

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1107	Press
		Mis.
Dated	8. 5.	1866

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
8th May 1866.*

Read the following papers :—

No. 162. Proceedings of the Madras Government in the Military Department.

Referring a letter from the Commissary General, requesting instructions as to the necessity or otherwise of executing Commissariat Contract Deeds on stamp paper. (Here enter 24th April 1866.)

No. 163. From the Officiating Commissary General, to the Secretary to Government, Military Department, Fort Saint George, dated Madras, 26th April 1866, No. 8,858.

1. In compliance with your Official Memorandum, No. 46 of the 25th April 1866, I have the honor to forward two copies of the form of Contract Deed in use with this Department.

2. Form No. 1 is the form which has been hitherto used, and to which the various opinions of the Law Officers refer.

3. Form A. is the one recently prepared by the Government Solicitor, and sanctioned by Government.

Transferred to the Revenue Department.

(Signed) H. MARSHALL, Major-General,
Secretary to Government.

FORT SAINT GEORGE,
28th April 1866.

No. 164. ORDER THEREON, 8th May 1866, No. 1,101.

Separate Revenue, No. 2.
Stamps.

1. The Governor in Council considers the opinion of the Advocate General recorded in Government Proceedings, 30th May 1865, No. 517, to be correct.

2. Although the Agreements referred to are signed by the Contractor, they are nevertheless made and signed by the Commissariat Officer on behalf of Government, and therefore fall within the general exemptions under Section A.

(True Extract.)

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

To the Military Department,
,, the Board of Revenue.

Exd. S. T. Augustin.

Military Dept.

Proceedings of the Madras Government

Read the following.

N^o. 8606

Comd^g. Genl^l. Office

Madras 14th April 1865

From The Off^g. Comm^g. General
Madras.

To The Sec^y. & Gov^t.
Military Dept.

From St. George.

Sir, I have the honor to bring to your notice that considerable inconvenience is now experienced in consequence of the contradictory opinions which have been expressed by the law authorities of Madras and Bengal regarding the necessity or otherwise of executing Commissariat Contracts &c. on stamped paper.

2. The Bengal authorities have maintained throughout that the Commissariat Agreements should be executed on stamped paper of the value of one rupee under section 1 of the Stamp Act.

Vide Pro. of Gov^t. of 11th Feb^y 1865.

3. After the first publication of the Act in Madras, Commissariat Agreements were executed on stamped paper, but in the beginning of 1864, Govern^t. decided that this was unnecessary and directed the refund of the value of the stamps that had been so affixed.

Or. of Madras Gov^t. 439 of 27th Feb^y 1864.
D^o. D^o. 796 of 10th April 1864.

4. Subsequently, however the Madras Gov^t. decided in order N^o. 290 of 11th Feb^y 1865, Res. Dep^t., that under the amended Act of 1862, Commissariat "Bonds" should be executed

executed on stamped paper.

5. This decision was based upon the opinion of the Bengal law officers, who evidently considered the document used by the Commissariat was a bona fide "Bond". But the concluding clause of Mr. Cowie's opinion, in which he suggested the use of deeds of covenant in lieu of Bonds, caused an enquiry to be made as to whether the documents used by the Commissariat and commonly called "Bonds", were really bonds in a legal sense.

6. This point having been decided by the legal authorities in the negative, the opinion of the Bengal law officers appeared no longer applicable to our case. It was therefore again referred to Govt., who having obtained the opinion of the Advocate General { Dr. of Madras Govt. R.D. 1144 of 30th May 1866. -
Or. of Govt. R.D. 2092 of 5th June 1865. -
thereon, decided that the deeds used by the Commissariat are "Agreements," and not "Bonds", and that they came already within the exemption of Schedule A of the Stamp Act and do not require to be stamped.

7. Instructions were accordingly sent to Commissariat officers informing them that they need not insist on Commissariat deeds being executed on stamped paper.

8. Stamp Acts have however been also introduced into the Native States of Hyderabad and Mysore, and the local Magistrate at Hyderabad having made his own interpretation of the point of law, called on the Commissariat Dept^{ts} to cause their contract deeds to be stamped.

