

**Chapter-5**  
**Individual Audit Observations**



## Chapter 5: Individual Audit Observations

### State Taxes and Excise Department

#### 5.1 Inadmissible allowance of Input Tax Credit (ITC) on branch transfer

**Failure of Assessing Authorities to disallow ITC on branch transfer resulted in inadmissible allowance of ITC of ₹ 1.40 crore. Besides, interest was also leviable.**

Section 11(4) of the Himachal Pradesh VAT Act, 2005, provides that notwithstanding anything contained in sub-section, ITC shall be allowed only to the extent by which the amount of input tax paid in the State exceeds four *per cent* on purchase of goods sent outside the State otherwise than by way of sale in the course of inter-state trade. Section 19 provides that if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* and thereafter one and half *per cent* till the default continues.

Audit scrutiny during 2020-21 of five <sup>1</sup> (out of 11) test-checked Deputy Commissioners of State Taxes and Excise (DCSTE) revealed that Assessing Authorities (AAs), while finalizing assessments (between April 2019 to January 2020) of 14 dealers, for the assessment years 2007-08 to 2016-17, disallowed ITC of only ₹ 0.52 crore on goods sent as branch transfer, whereas, the AAs were required to disallow ITC of ₹ 1.92 crore<sup>2</sup> of ITC on branch transfers as per Section 11(4), *ibid*. This resulted in excess benefit of ITC of ₹ 1.40 crore<sup>3</sup> on branch transfer. Besides, interest under Section 19 of the Act, *ibid* was also leviable.

Government replied (March 2022) that re-assessments had been carried out in four cases of three dealers.<sup>4</sup> The amount was pending for recovery and the reply in case of one dealer was accepted as the company was liquidated by the order of Hon'ble High Court of Mumbai. In the remaining cases, DCSTEs had been directed by Government to take appropriate action.

***The Department may consider issuing necessary directions to the officials concerned to pay due attention to the relevant rule provisions while making adjustment of ITC in the assessments.***

<sup>1</sup> DCSTEs Sirmour at Nahan, Una, Baddi, Solan and Nurpur (Kangra).

<sup>2</sup> ITC to be disallowed on Branch transfer = (4%) / (rate of tax) x (Total ITC - ITC on sales of the corresponding rate of Tax).

<sup>3</sup> DCSTE Sirmour: four cases: ₹ 49.92 lakh, DCSTE Una: four cases: ₹ 63.40 lakh, DCSTE Baddi: three cases: ₹ 24.51 lakh, DCSTE Solan: two cases: ₹ 0.92 lakh and DCSTE Nurpur (Kangra): one case: ₹ 1.30 lakh.

<sup>4</sup> Malwa Cotton, Fewa Electric and Stufa.

## 5.2 Non-levy of penalty and additional penalty on short lifting of Minimum Guaranteed Quota (MGQ)

**The Department did not levy penalty of ₹ 37.46 crore and additional penalty of ₹ 1.58 crore for short lifting of MGQ against benchmarks of 100 per cent and 85 per cent respectively.**

Para 5.3 of Excise Announcement (EA) 2019-20<sup>5</sup> and para 4.3 of EA 2018-19 stipulate that each licensee shall lift 100 per cent of Minimum Guaranteed Quota (MGQ) both of Country Liquor (CL) and Indian made Foreign Liquor (IMFL) as fixed for each vend and shall be liable to pay penalty equivalent to Retail Excise Duty (RED) on un-lifted quota falling short of 100 per cent MGQ. Further, if lifting falls short of 85 per cent of MGQ, he shall be liable to pay in addition to the RED as penalty, an additional penalty of 10 per cent of the RED falling short of 85 per cent of MGQ. District in-charge concerned is required to review the lifting of MGQ on quarterly basis and ensure recovery of penalty as well as additional penalty on un-lifted MGQ.

Para 5.5 (a) of EA 2019-20 also stipulate that, in the event the licensee fails to make the payment of penalty equal to RED on the unlifted monthly Quota, by the due date, the licensee shall pay on the amount which remains unpaid, interest at the rate of 14 per cent per annum for a delay of up to one month from the date of default. If the default in payment of annual Retail Excise Duty exceeds one month, such licensee shall pay interest @ 18 per cent per annum on the unpaid amount from the date of expiry of one month's period from the first date of default.

During 2020-21, scrutiny of records for the period 2018-20 of six (out of 11) test checked DCSTEs<sup>6</sup> revealed that out of 1041 licensees of CL and IMFL under these six DCSTEs, 714 licensees had lifted quota short of 100 per cent benchmark by 11,58,496 proof litres (pls),<sup>7</sup> on which penalty of ₹ 37.46 crore was leviable. Out of these 714 licensees, 241 licensees had lifted quota short of 85 per cent benchmark by 4,67,993 proof litres, on which additional penalty of ₹ 1.58 crore was leviable.

**Table-5.2.1: MGQ lifted against benchmark of 100 per cent and 85 per cent for CL and IMFL**

Type of liquor	MGQ fixed (pls)	MGQ lifted (pls)	Rate of RED leviable as per EA (Per pls)	100 per cent benchmark		85 per cent benchmark	
				MGQ lifted short of 100 per cent	Penalty (₹)	MGQ lifted further short of 85 per cent	Additional penalty (₹)
1	2	3	4	5=2-3	6=4*5	7	8
CL	54,51,629	49,36,246	290	5,15,385	14,94,61,579	1,92,953	55,95,650
IMFL	60,97,909	54,54,797	350	6,43,111	22,50,89,009	2,75,040	1,02,31,684
<b>Total</b>	<b>1,15,49,538</b>	<b>1,03,91,043</b>		<b>11,58,496</b>	<b>37,45,50,587</b>	<b>4,67,993</b>	<b>1,58,27,335</b>

<sup>5</sup> Extended up to May 2020 due to Covid Pandemic.

<sup>6</sup> Una, Hamirpur, Kangra at Dharamsala, Kullu, Sirmour at Nahan and Mandi.

<sup>7</sup> Strength of alcohol is measured in terms of 'Degree Proof'. Strength of such alcohol 13 parts of which weigh exactly equal to 12 parts of water at 51 Degree F. is assigned 100 Degree proof. Apparent volume of a given sample of alcohol when converted into volume of alcohol having strength 100 Degree is called LPL or PL.

Thus, failure of DCSTEs to strictly review the quota lifting position of MGQ on a quarterly basis as required by EA resulted in non-realisation of penalty and additional penalty of ₹ 39.04 crore (₹ 37.46 crore + ₹ 1.58 crore). In addition, interest under para 5.5(a) of Excise Announcement 2019-20 was also leviable.

The DCSTEs concerned accepted the audit observations and replied that action would be taken to recover the penalty and additional penalty from the defaulters.

*The Department may fix accountability and ensure recovery of due license fee amounts in light of the above observations.*

### 5.3 Non-levy of interest on delayed payment of Retail Excise Duty and Bottling Fee

**Interest amounting to ₹ 41.16 lakh on delayed payment of license fee and ₹ 26.30 lakh on delayed payment of bottling fee was not demanded by the Department from the licensees of 69 vends and five manufacturers respectively, resulting in non-levy of interest to the extent of ₹ 67.46 lakh.**

Para 3.35 of Excise Announcement (EA) 2019-20 provides that if a licensee fails to make payment of retail excise duty (RED) by the due date, he shall pay interest on the unpaid amount at 14 *per cent* per annum for delay of up to one month from the date of default. If the default exceeds one month, he shall pay interest at 18 *per cent* per annum on the unpaid amount from the date of expiry of the first month of default. Para 3.36 of EA also provides that if the licensee fails to deposit RED plus interest by last day of the next month, or the last instalment by 15 March, his vend shall be sealed by the DCSTE on the 1st day of the following month or on 16th March.

Rule 9.5(6)(a)(ii) of Punjab Distillery Rules, 1932 as applicable to Himachal Pradesh provides that bottling fee at the rates prescribed shall be payable on quarterly basis. Rule 9.5(8) further provides that in the event of failure to pay the bottling fee or part thereof by the due date, interest at 12 *per cent* per annum for the first month of default shall be payable; and if the default exceeds one month, interest at 18 *per cent* per annum from initial date of default shall be payable till the default continues.

Audit scrutiny of records during 2020-21 of four (out of 11) test checked DCSTEs<sup>8</sup> revealed that licensees of 69 out of 583 vends under these four DCSTEs had deposited RED of ₹ 53.59 crore with delay ranging from one and 102 days. In 23 cases, the delay was more than one month. These licensees were liable to pay interest of ₹ 41.16 lakh on the delayed payments.

Similarly, five manufacturers under two DCSTEs<sup>9</sup> had deposited bottling fees of ₹ 5.88 crore with delay ranging from one to 421 days, on which interest of ₹ 26.30 lakh was leviable.

<sup>8</sup> DCSTEs: Solan 15 Vends; ₹ 11.64 lakh, Nurpur (Kangra): eight Vends; ₹ 2.22 lakh, Mandi 12 Vends; ₹ 4.40 lakh and Kullu 34 Vends; ₹ 22.90 lakh.

<sup>9</sup> DCSTEs: Baddi: three manufacturers; ₹ 19.80 lakh and Nurpur: two manufacturers; ₹ 6.49 lakh.

Thus, interest of ₹ 67.46 lakh (₹ 41.16 lakh on RED and ₹ 26.30 lakh on bottling fees) was not recovered. DCSTEs accepted the observations and replied that recovery of interest would be initiated.

*Despite being repeatedly pointed out by Audit for the last five years, the deficiency persists, indicating negligence in applying the provisions of EA. Government may consider conducting periodic review of recoveries from retailers, distilleries, breweries, bottling plants to safeguard its revenue.*

#### 5.4 Non-realisation of bottling license fee

**In two distilleries/bottling plants, DCSTEs recovered bottling license fee of ₹ 34.96 lakh against the recoverable amount of ₹ 71.86 lakh resulting in non-realization of ₹ 36.91 lakh. In addition, interest was also leviable.**

Rule 9.5(6) of the Punjab Distillery Rules (PDR), 1932 as applicable to Himachal Pradesh provides that the licensee shall pay into the Government treasury, the amount chargeable according to the units of 750 millilitres (mls) of CL and IMFL bottled by them. Rule 9.5 (8) of PDR further provides that if the licensee fails to pay the fee or part thereof by the due date, interest at the rate of 12 per cent per annum up to one month and if the default in payment exceeds one month, interest at the rate of 18 per cent for the entire delay shall be payable. This fee shall be paid by the licensee quarterly within the seven days of the expiry of each quarter.

