, Superintending Engineer
II Circle.

JM.

No 1886 W

From
W. C. Lewis Esqr.
Executive Engineer
Kistna Western Dn.

To
The Chief Engineer
P.W.D.
Madras.

Dated 28th March 98.
Despd. "

Enclosures: 6.

Subject.

Enclosures, certain connected with Bapatla Taluq Cutcherry case.
Forwarding.

No. 1886 M. Kistna Western Division Office,
STATION, Guntur
28th March 1898

From,

W. C. Davis Esquire,
Executive Engineer,
Kistna Western Division.

To,

THE Chief Engineer
P. W. D.
Madras

SIR,

Encls: 6.

With reference to the telegm d/ 26-3-98 from the Supt. Engr. II Circle, I have the honor to forward herewith 6 enclosures connected with Bapatla Cutcherry Case as detailed below sent to Supt. Engr. with your Memo No. 636 C dated 3-2-98.

(1) Draft answer to plaint
(2) Copy of No 1704 M d/ 21-2-97 to Contractor A Veeramalu
(3) Do — 1793 M d/ 12-3-97 to do
(4) Translation of plaint
(5) Original plaint in Telugu
(6) Copy of Schedule Contract bond.

I have the honor to be
Sir
Your most obedt Servt
W Davis
Executive Engr.

C
28/3/98

Public Works (1898) Department.

CURRENT No. 3868

Urgent

D/

Order
No. 326 D., d/20^{d} May 1898.

Referred to the Govt. Pleader, Madras, for favour of opinion as to whether the suit in question can be successfully defended. A note of the points on which legal opinion is mainly required is attached.

Ag. Secretary to Govt. P.W.D.

From The Superintending Engineer II Circle

No. 1258 K.W.

Dated 28. 4. 98

Received 2. 5. 98

Enclosures 5

Spare copies

23/5/98

To The Govt. Pleader ~~Madras~~ with the ~~following~~ papers in original to be returned
(Note for the office. A list of the papers to be kept)

Copy to the S. E. II Circle.

IL 89

SUBJECT.

Bapatla Taluq Cutcherry Case — Submits certain papers regarding details of the claims of Contractor A. Sreeramulu —

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Kistna Western Division Office
Guntur: dated 21st April 98

From

W. C. Lewis Esquire,
Executive Engineer
Kistna Western Dn.

To

The Chief Engineer,
Public Works Department

Through the Superintending Engineer
Second Circle.

Enclo: 4
1 contr's schedule of claims.
1 copy of Final bill.
1 comp: statt.
1 Notes accompanying schedule of claims.
4 Total.

Sir,

In compliance with your telegram* dated 14-4-1898, I have the honor to forward the contractors schedule of claims which was only obtained in March through the Government Pleader, Masulipatam, together with a copy of the final bill as tendered to him and a comparative statement with notes on the differences of the items of work and materials.

*9D
14-4-98
at only

2. As for the item of claim Rs 500 for breach of contract the Govt

solicitor advises that a breach of contract has been committed. The damages due are quite another matter as I think we are in a position to prove that he was working at a loss.

3. I have paid into Court the Sum of Rs2469-11-11 being the amount of final bill as tendered and of the security reserved at 10 per cent. As a breach of contract has been committed, there is no excuse for our reserving it.

4. The case has been adjourned to 20th July and further orders are awaited from you.

5. The Contractor refused to meet me and the Sub-divisional officer when preparing the final bill; hence small differences in quantities but he has ~~been~~ evidently made use of our bill in preparing his claim.

I have the honor to be
Sir,
your most obedient servt.
W.Lewis
Executive Engineer
Kistna Western Dn

21/7/98

No. 378

SUPG. ENGINEER'S OFFICE,
No. 1308
26 APR. 93
P. W. D.
SECOND CIRCLE

No. 1258 K.W / 27.4.98 Encl: 4

From
W. C. Lewis Esqr.
Executive Engineer
Kistna Western Dn.

To
The Chief Engineer
P.W.D.
Thro: Supdg: Engineer
II Circle.

Dated 21st April 1898.
Despd. "

Enclosures: 4.

Subject.

Details of contractor A. Srisamulu's claims in Bapatla Taluq Cutcherry case.
Submitting the ―― with certain explanations.

Forwarded

W Hamman

Supdg: Engr:
II Circle

Public Works (1898) Department.

CURRENT No. 4946

From
The Govt. Pleader
Madras

Order

No. 445

Dated 10-6-98

Received }
Registered } 11.6.98

Enclosures 1 file returned

Spare copies

SUBJECT.

Submitting the opinion
in Bapatla Taluq
Cutcherry case –

o.L.S. 172

B27/6

BACK PAPERS.

No.	Date.

FURTHER PAPERS.

No.	Date.

Government Pleader's Office,

HIGH COURT,

Madras, 9th June 1898.

No. 445.

From

E. B. POWELL, Esq.,

Government Pleader,

Madras,

To

The Secretary to Government,

Public Works Department.

Sir,

With reference to your Endorsement No. 526 D,× dated the 20th May 1898, I have the honour to submit the following

× Enclosures returned

— Opinion. —

It is stated in the schedule to the plaint that Rs:500 is claimed as loss of profit to Plaintiff by cancelment of the contract. Before he can get a decree for the Rupees 500 the Plaintiff must prove that he has sustained that amount of damages in consequence of the contract having

been

been cancelled. If he fails to prove this he will only be entitled to nominal damages for the breach.

2. The costs will presumably follow the event and be awarded to the respective parties in proportion to the amounts allowed or disallowed. Ex. gra. Supposing the Court to allow Rs: 100 as damages the Government would be entitled to their costs on the amount disallowed viz- Rs: 4,623.14.3 out of the whole sum claimed viz. 4,723.14.3.

I have the honor to be,
Sir,
Your most obedient st.,

EW Powell
Govt: Pleader