

# MADRAS RECORD OFFICE.

Government of Madras.

*Revenue* DEPARTMENT.

|          |            |                         |
|----------|------------|-------------------------|
| G.O. No. | 1110       | Press<br><del>Mis</del> |
| Dated    | 24-4-1868. |                         |

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,  
24th April 1863.*

No. 567. Read the following letter from the Secretary to the Government of India, Public Works Department, (Account—Irrigation,) to the Secretary to the Government of Madras, Revenue Department, dated Fort William, 11th March 1868, No. 41 A. I. :—

1. With reference to your letter No. 375, of the 11th ultimo, relative to the arrangements under which the water-rate is to be levied for irrigation from the works of the Madras Irrigation and Canal Company, I am directed to remark that the scope of the enquiry made by the Government of India has been misconceived.
2. The Governor General in Council desired to have exact information as to the precise system followed in levying the water-rate for the Company in all its details, extending to the control of the distribution of the water, the check on the area irrigated, the mode of settling with the Company's Agent, the liability of the Government in each half year or year, the system of accounting with the Company, and all other matters arising in relation to giving effect to the contract between the Company and the Government in respect to the revenues derived from irrigation.
3. The remark regarding the possible liability of the Company to make good charges for collection was made incidentally only in connection with the general enquiry, and was not, in fact, the main subject of it.
4. On this last point, I am desired, with reference to the remarks made in your letter under reply, to request the attention of the Madras Government to the remarks of the Secretary of State on the subject, contained in the 3rd paragraph of his despatch No. 14 of 1864, which was communicated to the Madras Government with Public Works Resolution No. 378C/2,793, dated 27th June 1864. From this it will be observed that the Secretary of State is of opinion that the Local Government, in fixing the price to be paid to the Company, may take into account charges of collection, if incurred by Government, and other charges which may be incurred by Government in connection with the irrigation of land. A copy of this despatch, and of that to which it is a reply, are forwarded for ready reference. Also a copy of the opinion of the Standing Council will be forwarded in another cover, confidentially.
5. In requesting that this matter may again receive the attention of the Madras Government, I am desired to enquire what is the analogous matter referred to by you, in which the Secretary of State declared that, in the absence of any such provision in the contract, the liability must be borne by Government.

No. 568.

ORDER THEREON, 24th April 1863, No. 1,110.

Miscellaneous.

1. Ordered that copy of the rules for the distribution of water from the Madras Irrigation Company's Works, and for realizing their irrigation revenue, be forwarded to the Government, with a complete set of the correspondence held relating thereto.
2. It is observed that the Directors of the Company have not yet submitted for acceptance of the proposed forms of account prepared by the Government.
3. The extent of irrigation from the Company's works has hitherto been so trifling, that the rules can scarcely be said to have been tested by practice.

*Proceedings of the Madras Government, Revenue Department,  
21th April 1863.*

4. The Government were aware that it had been suggested that, in fixing the price to be paid by Government to the Company for water supplied for irrigation, the charges incurred by Government for collection and otherwise might be taken into account; but it appears to them that practically this cannot be done in the face of the letter of the contract, so as to allow Government to recoup themselves for expenses incurred, unless the Company will deliberately consent to relinquish part of what they can claim under the covenant, which it may be probably assumed they will not do, and which it would be derogatory for the Government to seek, with the risk of a refusal and as a concession.

5. Clause 13 of the contract provides that *the price to be paid* by Government to the Company for water supplied for irrigation shall be settled by mutual agreement or by arbitration, and that "such price shall be the price to be paid by the cultivators to Government," so that the Government cannot collect more from the ryot than they themselves are to pay to the Company. There is no provision in the contract for deducting in account the costs of collection from the ryots, with whom the Company have nothing whatever to do, when Government have exercised their option of taking all the water that the Company can supply for irrigation purposes, (as they have done here, and as in fact it was certainly contemplated that they would do when the contract was drawn,) and the absence of such provision precludes the Government from claiming any deduction except as a concession by the Company.

