

CHAPTER III

AUDIT OF TRANSACTIONS

HIGHWAYS AND MINOR PORTS DEPARTMENT

3.1 Avoidable expenditure

3.1.1 Manipulation of traffic census

Adoption of fictitious traffic census for widening a road led to avoidable expenditure of ₹ 1.69 crore.

Indian Road Congress (IRC) 64-1990 prescribes an intermediate lane of 5.5 metres width carriageway for a design service volume between 2,000 and 6,000 Passenger Car Units (PCU) and double lane of seven metres width carriageway for the design service volume exceeding 6,000 PCU.

Widening of Puliyankulam road at km 0/0 – 11/2 from single lane to double lane was sanctioned (December 2010) by the Chief Engineer (Construction and Maintenance), Highways, Chennai (CE) on the grounds that the PCU of the road as per the traffic census taken in 2008 was 7,336 and was awarded to the contractor (February 2011) for the value of ₹ 6.63 crore. The work was completed (March 2012) at a cost of ₹ 6.38 crore.

Scrutiny of the traffic census register available in the office of the Divisional Engineer (Highways), (Construction and Maintenance), Sivaganga (Division) revealed that the actual traffic intensity of the road as per the census taken in May 2008 was 1446 PCU only. After projecting the traffic census for next 10 years as per the IRC provisions with reference to base year 2011, the design traffic volume would work out to 3,086 PCU¹. Therefore, the road could be widened to intermediate lane of 5.5 meters only as per the aforesaid IRC provision. However, the Division had adopted fictitious traffic census. For instance, the actual number of “cars, jeeps, vans, three wheelers, etc.,” as per Traffic Census Data Sheet for the 24 hours period starting from 1 May 2008, 6.00 am to 2 May 2008, 6.00 am was only 90; whereas the Division modified the number to 890 in the weekly traffic count in order to justify widening the road to double lane. Similarly, the actual number of “bullock carts” and “cycles” was 36 and 740 whereas the Division modified the numbers to 436 and 1,740 respectively and there were number of such ‘irregular modifications’ in the traffic census in respect of other categories of vehicles also. Thus, the action of the Division in adopting a fictitious figure resulted in unwarranted widening to double lane by incurring an avoidable expenditure of ₹ 1.69 crore.

Government replied (October 2012) that the road was widened adopting 7,502 PCU on the basis of traffic census taken in May 2010. The reply is not

¹ A way of accounting for the interaction of various kinds of vehicles to express the capacity of roads in terms of common unit is known as PCU = $[(1,446 \times (1.06)^3 \times (1.06)^{10})] = 3,086$

acceptable as the Division adopted the traffic census of 2008 in the estimate and there were no basic records available in the Division for the traffic census taken in 2010 justifying widening as per IRC norms.

3.1.2 Undue benefit to contractors

Rectification of defects in the widened portion of the two roads through new contractors instead of by the original contractors at their risk and cost led to avoidable extra expenditure of ₹ 2.31 crore.

Agreements for widening of the two roads² in Virudhunagar District *inter alia* provided 'Defects liability period clause' for rectification of the defects by the contractors at their cost for a period of 36 months from the actual date of completion. The road works were completed during the period from December 2007 to October 2009 and therefore the contractors should have rectified the defects, if any, upto December 2010 and October 2012 at their own cost. It is pertinent to mention that the Superintending Engineer (Highways), Tirunelveli (SE) while countersigning the completion report of the work instructed (November 2008) that the defects liability period should be taken into account and defects if noticed, should be got rectified by the original contractors at their cost within the defects liability period.

However, the same widened portion of the two roads were included in nine estimates sanctioned (April and August 2010) at a cost of ₹ 6.26 crore by Divisional Engineer (Highways), Virudhunagar (DE)/SE under 'Special Repair works'/'Improvement works'. All the nine works entrusted to four contractors were completed and payments made (March and July 2011).

As the widened portions of these roads were under the defects liability period of the contractors when estimates for Special Repair works/Improvement works were approved by the DE/SE, the action of the department in calling for fresh tenders instead of directing and getting the contractors to rectify the defects resulted in avoidable expenditure of ₹ 2.31 crore.

Government replied (November 2012) that the entire width of the road was now taken up for rectification of the damages and for improvement as the existing carriageway was not improved when the widening work was taken up and also to accede to the request of public.

The reply of the Government is not acceptable as the Special repair works and Improvement works were proposed (2010-11) for the reason that the riding surface of both widened and existing portion of the road was damaged and worn out. As such the rectification work in the widened portions should have been carried out through the contractors who did the widening work, at their cost and the Department should have borne the expenditure for the remaining portion (existing portion) of the road alone.

As rectifying the defects developed on the road in the defect liability period was mandatory for the contractors and the rates quoted for the work were

² Melamadai - Palavanatham Road (three reaches) and Virudhunagar - Krishnapuram Road (five reaches)

inclusive of it, the Department incurred avoidable extra expenditure of ₹ 2.31 crore thereby giving undue benefit to the contractors.

3.1.3 Unintended benefit to the contractors

Non-inclusion of recovery clause in the agreements for the works for restricting the payment to the contractors, based on the actual consumption of cement resulted in unintended benefit to the contractor to the tune of ₹ 1.69 crore.