Audit scrutiny in 2020-21 of the records for the year 2019-20 of two distilleries under two test checked DCSTE<sup>10</sup> (out of 11) revealed that the units had produced 17.72 lakh proof litres (47.06 lakh bottles) of liquor (CL & IMFL) on which bottling fee of ₹ 71.86 lakh at the prescribed rates<sup>11</sup> was payable, against which the units had paid only ₹ 34.96 lakh as given below:

**Table-5.4.1: Bottling license fee paid less for CL and IMFL**

Name of DCSTEs	Production in proof (Litres)			No. Of Bottles of 750 mls			Payable Bottling Fees			Paid	Amount recoverable (₹)
	IMFL	CL	Total (IMFL+ CL)	IMFL Bottles (750 mls)	CL Bottles (750 mls)	Total Bottles (IMFL+ CL)	Bottling fee @ ₹ 4.50 per unit (IMFL)	Bottling fee @ ₹ 1.50 per unit (CL)	Total Bottling fee (IMFL+ CL)		
Una	12,456	10,13,832	10,26,288	22,143	27,03,552	27,25,693	99,646	40,55,328	41,54,974	7,15,000	34,39,974
Sirmour	11,520	7,34,796	7,46,316	20,481	19,59,456	19,79,937	92,163	29,39,184	30,31,347	27,80,650	2,50,697
<b>Total</b>	<b>23,977</b>	<b>17,48,628</b>	<b>17,72,605</b>	<b>42,625</b>	<b>46,63,008</b>	<b>47,05,633</b>	<b>1,91,812</b>	<b>69,94,512</b>	<b>71,86,324</b>	<b>34,95,650</b>	<b>36,90,670</b>

There was nothing on record to indicate that the heads of the units concerned had initiated any action to recover the remaining bottling fee. This resulted in

<sup>10</sup> Sirmour and Una.

<sup>11</sup> CL: ₹ 1.50 and IMFL: ₹ 4.50 per bottle.

non-realisation of bottling fee/bottling license fee of ₹36.91 lakh<sup>12</sup>. Besides, interest under rule 9.5(8) of Punjab Distillery Rules (PDR), 1932 was also leviable. On this being pointed out, the DCSTEs confirming the facts and figures as correct, stated that the matter would be looked into, and action would be taken as per excise policy.

### 5.5 Suspected Pilferage of Country Liquor

**Mismatch between the quantity sold by the wholesaler and lifted by the retailers resulted in suspected pilferage of liquor involving retail excise duty of ₹ 24.05 lakh.**

Rule 7.13(ix) of Excise Announcement 2019-20 provides that the supply of Country Liquor and High Strength Country Liquor to the retail licensee of the State shall be done through the L-13 wholesale only and that the L-13 Licensee shall be bound to give supplies of CL to any retail sale Licensee of the District in which it is located, if so desired by such retail sale licensee. In case no L-13 vend is open in a district, this condition may be relaxed by the collector of the zone concerned in which case the retailer shall obtain supplies from the L-13 so approved by the collector of the zone.

The liquor/beer can be sold/transported from the warehouse to the retailers by the wholesaler only after obtaining a pass/permit from the excise authority.

During 2020-21, scrutiny of records of two<sup>13</sup> (out of 11) test checked DCSTEs revealed that retailers under these two DCSTEs had lifted 21.91 lakhs proof litres of country liquor (CL) against the sale of 21.99 lakh proof litres of CL by wholesalers in the district. Difference between quota sold by wholesalers and quota lifted by retailers as per table below:

**Table-5.5.1: Details of suspected pilferage of country liquor**

Sr. No.	Name of DCSTEs	Quota Sold By Wholesalers (CL)	Quota lifted by Retailers (CL)	Difference	RED @ ₹ 290 Per Pls for CL
1.	Baddi	12,87,967.14	12,87,009.16	957.98	2,77,814.2
2.	Sirmour	9,11,440.125	9,04,105	7,335.125	21,27,186.25
<b>Grand Total</b>		<b>21,99,407.265</b>	<b>21,91,114.16</b>	<b>8,293.105</b>	<b>24,05,000.45</b>

Thus, there was suspected pilferage of 8,293.105 proof litres of CL on part of wholesalers involving retail excise duty of ₹ 24.05 lakh, worked out as per applicable rates of retail excise duty of 2019-20.

On being pointed out in audit (Feb 2021), the DCSTE Sirmour replied that sale figures of wholesalers and lifting of retailers would be reconciled and outcome thereof will be reported to Audit.

The Department should devise a mechanism to cross-check the sale of wholesalers and receipt of retailers to avoid pilferage of liquor.

<sup>12</sup> Sirmour: ₹ 2.51 lakh and Una: ₹ 34.40 lakh.

<sup>13</sup> DCSTE Baddi and Sirmour at Nahan.

## Revenue Department

### 5.6 Short determination of market value of properties

**Incorrect valuation on the basis of incorrect circle rates and false affidavits regarding distance of the land from road resulted in short-realisation of Stamp Duty and Registration Fee of ₹ 3.74 crore.**

According to article 23 of Indian Stamp Act 1899, as amended in 2013, Stamp Duty (SD) at six *per cent* for other persons and four *per cent* for women would be leviable on either the market value of the property or the consideration amount, whichever is higher. Similarly, as per Revenue department notification dated January 2012, Registration fees (RF) at two *per cent* would be leviable on either the market value of the property or the consideration amount, whichever is higher, for registration of property. Department of Revenue issued notification in January 2016 classifying land in rural and urban areas into five categories for calculation of Stamp Duty and Registration Fee (SD & RF), depending upon its location/distance from any road viz., land situated (i) up to 25 meters; (ii) 25 metres to 50 metres; (iii) 50 metres to 100 metres; (iv) 100 metres to 1,000 metres; and (v) more than 1,000 metres from any road in the Revenue Estate. The roads are in turn categorised as National Highway (NH), State Highway (SH) and Other Road (OR). The purchaser is required to file affidavit stating the distance of the relevant land or holding from an NH, SH or OR for calculation of Stamp Duty. If the affidavit of purchaser is found false, penalty up to 50 *per cent* of the applicable Stamp Duty/ Registration Fee is to be levied and recovered.

#### I. Short levy of SD and RF due to application of incorrect circle rates.

Audit scrutiny in 2020-21 of the records of 23 test checked Sub-Registrars (SRs)<sup>14</sup> (out of 78) revealed that 195 deeds were registered (between 2015 and 2020) for a consideration amount of ₹ 25.71 crore, on which SD and RF of ₹ 1.83 crore was levied. The SRs, while registering these sale deeds ignored/overlooked the supporting documents such as self-affidavits declaring location/distance of land from different categories of road and Jamabandis declaring cultivated/uncultivated nature of the land.

Audit found that SR applied incorrect circle rates, resulting in under valuation of properties. As per the applicable circle rates, consideration amount works out to be ₹ 38.30 crore on which SD and RF of ₹ 2.61 crore was required to be levied. However, SD and RF of ₹ 1.83 crore was levied, leading to short realisation of SD and RF of ₹ 77.96 lakh (SD: ₹ 55.72 lakh + RF: ₹ 22.24 lakh).

<sup>14</sup> SR Barsar: two cases ₹ 1.32 lakh, Bhoranj: five cases ₹ 1.78 lakh, Bharari: nine cases ₹ 1.29 lakh, Bilaspur: four cases ₹ 1.86 lakh, Bihru kalan: seven cases ₹ 1.25 lakh, Chhatri: 10 cases ₹ 1.20 lakh, Dharmsala: six cases ₹ 4.69 lakh, Galore: two cases ₹ 0.59 lakh, Hamirpur: three cases ₹ 0.33 lakh, Jubbal: two cases ₹ 1.01 lakh, Kangra: 15 cases ₹ 1.91 lakh, Kangoo: two cases ₹ 5.14 lakh, Kullu: nine cases ₹ 1.21 lakh, Kataula: seven cases ₹ 4.07 lakh, Nagrota Bagwan: 14 cases ₹ 3.99 lakh, Nahan: 11 cases ₹ 4.38 lakh, Nalagarh: 15 cases ₹ 22.30 lakh, Paonta Sahib: 17 cases ₹ 2.83 lakh, Sadar(Mandi): 20 cases ₹ 6.99 lakh, Shimla(R): 27 cases ₹ 6.28 lakh, Sujanpur: three cases ₹ 0.60 lakh, Tauni Devi: three cases ₹ 1.04 lakh and Tikkar: two cases ₹ 1.76 lakh.

## II. Short levy of SD and RF due to acceptance of false affidavits-

Audit scrutiny in 2020-21 of the records of 37 test-checked SRs<sup>15</sup> (out of 78) revealed that 420 Deeds were registered between 2015 and 2020 on the basis of self-affidavits filed by the purchasers declaring distance of land holding from different categories of roads. These deeds were registered for a consideration amount of ₹ 78.62 crore, on which SD and RF of ₹ 5.64 crore was levied. Audit cross-verified the affidavits with maps (*latha*) available with the Kanungo (Revenue Authority) and found that the valuation of the properties should have been done at ₹ 118.20 crore on the basis of location/distance of land from different categories of road, on which SD and RF of ₹ 8.60 crore was required to be levied. Audit observed that even though the revenue records (*latha*) and land rates were available with the Department, the SRs did not cross-verify the affidavits before registration of deeds, and instead, relied on the information in the self-affidavits filed by the purchasers. This led to short levy of SD and RF of ₹ 2.96 crore (SD ₹ 2.21 crore + RF ₹ 75.98 lakh). In addition, maximum penalty @ 50 per cent of applicable SD and RF amounting to ₹ 4.29 crore also became leviable.

On this being pointed out, 11 SRs<sup>16</sup> replied that an amount of ₹ 36.62 lakh (April 2020 to March 2021) in 82 cases had been recovered. Remaining Sub-Registrars (SRs) stated that doubtful affidavits would be examined by the revenue authority concerned and action taken accordingly, after ascertaining the exact location of land in due course of time under intimation to audit.

