Revenue Department

No 57

Entd 12 — 1 — 1859

No. 15. Read the following Extract from the Proceedings of the Board of Revenue, dated 17th December 1858, No. 4658.

Read again letter from Collector of Canara, dated 27th July 1858, No. ——

(In Con. 19th August 1858, No. 3475.)

Read also letter from same Officer, dated 27th October 1858, No. 123.

(In Con. 17th December 1858, No. 4944.)

In Cons. 16*th Sep.* 1858. Resolved that the above letters be submitted to Government for their orders with reference to Extract Minutes Consultation dated 13th September last, No. 1245, R. D.

2. In the last of the letters above recorded the Collector reports further on the case of the Goa salt Contractor Antony Naik, which was previously discussed at some length in the earlier letter, already on a previous occasion submitted to Government with the Board's Proceedings of 19th August last.

3. The facts of the case are briefly as follow.

4. In October 1857, Antony Naik contracted to supply 1,800 Garces of Goa salt, at prices ranging from Rs. 19-4 to Rupees 26 per Garce according to the port of delivery.

5. He failed to supply more than Garces 772, Indian Maunds 389, and among other measures adopted by the Collector to make good the deficiency in his stock thus created, was the purchase of some Garces 414 of Bombay salt at Rupees 50 per Garce which eventually from difference of measurement was raised to Rupees 53—for the difference between which cost price, and the Contract rates for Goa salt (less the difference of selling price) amounting to Rupees 7,187-5-3, the Collector now proposes to hold the Contractor liable, to Government.

6. There appears no question that under the strict letter of the Contract the Contractor is responsible for this amount if Government should think fit to enforce it, but the Board are of opinion that the case is one in which as an act of grace and policy the Government may with advantage waive their strictly legal rights, the enforcement of which would probably ruin the unfortunate Contractor and deter any individuals from coming forward with offers hereafter when the majority of the mercantile community combine against the Government.

7. The sole reason assigned by the Collector for recommending that the penalty be enforced, is that the Contractor denies altogether his liability, but the Board do not consider such an act on the part of a man who sees ruin staring him in the face, as any sufficient reason for advocating so harsh a measure.

8. In his report of 30th January last, the Collector brought to the knowledge of the Board, that the Contractor who was then much in arrears with his supply according to the terms of his Contract, stated that the amount contracted for was not procurable in the Goa territory, and Mr. Fisher went on to say that he had addressed the Goa Government on the subject to enable him to test the truth of this Statement.

In Consultation 2nd March 1858.

9. The result of this application for information has not been communicated to the Board, but the Collector has no where stated that it was adverse to the Contractor, and did not succeed himself in getting any further supply from Goa.

10. In the same letter he stated that 96,000 Indian Maunds was the amount represented by the Contractor as procurable, and very nearly this amount was delivered, and he further expressed his own opinion that the stock of Salt in Goa was probably low "as the out-turn of the last two seasons had been so bad."

11. In his next Salt Report dated 29th April last, Mr. Fisher after remarking that the Contractor's failure was "the result of want of foresight rather than of exertion on his part," stated that he was "prepared to recommend the grant of every indulgence compatible with the security of Government from loss consequent on the present failure, if due exertions are made to supply *after the monsoon* the Salt required," and he trusted the Board would take the same view of the case.

In Con. 22*nd June* 1858.

12. The Board however decided that it was preferable that the contract, which had really expired in March preceding should be finally closed.

In Con. 19*th August* 1858.

13. In his concluding report of 27th July last on the Salt Revenue of Fusly 1267, after pointing out that though there was a deficit of more than Rupees 40,000 as compared with Fusly 1266 (much of which was undoubtedly caused by the necessity of closing the Devamunni Ghaut during the trading season) still as compared with Fusly 1265 there was an increase of more than Rupees 60,000—he went on to state that Antony Naik expressed his willingness to supply such Goa salt as was obtainable, but denied his responsibility for the extra expense incurred by Government in consequence of his default, and that on the whole he was of opinion that the Contract should be finally closed and the Contractor held responsible for all losses. He further explained how the Bombay salt having been purchased by weight, but received by measurement, a further expenditure of Rupees 3 per Garce had been incurred making the total cost to Government Rupees 53 per Garce, at which rate he proposed to calculate the Contractor's liabilities.

14. The Board in their Proceedings of 19th August last on this report, after admitting the strict legal liability of the Contractor, declared themselves unwilling to punish him for a failure which appeared to be the result of circumstances beyond his control, and requested the Collector to re-consider the matter and submit a fresh proposal. They also stated their opinion that the Contractor was certainly not liable for the additional Rupees 3 per Garce abovementioned.

In Cons. 16*th Sep.* 1858.

15. These Proceedings were submitted to Government, who in Extract Minutes Consultation of 13th September last expressed themselves unable to concur in opinion with the Board, and stated they were of opinion that the performance of Contracts should be rigidly enforced though it might occasion hardship to individuals, and that only in very rare and peculiar instances should concessions be made by Government.

16. The Board being of opinion that the present case does offer such circumstances beg leave to recommend it for the favorable re-consideration of Government.