Indian Standard (IS) 456-2000 and Ministry of Road Transport and Highways (MORTH) recommends design mix for mix strength above M 20. Concrete mix for various strengths was designed by the Highways Research Station (HRS) based on the sample of brand and grade of cement, fine aggregates and coarse aggregates furnished by the contractors and the same was communicated to the divisions for adoption in the work. HRS in the circular memorandum instructed (October 2004) all Divisional Engineers to get the mix design for concrete structures done only from HRS.

Scrutiny of estimates prepared by Divisional Engineers (Highways), Karur and Chengalpattu for seven bridge works revealed that for cement concrete works involving mix strength of M 25 and above, design mix with proportion of materials such as 1:1.5:3 (M 25) 1:1.2:2.4 (M 30/M 35/M40) were proposed. Estimates were prepared by the Department adopting standard data available with them. While the quantity of cement recommended by HRS for M 25 ranged from 380 to 390 kg and for M 30/M 35/M 40 from 380 to 450 kg, the division adopted 432 kg for M 25 and 540 kg for M 30/M 35/M 40. The mix designed by HRS involved lesser quantity of cement than that proposed in the estimates and the contractors also utilised quantities of cement as per design mix in the works concerned. Payments to the contractors were however made with reference to higher quantity of cement adopted in the estimates due to non-inclusion of recovery clause in the agreements for restricting the payment to the contractor, to actual consumption.

In respect of two other works sanctioned in the office of the Superintending Engineer (Highways), NABARD and Rural Roads Circle, Trichy (SE), SE had included a suitable clause in the agreements for recovery of cost of cement utilised in excess of the quantity approved by HRS and effected recoveries (December 2011) from the contractors bills.

Thus, non-inclusion of recovery clause in the agreements for the works for restricting the payment to the contractors, based on the actual consumption of cement resulted in unintended benefit to the contractors to the tune of ₹ 1.69 crore.

The Government replied (December 2012) that as per the conditions of the contract, the contractor has to execute the work as per the design mix even if it stipulates higher quantity of cement which may result in higher rate than that of the estimated one or lower quantity cement, but should attain the required strength of concrete. The reply is not acceptable since the design mix

approved by HRS involved lesser quantity of cement than that contemplated in all the estimates and payment was made based on estimated quantity.

3.1.4 Avoidable extra expenditure

Adoption of ex-Coimbatore rates in the estimates for various grades of Bitumen instead of the economical ex-Cochin rates resulted in avoidable extra expenditure of ₹ 4.73 crore.

The Highways department of the Government of Tamil Nadu (Department) obtained the prevailing ex-Coimbatore and ex-Cochin market rates of Bitumen from Oil Companies for various grades³ of Bitumen before preparing the estimates for various road works in three Construction and Maintenance (C&M) divisions⁴ under Coimbatore Circle and two C&M divisions⁵ under Tiruppur circle. Analysis of the market rates of various grades of Bitumen obtained from Oil Companies revealed that ex-Cochin rates inclusive of lead charges were less than the ex-Coimbatore rates for various grades of Bitumen and difference in cost per MT ranged from ₹ 925 to ₹ 5,171 for Bitumen Emulsion, ₹ 1,312 to ₹ 2,445 for Bitumen 60/70 and ₹ 1,330 to ₹ 2,417 for Bitumen 80/100.

Audit scrutiny of estimates in respect of 339 road works revealed that the Department adopted ex-Coimbatore rates in all the above estimates prepared during 2009-10 to 2011-12. Incidentally, it was also observed that the economical rates of ex-Cochin were adopted in the estimates prepared during 2010-11 in the office of the Divisional Engineer (Highways), NABARD and Rural Roads Division, Erode. As the works were awarded on percentage tender system, non-adoption of the economical ex-Cochin rates in the estimates resulted in avoidable extra expenditure of ₹ 4.73 crore. The matter was referred to Government in September 2012; reply has not been received (January 2013).

3.1.5 Avoidable expenditure

Delay in granting Financial Sanction for Revamped Central Road Fund works resulted in avoidable excess expenditure of ₹ 10.53 crore.

The Ministry of Road Transport and Highways (MORTH), Government of India (GOI) sanctions funds every year under the Revamped Central Road Fund (RCRF) for executing road and bridge works. For the year 2010-2011, administrative approval for ₹ 130.62 crore was accorded (February 2011) by MORTH for executing 17 road and bridge works in Tamil Nadu. As per the RCRF (State Roads) Rules 2007, the executing agency should ensure that the project is technically approved, financially sanctioned by Government of Tamil Nadu (GoTN) and awarded within a period of four months from the date of Administrative Sanction (AS) of work, failing which the work shall be deemed to have been desanctioned. Out of 17 works approved by GOI, two works were deleted and technical sanction for ₹ 111.63 crore was accorded (February 2011) by the Chief Engineer (National Highways), Chennai (CE)

³ Emulsion Bitumen, Bitumen 60/70 and 80/100

⁴ Coimbatore, Gobichettipalayam and Pollachi

⁵ Erode and Tiruppur

for 15 works. One work was not taken up as the bid was not technically qualified.

CE addressed (February 2011) GoTN for granting financial sanction and also invited tenders (February 2011). The evaluated bids for 14 works were submitted (April and May 2011) for approval of Commissionerate of Tenders (COT). The total value quoted by the lowest bidders for 14 works worked out to ₹ 94.73 crore.