The

9. The Magistrate on being requested to show on what clause of the Act he founded his claim, forwarded a reply, from which it appeared that he looked upon Commissariat Agreements as bona fide bonds, and exacted a heavy tax on them.

10. As this opinion appeared to be incorrect, I addressed the Magistrate on the 24th July 1865, and forwarded him a copy of Order of the Madras Government ruling that Commissariat deeds need not be stamped, and requested him to lay the same before the Resident.

11. Meanwhile I received a communication from the Commissioner General Bengal,

The terms of the general exemption in the present Stamp Act, materially differ from those of Act 36 of 1860, the former Stamp Act. By the latter deeds ~~in~~ in which Government or their Officer was a party, were declared exempt from stamp duty. But it is otherwise with the present Act under which it has been always considered by Mr. Cowie and myself on references from many public departments, that all instruments except those made or executed by Government Officers, are liable to stamp duty. There are many cases in which the obligatory special conditions were on the side of the Contractor with Government who signs the deed or instrument of contract, while the Government Officer signs no deed, the obligation of Government simply being to pay the price of goods or work done. There is also the common case of security bonds to the Secretary of State.

As regards the Commissariat Agreements, I agree with Mr. Cowie that they are not in the nature of agreements for the payment of money, and that they ought to bear an Agreement stamp.

(Signed) J. Graham.

bear an agreement stamp (1 Rupee).

12. Shortly after the Magistrate at Hyderabad in reply to my reference

forwarded

enclosing copy of an opinion of the law officers at Calcutta to the effect that Commissariat bonds were agreements and should

forwarded a copy of a similar

opinion of
the Calcutta
law officers.
that Com-
-missariat
Agreements
need only
bear a one
rupee stamp,
and this ru-
-ling is now
acted upon
in Hyderabad
-head, whilst
in the re-
-mainder
of the
Madras
Presidency
no stamps

Opinion

The terms of the general exemption in the present Stamp Act materially differ from those of the former Act which exempted all instruments to which Government or its officers were parties. Since the existing Act came into operation, the present question has been referred to Mr. Cairnes and myself on numerous occasions, and we have always been of opinion that there is no exemption unless the instrument is made or executed on behalf of Government. I understand the word "made" to be used as equivalent to "executed" or at all events not to be used as having any intelligible different meaning. There are many instances in which all the special terms of an instrument are to be performed by one of the parties, the other party not being required to sign the instrument; sometimes because he is not required to do anything under it, or in other cases because his obligation under it is simply that arising in law, such as to pay for goods or work done. There is also the common case of indemnity and security bonds to the Secretary of State. I therefore with full respect for the Advocate General of Madras remain of opinion that these Commissariat Contracts executed by the Contractor and not executed by the Commissariat Officer are liable to stamp duty although if a counterpart be signed by the Commissariat Officer only, in favor of the Contractor, such counterpart would be exempt.

As to the proper stamp in these cases, I concur in considering them Agreements under section 1 and not of the nature of bonds under section 18, and of this opinion was Mr. Cairnes on a reference from the Commissariat Department in March 1864.

Signed J. Graham

are required -

13. As these differences of practice are inconvenient, and as the balance of legal opinion seems to be in favor of the decision which requires that all Commissariat Agreements should bear on Agreements stamp of one Rupee, I submit for the consideration of Govt whether it would not be better to adopt this ruling in this Presidency so as to ensure uniformity of practice.

I have the honor to be,
Sir,
Your obedient servant,
J. Miller, Secretary to Government

Order thereon 24th April 1866 N.

Referred to the Revenue &
Department with advertisement to pre-
-vious correspondence.

Signed / R. Marshall
Major General
Secretary to Government

[Signature]

It is further agreed that the said _____ shall not be directly or indirectly concerned, or in any way deal with the servants of the Commissariat Department otherwise than by the terms of this contract, or to

84 May 1866

Although the agreements referred
to are signed by the contractors
they are nevertheless made by the com-
missioners of prison on behalf of Govt and
therefore fall within the general scope
of laws under which.