***The Government may consider putting in place systems and procedures to simplify the mechanism for identification of different types of roads and calculation of distance from roads to reduce arbitrary interpretation of the rules.***

<sup>15</sup> SR Arki: seven cases ₹ 2.46 lakh, Baldwara: 15 cases ₹ 6.20 lakh, Barsar: 10 cases ₹ 3.07 lakh, Bharari: five cases ₹ 3.05 lakh, Bhawarna: 20 cases ₹ 5.37 lakh, Bilaspur: five cases ₹ 17.56 lakh, Chamba: six cases ₹ 7.90 lakh, Chhatri: eight cases ₹ 0.64 lakh, Dharmsala: 19 cases ₹ 7.48 lakh, Galore: 10 cases ₹ 4.33 lakh, Harchakian: six cases ₹ 0.62 lakh, Jubbal: five cases ₹ 8.14 lakh, Junga: seven cases ₹ 1.86 lakh, Kangoo: 14 cases ₹ 4.41 lakh, Kangra: 15 cases ₹ 6.38 lakh, Kasba Kotla: six cases ₹ 2.25 lakh, Kataula: six cases ₹ 1.22 lakh, Kullu: seven cases ₹ 1.02 lakh, Nahan: 12 cases ₹ 37.50 lakh, Nalagarh: 18 cases ₹ 8.55 lakh, Narag: five cases ₹ 1.79 lakh, Nargota Bagwan: four cases ₹ 0.65 lakh, Palampur: nine cases ₹ 3.56 lakh, Pangna: 18 cases ₹ 23.21 lakh, Paonta Sahib: 19 cases ₹ 22.71 lakh, Ramshehar: 14 cases ₹ 3.53 lakh, Sadar(Mandi): five cases ₹ 1.83 lakh, Sarkaghat: 11 cases ₹ 4.22 lakh, Shimla(U): nine cases ₹ 3.54 lakh, Shimla(R): 17 cases ₹ 40.13 lakh, Sihunta: six cases ₹ 3.01 lakh, Solan: 17 cases ₹ 56.33 lakh, Sundarnagar: 53 cases ₹ 18.71 lakh, Tauni Devi: seven cases ₹ 1.63 lakh, Thunag: 17 cases ₹ 5.51 lakh, Thural: six cases ₹ 0.66 lakh and Tikkar: two cases ₹ 0.28 lakh.

<sup>16</sup> Baldwara: ₹ 5.64 lakh, Bharwain: ₹ 2.12 lakh, Chhatri: ₹ 0.70 lakh, Junga: ₹ 1.67 lakh, Mandi (Sadar): ₹ 0.54 lakh, Ramshahar: ₹ 0.23 lakh, Shimla(R): ₹ 6.76 lakh, Sihaunta: ₹ 1.04 lakh, Solan: ₹ 11.46 lakh, Thunag: ₹ 5.07 lakh and Tikkar: ₹ 1.33 lakh.

## 5.7 Short realisation of Stamp Duty and Registration Fees on Lease Deeds

**Market rates were not used to calculate stamp duty and registration fees due on lease deeds resulting in short recovery of ₹ 0.43 crore.**

Department of Revenue notified in January 2012 that *Stamp Duty* (SD) at five *per cent*<sup>17</sup> and *Registration Fees* (RF) at two *per cent*<sup>18</sup> would be leviable on the market value of the property for registration of all lease deeds.

Audit scrutiny in 2020-21 revealed that in 10 (out of 78) test-checked Sub-Registrars (SRs), the SRs levied stamp duty and registration fees on 33 lease deeds using arbitrary consideration amount instead of using the market value, even though the circle rates of land and built-up rates of structures needed to determine the market value<sup>19</sup> were available with the Department. As a result, against SD and RF of ₹ 0.73 crore (SD ₹ 0.52 crore + RF ₹ 0.21 crore) that would have been leviable on the basis of market value, (which would have been the higher amount), the SRs levied SD and RF of ₹ 0.30 crore (SD ₹ 0.22 crore + RF ₹ 0.08 crore) on a lower amount for which no justification was found on record, resulting in short realisation of SD and RF of ₹ 0.43 crore<sup>20</sup> (SD: ₹ 0.30 crore + RF: ₹ 0.13 crore).

The Department replied (between March and December 2020) that three SRs<sup>21</sup> had recovered an amount of ₹ 6.82 lakh in seven cases. The remaining SRs stated that cases would be reviewed. The reply of the Government was still awaited (August 2022).

*This issue was highlighted in the Audit Report on State Revenues of previous years, but the SRs were continuing to deviate from the departmental instructions. The persistence of such deviations is indicative of weak internal controls. The Government may examine the reasons for persistent non-adherence to the departmental notification by field offices and initiate corrective action.*

## Public Works Department

### 5.8 Short realization of dues for laying of optical fibre cable

**Failure of the Department to apply correct rates for restoration of road after the laying of optical fibre cable reflects negligence in safeguarding public resources resulting into short recovery of ₹ 0.55 crore and compromising the ability of the department to restore the road to the desired quality standards.**

As per departmental instructions (January 2001), damages caused to the roads are restored by Himachal Pradesh Public Works Department (HPPWD) out of deposit

<sup>17</sup> Formula: Stamp duty @ 5% x Market Value x Period of lease / 100.

<sup>18</sup> Formula: Registration Fees @ 2% x Market Value x Period of lease / 100.

<sup>19</sup> Formula: Market value of property = (Circle Rate \* Area) + {BUILTUP rate \* Area (if structure is also being sold)}.

<sup>20</sup> Dheera: one case, ₹ 1.93 lakh; Kangra: two cases, ₹ 6.61 lakh; Dharwala: one case, ₹ 1.49 lakh; Hamirpur: Six cases, ₹ 3.92 lakh; Solan: Nine cases, ₹ 8.73 lakh; Dulehar : one case, ₹ 1.51 lakh; Junga: five cases, ₹ 4.38 lakh; Shimla Rural : one case, ₹ 0.98 lakh; Churah: five cases, ₹ 8.72 lakh and Chamba: two cases, ₹ 1.64 lakh.

<sup>21</sup> Dheera ₹ 1.93 lakh, Junga ₹ 4.15 lakh and Solan ₹ 0.73 lakh.

money received from telecom companies against estimates prepared by the Executive Engineer (EE) of the concerned division. For restoration of road after laying underground cable/optical fibre cable, the Engineer-in-Chief fixed the rate<sup>22</sup> for the year 2018-19 at ₹ 1,121 per meter for *pucca* (metalled and tarred<sup>23</sup>) road, and ₹ 238 per meter for *katcha* road respectively. Besides, the rates for tribal area were to be 25 per cent above the aforesaid rates.

Scrutiny of records of Bharmour division revealed that an estimate for the restoration of road work<sup>24</sup> amounting to ₹ 2.65 crore was prepared in 2018 and sent to Telecom operator<sup>25</sup> for a total length of 26.10 km<sup>26</sup> falling in tribal area from Garola to Deol. In the estimate, 5.0 km of the road<sup>27</sup> was shown as *katcha* road whereas as per records, the road was found to be a *pucca* road. Instead of applying the rate applicable for *pucca* road at ₹ 1,121/- per meter, the Division had wrongly applied the rate for *katcha* road at ₹ 238/- per meter in the estimate. This resulted in short recovery of ₹ 0.55 crore<sup>28</sup> on restoration of this stretch of the road. It also compromised the ability of the department to restore the road to the desired quality standards.

The Audit finding was referred to the State Government (April 2021). The Government while accepting the audit observation, endorsed (September 2021) the Engineer-in-Chief's reply in which it was stated that the Executive Engineer had been directed (September 2021) to prepare the revised estimate and issue an appropriate demand notice for the additional amount. The Executive Engineer in compliance had prepared and intimated (September 2021) the revised estimate to the telecom operator with a request to deposit the balance amount of ₹ 0.55 crore at the earliest.

*The case pointed out is based on the test check conducted by Audit. The Department/ Government may initiate action to examine similar cases and ensure preparation of estimates as per actual records.*

## 5.9 Unfruitful expenditure and undue favour in construction of road work

**Unfruitful expenditure of ₹ 3.34 crore on incomplete road work including undue favour of ₹ 0.38 crore due to manipulated/ collusive bidding, besides making payment for fictitious entries in measurement books.**

Administrative approval was granted (April 2011) by Special Secretary (PW) Himachal Pradesh for construction of Jablahi Nalah- Barnota Karkoh road (Km 0/0 to 5/500) including one bridge under NABARD, to provide transport facility in Kotli

<sup>22</sup> Engineer-in-Chief HPPWD vide letter no. PW(R) 71-A-Fibre Cable/WS-559-90 dated 23-4-2018.

<sup>23</sup> Pre-mix carpet bituminous concrete.

<sup>24</sup> Restoration of road due to laying of OFC along with Khramukh Nayagram road portion Garola to Deol.

<sup>25</sup> Reliance Jio Infocom Limited.

<sup>26</sup> *Pucca* road: 17.010 and *Katcha* road: 9.090.

<sup>27</sup> Lying between 13/000 to 27/200 under Holi Sub division.

<sup>28</sup> 5000 rmt \* (1121 - 238) ₹ per rmt + 25 per cent additional for tribal area = ₹ 0.55 Crore.

area of Mandi district. Technical sanction was granted (February 2012) for ₹ 1.82 crore by the Chief Engineer (CE). The work was awarded in 2015 and was still in progress (March 2022).

Scrutiny of records (January 2018) of HPPWD Mandi II Division and information obtained thereafter revealed the following irregularities -

### **5.9.1 Payment for fictitious entries in measurement books**

Punjab PWD Code (followed by HPPWD) in para 4.5 and 4.6 stipulates that the measurement book (MB) must be looked upon as the most important record since it forms the basis of all accounts of quantities which have to be counted or measured. MB should be a reliable record as it may have to be produced as evidence in a court of law.

The work<sup>29</sup> was first awarded in January 2015 to a Government contractor for ₹ 1.56 crore and was stipulated to be completed in two years (February 2017).