In the wake of Assembly Elections the model code of conduct of Election Commission came into force with effect from 1 March 2011. Hence, the CE requested (March 2011) MORTH for extension of time till 31 July 2011 for awarding the works. After the elections, the CE addressed GoTN on 19 May 2011 citing the necessity for financial sanction to the works before 10 June 2011. As neither financial sanction from GoTN nor revalidation of AS from MORTH were received (June 2011), tenders for 14 works were cancelled and retendered in the same month. After obtaining (July 2011) financial sanction from GoTN, tenders were approved by COT (August 2011) in anticipation of orders of revalidation from MORTH. Orders of revalidation were received in March 2012 from MORTH. In the meantime, agreements were executed (August 2011) with the contractors for the value of ₹ 105.26 crore. The works are in progress and a total expenditure of ₹ 92.93 crore has been incurred (March 2012).

GoTN had requested (January 2011) MORTH for early AS for the works citing the likelihood of implementation of Election Commission's model code of conduct from March 2011. The CE also sought (February 2011) financial sanction and pointed out (May 2011) the possibility of lapse of administrative approval unless the financial sanction was issued before 10 June 2011. Despite these facts and availability of budget provision of ₹ 100 crore in 2010-11, financial sanction was not accorded by GoTN leading to cancellation of tenders received in the first call. This had resulted in avoidable extra expenditure of ₹ 10.53 crore to Government due to retendering. The matter was referred to Government in July 2012; reply has not been received (January 2013).

3.1.6 Avoidable extra liability

Incorrect cancellation of contract resulted in avoidable extra liability of ₹ 1.29 crore to Government.

Government of Tamil Nadu (GoTN) accorded (August 2010) administrative approval for the work of "Formation of a bye-pass road at Pattukottai from 0/0-2/8 (up to Ponnavarayankottai)" for ₹ 660 lakh. The work technically sanctioned (September 2010) by the Chief Engineer (C&M) Highways, Chennai (CE), was awarded (February 2011) to the lowest contractor (L-1) for a value of ₹ 5.89 crore at 0.01 *per cent* less estimate rate of 2010-11 with a completion period of 12 months. Land to an extent of 11.15.21 hectare situated in four villages acquired (February and March 2011) for the work by the Revenue Department was handed over (July 2011) to the Divisional Engineer (H), Thanjavur (DE).

Citing the reasons of non-possession of land for over six months and cultivation on the land, the contractor requested (July 2011) the DE to cancel the contract. On a specific query from the Superintending Engineer (Highways), Trichy (SE) on the stage of the land acquisition for the work, the DE suppressed (July 2011) the fact of possession of land with the Department and informed (August 2011) SE that the lands were under cultivation and yet to be taken over. SE cancelled the above contract (August 2011). Tenders were called again for the work (August 2011).

Out of the two tenders received, L-1 of the previous tender was again found to be the lowest and accepted by Commissionerate of Tender (December 2011). Work was assigned to the contractor (January 2012) for ₹ 7.18 crore at 22 *per cent* above the estimate rate and an expenditure of ₹ 1.44 crore has been incurred so far (June 2012).

Thus, the incorrect cancellation of the original contract by suppression of facts and subsequent entrustment of work by fresh tender at 22 *per cent* premium over the earlier rates to the same contractor, resulted in avoidable extra liability of ₹ 1.29 crore to Government.

The matter was referred to Government (July 2012) and Government replied that the land acquisition process was not completed (August 2011) even after the completion of six months from the date of execution of agreement (February 2011). The reply is factually incorrect as the Highways Department was already in possession (July 2011) of the required land.

3.1.7 Avoidable expenditure due to excess provision of cement in the estimate

Provision of excess cement in the estimates due to non-adherence of MORTH specifications resulted in avoidable expenditure of ₹ 1.33 crore.

Section 601.3.3 of Specifications for Road and Bridge Works issued by the Ministry of Road Transport and Highways (MORTH) provided for minimum cement content of 150 Kilogram/cubic metre (kg/cu.m) in lean concrete. It also provided for increased quantity of cement as necessary, if the minimum cement content was not sufficient to produce concrete of the specified strength without additional compensation to the contractor for the increased quantity of cement.

Test check of records relating to 26 works executed by Divisional Engineers (DE) Nagapattinam, Thiruvarur and Virudhunagar revealed that Lean Cement Concrete (LCC) mix of 1:3:6 with a cement content of 216 kg per cu.m was proposed in the estimates and agreements entered into with the contractors. As the works are awarded on percentage tender system, incorrect adoption of 216 kg per cu.m instead of 150 kg per cu.m resulted in avoidable extra expenditure of ₹ 1.33 crore. The matter was referred to Government in July 2012; reply has not been received (January 2013).

PUBLIC WORKS DEPARTMENT

3.1.8 Avoidable extra expenditure

Avoidable extra expenditure of ₹ 2.98 crore and an additional liability of ₹ 0.25 crore due to adoption of incorrect rates/specifications and unauthorised quarrying in PWD canal lands.

Government of Tamil Nadu (GoTN) accorded (October 1996) administrative sanction for the Project “Providing irrigation facility to 58 villages in Usilampatti Taluk of Madurai District” at an estimate cost of ₹ 33.81 crore under part II scheme for the year 1996-97 and the Project envisaged carrying the surplus waters from Vaigai Dam. It also included excavation of a high level canal for a length of 27.20 Km from the proposed head sluice (Ogee weir) on the right flank of Vaigai Dam at LS 2,425 m from the spillway. The scheme, commenced in February 1999, has not yet been completed (July 2012) due to changes in design and alignment, land acquisition etc. An amount of ₹ 74.59 crore has been spent on the scheme as of June 2012.