6. The analogous case to which reference was made in the letter to the Government of India, dated 11th February 1863, is that of the loss likely to be sustained by Government, when on failure on the part of the Company to supply sufficient water to mature a crop, the Government must remit not only their claim on the ryot for the water-rate, but also the demand on account of land revenue, and the Secretary of State in his Despatch of 16th December 1863, (of which copy will now be furnished to the Supreme Government,) admitted that such loss must be borne by Government, and could not be thrown on the Company, although resulting from their own *laches*, as the contract contains no provision for the contingency.

(True Extract.)

(Signed) W. HUDLESTON,

*Secretary to Government.*

Ed. S. T. Augustin.

PUBLIC WORKS DEPARTMENT.

No. 86 of 1863.

To

THE RIGHT HON'BLE SIR CHARLES WOOD, BART., G. C. B.,  
SECRETARY OF STATE FOR INDIA.

*Fort William, 31st December, 1863.*

General.

SIR,

We have received with your Despatch No. 23, dated 24th June 1863, a copy of the Contract lately entered into with the Madras Irrigation Company.

2. The Deed appears obscure in regard to certain important points, though on the whole its effect may probably be to give the Government the powers which it may desire to exercise in connexion with the operations of the Company.

3. The preamble recites the terms of the preliminary arrangement made by the Secretary of State with the Company in 1858, and among the stipulations is the following: "that it should be left to the Government to decide in what manner the returns from the works constructed should be levied, and the Government should have the option of purchasing the water supplied for irrigation at a price to be agreed on with the Company." In the body of the Contract, however, there is no specific allusion to any of these points, excepting the manner in which the price for the water is to be fixed.

4. Clauses 13, 14, and 15, which refer to the price of the water, speak of the payment for the water as to be made by the Secretary of State to the Company for the water supplied from the Company's works for the irrigation of land. We infer that this must mean *all* the water, in the same way that the words in the preamble plainly mean *all* the water; and that the power of the Government to purchase all the water at its pleasure is intended to be retained.

5. No specific reference is made to any power of the Government to control the system under which the irrigation is actually carried on, nor does it appear to what extent the Government may set off charges of collection against the price, or any other charges incurred by the Government in connexion with the irrigation of land with the Company's water.

6. The words at the end of Clause 11 may suffice to secure to the Government a power of enforcing all necessary attention to the requirements of the cultivators in the matter of irrigation works. The power of authoritative control reserved in Clauses 16 and 17 seems to refer solely to the expenditure of the million under the guarantee.

7. The terms of Clause 22 may be regarded as admitting of the power of the Government to require the Company to discharge all the expenses of the Government in the collection of the water rates, and in any other matters "in about and relating to the supply of water for irrigation."

8. The views explained above are partly based on the correspondence of the words of the Clauses of the Contract with the expressions used in the preamble, but chiefly on a consideration of the mischief likely to result from the Government not having reserved to it the powers as to the disposal of the water for irrigation first stipulated for, and the general knowledge that we have of the opinions of Her Majesty's Government as to the precautions necessary in permitting the execution and management of irrigation works by a private Company.

9. We shall be glad to hear that you acquiesce in the conclusions formed on these points, and would suggest that, so far as you agree, it might be advisable to obtain a formal expression of acquiescence from the Company also.

We have the honour to be,

SIR,

Your most obedient and humble Servants,

W. DENISON.

R. NAPIER.

H. B. HARRINGTON.

H. S. MAINE.

C. E. TREVELYAN.

W. GREY.

Copy.  
PUBLIC WORKS DEPARTMENT,  
FORT WILLIAM.

General.

Letter No. 86, dated 31st December, 1863.  
From  
The Government of India,  
To  
The Right Hon'ble the Secy. of State for India.

Submitting observations on the Contract lately entered into with the Madras Irrigation Company.