The awarded work *inter alia* had provision for excavation work of 43,800.59 cubic meter to widen the road to a width of five to seven meters from 0/0km to 5/500 km, amounting to ₹ 0.46 crore<sup>30</sup>. However, it was noticed that the contractor excavated a quantity of 58,017.96 cubic meter (32 *per cent* above scope of work) for which payment of ₹ 0.61 crore was made to him. Thereafter, the contractor abandoned the work in April 2016 and the contract was rescinded by the Executive Engineer (EE) (Mandi Division II) in March 2017.

Subsequently, excavation work for a quantity of 7,490.53 cubic meter amounting to ₹ 0.08 crore<sup>31</sup> was again awarded in January 2018 to a second contractor in road portion 1/900 to 2/600 as balance work left out by the first contractor. Apart from this, excavation work for 25,679 cubic meter amounting to ₹ 0.38 crore<sup>32</sup> was also awarded in September-October 2018 to 36 other contractors as Removal of Formation Deficiency (ROFD) work.

In all instances, the excavation work was claimed to have been executed and completed. It would appear that against the original estimate/award of 43,800.59 cubic meter of excavation work for ₹ 0.46 crore, the department apparently got a total quantity of 91,187.49 cubic meter<sup>33</sup> excavated for ₹ 1.07 crore.

However, when Audit scrutinized and compared the excavation work recorded in the respective measurement books (MBs) of the various contractors, it was found that the road width recorded as already cleared by the first contractor was again recorded as

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<sup>29</sup> SH: F/C 5/7 Mtr wide, CD works, V shape *katcha* drain, P/L Essential soling & C/O 19.75 Mtr. RCCT beam bridge.

<sup>30</sup> RD 0/0 to 5/500 at the rate of ₹ 105.76 per cubic meter.

<sup>31</sup> RD 1/900 to 2/600 at the rate of ₹ 109 per cubic meter.

<sup>32</sup> All the road from RD 0/0 to 5/500 (except 1/900 to 2/420) at an average rate of ₹ 146 per cubic meter.

<sup>33</sup> 58017.96 cubic meter + 7490.53 cubic meter + 25679 cubic meter.

having been cleared by second contractor/36 ROFD contractors. This is illustrated from a few examples in **Table-5.9.1**.

**Table-5.9.1: Overlap of Excavation work (as per Measurement Books)**

1	Excavation by first contractor			Excavation by Second Contractor/ ROFD work by various contractors		
	2	3	4	5	6	7
RD	Width shown already clear	Width cleared by first contractor	Total clear width after execution (April 2016)	Width shown already clear (Aug 2018)	Width cleared by second/ ROFD contractor	Total clear width after execution
0/0	4	3	7	4.2	0.6	4.8
0/30	3	2.7	5.7	0	6.0	6.0
0/60	3	4	7	0	7.3	7.3
0/90	0	5.6	5.6	0	6.5	6.5
0/120	0	5.2	5.2	0	5.5	5.5
0/150	2.7	3	5.7	5	1	6
0/180	0	6	6	3.5	2.3	5.8
0/210	0	6	6	6	0.8	6.8
0/240	0	7	7	0	5.5	5.5
0/270	2.5	3.1	5.6	3	2.0	5.0

It is clear from the above table that after showing road width cleared to the required extent in 2016 (column 4), the division showed a lesser extent of road width clear in 2018 (column 5). For the same excavation work, measurements and payments have been recorded twice in two different MBs.

### 5.9.2 Manipulated/ collusive bidding

According to Competition Act 2002 “bid rigging” means any agreement, between enterprises or persons, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

Section 8 (b) of Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 (hereafter HP Corrupt Practices Act), provides that any tenderer for a work under a works department who enters into a conspiracy with any other tenderer to eliminate competition for pushing a collusive low-rate tender for acceptance, shall face punitive action.

Section 9 (a) of the Act *ibid* stipulates that any officer of a works department, having authority to accept a tender on behalf of a works department, who abets the commission of an offence under Section 8 by accepting such tender, shall also face punitive action.

As referred in para 5.9.1, after the first contractor abandoned the work and his contract was rescinded, the work was split-up in 36 parts and separate tenders were floated for each as ROFD work. The entire process of split-up and award has several indicators of manipulated/collusive bidding as detailed below:

#### 5.9.2.1 Irregular splitting and award of ROFD work

As per section 13 of the HP Corrupt Practices Act, an officer of the works department, who resorts to splitting of purchase order with malafide intention, in order to enable him to affect purchases which would have otherwise been beyond the pale of his financial authority to do so, or to do so in flagrant breach of the established procedure shall face punitive action.

Para 6.44 of Punjab Public Works Manual of Orders specifies that only that authority can allow/approve split up of a work who is competent to accord technical sanction to the whole work/project. Notwithstanding the *ibid* rule, there exist departmental instructions<sup>34</sup> that EEs are not authorized to split up the works at their own level even if the technical sanction of the whole project rests under their authority.

As mentioned earlier, technical sanction for the work had been granted by CE in February 2012. So, only the CE was competent to grant split-up sanctions in respect of the work. However, a sanction<sup>35</sup> of ₹ 0.39 crore was taken from the Superintending Engineer (SE) in May 2018 for splitting the work into two ROFD works. Thereafter, the excavation component of these two ROFD works were further split up into 36 works (Table-5.9.2) without justification by the EE at the division level and the Assistant Engineers at the subdivision level in June and August 2018, beyond their respective delegated powers.

Executive Engineer (EE) accepted (March 2022) that EEs are not authorized to split-up the works but stated further that the work was split up due to urgency of work and *ex-post facto* split-up sanction of work would be obtained from the competent authority.

However, no documents were provided to support the claim of urgency leading to splitting-up of the work.

#### 5.9.2.2 Failure to advertise the tenders and ensure wide publicity

As per Punjab Public Works Manual of Orders (followed by the HPPWD), the Detailed Notice Inviting Tender (DNIT) for works costing above 50,000 should be sent to Director Information and Public Relations (IPR), approved contractors, offices of other divisions etc. and some proof of dissemination should be obtained. Further, there are departmental instructions<sup>36</sup> that all tender

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<sup>34</sup> No. PW/CTR/32-20/Genl.Instructions/2012-1877-1976 dated 23/04/2012.

<sup>35</sup> vide letter No PW-SEI-R-25-26-M-11/2017- 3615-16 dated 3-5-18 for 0.39 crore.

<sup>36</sup> No. PW-CTR-32-20/Genl.Inst/2014/6006-105 dated 08/07/2014.

notices should be sent to Director IPR in soft copy<sup>37</sup>, and that in case of non-compliance, the officers concerned of the department would be responsible for consequences of non-publication of tender notices.

Audit observed that for the 20 out of 36 works, DNIT notices/letters were endorsed to director IPR and other recipients in diary entries at the division.

However, for these 20 works with tendered value over ₹ 50,000, no proof was found of actual dispatch of tender notices like a postal certificate/speed post/registry slip or an email trail of soft copy dispatch, as required by *ibid* Manual of Orders. Moreover, the Director IPR denied receiving DNIT letters for publication in any form/medium (post, email/pen drive etc.). The other intended recipients, such as Superintending Engineer (1<sup>st</sup> Circle Mandi), also denied receiving DNIT notices/letters from the division. The Sub divisional offices under the control of the division also did not have any record of receipt of *ibid* DNIT notices/letters in their diary entry. The remaining 16 works were tendered below ₹ 50,000 which dispensed with the requirement for wide publicity. Thus, due publicity was not given to the DNIT notices by the division/subdivision concerned which aided collusive bidding as substantiated by the subsequent points.

The EE replied (March 2022) that tenders above ₹ one lakh are sent through Registered post/e-mail to director IPR and tenders below ₹ one lakh are not required to be published in the Giriraj or any other newspaper as per Government instructions.

The reply is unacceptable as no documentary proof was submitted in support of this claim and the *ibid* Manual of Orders clearly specifies that tenders above ₹ 50,000 are to be publicized and proof of dissemination is to be obtained. Moreover, sending soft copy to the Director IPR and ensuring publication was the responsibility of the divisional officer which had not been carried out.

Further, non-publication of tender notices tantamount to abetting the elimination of competition from bidding process, which is an offence under Section 9(a) of HP Corrupt Practices Act.

### 5.9.2.3 Suspected collusive bidding through bid rotation

In bid rotation schemes, the conspirators agree to distribute the share of the spoils amongst themselves and thus all conspirators submit their bids but take turns to be the lowest bidder. CCI explains that “a strict bid rotation pattern defies the law of chance and suggests that collusion is taking place.”

Scrutiny by Audit revealed certain suspicious patterns, which indicate a high probability of collusive bidding through bid rotation in the tender of these 36 works as shown in Table-5.9.2.

<sup>37</sup> No. I&PR- H-(F)6 (Advt.)-2(W)/2013-1919 dated 09 June 2014.