Based on the scrutiny (May-June 2012) of the records of Chief Engineer (PWD), WRO, Madurai Region (CE), and other subordinate offices⁶, the following audit observations are made:

(i) As per the agreements (1999-2000) with the contractors for reaches LS 17.55–23Km and LS 24.40–27.20Km, rate for additional works shall be derived from the rates for similar items of work in an accepted agreement. In case of works for which supplemental agreement was to be entered into and where the Schedule of Rates (SOR) had changed in the intervening period, the SOR prevailing at the time of execution of additional items would be adopted with no tender premium over this rate.

The first approved Revised Administrative Sanction (RAS) for ₹ 74.60 crore, inter alia, provided for execution of additional items and quantities in these reaches. The additional items of work included conveying earth from a distant place (more than one km).

Audit however observed that the SOR prevailing during execution of the additional works (2002-03) was lower than the rate prevailed during the execution of original agreement (1999-2000). Higher rates as per the agreement instead of lower rates prevailing at the time of execution were adopted violating the conditions of contract. Thus, incorrect adoption of rates resulted in extra expenditure of ₹ 2.06 crore.

(ii) The Work of “Excavation of main canal from LS 3.0 Km to 11.65 Km including all cross masonry structures” was one of the sub works of the scheme. The site was handed over to the contractor on 23 November 1999 with the stipulation that the work be completed by 22 November 2001. When

⁶ Office of the Superintending Engineer, (PWD), WRO, Periyar Vaigai Basin Circle and Office of the Executive Engineer (PWD, WRO), Periyar Improvements Division VII, Madurai.

the work was in progress (January 2001), a change of alignment was proposed due to existence of granite/metal/sand in the original alignment and the revised alignment was approved by the Superintending Engineer (March 2003). The work was further delayed due to various other reasons⁷.

During inspection (April 2009), CE noticed that the ground levels in the revised alignment at LS 6810M to 6960M had further gone down from the levels furnished in revised Condensed Longitudinal Section (CLS) due to unauthorised quarrying operation in the intervening period necessitating additional quantity of 40,835 cu.m. of earthwork and other incidental work thereon for formation of canal embankment. The work was executed during August and September 2009 and part payments to the tune of ₹ 43.09 lakh were made pending approval of RAS II.

Audit observed that though the site had already been handed over (November 1999) to the contractor and the work was under execution with several extensions of time, neither the contractor nor the department had taken up the matter of unauthorised quarrying stated to have taken place in 2004-05 with the competent authority to prevent the same. Further, the CE noticed only belatedly in April 2009 the unauthorised quarrying. In reply to audit query, the Executive Engineer, PWD stated (August 2012) that the matter was not taken up with the Revenue/Police Department (August 2012) and no complaint was registered.

Thus, the failure of the contractor and the department to safeguard the PWD canal lands and prevent unauthorised quarrying resulted in an avoidable expenditure of ₹ 43.09 lakh and avoidable liability of ₹ 14.37 lakh.

(iii) Table 5 of revised IS-456 issued in the year 2000 prescribes the use of minimum cement content of 250 and 300 Kg per cu.m. for PCC and RCC M 20 concrete under moderate exposure conditions. Concrete continuously under water was also classified as moderate exposure condition in Table 6 of the IS *ibid*. The estimate sanctioned for construction of aqueducts at LS 16.625–17.875 Km and at LS 23.245–24.645 Km during 2007-08 contained provision for use of 432 Kg/430.8 Kg of cement per cu.m. of PCC/RCC M 20 concrete using 20mm metal. The agreements with the contractors during 2007-08 specified that the cement content shall conform to IS 456-1978 instead of the latest revision of 2000 which provided for lesser usage of cement content. Thus, non-adoption of cement content as per IS 456:2000 by the department resulted in excess usage of cement at 182 Kg per cu.m. of PCC M 20 and 130.80 kg per cu.m. of RCC M 20 in the aqueduct works resulting in extra expenditure of ₹ 49.05 lakh and avoidable liability of ₹ 11.04 lakh. The matter was referred to Government in September 2012; reply has not been received (January 2013).

⁷ i) Delay in approval of RAS I (approved in March 2006) ii) Pending approval of RAS II iii) Non-receipt of Letter of Credit

HIGHWAYS AND MINOR PORTS DEPARTMENT

3.1.9 Non-realisation of revenue due to Government

Non-recovery of extra cost of terminated contracts and delay in forfeiture of security deposits resulted in non-realisation of revenue of ₹ 5.30 crore.

Clause 109.06 of Preliminary Specifications (PS) to “Standard Specification for Roads and Bridges” (SSRB) of Tamil Nadu Highways Manual, 1995 (Manual) stipulates that in the event of failure of a contractor to complete a work, Highways Department has the authority to proceed with the execution of the balance portion of the work through any other agency at the risk and cost of the original contractor. As per Clause 109.07 of the manual, the Security Deposit (SD) and Additional Security Deposit (ASD) remitted by the original contractor at the time of execution of agreement shall also stand forfeited. Clause 5.1 B of General conditions of contract stipulated that if the tender percentage quoted by the contractor is five to fifteen *per cent* less than the estimated amount, the contractor shall pay ASD at two *per cent* of the estimated value. Further, Clause 110.12 of *ibid* Manual stipulates that in every case in which provision is made for recovery of money from the contractor, the Government shall be entitled to retain or deduct the amount thereof from any moneys that may be due to the contractor under this or under any other contract or contracts or on any other account.