*Form of Agreement for Articles of
Rations of which
Samples are depo-
sited*

day of

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hereinafter called "the Contractor" of the one part, and THE RIGHT HONORABLE THE SECRETARY OF STATE FOR INDIA IN COUNCIL hereinafter called "the Purchaser" of the other part.

WHEREAS the Contractor has agreed with the purchaser to supply to the Commissariat Department of the Madras Government (hereinafter called the said Department) at

all such quantities of the articles and things specified and described in the Schedule hereto annexed, (and which said articles and things are hereinafter referred to as the said articles and things) as the Contractor shall be required by the said Department to supply at any time or times hereafter during the period of _____ commencing from the _____ day of _____ and at the price or prices, _____ and in the manner and upon the terms and conditions hereinafter mentioned.

And whereas the Contractor has deposited samples or specimens of the several articles and things which are to be supplied by the Contractor, in the Office of the Commissary General of the Madras Government at _____, and in order to identify such samples or specimens for the purposes hereafter mentioned, such samples or specimens have been sealed with the respective seals of the said Office and of the Contractor,

And whereas the Contractor has also blank endorsed and deposited in the said Office the Promissory Note or Security of the Government of India hereinafter described (that is to say)

As Security for the due and faithful performance by the Contractor of this his Contract.

NOW THESE PRESENTS WITNESS, that for carrying the said Agreement into execution, the Contractor on the one part for himself, his heirs, executors, administrators and personal representatives, and the purchaser on the other part for himself, his successors and assigns mutually covenant, declare, contract and agree, every of them with the others and other of them, in manner following (that is to say).

At any time or times and at all times, during the period of _____ commencing from the _____ day of _____ at which the Contractor shall be required by the said Department so to do, the Contractor shall and will supply to the said Department at and for such price or prices as are specified in the said Schedule, all such quantities of the said articles and things as the said Department shall from time to time require the Contractor to supply under this Contract: and all such articles and things shall be delivered by the Contractor between such hours, on such day or days, at such place or places, to such person or persons and in such manner as the said Department shall from time to time and at any time require or direct.

All articles and things supplied by the Contractor shall be of the same qualities and descriptions as the said samples or specimens, and shall be in all respects equal thereto.

All articles and things supplied by the Contractor shall be subject to inspection and acceptance or rejection by such person as the Commissary General at Madras for the time being shall from time to time name and appoint to that duty or for that purpose, (and which said person to be so named and authorized as aforesaid, is hereinafter referred to as the Inspecting Officer).

All articles and things supplied by the Contractor shall likewise be subject to inspection and acceptance, rejection or condemnation by any Regimental Committee assembled under the provisions of G. O. G. 233 of 1853, or any other order or rule in force for the time being within the Presidency of Madras authorizing the assembling of any such Committee.

All articles and things supplied by the Contractor shall likewise be subject to inspection and acceptance, rejection or condemnation by any special Committee assembled by the Officer Commanding any station under the provisions of O. M. G. 1037 of 1863, or any other order or rule in force for the time being within the Presidency of Madras authorizing the assembling

All articles and things supplied by the Contractor which in the opinion of the Inspecting Officer shall be in bad order, unsound, unmerchantable, inferior in quality to the said samples or specimens otherwise faulty or unfit for use, or positively unwholesome, shall and may be rejected by the Inspecting Officer, and unless any such Regimental Committee as aforesaid shall have been assembled for the purpose of inspecting such articles and things so rejected by such Inspecting Officer as aforesaid, his opinion and rejection shall in all respects be final and conclusive and altogether operative and binding upon the Contractor, and shall not be open or subject to question or dispute by the Contractor upon any ground whatsoever.