17. The Board have already stated several facts that in their opinion would justify this act of grace, but there are others of still greater weight.

18. In his last letter above recorded the Collector states that when first the Contractor entered the market, he had to contend against "a combination of merchants, who had forestalled him"—that he has "no doubt that the Contractor's speculation was any thing but remunerative" which was "attributable to unexpected competition from parties here, who bought up the salt, while he was contracting to supply it" and that thus "the early part of the season was lost, and difficulties increased until the whole broke down" and that had his arrangements been good, and had he submitted in the first instance to a certain amount of loss, "he might readily have supplied 1,200 Garces of Goa salt" instead of less than Garces 800. But as the Collector did not succeed in obtaining any Goa salt through other sources, this is a matter of opinion only and it is besides equivalent to admitting that under no circumstances could the Contractor have fulfilled his Contract for Garces 1,800.

19. Mr. Fisher however certainly proposes to limit the Contractor's liability to Garces 1,200, but this it may be observed is the whole amount of which his supply of salt, Goa and Bombay combined, consisted; he could scarcely call upon the Contractor to pay for salt, which even the aid of the Government Officials at Bombay was insufficient to obtain.

20. The Collector in his report on the Contractor's Petitions has not noticed his assertion that the enforcement of the penalty, combined with his losses on the contract, will effect his ruin, and the Board therefore consider that they may assume the truth of that Statement, but at the same time they desire to express their opinion that the Contractor's Statement that his difficulties were increased in consequence of the Collector refusing in his case to address to the Goanese Government "the usual letter" written on the occasion of similar contracts is quite unfounded.

21. An additional circumstance which the Board think worthy of consideration is the excessive price at which the Bombay Salt in question was purchased.

Fort Saint George, Revenue Consultation of 18*th January* 1859.

22. The average price at which Bombay Salt has hitherto been purchased by Government for the supply of the Government Monopoly is Rupees 22 per Garce, the price at which the liability of the Contractor is to be calculated is Rupees 53, and though it is true that this was the price paid by Government, the point is not therefore in the opinion of the Board unworthy of the consideration of a liberal Government.

23. It may be said that all with which the Contractor had to contend was incedent to the system of Contracts between Government and Mercantile men.

24. The Board will not dispute the general truth of this assertion, but feel that it is not altogether applicable to the Madras Presidency where the system of Government Contracts is of comparatively recent introduction, and needs to be judiciously fostered rather than indiscriminately enforced, and they are convinced that far more advantage will result to Government from a liberal consideration of the circumstances of individual cases, than can accrue from the strict enforcement of the letter of a Contract, where success has been barred by circumstances beyond the Contractor's control.

25. The Board beg to recommend that Anthony Naik be relieved from the penalties attaching to non-fulfilment of his Contract for the supply to Canara of Goa salt, as the failure appears to have been the result of circumstances mostly beyond his control, and because the enforcement of the penalty would in the opinion of the Board be inexpedient.

(A true Extract.)

(Signed) W. HUDLESTON, *Sub-Secretary.*

No. 16. ORDER THEREON, No. 57; dated 12th January 1859.

1. In their Proceedings dated 19th August 1858, No. 3168, the Board of Revenue noticed the case of one *Antonio Naik* who contracted to supply the Canara District with 1,800 Garce of Goa Salt within the month of February 1858, but only supplied about 772 Garce. They noticed that they had perused the deed of contract, and had no doubt of the Contractor's liability to make good the additional expense incurred by Government in purchasing Salt in consequence of his default. But they considered that such default had been caused by circumstances beyond the Contractor's control, and were not disposed to deal hardly with him.

Ex. M. C. 13*th Sep.* 1858, *No.* 1245.

2. The Government differed from the Boards' view of the case. They deprecated any interference whatever with the internal concerns of Contractors, and remarked that if this were done in one case, the trouble of enquiring into extenuating circumstances which would always be urged by a Contractor to evade responsibility, would be entailed on the authorities; it was only in very rare and peculiar instances they thought, that concessions should be made; "and if in the present case the man be really poor, and did indeed use his "best exertions to procure the Salt, the Government considered that some indulgence might be "shewn as a matter of grace and favor."

3. In their Proceedings recorded above, the Board again urge that Antonio Naik be relieved from the penalties attaching to the non-fulfilment of his contract. First, because the failure was the result of circumstances *mostly* beyond his control; secondly, because the enforcement of the penalty would, the Board think, be inexpedient.

4. It is to be observed that the defaulter does not admit his liability; and the Collector has not noticed his assertion that the enforcement of the penalty would effect his ruin, though the Board have assumed that Antonio's statement to that effect, is correct.

5. The Government are not of opinion that the present is a fitting case for the grant of indulgence. Did the man admit his liability, some slight consideration might be shewn him as a matter of favor, (as the Government remarked in their previous order); but he denies that he has defaulted, and Mr. Fisher accuses him of two falsehoods. The Governor in Council accordingly resolves to direct that the former orders be adhered to.

(Signed) J. D. BOURDILLON,
Secretary to Government.