Twelve cases of terminated contracts necessitating recovery of extra cost from the original contractors due to completion of the balance works through another contractor during the period from 2008-09 to 2011-12 were examined in five⁸ divisions.

In this regard, the following audit observations are made:

A sum of ₹ 5.30 crore was to be recovered from seven contractors in 12 works and a single contractor (Contractor A) was involved in six works terminated during 2008 and 2009. The balance works were got completed during 2010 and 2011 with the extra cost of ₹ 0.85 crore recoverable from Contractor A. The same contractor had executed road works in another division (Construction and Maintenance Division, Highways, Tiruvannamalai) since 2007 and payment of ₹ 1.68 crore was made from January 2010 to January 2012. Had the Superintending Engineer/Chief Engineer (General) intimated the amount of recovery to other divisions/circles as per the above manual provisions immediately after termination of the contract, extra cost of ₹ 0.85 crore could have been recovered. Thus, there was lack of coordination among divisions/circles in the recovery of dues to the department.

The SD and ASD amounting to ₹ 14.54 lakh in respect of five terminated contracts were not forfeited and credited to Government account as per the

⁸ Divisional Engineer (Highways), Project Division, Vellore and Tiruvarur, Divisional Engineer (Highways), (Construction and Maintenance Division), Tiruchirappalli and Chengalpattu, Divisional Engineer (Highways), NABARD and RR Division, Chengalpattu.

agreement clause. Further, ASD at two *per cent* of the estimated value amounting to ₹ 9.35 lakh⁹ was not collected from the contractor by the Highways Project Division, Vellore.

In respect of such cases where the extra cost was found to be irrecoverable even after exhausting other dues payable to the contractor through SD/ASD/other pending bills, the Revenue Department could be addressed for the recovery of the same by invoking Revenue Recovery Act as per Clause 110.12 of the Manual. No such action was initiated by the divisions.

Thus, the lack of coordination among divisions/circles in the recovery of extra cost due to the department in respect of terminated contracts from the payment made to the contractor in other divisions and also delay in forfeiture of security deposits resulted in non-realisation of revenue of ₹ 5.30 crore.

The matter was referred to Government in September 2012; reply has not been received (January 2013).

HANDLOOMS, HANDICRAFTS, TEXTILES AND KHADI DEPARTMENT

3.1.10 Avoidable interest liability on the Government

Imposition of unacceptable conditions on the banks for adjustment of funds against the loan for Common Effluent Treatment Plants resulted in loss of ₹ 5.34 crore to the Government exchequer.

The Hon'ble High court, Madras (December 2006) directed the Tiruppur dyeing industries to establish Common Effluent Treatment Plants (CETP) to treat effluents through Reverse Osmosis. Accordingly, 18 CETP were established (2007) availing loan assistance to the tune of ₹ 525 crore from Nationalised/Private Banks. Each CETP is functioning as Special Purpose vehicle (SPV) to ensure its proper operation for achieving Zero Liquid Discharge.

As the CETP were unable to repay the loan availed, the Dyers' Association represented (April 2008) to the Government for financial assistance for repayment of loan. Government of India (GOI) and Government of Tamil Nadu (GoTN) acceding to the request of the owners of Tiruppur Dyeing industries decided to provide (March 2010) subsidy¹⁰ to alleviate the loan burden. Accordingly, GoTN accorded sanction (September 2010) for ₹ 120 crore and released ₹ 33.09 crore for adjustment of overdue instalments of Principal and Interest.

Subsequently, based on the proposals (October 2010) of Director of Handlooms and Textiles (DHT), Chennai, GoTN released (October 2010) ₹ 116.91¹¹ crore *suo-motu* with the condition that the bank which extended

⁹ ₹ 4, 67, 50,702 x 2 *per cent* = ₹ 9.35 lakh

¹⁰ GOI Assistance – ₹ 200 crore, GOTN Assistance - ₹120 crore

¹¹ Government of India share – ₹ 100 crore, Government of Tamil Nadu Share - ₹ 16.91 crore

loan for establishing CETP should furnish Bank Guarantee to GoTN valid for eight years with a view to ensure the proper functioning of CETP. GoTN further directed that the grant released to six banks (12 branches) was to be kept in a separate bank account pending compliance of the conditions. Accordingly, the grant of ₹ 116.91 crore was deposited in Savings Bank (SB) Account opened in the name of the DHT.

The banks, however, expressed (October 2010) their inability to furnish Bank Guarantee on grounds that they did not possess the expertise to ensure the performance of the CETP and could not guarantee the successful running of the plant. However, they offered (October 2010) to cede first *pari passu* charge in favour of GoTN on Project Assets. Finally, GoTN ordered (January 2012) DHT to release the subsidy amount of ₹ 116.91 crore kept in SB accounts of DHT without insisting on the Bank Guarantees. An amount of ₹ 5.59 crore accrued as interest in the SB account (May 2012).