Madras Irrigation Contract.  
Copy of Mr. Forsyth's opinion

In the first place I wish to observe that the setting of this contract was attended with the greatest difficulty, owing to the impossibility of getting the Madras Irrigation Company to agree to the terms proposed on behalf of the Secretary of State in Council and their opposition was protracted for nearly 3 years, namely from some period in 1860 when the first draft of a contract was made by the Council of the Secretary of State in Council until June 1863 when the contract was finally executed after much complicated correspondence and negotiation.

I will now proceed to state the substance of the letter addressed by the acting Secretary of India in Council to the Secretary of State in Council dated 21st July 1863 in which the latter was informed that the Madras Irrigation Company had been established and that the contract had been entered into with them.

instructed shall be levied" for by clause 27 it is agreed that the rates for the supply of water (except for the purposes of Irrigation) and Tolls for navigation and Rates for conveyance shall be levied by an act of the Indian Legislature. and by clause 13 the mode is defined according to which the Company is to be paid for water supplied for purposes of Irrigation. - Clause 13 taken in conjunction with clause 27 sufficiently in my opinion gives effect to the recital that "Government should have the option of purchasing the water supplied for Irrigation at a price to be agreed on with the Company."

I think that the effect of the contract is that the Government have the option of purchasing water supplied for irrigation and that they contemplated as being the sole source of supply as no provision is made for the supply of such water by anybody.

not necessary to provide that "Government may set off charges of collection against the price or any other charges &c." for in fixing the price under the terms of clause 13 all these would of course be taken into account just as in determining the rent or price of a house the question of price would depend partly upon the amount of rates or other burdens to which it was subject. at all events Council had no instructions to make any specific provision on the subject.

6. I agree in the interpretation put by the letter of the acting Governor General & India in Council upon clauses 11. 16 & 17 -

7. I do not think that it was any of the object of clause 22 to admit the Government "to require the Company to discharge all the expenses of the water in the collection of the water before said the expense of the water as an element in the price."

that expense to their debit - But if the expense of collection is thrown upon the Government then the Government will naturally pay so much less for the water but there will be nothing for the Company to enter to their debit on that head.

9. I do not think it is advisable to apply to the Company to obtain from them a formal expression of acquiescence. The Contract is now executed and must speak for itself. To call the attention of the Company to the points referred to in the communication from India would only be to raise doubts and suggest difficulties which are not likely to arise.

A. W. Forsyth  
26 Feb. 1854.

Enclosure to P. 41. P. A. 6

Confidential

Rev. Secy. 21 April 1854

the water supplied by the Company for the purpose of irrigation.

3. In fixing "the price to be paid by the Secretary of State to the Company for the water supplied for irrigation" under Cause 13 of the Contract, the Local Government may, in my opinion, take into account charges of collection if incurred by the Government, and other charges which may be incurred by the Government in connexion with the irrigation of land.

4. But if the arrangement between the Government and the Company is so made as to throw upon the Company, instead of the Government, the expense of collection, then Clause 22 provides, that the Company shall enter that expense to their debit.

5. I agree in the interpretation put by your despatch, paragraph 6, on Clauses 11, 16, and 17.

I have the honour to be,

SIR,

Your most obedient, humble Servant,

C. WOOD.

PUBLIC WORKS.

No. 14 of 1864.

To

HIS EXCELLENCY THE RIGHT HON'BLE  
THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

INDIA OFFICE;

London, 9th April, 1864.

SIR,

On receipt of the despatch noted in the margin, remarking No. 86, dated 31st December 1863. on certain provisions of the contract entered into with the Madras Irrigation and Canal Company, I caused it to be communicated to the Standing Council to this Office, under whose advice the Deed had been prepared. Having now received Mr. Forsyth's opinion, I have the following suggestions to make for your guidance:—

2. The clauses in the Contract, taken together, appear to give the Local Government the option of purchasing, and the power to purchase all the water supplied by the Company for the purposes of irrigation.

3. In fixing "the price to be paid by the Secretary of State to the Company for the water supplied for irrigation" under Cause 13 of the Contract, the Local Government may, in my opinion, take into account charges of collection if incurred by the Government, and other charges which may be incurred by the Government in connexion with the irrigation of land.