All articles and things supplied by the Contractor which in the opinion of any such Regimental Committee or Special Committee as aforesaid shall be in bad order, unsound, unmerchantable, inferior in quality to the said samples or specimens, or otherwise faulty or unfit for use, or positively unwholesome, shall and may be rejected or condemned by any such Regimental Committee or Special Committee as aforesaid, and unless any such Special Committee as aforesaid shall have been assembled for the purpose of inspecting such articles and things as shall have been rejected or condemned by any such Regimental Committee as aforesaid, the opinion and rejection or condemnation of any such Regimental Committee as aforesaid shall be in all respects final and conclusive and altogether operative and binding upon the Contractor, and shall not be open or subject to question or dispute by the Contractor upon any ground whatsoever: and the opinion and rejection or condemnation of any such Special Committee as aforesaid, upon any such articles and things as aforesaid, shall be in all cases and in all respects final and conclusive and altogether operative and binding upon the Contractor, and shall not be open or subject to question or dispute by the Contractor upon any ground whatsoever.

All articles and things supplied by the Contractor which shall be rejected by the Inspecting Officer, and upon which no such Regimental Committee as aforesaid shall have been assembled shall be removed by the Contractor within _____ hours after such rejection shall have been notified to the Contractor by the Inspecting Officer.

All articles and things supplied by the Contractor which shall be rejected by any such Regimental Committee as aforesaid, and upon which no such Special Committee as aforesaid shall have been assembled, shall be removed by the Contractor within _____ hours after such rejection shall have been notified to the Contractor by any such Regimental Committee as aforesaid.

All articles and things supplied by the Contractor which shall have been rejected by any such Special Committee as aforesaid, shall be removed by the Contractor within _____ hours after such rejection shall have been notified to the Contractor by any such Special Committee as aforesaid.

All articles and things supplied by the Contractor which shall have been condemned by any such Regimental Committee or Special Committee as aforesaid upon the ground of their being positively unwholesome, shall be forthwith destroyed in the presence of the Committee which shall have condemned the same, and the Contractor shall not be at liberty to remove the same or any part thereof.

In lieu of the articles and things which shall have been rejected or condemned by the Inspecting Officer or by any such Regimental Committee or Special Committee as aforesaid under the provisions hereinbefore contained or any or either of them, the Contractor shall and will within _____ after such rejection or condemnation shall have been notified to him as aforesaid, supply and deliver to the said Department between such hours, at such place or places, to such person or persons, and in such manner as the said Department shall require or direct, such quantity or quantities of the said articles and things of the same quality and description as the said samples or specimens and in all respects equal thereto, as shall be equivalent in quantity or quantities to the quantity or quantities of the said articles and things which shall have been so rejected as aforesaid, or such other articles and things as the Inspecting Officer or any such Regimental Committee or Special Committee as aforesaid shall authorize the Contractor to supply and deliver in the stead of and in substitution for the articles and things which shall have been so rejected or condemned as aforesaid.

In case of neglect or refusal on the part of the Contractor to supply and deliver any of the said articles or things, or any other articles or things which the Inspecting Officer or any such Regimental Committee or Special Committee as aforesaid shall have authorized the Contractor to supply and deliver in the stead of and in substitution for any articles or things which shall have been so rejected or condemned as aforesaid, and which the said Department shall from time to time require the Contractor to supply and deliver, and of such approved quality, and at such time or times, place or places, and in such manner as hereinbefore provided, and so often as any such neglect or refusal shall happen it shall be lawful for the Commissary General at Madras for the time being, or any person by him thereunto authorized, to purchase elsewhere and from any other person or persons whomsoever such quantities of the said articles and things as shall not have been duly supplied and delivered by the Contractor, or as shall be required in lieu of any articles and things which shall have been so rejected as aforesaid, and to charge the difference (if any) between the price or prices of the articles and things which may be so purchased, or the monies which may have been paid for the same, and the price or prices payable under this Contract for such articles and things, against the Contractor; and in addition thereto to impose upon the Contractor a fine not exceeding the sum of _____ Rupees for each and every such case of neglect or default.

The Contractor shall pay and reimburse to the purchaser such difference in price as aforesaid, and such fine or fines as aforesaid, within _____ days after the same shall have been demanded from him by or on behalf of the purchaser.