In this regard, the following audit observations are made:

Though the initial subsidy of GoTN (₹ 33.09 crore) was immediately adjusted against the outstanding loans with the banks (September 2010), further assistance of ₹ 116.91 crore was released (October 2010) to the banks conditionally without consulting the banks and ascertaining the feasibility of ensuring the functioning of CETP by the banks.

Government subsidy was intended to lessen the loan burden of CETP with the banks at the earliest. Though DHT informed (November 2010) the Government about the inability of the banks to furnish Bank Guarantee, GoTN issued orders (January 2012) for release of the subsidy amount of ₹ 116.91 crore after a delay of 14 months. Consequently, interest liability of the CETP further increased to ₹ 20.85 crore¹².

While Government borrowed funds at the rate of 7.29 and 7.53 *per cent* during the periods 2009-10 and 2010-11, the interest paid on the SB account on deposits was at the rate of 3.82 *per cent* only. Further, the interest of ₹ 5.59 crore accrued on SB account has also been kept outside the Government account.

Thus, the failure to frame modalities before the release of subsidy and imposition of conditions unacceptable to the banks for adjusting ₹ 116.91 crore against the loan dues of CETP defeated the purpose of timely alleviation of loan burden of CETP and also resulted in loss of ₹ 5.34 crore to the Government exchequer due to retention of money outside the Government account besides increasing the interest liability of the industries to the extent of ₹ 20.85 crore.

The matter was referred to Government in September 2012; reply has not been received (January 2013).

¹² Calculated on simple interest adopting floating rates of interest ranging from 11.25 to 18 *per cent* charged by the respective Banks.

PUBLIC WORKS DEPARTMENT

3.1.11 Avoidable payment of interest

Injudicious decision to approach the courts against the opinion of the Government Pleader resulted in avoidable commitment for payment of interest of ₹ 1.89 crore.

Adjudication and Arbitration clauses were provided in the agreement for the work of rehabilitation of contour canal from LS 0.00 km to 25.490 km of Parambikulam Aliyar Project to settle disputes, if any, which arose between the contractor and Public Works Department (PWD). As per the adjudication clause, the process for adjudication should be notified within 14 days of such dispute and the adjudicator should pronounce his decision within 28 days of notification. If either party was not satisfied with his decision, then the dispute could be referred to arbitration. For contract values exceeding ₹ five crore, arbitration clause provided for appointment of Arbitral Tribunal consisting of three arbitrators *viz.*, one each to be appointed by the employer and contractor and the third arbitrator chosen by two arbitrators so appointed by the parties.

The contractor notified (November 2001) certain disputes that arose since 1998 for adjudication. Instead of opposing the adjudication at the admission stage itself citing the delays in notifying the dispute by the contractor, PWD participated in the adjudication. After deliberating on all the disputes for one year, the adjudicator pronounced (December 2002) that the matter was beyond the scope of adjudication as the contractor had continued the works and approached him only after bunching the disputes instead of posing them as and when they occurred. He also opined that he had no power to pass an award after completion of the work and several disputes referred were beyond the scope for adjudication.

Consequently, on the request of the contractor (December 2002), the Chief Engineer, WRO, PWD, Pollachi Region (CE) appointed (April 2004) an arbitrator as sole Arbitral Tribunal. The arbitrator passed (September 2004) the award of ₹ 2.14 crore in favour of the contractor as against the claim of ₹ 12.05 crore preferred by the contractor. PWD sought (September 2004) the legal opinion of the Government Pleader (GP) on which the GP opined (October 2004) that the case was not fit for filing an appeal as the arbitration award was passed taking into account the grievances of the CE as well as the contractor and the arbitrator had also given reasons for arriving at the conclusions. Contending that the GP's opinion was not legally binding, an appeal was filed (December 2004) in the District Court (DC) based on the directions (October 2004) of the CE. The appeal was dismissed (September 2009) by the DC.

Against this, an appeal was filed (March 2010) by PWD in the Hon'ble High Court (HC), Chennai contesting that the sole arbitrator had no jurisdiction to entertain the disputes as the contract value exceeded ₹ five crore. However, this appeal was also dismissed (December 2010) by the HC as the department

had failed to raise the question of jurisdiction of the Sole Arbitrator at the appropriate time. Moreover, the sole arbitrator represented both the parties as he had been appointed, after the PWD and the Contractor agreed to it.

After obtaining legal opinion (February and September 2011) from the Special Government Pleader, HC, Chennai and the Additional Advocate General, Tamil Nadu that the case was not fit for further appeal, Government decided (January 2012) to make a payment of ₹ 4.74 crore comprising the award of ₹ 2.14 crore and interest thereon of ₹ 2.60 crore (from September 2001).

The action of the department in not opposing the adjudication proceedings at the admission stage itself delayed the process of arbitration. Further, appeal made against the arbitration award in the DC against the advice of the GP and questioning the jurisdiction of the arbitrator, though appointed by the PWD themselves in the HC, was injudicious as there was no case for appeal. This resulted in committed payment of additional interest of ₹ 1.89 crore to the contractor (September 2004-January 2012) which was avoidable.

Government replied (November 2012) that an appeal petition was filed in the Supreme Court of India against the orders (December 2010) of the High Court of Madras. Audit observed that the decision to prefer appeal was contrary to the earlier decision of Government (October 2011) to implement the orders of the High Court of Madras.