4. But if the arrangement between the Government and the Company is so made as to throw upon the Company, instead of the Government, the expense of collection, then Clause 22 provides, that the Company shall enter that expense to their debit.

5. I agree in the interpretation put by your despatch, paragraph 6, on Clauses 11, 16, and 17.

I have the honour to be,

SIR,

Your most obedient, humble Servant,

C. WOOD.

*Suggest difficulties which are not likely to arise*

*A. W. Forsyth  
26 Feb. 1864.*

R.D. 8.

N<sup>o</sup>. 1110

Pro: of the Madras Govt  
Under date the 21<sup>st</sup> app<sup>r</sup>/68.

Read the following  
letter from the Secy to the  
Govt of India. -

Remarking that the scope  
of the enquiry made by the Govt  
of India relative to arrangements  
for levy of water rate for irriga-  
tion from the works of the M. S. Canal  
Co. has been well conceived by the  
Madras Govt. -

H. C. 11<sup>th</sup> March 1868  
A.S.

Ordered that  
copy of the rules for  
the distribution of water  
from the Madras Irriga-  
tion Company's canal  
works and for regulating  
their irrigation, &c. &c.  
be forwarded to the  
Supreme Govt with a  
complete set of the cor-  
respondence &c. &c. re-  
garding the same.

C. J. ...

N. W.

by A

Dec. 9 1868

From the Secy to the Govt

10037-568

that the Directors of the Company have not yet intimated their acceptance of the proposed forms of account prepared by the Const. Eng.

The extent of irrigation from the Govt. works has hitherto been so trifling that the rules can scarcely be said to have been tested by practice.

The Govt. were aware that it had been suggested that in fixing the price to be paid by Govt. to the Company for water supplied for irrigation, the charges incurred by Govt. for collection and otherwise might be taken into account - but it appears to them that practically this cannot be done in the face of the letter of the contract.

so as to allow Govt. to ~~recompense~~ <sup>recomp</sup> themselves for expenses incurred, unless the Comp<sup>y</sup> will deliberately consent to relinquish part of what they can claim under the covenant - which it may be probably assumed they will not do - and which it would be derogatory for the Govt. to seek, with the risk of a refusal and as a concession.

Clause 13 of the Contract provides that the price to be paid by Govt. to the Comp<sup>y</sup> for water supplied for irrigation shall be settled by mutual agreement or by arbitration - and that such price shall be the price to be paid by the cultivators to Govt. so that the Govt. can not collect more from

the Ryots - then they themselves are to pay to the Compt<sup>rs</sup> - There is no provision in the contract for deducting in account the costs of collection from the Ryots, with whom the Compt<sup>rs</sup> have nothing whatever to do, when Govt. have exercised the option of taking all the water that the Compt<sup>rs</sup> can supply for irrigation purposes - (as they have done here, and as in fact it was certainly contemplated that they would do when the contract was drawn -) and the absence of such a provision precludes the Govt. from claiming any (or any) deduction except as a concession by the Company. - The

omit and dit

omit suit

The analogous case to which reference was made in the letter to the Govt. of India of 11<sup>th</sup> Feb/68 is that of the loss likely to be sustained by Govt. when on failure on the part of the Company to supply sufficient water to mature a crop the Govt. must remit not only their claim on the Ryots for the water rate - but also the demand on account of land revenue, and the Sec<sup>y</sup> of State in his despatch of 15<sup>th</sup> Dec<sup>r</sup>/63 (of which copy will now be furnished to the Sup<sup>r</sup> Govt.) admitted that such loss must be borne by Govt. and could not be thrown on the Compt<sup>rs</sup> - although resulting from their own lack - as

as the contract contains  
no provision for the em-  
ergency. -

L.B.

Revenue 1868 Deficit  
No of Count for April

No. 1110.

No of the several Count  
of 24<sup>th</sup> April 1868

Copy  
Done

Ms. 568-568