Para 5 Pet.

No 57.

Extract from the Minutes of Consultation
Madras date the 12th January 1859.

Read the following Extract from the
Proceedings of the Board of Reve-
nue.

(Here enter 17 Dec 1858 No 4658.)

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1. In their Proceedings dated 17 Aug.
1858 No 3168, the Board of Revenue
noticed the case of one Antonio Naik
who contracted to supply the
Canara District with 1800 Garce
of Goa Salt within the month of
February 1858 but only supplied
about 772 G. They noticed that
they had perused the deed
of contract, and had no doubt
of the contractor's liability to make good
the additional Expence incurred
by Govt in purchasing Salt
in consequence of his default.

but they considered that such default had been caused by circumstances beyond the Contractor's control, and were not disposed to deal hardly with him.

2 The Govt differed from the Board's view of the case. They deprecated any interference whatever with the internal Economy of contractors, and remarked that if this were done in one case, the trouble of enquiring into extenuating circumstances which would always be urged by a contractor to evade responsibility, would be related on the authorities. It was only in very rare and peculiar instances that they thought exceptions should be made; ~~but~~ "and if in the present "case the man be really poor, "and did indeed use

GHC 13 Sept/58
No 1245.

the Salt, the Govt considered that some indulgence might be shewn as a matter of grace and favor.

3. In their proceedings recorded above the Bd. again urge that Antonio Nash be relieved from the penalties attaching to the non-fulfilment of his contract. First, because the failure was the result of circumstances mostly beyond his control; Secondly because the enforcement of the penalty would defeat the object which the Board think be intended.

4 It is observed that the defaulter does not admit his liability; and the Collector has not noticed his assertion that the enforcement of the penalty would effect his ruin, though the Bd have assumed that Antonio's statement of that effect is correct.

5. The Govt are not of opinion that the present is a fitting case for the grant of indulgence. Did the man admit his liability, some slight consideration might be shewn him as a matter of favour, (as the Govt remarked in their previous order); but he denies that he has defaulted, and Mr Fisher accuses him of two falsehoods. The G. in C accordingly resolves to direct that the former order be adhered to. It is hopeless to expect that contracts with such be fulfilled if the defaulting contractors are let off on failure; & this course the Govt are led to suppose, is almost invariably proposed for adoption.

WHB

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W.R.
Jany 5/59. Hospt Supts of Rev with 8 Encls Ch pc 13

C5 Jany 59 No 11

From the Bd of Rev - 8/17 December 1858

Memorandum

In their Proceedings dated 19 August/58, No 3168, the Board of Revenue noticed the case of one Antonio Naik, who contracted to supply the Canara District with 1800 Candies of Goa Salt within the month of February 1858 but only supplied about 772 C. They noticed that they had perused the deed of Contract, and had no doubt of the Contractors liability to make good the add.l Expense incurred by Govt in purchasing Salt in consequence of his default. But they considered that such default had been caused by Circumstances beyond the Contractors control, and were disposed to deal kindly with him.

2. The Govt (Exhd. 17 Sept 1854. Notes.) differed.
They deprecated any interference, whatever
with the internal concerns of contractors
and remarked that if this was done
in such case, the trouble of inquiring
into extenuating circumstances,
which would always be urged by a
Contractor to evade responsibility,
would always be entailed on the au-
thorities. It was only in any case and
peculiar instances that Concessions
should be made by Govt; "and if in
"the present case, the man be
"really poor and did indeed
"use his best exertions, the case
"the fault, some Concession might

remade as a matter of grace and
favor.

3. In this proceeding under review
the Bd again urge that Antonio N.
be relieved from the penalties
attaching to the non-fulfilment of
his contract.
First, as the failure was the result
of circumstances mostly beyond his control.
Secondly, because the Enforcement
of the penalty would, the Bd
think be inexpedient
The order of Govt. as directed
should be observed that Antonio
does not admit his liability;

and the Collector has reduced
his assertion that the Enforcement
of the penalty with effect his min;
though the Board have (with
what reason Gd will decide)
p20 assumed that Petr's statement
& that effect
is correct.

Dec. 22nd It is hopeless Disputes contracts
can be fulfilled - if the con-
tractors are let off. in future.
& this almost invariably the cause pro-
posed - Moreover this man disputes his
liability. that appears at all events to be
take of example. Dr Entablished -
& but might possibly be thrown off on further
this liability subsequently - tho' it appears
hardly a fitting case - as the Tichborne accused
prior of this falsehood - I fully concur in the above
HE

Cons. 14 Jan 1828-53-82.

Extract from the Proceedings of the Council of Agriculture, held at Paris, on the 12th January 1827.

Present

Count Chaptal, in the Chair.

Count Lasteyrie, Secretary.

The Minutes of the last Meeting were read and confirmed.

The Chairman informed the Council, that he had received a letter from M. Tessier, Member of the Institute, and Inspector General of the Flocks of Rambouillet, dated the 10th January 1827, announcing the death of M. Daubenton, Member of the Institute, and Professor at the Museum of Natural History.

No. 15 to 16.