Table-5.9.2: Bidding and award of ROFD work

(Amount in ₹)

Sr. No.	Name of ROFD contractor <sup>38</sup> (L1 bidder)	RD (from- to)		Negotiated rate agreed by L1	Rates quoted by			Estimated cost	Awarded amount
					L1	L2	L3		
(1)	(2)	(3)		(4)	(5)			(6)	(7)
1.	Girdhari Lal	0/000	0/150	185	225	230	240	89,938	1,28,168
2.	Dhyan Singh	0/150	0/330	190	230	235	245	92,013	1,31,122
3.	Girdhari Lal	0/330	0/480	231	280	290	300	99,093	1,41,034
4.	Dhyan Singh	0/480	0/615	206	250	255	260	97,512	1,38,593
5.	Bhuvnesh Thakur	0/615	0/735	240	310	320	330	95,599	1,35,008
6.	Bhuvnesh Thakur	0/735	0/870	223	280	290	300	95,584	1,35,520
7.	Ravinder Kumar	0/870	1/015	197	240	250	265	96,109	1,36,269
8.	Ravinder Kumar	1/015	1/210	196	250	255	260	95,263	1,35,210
9.	Jitender Kumar	1/210	1/435	169	200	210	215	91,670	1,30,000
10.	Jitender Kumar	1/435	1/645	185	225	230	240	89,282	1,26,282
11.	Mast Ram	1/645	1/795	225	275	280	290	89,544	1,26,461
12.	Mast Ram	1/795	1/900	199	240	245	250	78,585	1,11,263
13.	Dhanjay	2/420	2/510	187	225	230	235	95,771	1,35,884
14.	Jeevan Lal	2/510	2/675	213	265	270	275	96,018	1,36,689
15.	Mast Ram	2/675	2/820	203	250	270	280	49,271	69,833
16.	Mast Ram	2/820	2/893	202	250	270	280	49,219	69,864
17.	Girdhari Lal	2/893	2/937	228	300	310	320	48,954	69,569
18.	Girdhari Lal	2/937	2/977	184	225	235	250	48,088	68,433
19.	Ravinder Kumar	2/977	3/064	209	260	290	300	49,980	71,152
20.	Ravinder Kumar	3/064	3/078	246	320	350	360	48,801	69,351
21.	Jitender Kumar	3/078	3/122	214	270	280	290	48,919	70,080
22.	Jitender Kumar	3/122	3/160	250	325	350	360	49,192	70,044
23.	Bhuvnesh Thakur	3/160	3/187	231	290	300	310	48,886	69,402
24.	Bhuvnesh Thakur	3/187	3/231	222	285	290	300	49,579	70,555
25.	Dhayan Singh	3/231	3/269	186	240	250	260	48,908	69,230
26.	Dhayan Singh	3/269	3/297	244	310	320	330	47,820	67,936
27.	Yadav Singh	3/297	3/425	191	240	250	260	48,692	69,193
28.	Yadav Singh	3/425	3/504	198	260	280	300	49,961	70,776
29.	Dhanjay	3/504	3/630	165	250	260	270	47,349	67,494
30.	Dhanjay	3/630	3/780	164	250	260	270	47,021	67,105
31.	Jitender Kumar	3/780	4/015	177	198	200	210	90,530	1,29,361
32.	Girdhari Lal	4/015	4/330	188	215	220	225	99,817	1,42,515
33.	Ravinder Kumar	4/330	4/615	156	190	200	210	93,295	1,33,570
34.	Ravinder Kumar	4/615	4/765	152	170	180	200	92,308	1,32,342
35.	Dhayan Singh	4/765	5/135	152	170	180	190	95,419	1,37,002
36.	Dhayan Singh	5/135	5/500	147	160	170	180	83,266	1,19,368
	<b>Total</b>							<b>26,37,256</b>	<b>37,51,678</b>

i. Instructions of Government of Himachal Pradesh<sup>39</sup> direct that “the number of bids received in the advertised tender system shall not be less than three. If the number of bids received is less than three, then normally such tender may be rejected, and process of re-tendering may be initiated.”. In the bidding of 36 ROFD works, there were in total 17 participating contractors. But for each of the 36 works, exactly three contractors participated in each bid

<sup>38</sup> Rates quoted by the various contractors have been shown in the following colour scheme:- Girdhari Lal, Dhyan Singh, Bhuvnesh Thakur, Ravinder Kumar, Jitender Kumar, Mast Ram, Jeevan Lal, Dhanjay, Roshan Lal, Gayatri, Dharamender Kumar, Bhagat Ram, Harish Kumar, Bhag Singh, Khem Chand, Yadav Singh, Hem Singh.

<sup>39</sup> No. Ind/SP (Misc)F (6-10)4/80-111 dated 24.10.2013.

(column 4 in table above). This suggests that these 17 contractors were taking turns to fulfill the *ibid* requirement of three minimum bids and to avoid having to re-tender.

ii. For each of the 36 works, three tender application forms were sold. Details<sup>40</sup> in one form was filled in original (in blue pen), and the other two forms were sold in carbon copies. It was found that the bidder who was sold the original form became the L1 bidder in each of the 36 works, while the L2 and L3 bidders always had the forms in carbon copies. This was possible only when the L1 bidder was pre-decided and his paperwork was prepared first, while the paperwork for L2 and L3 bidders in carbon copy was prepared to show compliance with *ibid* requirement of minimum three bids. This suggests that bidding was not held in fair and transparent manner as the law of probability dictates that if the forms had been sold randomly then the L1 bidder would have ended up being sold a carbon copy form in at least some of the cases.

iii. In 28 out of the 36 works, bidders managed to be the L1 bidders for two consecutive stretches 14 times. This pattern of award of consecutive stretches of road to the same bidder 14 times was an unlikely occurrence in a fair and transparent bidding process and the only rational explanation for its occurrence was that collusion/ bid rotation was taking place.

iv. In all 36 works, the average difference between originally quoted rate (column 5, Table-5.9.2) and negotiated rate of L1 bidder (column 4) was 21.02 per cent (ranging from 8.13 per cent to 34 per cent). It was not clear why all the L1 bidders would agree to reduce their rates by such a high margin if they had won the contract fairly on their originally quoted rates. If the L1 bidders had the capacity to reduce the quoted rate so steeply after winning the bid, there was no logic of originally quoting higher rates as the average difference between L1 and L2 bidder was only 4.55 per cent (ranging from 1 per cent to 10.34 per cent) and the L1 bidder could have risked losing the tender with such a small margin. This suggests that the originally quoted rates of L1 bidders were anti-competitive and illusory rates, and the lowest bidder in each bid may have been pre-decided.

v. Even after negotiations, the negotiated rates of L1 bidders for all 36 works were consistently 41-43 per cent above the estimated rates (column 6 & 7, Table-5.9.2). This suggests that all bidders had colluded to quote very high rates in the tender and derive high profit margins even after negotiations.

vi. As per Para 18.7 of CPWD Manual, “The Register of the Sale of the Tender Documents should contain a chronological record of the issue of tender documents, showing the names of the persons to whom issued, the number of forms issued and the amount received. Further, the register should be treated as a Subsidiary Cash Book and its pages should be machine numbered”. It was

<sup>40</sup> Like name of division, sub-division, name of work with Road RD, estimated cost of work, earnest money etc.

noticed that sale entries for all the three forms sold for a particular work were made combined in the tender sale register. This indicated that either the tender sale register was created after the award of all the tenders to complete the paperwork, or that all the three forms for a particular work were sold at the same time further supporting the indications of collusive bidding. Moreover, all the entries in the register were undated and all the pages were unnumbered in violation of the *ibid* manual.

The above facts, viz., splitting of the contract into multiple works without approval by competent authority, lack of publicity to the tenders, the several indicators of manipulated tenders, all suggest that the division had violated rules and procedures and facilitated collusive bidding in the award of all the works at very high rates in order to benefit the contractors.

The EE replied (March 2022) that:

- It was a coincidence that only three numbers contractors participated and applied for each job of this work and accordingly this office was not able to cancel tender or refuse to issue the bid documents to these contractors.
- He also said that tender forms had been issued to the participant contractors as and when they applied for the jobs in routine, but by chance the contractors to whom the pen written tender forms were issued in routine, the quoted rates were found lowest and to whom the carbon copies tender forms were issued in routine, the quoted rates were found on the higher side. All measures of transparency as per Government instructions had been followed up during the tendering process but sometimes this type of situation comes co-incidentally.
- Further, it was by chance that the rates quoted by same bidders were found lowest for consecutive road stretches and the same had been awarded to the lowest bidder/contractor accordingly.

The reply was unacceptable because probability of all three coincidences occurring individually was virtually zero<sup>41</sup> and fall in the category of impossible/rarest of the rare. Moreover, these three events happening at the same time in the same bidding process was even rarer. Thus, the events are not mere “coincidences” but defy the law of chance and indicated collusion/bid rigging.

### 5.9.3 Delay in execution of bridge work

After the first contractor abandoned the work, the tender for construction of 19.75-meter span RCC T-beam bridge over Jablahi Nallah at RD 0/357 was awarded at the cost of ₹ 0.55 crore in August 2017 and was stipulated to be completed in six months (February 2018). However, it was noticed that even after a delay of more than four years the work amounting to only ₹ 0.36 crore had been executed (March 2022)

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<sup>41</sup> Mathematically, the probability is zero even if considered up to 20<sup>th</sup> place of decimal.

and the work was still incomplete, which rendered unfruitful the entire expenditure of ₹ 3.34 crore (December 2021) on the construction of road.

Thus, undue favour was granted by making payment for fictitious entries in measurement books, undue favour of ₹ 0.38 crore due to manipulated/collusive bidding and unfruitful expenditure of ₹ 3.34 crore due to non-completion of road work after a delay of 11 years since administrative approval besides people of the area have been deprived of the intended benefits.

The Audit findings were referred to the State Government (March 2022) and reply was awaited (August 2022).

**Recommendations:**

- *Splitting of works by Executive Engineers despite having no power to do so should be strictly checked and accountability fixed.*
- *Proof of posting the letters (email/ registry/speed post) to different addresses for tender publicity/advertisement must be made compulsory and accountability fixed.*
- *Publication of tenders in Giriraj (Weekly publication of State Government)/ other newspapers must be ensured and accountability of divisional/subdivisional officials ensured for non-publication.*
- *Thorough investigation may be conducted to investigate collusive bidding as pointed out in the audit test check and accountability fixed.*
- *Fake entries in measurement books as pointed out in the test check by the audit may be investigated and suitable action may be taken.*

**5.10 Undue favour to contractor on work of strengthening/widening of road**

**Undue favour was granted to contractor for road work by making unauthorized/irregular advance payments of ₹ 6.15 crore and not adjusting/ recovering the same, not levying liquidated damages of ₹ 0.82 crore for delay, granting inadmissible price escalations of ₹ 0.62 crore; besides, NABARD loan funds for other scheme(s) were diverted for making advance payments to the contractor thereby incurring interest liability.**

For widening and strengthening of a 10-kilometre stretch (RD 20/0 km to 30/0 km) of Sainj Chopal Nerwa Shallu road in Shimla district, Government of India accorded (May 2017) administrative approval and expenditure sanction of ₹10.00 crore through the Central Road Fund (CRF) scheme, and the Chief Engineer HPPWD (Shimla Zone) accorded (September 2017) technical sanction of ₹ 10.12 crore. The work was awarded by Executive Engineer (EE) HPPWD Chopal division to a contractor for ₹ 8.15 crore in June 2018, with the stipulation to complete it within one year *i.e.*, by July 2019. The items of work to be completed consisted of – formation cutting in

extended width, retaining structures, extension of existing cross-drainage, providing/ laying of granular sub-base, water bound macadam grade-II and III, bitumen macadam, bitumen concrete, essential drains and parapets.