3.2 Blocking of funds

HIGHWAYS AND MINOR PORTS DEPARTMENT

3.2.1 Non-utilisation of Central Mixing Plants

Failure to assess the necessity before requesting for supply of the Central Mixing Plants resulted in poor/non-utilisation of the plants worth ₹ 1.24 crore.

Ministry of Shipping, Road Transport and Highways (MOSRT&H), New Delhi considered the request (August 2006) of Government of Tamil Nadu (GoTN) and approved (September 2006, August 2007) supply and erection of three Central Mixing Plants (CMP) in the hill areas at Ooty, Kodaikanal and Valparai to overcome the difficulties in transporting the bituminous mix with required temperature from foot hills to work sites. The plants were consigned to the GoTN free of cost with the stipulation that GoTN had to bear the initial expenditure towards Civil Engineering works, fuel etc., required for Commissioning of CMP which would be later charged to the civil works of the Ministry. Plants costing ₹ 131.86 lakh supplied by MOSRT&H between June 2007 and July 2008 were erected by the Divisional Engineers, Ooty (September 2008), Dindigul (December 2008) and Pollachi (August 2009) incurring an expenditure of ₹ 69.82 lakh. Ministry also directed (November 2010) the Chief Engineer (H) (Construction and Maintenance) (CE) to issue instructions to field officers for proper utilisation of CMP.

The CMP erected (March 2009) at Kodaikanal was not utilised so far (July 2012) and that erected (September 2008) at Ooty was utilised only for 15 days since erection in the bituminous works executed by the divisions.

Reasons for gross underutilisation of CMP as analysed by audit revealed that the common tender conditions stipulated that the contractors should furnish proof for possession of their own CMP for the works involving CMP and the tenders received without such proof would be rejected. Therefore, tender conditions prevented the contractors from using department CMP. In the absence of specific clause in the agreement for the use of CMP, the department could not force the contractors to use their CMP.

The Divisional Engineer (Highways), Pollachi citing Table 500-5 of MORTH specifications (IV Revision) replied (June 2012) that the required temperature of the mix could be maintained even while transporting the mix from foot hills to work sites in hilly regions.

In view of the above, the request of GoTN and the supply of CMP by MOSRT&H were unnecessary. In the absence of any demand for CMP, proposals were sent (September 2008, June 2009) to GoTN to lease out the CMP for meeting the expenditure towards maintenance of the CMP, and the same were yet to be approved by the GoTN (June 2012).

The reimbursement claim for the expenditure of ₹ 69.82 lakh incurred towards civil works is yet to be preferred (July 2012) by GoTN.

Thus, the failure of the department in assessing the necessity before supply of the plants from the MOSRT&H and non-inclusion of a suitable clause in the agreement after the procurement of CMPs resulted in poor/non-utilisation of the plants costing ₹ 1.24 crore¹³ besides defeating the purpose for which the plants were supplied by the MOSRT&H.

The matter was referred to Government in August 2012; reply has not been received (January 2013).

HANDLOOMS, HANDICRAFTS, TEXTILES AND KHADI DEPARTMENT

3.2.2 Release of grant without immediate requirement

Release of grants disregarding financial principles even before the proposal for establishment of Vaigai Hi-Tech Weaving Park resulted in non-utilisation of grant of ₹ 5.78 crore.

Government of Tamil Nadu (GoTN) sanctioned (June 2005) an amount of ₹ 4.37 crore for establishment of Vaigai Hi-Tech Weaving Park at Andipatti under Textile Centre Infrastructure Development Scheme (TCIDS) with the assistance from Government of India (GOI) to uplift the Power loom sector.

¹³ Dindigul Cost of Plant: ₹ 42.91 lakhErection charges: ₹ 20.00 lakh.
Ooty Cost of Plant: ₹ 42.91 lakhErection charges: ₹ 17.82 lakh.

The scheme to be executed by a *Special Purpose Vehicle*¹⁴ (SPV) envisaged creation of infrastructural facilities like development of roads, Effluent Treatment Plant, Training Centre, Testing etc., required for production of export quality fabrics for earning foreign exchange to the tune of ₹ 360 crore per annum and thereby creation of employment opportunities to about 16500 persons.

The project cost of ₹ 17.81 crore under TCIDS scheme was to be shared by GOI and GoTN in the ratio of 75:25 and the share of GoTN of ₹ 4.37 crore was released (June 2005) to SPV with the instructions to deposit the amount in a separate bank account pending clearance of project proposal by GOI.

As the project was not executed before the cut off date (July 2005) fixed by GOI and due to poor progress, the scheme was revived (August 2009) under “*Scheme for Integrated Textile Parks*”¹⁵ (SITP) by GOI. The total *project cost*¹⁶ under SITP was ₹ 61.01 crore. GOI released (March 2010) ₹ 2.44 crore for this purpose and out of this, SPV utilised ₹ 2.34 crore for the purchase of land, factory buildings, etc.

The State Government contribution of ₹ 4.37 crore released in June 2005 along with interest of ₹ 1.41 crore was not utilised (July 2012) and kept in the bank account of SPV. In the meantime, GOI cancelled (October 2011) the project (SITP) citing poor progress due to *various reasons*¹⁷ and requested the SPV to refund the grant of ₹ 2.44 crore already released. GOI also requested the State Government to initiate the revenue recovery proceedings to recover the amount from SPV. GoTN addressed (January 2012) GOI for extension of time up to October 2012 for commissioning of Vaigai Hi-Tech Weaving Park. SPV had neither refunded the grant of GOI nor obtained extension of time (July 2012).