The Contractor shall and will submit and deliver to the said Department on or before the day of every Calendar month, a bill or bills in the usual and proper form, for all articles and things supplied under this Contract during the previous Calendar month, and in default of the Contractor so doing, it shall be lawful for the Commissary General at Madras for the time being, or any person by him thereunto authorized, to impose upon the Contractor a fine of 5 Rupees per diem for each and every day after the _____ day of every Calendar month that such bill or bills as last aforesaid shall remain undelivered, and the Contractor shall pay to the purchaser such fine or fines as aforesaid, within _____ days after the same shall have been demanded from him by or on behalf of the purchaser.

The Contractor shall not be in any way interested or concerned directly or indirectly with the servants of the said Department in any trade, business or other transaction whatsoever, nor shall the Contractor give or pay, or promise to give or pay to any such servants directly or indirectly, any money or fee under the designation of "custom" or otherwise, nor shall the Contractor assign or make over this Contract directly or indirectly to any person or persons whomsoever, or permit any person or persons whomsoever to interfere in the management or performance hereof.

The Contractor shall at all times during the continuance of this Contract, obey and carry out in all things the orders, instructions and directions of the Commissary General at Madras for the time being, and of all officers and servants acting under his orders and by him authorized to act, in all or any of the matters and things herein contained, and the Contractor shall abide by the decision of the Commissary General at Madras for the time being, and of any Officer or servant acting under his orders and by him authorized to act for him, in all matters relating to or in any wise concerning the construction of this Contract, or any matter, cause or thing herein contained, or any question arising thereout, any and every such decision as last aforesaid shall be final and conclusive and altogether operative and binding on the Contractor, and shall not be subject to question or review upon any ground whatsoever.

Within _____ days after the delivery and acceptance of any articles and things supplied under this Contract, the purchaser shall and will pay the Contractor for all such articles and things so delivered and accepted, at the rates specified for such articles and things in the said Schedule.

Upon the complete fulfilment of this Contract by the Contractor to the satisfaction of the Commissary General at Madras for the time being, the said Promissory Note or Security of the Government of India shall be re-endorsed to the Contractor.

In case the Contractor shall fail or neglect or refuse to observe, perform, fulfil and keep all, or any one or more, or any part of any one or more of the Covenants, stipulations and provisions herein contained, it shall be lawful for the Commissary General at Madras for the time being, (if he shall think fit so to do) on any such failure, neglect or refusal as aforesaid, by any writing under his hand to put an end to this Contract so far as regards the purchaser, and thereupon every article, clause and thing herein contained on the part of the purchaser shall cease and be void - and (in case any money difference in price or fines shall then be due from

the Contractor to the purchaser) it shall also be lawful for the Commissary General at Madras for the time being, to sell and dispose of the said Promissory Note or Securit of the Government of India for the amount of Rupees at or for the market value thereof, and with and out of the proceeds of such sale (after payment thereof of all expenses connected therewith) to reimburse to the purchaser all such monies, damages, losses, expenses, difference in price and fine or fines as the purchaser shall have sustained or been put to by reason of the Contractor having been guilty of any such failure, neglect or refusal as aforesaid, or other breach in the performance of this his Contract, or as shall for the time being be due and owing from the Contractor to the purchaser.

And if the amount of the proceeds realised by the sale of the said Promissory Note or Securit after payment thereof of all expenses connected therewith shall be insufficient to pay and satisfy the whole of all such damages, losses, expenses, difference in price and fine or fines as aforesaid, then and in that case it shall be lawful for the purchaser to recover the residue thereof by legal proceedings against the Contractor upon the Covenants herein contained. IN WITNESS whereof the said and

Commissary General at by the order and direction of the Governor in Council of Fort Saint George, acting for and on behalf of the Secretary of State in Council, have hereunto subscribed and set their respective hands the day and year above-mentioned.

Signatures
of
Witnesses.

Signatures
of
Principals.

SCHEDULE.

Articles to be supplied.	Probable quantity or number.	Price.			REMARKS.
		Per.	Rs.	A.P.	

Signatures
of
Witnesses.

Signatures
of
Principals.

Recd 12/13/65
San. Secy. Secy. 11/11/65