Scrutiny of records (January 2021) of HPPWD Chopal division revealed that the work was still incomplete as of March 2022, even after lapse of more than 2.5 years since the stipulated date of completion. Further, whereas work worth only 10 *per cent* of contract value had been executed and measured, payment amounting to 86 *per cent* of contract value had already been made to the contractor (March 2022) by the division besides payment for escalation, thereby extending undue favour as discussed in the following paragraphs:

#### **5.10.1 Unauthorized and irregular advance payments, ₹ 6.15 crore**

Punjab PWD Code and Central Public Works Account (CPWA) Code (both followed by HPPWD) have provision for three kinds of advances – *mobilization advance* for specialized and capital-intensive works, *secured advance* on security of materials brought to site, and *advance payments* for “work executed but not measured.” Both Codes direct that “advances to contractors are as a rule prohibited and every endeavor should be made to maintain a system under which no payments are made except for works done<sup>42</sup>”.

- For advance payments in respect of “*work executed but not measured*”, the Punjab PWD Code stipulates that government sanction is mandatory, while the CPWA Code stipulates that sanction of at least Superintending Engineer (SE) is mandatory. Such advance payments should be followed by detailed measurement within two months at the most with a view of adjusting the advance within three months from the date it was made. CPWA Code also stipulates that a second advance before recovering the first one should only be permitted in very exceptional circumstances.

Audit observed that the EE made first advance payment to the contractor of ₹ 1.65 crore in September 2019 (after expiry of stipulated date of completion, viz., July 2019) and then a second advance payment of ₹ 4.50 crore in March 2020 without recovering the first advance payment. In both instances, the EE was not authorized to make such advance payments without previous sanction of superior officers. Moreover, advance payment had not been adjusted/recovered even after a delay of two years (March 2022).

- As per Clause 42 & 43 of agreement, the contractor was to submit to the engineer monthly statements of the estimated value of work completed.

Audit observed that no such bills were submitted by the contractor from the date of award (June 2018) up to the date of second advance payment (March 2020) and the

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<sup>42</sup> Punjab PWD Code in Chapter II Works Rule 2.105, and CPWA in 10.2.22 and 10.2.23.

division granted advance payments without any receipt of bill from the contractor for the *ibid* work.

- CPWA prescribes that an advance payment for work actually executed may be made on the certificate of an officer (not below the rank of Sub Divisional Officer) to the effect that not less than quantity of work paid for has actually been executed and the officer granting such certificate will be held personally responsible for any overpayment which may occur on the work in consequence.

Audit observed that Assistant Engineer (sub-divisional officer) had certified that work worth ₹ 8.15 crore was executed by the contractor, but not measured. On the strength of the certificate, advance payments (September 2019 and March 2020) were made worth ₹ 6.15 crore (out of total contract amount of ₹ 8.15 crore). However, report of the State Quality Management Wing (February 2020) showed that work worth approximately ₹ 0.49 crore only had been executed by February 2020 (**Appendix-5.1**). This clearly showed that the advance payment was made for work that had largely not been executed at the time of payment, which was highly irregular.

Thus, advance payment amounting to ₹ 6.15 crore was made to the contractor in violation of rules, without obtaining necessary authority/ sanction, and for work which had been executed to a much lesser extent than claimed at the time of making such advance payments, as was revealed subsequently in quality check inspection.

### **5.10.2 Incorrect accounting and non-adjustment of advance payments**

- Under clause 10.5.14 of CPWA Code, advance payments made to a contractor should not be charged as final outlay on the work. A suspense head, “Contractors – Advance Payments”, should be opened in the Works Abstract for the record of advance payments and their subsequent adjustments. Clause 10.2.23 of CPWA Code prescribes that Divisional Officer should submit a monthly statement for the information of the SE concerned giving details of advances made to contractors for work done but not measured so that clearance may be watched.

Audit observed that the two advance payments had been charged directly to the work instead of placing in Suspense Head “Contractors - Advance Payment” in violation of the above provision. This meant that monitoring of status of the advance payments was dispensed with and adjustment/recovery of the same could not be watched.

- It was further observed that the division passed the first running account bill of the contractor for ₹ 0.85 crore in February 2021 on the basis of detailed measurements for 77,272.72 cubic meter quantity of excavation carried out in September, October, November, December 2020 and January 2021. However, at the time of passing the bill, the division did not adjust the bill amount against the advance payments. Instead, payment of ₹ 0.85 crore was made to the contractor over and above the advance payment already made to him, which was irregular.

### 5.10.3 Non-levy of liquidated damages, ₹ 0.82 crore

As per clause 49 and Section 4 (Contract Data) of the DNIT/agreement, the contractor was liable to pay liquidated damages at the rate of 1/2000<sup>th</sup> of the contract price for each day of delay subject to a maximum of 10 *per cent* of contract price.

Detailed measurements were carried out in September-December 2020 and January 2021, and first running account bill of the contractor was passed by the division in February 2021. Audit observed that work worth only ₹ 0.85 crore out of a total contract amount of ₹ 8.15 crore had been executed. Thus, as of February 2021, the contractor had executed only about 10 *per cent* of the total scope of work, even after lapse of more than 1.5 years from the stipulated date of completion (July 2019).

As the contractor had delayed the execution of work significantly, liquidated damages of ₹ 0.82 crore (10 *per cent* of contract price of ₹ 8.15 crore) should have been levied/recovered from the contractor. However, the same was not done by the division thereby extending undue favour to the contractor.

### 5.10.4 Escalation payments made on advance payments, ₹ 0.62 crore

It is a usual practice for contracts of *more than one year duration* to have a “price adjustment” clause for adjustment/escalation in contract value on account of increase/decrease in prices of labour, material, fuel etc., whereas contracts of one year duration do not require this “price adjustment” clause<sup>43</sup>. Since the period of contract in the current case was only 12 months, it did not have any provision for “price adjustment/escalation.” However, the division, rather than levying liquidated damages for delay in execution of work, instead paid (March 2021) the contractor ₹ 0.09 crore and ₹ 0.53 crore for price escalations on the amounts of advance payments made to him, without any justification and in clear violation of the contract agreement, thereby extending further undue favour to the contractor.

### 5.10.5 Irregular diversion of NABARD funds with interest liability, ₹ 0.32 crore

Whereas the work had been sanctioned under Central Road Fund (CRF), Audit observed that funds amounting to ₹ 4.50 crore were diverted from NABARD loan head for making payments to the contractor. This was a serious financial irregularity and meant that interest liability<sup>44</sup> of approximately ₹ 0.32 crore (as of March 2022) became incumbent on the state exchequer for the advance payment made from NABARD head for work which was not even sanctioned under NABARD.

Thus, as of March 2021, the division had extended undue favour to the contractor on account of –

- advance payments (₹ 6.15 crore),

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<sup>43</sup> Clause 33.10 (2) of Central Public Works Manual 2014

<sup>44</sup> ₹ 0.17 crore of interest in first year + ₹ 0.15 crore of interest in second year (@ Interest rate of 3.9 *per cent* = 5.40 - 1.5 (bank rate prevalent at the time of fund disbursement – 1.5 *per cent*) for two years upto March 2022 for loan amount to be repaid in seven equal annual installments)

- non-levying of liquidated damages (₹ 0.82 crore) for delay in execution of work,
- price escalation payments (₹ 0.62 crore) for execution of only 10 *per cent* of the scope of work,
- diversion of NABARD loan funds for interest-free advance to the contractor, on which the state exchequer will incur interest liability of approximately ₹ 0.32 crore (upto March 2022).
- besides, irregular payment of first running account bill (₹ 0.85 crore) without recovering/adjusting the advance payments.

The work was incomplete as of March 2022. The division had made payments totaling ₹ 7.62 crore<sup>45</sup> (93 *per cent* of the total contract value of ₹ 8.15 crore) to the contractor, and in the event of abandonment of work by the contractor, there was a risk that the department would not be able to recover the amount of advance payments, escalation payments and liquidated damages from the contractor.

The Executive Engineer (EE) first stated (January 2021) that advance payments were made because the contractor had executed the work in different reaches in a haphazard manner which could not be measured. The reply was unacceptable because it was not clear how haphazard execution could hinder measurement of work; if work can be executed, then it can be measured.

Next, the EE stated (February 2022) that advance payment could not be adjusted by actual measurement of work done because of non-receipt of approval from Forest Department. This reply was also unacceptable. It was not clear how pending approval from Forest Department could create hindrance in taking detailed measurement of work for advance payments, because as per submission by the division to forest department, only 22 trees<sup>46</sup> were standing on HPPWD/ Government non-forest land on a stretch of 10 Km.

In his third reply, the EE stated (March 2022) that measurements from November 2019 to March 2020 could not be carried out due to snowfall and Covid-19 pandemic related lockdowns and that he was authorized to make advance payments.

This reply was unacceptable as detailed measurement was done in September, October, November, December 2020 and January 2021 (snow bound months) for finalizing first running account bill (₹ 0.85 crore). Moreover, Covid-19 related lockdowns were imposed only at the end of March 2020. Lastly, no documents were submitted in support of the claim that EE was authorized to make advance payments without approval of higher authority.

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<sup>45</sup> ₹ 6.15 crore+ ₹ 0.62 crore + ₹ 0.85 crore.

<sup>46</sup> As per submission of the division to forest department (first made in January 2020) 22 trees were required to be cut on a stretch of 10 KM (20/0 to 30/0).

Thus, the replies of the EE to the para were neither consistent nor tenable and cannot be accepted.

The Audit findings were referred to the State Government (March 2022) and reply was awaited (August 2022).