According to Rule 210 A (3) of Tamil Nadu Financial Rules, only so much of grants-in-aid is to be released in a financial year as is likely to be expended during that year. In the case of grants for specific works, payments must be made according to the needs of the works undertaken and money should not be drawn in advance of requirement.

The state share of ₹ 4.37 crore released in June 2005 along with interest of ₹ 1.41 crore (upto July 2012) for establishment of Vaigai Hi-Tech Weaving Park at Andipatti was lying unutilised and kept outside Government Account for more than seven years defeating the purpose of release of the grant. It is pertinent to mention that the Finance department of GoTN had also opined (March 2005) to release only a token amount of ₹ two crore as “only in principle” approval for the project had been given by GOI.

¹⁴ SPV- formed with the representative of local Industry, Financial Institutions, State and Central Government. SPV shall invariably be a Corporate Body registered under the Companies Act.

¹⁵ SITP – New Scheme introduced by GOI in August 2005 by integrating TCIDS and another scheme “Scheme for Apparel Parks for Exports”.

¹⁶ GOI assistance: ₹ 24.40 crore, State Government assistance: ₹ 5.49 crore, Promoters contribution: ₹ 2.78 crore, Bank Loan ₹ 28.34 crore

¹⁷ Non-mobilisation of finance by investors, delay in completion of construction activities, non-installation of machineries, etc.

Thus irregular release of grants-in-aid violating the financial principles even before formulation of viable proposals and also disregarding the advice of Finance department (March 2005) resulted in non-utilisation of Government grant of ₹ 5.78 crore (Grant ₹ 4.37 crore + Interest ₹ 1.41 crore) for more than seven years.

The matter was referred to Government in August 2012; reply has not been received (January 2013).

3.3 Regularity issue

HIGHWAYS AND MINOR PORTS DEPARTMENT

3.3.1 Irregular retention of funds outside Government account

Due to non-adherence of revised land acquisition procedure, an amount of ₹ 30 crore was kept outside the Government account for more than three years resulting in loss of interest of ₹ 4.07 crore.

The procedure of opening of Personal Deposit Account in the name of the Land Acquisition Officer (LAO) for payment of compensation for land acquisition in respect of National Highways (NH), Public Works and Highways Departments was in vogue from January 1972. Government discontinued (July 1987) this procedure and ordered that the amount payable towards compensation be kept in Treasury accounts under 8782 Remittance Head in respect of Public Works Department and under 8658 Suspense and Miscellaneous in respect of NH and Highways Department. As per procedure, the LAOs have to make the payment of compensation for the land acquisition by presenting bills at the treasury which will pass on the debit to the Divisional Officers concerned for eventual adjustment in the accounts of works. Contrary to the above revised procedure, an amount of ₹ 30 crore was kept out of Government accounts for three years and seven months as discussed below:

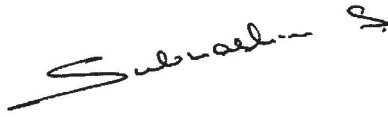
Government of Tamil Nadu accorded (March 2007) administrative sanction of ₹ 70 crore for land acquisition for the work of upgrading the road from Siruseri to Mahabalipuram (IT Expressway Phase II). Based on the sanction, Chief Engineer (General), Highways (CE) allotted (March 2008) ₹ 30 crore to the Divisional Engineer (Highways), Chengalpattu (DE) for the work and instructed the DE to present the adjustment bill with the Treasury Officer (TO) concerned. The bill was presented to the Sub-Treasury Officer, Chengalpattu (STO) who in turn issued a cheque in favour of the Special Tahsildar/Land Acquisition (STLA) IT Highways Corridor Phase II, Tambaram. Without insisting the STO to keep the amount under Suspense Head as outlined in the LA procedure, the DE obtained the cheque and sent (March 2008) it to STLA who in turn deposited it in the Savings Bank (SB) account maintained by him in State Bank of India (SBI), Tambaram and earned an interest of ₹ 3.99 crore at 3.5 per cent per annum during the period from March 2008 to October 2011. He withdrew (October 2011) ₹ 30 crore from the SBI and

credited it to Deposits Head at Sub Treasury, Tambaram. However, the interest amount of ₹ 3.99 crore was not yet (February 2012) credited to Government account pending clarification from Collector, Kancheepuram regarding the Head of Account to which the interest was to be credited.

The action of DE in sending the cheque for ₹ 30 crore to the STLA contravening the Government Orders and CE's instructions resulted in irregular retention of public money outside Government account for three years and seven months and loss of ₹ 4.07 crore to the Government (difference between borrowing rate of Government at 7.3 to 7.7 per cent and interest earned at 3.5 per cent on SB account).

The matter was referred to Government in June 2012; reply has not been received (January 2013).

Chennai
Dated 04 Mar 13


(SUBHASHINI SRINIVASAN)
Principal Accountant General
(Economic and Revenue Sector Audit)
Tamil Nadu

Countersigned

New Delhi
Dated 05 Mar 13


(VINOD RAI)
Comptroller and Auditor General of India