M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	2591	Press Mis.—
168-69 Dated	8 Sc—10—	№ 1868

Not to be folded or roughly handled

No. 148. 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 Simla, 27th August 1868, No. 128 A—I.:—

I am directed to acknowledge receipt of your letter No. 1,111, dated 24th April 1868, forwarding copy of the rules laid down for the distribution of water from the canal works of the Madras Irrigation Company, and to remark that the Governor General in Council cannot assent to the propriety of the arrangement under which the charges that may be incurred by Government in relation to the supply of water and collection of the water-rates on behalf of the Company, are made to fall on the Government, instead of on the Company. On this point, I am to forward, for the information of the Government of Madras, copy of a Despatch* that has been addressed by the Government of India, to the Secretary of State.

* No. 129, dated 27th August 1868.

Read the following Despatch from the Government of India, Public Works Department, (Account—Irrigation,) to the Right Honorable the Secretary of State for India, dated Simla, 27th August 1868, No. 129.

1. We have the honor to forward herewith, for your information, the correspondence detailed below, from which it will be observed that the Government of Madras is of opinion that, under the contract, the cost of collecting the water-rates for the Madras Irrigation and Canal Company, should be borne by the State instead of by the Company.

† Vide Despatch to Secretary of State, No. 86, dated 31st December 1863.

2. The contract entered into with this Company, as was pointed out† at the time when it was received by the Government of India, is very obscure on many points. The general scope of the relations between the Government and this Company is the same as that established in the case of the Orissa Works. It is declared that the Government shall buy all the water from the Company at a fixed price, and shall sell it to the cultivators at *that same price*. The Government, therefore, has expressly agreed not to charge the cultivators for the cost of collection, nor for any other expense it incurs in respect to the irrigation from the Company's works.

3. But the contract makes no specific reference to any power on the part of the Government to make the Company pay these charges of collection, &c., and the Government of Madras has accordingly affirmed that they must be borne by the State, which also should bear losses arising out of bad debts.

4. We would first observe that the case of the bad debts differs from the other in this important respect, that there is a direct covenant to the effect that the Government shall pay the fixed price *for all the water supplied*, which of course includes all water for which the Government itself may not be able to recover the price. But there is nothing analogous said in respect to the cost of collection, though it is specially alluded to in one part of the agreement.

5. As to the bad debts, therefore, we are of opinion that the *legal* responsibility of the Government cannot be disputed: and no more need be said of this point, than what we have already said under the same circumstances to the East India Irrigation Company, namely, that it is not equitable to make the Government, which derives no pecuniary benefit whatever from the irrigation, pay the bad debts, and that if the Company insists on its extreme legal rights in this respect, the Government in its turn should be equally unbending in insisting on the fulfilment of the letter of the contract by the Company.

6. But as to the cost of collection of the water-rates, the case seems to us very different; and in the absence of any specific covenant, fixing the charge either on the Company or the Government, we think that the agreement, when properly interpreted, shows that it is the Company who should pay, and not the Government. It may be argued that as the contract contains no express provisions on the point, the cost of collection should fall on the party collecting the water-rates, unless the other parts of the agreement contain words which exclude this inference. And we think that such words are to be found in Clause 22.

7. By Clause 22 of the Contract, it is distinctly laid down that the revenue account of the Company, while it is *credited*, amongst other things, with the sums paid by the Government for water, shall be *debited* with *all* payments made in respect of the management of the Company and its affairs generally, and *specially in about* and *relating to* the supply of water for irrigation, and *collection of the monies payable for such supply*, &c.

8. Now, there is no reference made here to any part of the charges for collection being borne by Government. On the contrary, it is laid down that "*all payments*," specially in about and relating to the collection of the water-rates, shall be debited *to the Revenue Account*. If it had been intended that the Government should in fact bear *the whole of the charges for collection*, or even a very large part of them, the words referred to could not have been used. The clause recites the principal elements of charge which are properly debitable to the revenue account, and amongst them very naturally refers to the cost of collection and of supplying the water.

9. It seems to us that there is no better ground for asking the Government to pay the cost of collecting the water-rates, than to pay for the maintenance of the works. The Government covenants in Clause 13 to pay for the water supplied precisely the *price fixed*, and no more and no less. If the Government has *also* to pay the cost of collection, it does not only pay this price, it pays more, which is directly opposed to the words of the clause referred to.

10. Again, it may be argued that the words in Clause 22, "all payments made," are not followed by words to indicate that these are payments made *by the Company exclusively*. The absence of any such words, and the introduction of "specially in about and relating to," seem on the contrary to imply that the intention was, what of course is the reasonable arrangement, that any expenses incurred by the Government in collection, &c., should be charged against the revenues of the Company. There is this further argument in favor of such a view, that this is the precise arrangement made with the same Company (for it is in fact the same,) in respect to the Orissa Works.

11. The opinion expressed on this point by Mr. Forsyth, the Standing Counsel to the India Office, received with Sir Charles Wood's Despatch, No. 14, dated 9th April 1864, does not seem to us to be compatible with the facts of the case, and the legitimate interpretation to be put on the contract. Mr. Forsyth says that if the Government incur charges for collection, they will naturally *diminish* the price to be paid for the water to the Company. But, unfortunately, whatever price is paid to the Company must also *be charged to the cultivators*, so that there could be no relief got in the manner suggested by Mr. Forsyth.

12. It seems to us so utterly unjust that the Government should be made to bear the cost of collecting the Company's water-rates, that we cannot think the Company itself would venture to ask it to be done. But the matter is one of such importance that we think it desirable to request that you will propose to the Company to assent to the view, that, all charges incurred by the Government in relation to the supply of water and collection of water-rates, should be debited against the Company's revenue account; and that if they do not so assent, the matter may be referred to arbitration under Clause 34 of the Contract.

13. We may add that the question at issue has not yet become of much practical moment, because the irrigation from the Company's canals has not yet begun to an appreciable extent.

No. 149. ORDER THEREON, 8th October 1868, No. 2,591.

Irrigation, No. 7.

Communicated to the Board of Revenue, together with copies of G. Os., under date 11th February 1868, No. 374, and 24th April 1868, No. 1,110, for any observations they may desire to offer.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue, with G. Os., Nos. 374 and 1,110.

Exd. S. T. Augustin.

No. 2934

From the Govt of Madras. MRD.
Dated 27 August 1868.

FOR ORDERS.

Govt. of 1868 Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated October, 8th.

Recd. Encl.

G. O., 8th October 1868, *No.* 2,591.

OCTOBER.

Nos. 148-149.

Distribution of Irrigation Company's water.—Board of Revenue to report on the propriety of its cost being paid by Government.

2-2591-

Encl under #

C° to the Board of Revenue together with
copies of G O: under date 11 Feb 68 No 374 & 2d & final
68 No 1110, for any observations they may desire
to offer

8th Oct 68

16 Copies Letter Bd of Revenue Ty 8th No 373 & 1110 Receipt 9

Revenue 1868. Misc.
Pros of Grant for Cotton
No. 2934.
From
The Govt. of India.
P. M. Despatch
Dated 27th Augt. 3/68
Received 14th Octr. 3/68.
No. 128. A-
E-1-
Watts Order
No 2591. 8 Octr.
Forwarding Copy of
a despatch addressed
to the Secretary of State
on the subject of the
distribution of water
from the Canal works
of the Madras Irrigation
Company

No 27 July 64 to 457-8
24 April 68 — 567 to 569

No 148 & 149

30 Sept 68 R 8 Octr