*The matter may be investigated, and accountability of officials concerned fixed. Steps may be also taken to complete the work so that the envisaged benefits can be realized.*

## Jal Shakti Vibhag

### 5.11 Infructuous and unfruitful/ineffective expenditure on construction of tube wells

**Not conducting scientific feasibility assessment of discharge at proposed sites for tube well schemes before commencement of work led to infructuous expenditure of ₹ 0.92 crore on abandoned schemes, and inefficient expenditure on marginally functional schemes, besides other schemes remaining incomplete even after lapse of seven years since approval, resulting in denial of irrigation facilities to beneficiaries.**

Bureau of Indian Standards (BIS) guidelines are applicable to the Jal Shakti Vibhag, Government of Himachal Pradesh. Paras 4.2 and 4.2.1 of “Location, Operation and Maintenance of Tube / Bore wells – Guidelines” by BIS (SP(QAWSM) 56:1994) state that geophysical methods using physical characteristics such as density, elasticity, magnetic susceptibility, electrical resistivity, radioactivity, etc. can delineate hydro-geologic features and pin-point locations for drilling of boreholes to help identify areas having good aquifers / groundwater potential and thereby provide information on groundwater potential in the surveyed area. It further states that “Geophysical surveys though costlier than hydrogeological investigations, can appreciably reduce much more costly infructuous drilling, especially in hard rock areas.”

Two irrigation projects<sup>47</sup> (Project-I: C/o Six tube wells for ₹ 4.09 crore and Project-II: C/o Seven tube wells for ₹ 5.33 crore) were approved under NABARD loan scheme<sup>48</sup> in August 2009 and March 2015 respectively to provide irrigation facilities to farmers of villages in Nalagarh (Solan district). As per the Detailed Project Reports (DPRs), a total of 13 tube wells were to be drilled under the two projects with each tube well having assumed water discharge of 30 litres per second (LPS) for irrigating 30 hectares of land. In addition, civil works (construction of pump house, delivery tanks, outlets, *pucca & kutcha* field channels) were to be executed and equipment (pumping machinery and pipes) were to be purchased.

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<sup>47</sup> C/o 6 tube wells in Nalagarh area for ₹4.09 crore (August 2009), C/o 7 tube wells (Rajpura, Miyanpur Baglehar, Kalyanpur Harizan Basti in GP Goel Jamala, Bhogpur, Gharoti (Bypass), Naggar in GP Khillian and Plasra Kalu) for 5.33 crore (March 2015).

<sup>48</sup> RIDF XIV and RIDF XX.

Scrutiny of records (February 2018 and March 2021) of Jal Shakti Division, Nalagarh revealed that scientific methods (geo-physical tests - electrical resistivity method, magnetic or remote sensing techniques, etc.) as recommended in BIS guidelines *ibid* were not used for ascertaining the available groundwater potential (discharge) at the proposed tube well sites. Instead, the department relied entirely on feasibility reports submitted (April 2008 and April 2009) by its Hydrology wing based only on hydrogeological survey consisting of preliminary topographic field surveys and geological conditions and discharge data from tube wells in nearby areas.

On the basis of the feasibility reports prepared by its Hydrology wing, the department undertook drilling work on all 13 tube wells in the two irrigation projects, after which it was discovered that the actual discharge at all the tube well sites ranged between 4 LPS and 16 LPS as against the assumed discharge of 30 LPS. Consequently, seven tube wells were abandoned after the drilling work, whereas the department decided to undertake civil work in the other six tube wells notwithstanding the low discharge. The detailed status of the tube wells projects is discussed in the **Table-5.11.1** and paragraphs below –

**Table- 5.11.1: Status of tube well projects**

Sr. No.	Tube well scheme at village	Drilling completed	Assumed discharge (LPS)	Actual discharge (LPS)	Expenditure (₹ in crore)			Status as of February 2022	
					Drilling	Civil work	Total		
<b>Project-I: C/o 6 tube wells (Seri Pahad, Seri Desh, Rakh Ghansot, Dattowal, Ambwala and Jaiwala)</b>									
1.	Seri Pahad	March 2011	30	5	0.18	-	0.18	Abandoned	
2.	Seri Desh			8					
3.	Rakh Ghansot			8					
4.	Dattowal			7.28	0.22 <sup>49</sup>	1.79	2.01		Functional at low discharge
5.	Ambwala			13					
6.	Jaiwala			16					
<b>Project-II: C/o 7 tube wells (Rajpura, Miyanpur Baglehar, Kalyanpur Harizan Basti in GP Goel Jamala, Bhogpur, Gharoti (Bypass), Naggar in GP Khillian and Plasra Kalu)</b>									
7.	Rajpura	July 2016	30	4	0.26	-	0.74	Abandoned	
8.	Miyanpur Baglehar	March 2016		7.28	0.17				
9.	Kalyanpur Harizan Basti	February 2016		10	0.18				
10.	Plasra Kalu	August 2016		9	0.13	.38	0.79	In progress <sup>50</sup>	
11.	Bhogpur	May 2016		12	0.20				
12.	Gharoti (bypass)	July 2016		14	0.11				
13.	Nagar	August 2016		14	0.10				

• **Abandoned tube wells –**

As shown in the above table, the actual discharge after completion of drilling work in the case of seven tube wells (Sr. No. 1, 2, 3, 7, 8, 9, 10) was found to be ranging between only 4 and 10 LPS. As such, the schemes were not feasible and no civil work

<sup>49</sup> ₹ 0.40 (total expenditure on drilling of 6 tube wells) - ₹ 0.18 (three abandoned) = ₹ 0.22 crore.

<sup>50</sup> Providing/laying of pipes in distribution system and construction of pump house & outlets.

was carried out. Expenditure of ₹ 0.92 crore<sup>51</sup> incurred on drilling work was rendered infructuous and these seven tube-wells were lying abandoned.

- **Functional / work in progress tube wells –**

The actual discharge after completion of drilling work in six tube wells (Sr. No. 4, 5, 6, 11, 12, 13) was found to range between 7.28 LPS and 16 LPS, despite which the department had undertaken civil work for these tube well schemes.

As of February 2022, civil work for three tube wells (Sr. No. 11, 12, 13) was still in progress after incurring expenditure of ₹ 0.79 crore. The other three tube wells (Sr. No. 4, 5, 6) on which expenditure of ₹ 2.01 crore had been incurred, were functional with very low discharge. However, in view of the low discharge in the three functional tube wells, it was unlikely that these tubewells would be able to adequately irrigate the envisaged 30 hectares of land.

Thus, non-adoption of more reliable geophysical methods as prescribed in the *ibid* BIS guidelines for assessment of groundwater potential resulted in infructuous expenditure of ₹ 0.92 crore on seven abandoned tube well schemes, and inefficient use of ₹ 2.01 crore on three functional tube well schemes having low discharge, whereas three tube well schemes remained incomplete after expenditure of ₹ 0.79 crore. The objective of providing irrigation facilities to beneficiaries remained unachieved in the case of the seven abandoned tube well schemes, and only marginally achieved in the three functional schemes in view of the low coverage. Besides, submission of false claims to NABARD in respect of schemes constituted financial irregularity and additional interest liability on the state exchequer.

In respect of the Project 1, The Executive Engineer (EE) stated (November 2019 and November 2020) that only survey had been conducted by Hydrology wing to assess water discharge and CCA was ascertained proportionately for tube wells having lesser discharge than the assumed. Justification for delay in scheme completion and failure in feasibility assessment of discharge was not provided. In respect of Project 2, the reply was awaited.

The Audit findings were referred to the State Government (March 2022) and reply was awaited (August 2022).

***The department should ensure scientific feasibility assessment of water discharge at proposed sites of schemes before execution so that expenditure on drilling and civil works is not rendered infructuous at subsequent stage.***

## **5.12 Infructuous and unfruitful expenditure on execution of sewerage scheme**

**Deficient planning and non-ensuring availability of land led to inordinate delay of 12 years in execution of sewerage scheme for Theog town rendering expenditure of ₹ 5.12 crore unfruitful.**

Para 1.4 of CPHEEO<sup>52</sup> Manual on Sewerage and Sewage Treatment 1993 stipulates that the period between design and completion of sewerage scheme should be

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<sup>51</sup> ₹ 0.92 crore = ₹ 0.18 crore + ₹ 0.74 crore.

between three and six years depending upon the type and size of the sewerage projects.

Scrutiny of records (December 2020) of Matiana division of Jal Shakti Vibhag (JSV) revealed that due to poor planning and non-execution of work, and despite overall total expenditure of ₹ 5.12 crore incurred on the scheme<sup>53</sup>, the sewerage scheme for Theog town remains incomplete and non-operational even 12 years after the stipulated date of completion.

### 5.12.1 Poor planning and revised technical sanction

The sewerage scheme for Theog town was administratively approved in June 2006 for ₹ 4.23 crore. It was planned in two zones (Zone I and Zone II) with provision for laying of sewerage network and construction of sewage treatment plant (STP) in each zone. It was stipulated to be completed within four years *i.e.*, by June 2010 and had a designed life of 30 years to cater to projected population of 12,019 people by 2041.

For construction of two STPs in Zones I and II (one STP in each zone), technical sanction of ₹ 0.98 crore was accorded in June 2007. However, there was no progress on the work for four years after technical sanction. In 2011, the department decided to abandon the plan of construction of STP in Zone I due to involvement of private land and unsuitable location of the identified site<sup>54</sup>. Instead, it was decided to:

- connect major portion of sewerage network of Zone I with sewerage network and STP in Zone II, and
- provide septic tanks for left-out portions in Zone I which were not feasible to be connected with Zone II.

Revised technical sanction of ₹ 2.32 crore was accorded (April 2012) by Chief Engineer (South Zone) for construction of STP with expanded capacity in Zone II, and construction of two septic tanks in Zone I. The work was awarded (December 2013) to a contractor for ₹2.64 crore to be completed in 18 months (by May 2015). Only the STP was constructed till date (February 2020), with a delay of five years. The two septic tanks have not yet been constructed.

The position of work done against the scope is given in the **Table-5.12.1**.

**Table-5.12.1: Status of work on STP and Septic Tanks as of February 2022**

Component	Scope of Work	Actual Work Executed	Balance
STP in Zone II	One STP (1.15 MLD capacity)	One STP (1.15 MLD capacity) (February 2020)	-
Septic Tanks for left-out areas in Zone I	Septic Tank 1 - 150 users Septic Tank 2 - 300 users	Nil	2 Septic Tanks

<sup>52</sup> Central Public Health & Environmental Engineering Organization (CPHEEO), MoUD, Government of India.

<sup>53</sup> Out of this ₹ 0.63 crore on the buried pipes and manholes was rendered infructuous.

<sup>54</sup> Non-sunny area where performance of STPs was sub-optimal.

### 5.12.2 Inordinate delay and non-functional scheme

As can be seen from the above table, the required STP was completed only in February 2020 after a delay of nearly five years from the stipulated date of completion (May 2015).

However, the STP was non-functional and the entire scheme remained non-operational even after lapse of two years since completion of STP in February 2022. The status of work could be summarised as given below:

- (i) Less than 50 *per cent* of work on sewerage network was executed and the work was suspended since 2009 due to land disputes at various stretches of the network alignment.
- (ii) Out of this, a significant portion of the constructed sewerage network viz., 91 manholes and 2,160 running meters (r. mt.) pipes laid along the national highway (erstwhile NH 22; now NH 5, on the road stretch from Rahighat to Janogghat) got buried under the NH since 2012-13 due to metalling and tarring work carried out by the Public Works Department (PWD) (NH division). The JSV division had not taken any steps to prevent the manholes and pipes from getting buried at the time of metalling and tarring work by PWD.
- (iii) Thereafter, the JSV division was unable to locate the manholes buried under the national highway because the running distances (RD) capturing their exact location were not recorded in the measurement books.
- (iv) The JSV division had been soliciting permission from the PWD (NH division) to dig the required stretch of road, but it does not know the exact location of the manholes in that stretch of the road.

In effect, no work had been done on the balance portion of sewerage network since 2009.

The scope of work and extent of execution is shown in the **Table-5.12.2**.

**Table-5.12.2: Status of work on Sewerage Network as of February 2022**

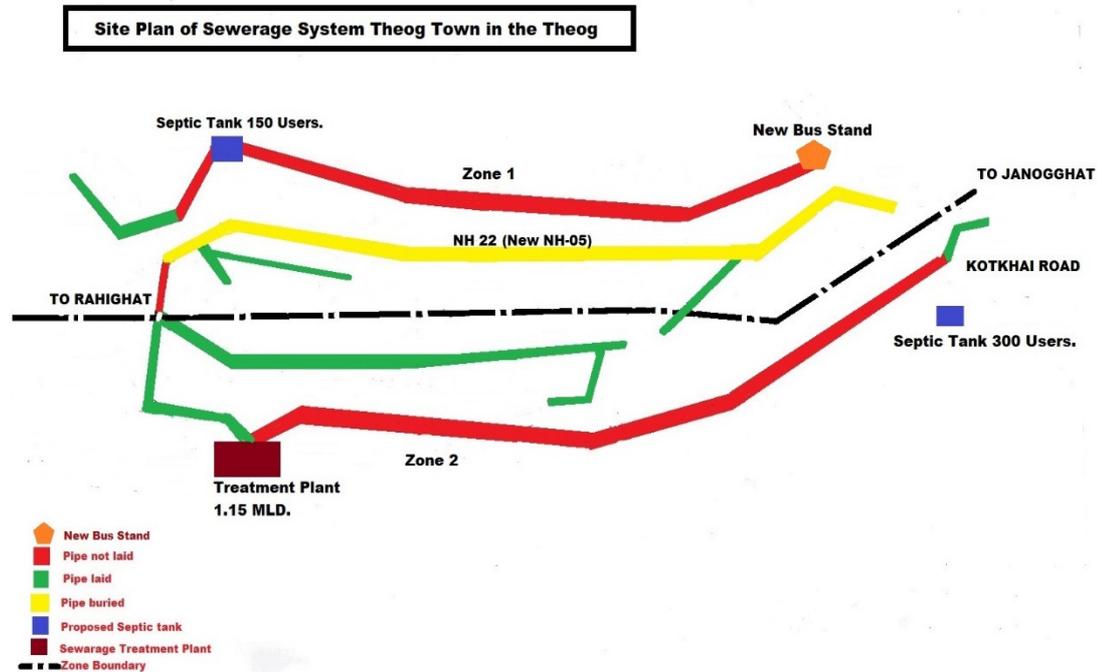
Component	Scope of Work	Actual Work Executed	Work buried under NH 22	Balance work remaining (%)
(1)	(2)	(3)	(4)	(5) = (2) – (3)
Providing and laying pipes	12,020 r.mt.	6,265 r.mt.	2160 r.mt.	5,755 r.mt. (48%)
Manholes	403 nos.	283 nos.	91 nos.	120 nos. (30%)
Flushing Tank	46 nos.	Nil	-	46 nos. (100%)

### 5.12.3 Unfruitful and infructuous expenditure

Thus, the scheme for Theog town remains incomplete and non-operational even after lapse of over 12 years since its stipulated date of completion (June 2010). Even though the STP was completed in February 2020, only 52 *per cent* of the sewerage network was laid (**Table-5.12.2** above), and neither of the septic tanks were constructed. Therefore, the scheme was not able to service the intended beneficiaries as originally envisaged. Out of the designed life of 30 years (starting from 2011),

11 years (37 per cent) have already elapsed without providing any service / benefit to the population as no sewerage connections could be released as of March 2022. Expenditure of ₹ 5.12 crore incurred on the incomplete scheme remained unfruitful, out of which ₹ 0.63 crore on the buried pipes and manholes was rendered infructuous.

A diagrammatic depiction of the status of the scheme is shown below –



The Executive Engineer, JSV Division, Theog attributed the delay to land disputes at the site of construction and in regard of STP, he replied that no connection had been released till date (March 2022) due to non-connectivity of sewerage line with STP.

The reply was not acceptable as land availability for STP and other components should have been ensured before awarding the work in order to avoid inordinate delay and possible cost escalation. Further, it had been more than two years since the STP was completed (February 2020) and non-functioning of STP has rendered the entire scheme non-operational. No justification was provided for the negligence in allowing components to get buried and remain untraceable, for planning deficiencies, and for non-construction of septic tanks.

The Audit findings were referred to the State Government (March 2022) and reply was awaited (August 2022).

***Land availability for STP and laying of sewerage pipes should be ensured while preparing DPR and before awarding of work. Feasibility assessment must be undertaken at the planning stage in order to avoid subsequent changes in design/ scope and consequent time delay and possible cost escalation.***

## Rural Development Department

### 5.13 Improper implementation of projects under State Rural Livelihood Mission

State Rural Livelihood Mission (SRLM) asked for lesser performance guarantee by ₹ 2.06 crore from Programme Implementing Agencies (PIAs) and failed to enforce contractual recovery of ₹ 0.74 crore from the defaulter for poor performance. Besides, failing to expedite execution of projects through PIAs, leading to training of only 5,262 (47 per cent) candidates against a target of 11,100 and placement of 36 per cent candidates against the stipulation of 70 per cent of the trained, the SRLM had to terminate three projects without completion, due to poor performance and expenditure of ₹ 2.05 crore incurred thereon did not serve the intended objective.

Government of India (GOI) introduced (September 2014) a youth employment scheme named as Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) as a part of National Rural Livelihood Mission, with the aim of providing skills to rural youth and provide them with jobs having regular monthly income. For the State of Himachal Pradesh, the GOI provides 90 per cent of the training cost and the balance 10 per cent is borne by the State Government. The scheme provides training in various trades including textiles, tourism and hospitality, health care, accounting, beauty wellness, retail business, supply chain management, etc.

The DDU-GKY National Unit at Ministry of Rural Development is the agency responsible for national policymaking, funding, technical support and facilitation. The scheme in the State is implemented by the State Rural Livelihood Mission (SRLM), a registered society<sup>55</sup> under the State Rural Development Department (RDD) which is responsible for providing co-funding and implementation support to the Project Implementing Agencies (PIAs)<sup>56</sup> who implement the programme through skill training and placement projects. The role of PIAs was mobilisation, counselling, skill training and placement of the eligible candidates in different trades.

Scrutiny (July 2020) of records of the office of the Director, RDD and further information received (February and July 2021) revealed the following:

#### (i) Under-utilisation of funds

Details of availability of funds and expenditure incurred there against by the SRLM under the scheme during 2016-20 are given in **Table-5.13.1**.

<sup>55</sup> Registered on 28 March 2011 under Himachal Pradesh Societies Registration Act, 2006.

<sup>56</sup> Entities registered under Indian Trust Acts or any State Society Registration Act or any State Cooperative Societies or Multi-State Cooperative Acts or the Companies Act 2013 or the Limited Liability Partnerships Acts 2008 or a government or a semi-government organization at the State and National Level to be selected by Project Approval Committee under the Chairmanship of Principal Secretary (Rural Development) of the State.

**Table-5.13.1: Availability of funds and expenditure incurred during 2016-20**

(₹ in crore)

Year	Availability of funds					Expenditure	Closing balance
	Opening balance	Receipts			Total		
		GOI	State	Interest			
2016-17	--	39.32	4.37	0.24	43.93	0.09 (0)	43.84
2017-18	43.84	3.62	--	1.56	49.02	9.24 (19)	39.78
2018-19	39.78	1.84	5.86	1.10	48.58	12.29 (25)	36.29
2019-20	36.29	25.83	--	1.13	63.25	7.72 (12)	55.53
2020-21	55.53	NA	NA	NA	55.53	3.50 (06)	52.03
<b>Total</b>		<b>70.61</b>	<b>10.23</b>	<b>4.03</b>	<b>84.87</b>	<b>32.84</b>	

Source: Information supplied by Department. Note: Figures in parentheses represent percentage.

Percentage of utilisation of funds during 2017-21 ranged between six and 25. Thus, the utilisation of the funds was low which indicated that the projects were not implemented as required as indicated in the succeeding sub-paragraphs.

**(ii) Non-recovery of penalties for non-compliance of scheme guidelines**

As per the guidelines, PIAs were to complete the target of training and placement, failing which penalty will be imposed on PIAs. The details of penalties imposed on ongoing projects is given in **Appendix-5.2**.

As evident from **Appendix-5.2**, in eight projects (Excluding Sr. No. 9), penalty of ₹ 29.00 lakh (ranging from ₹ 0.50 lakh to ₹ 5.50 lakh) was imposed and in case of PIAs at Sr. No. 2, 3, 4, 5, 6 and 7 penalty had been recovered fully while in case of PIAs at Sr. No. 1 and 8, penalty amounting to ₹ 11.00 lakh was still pending to be recovered. While on PIA at Sr. No. 9, penalty was not imposed despite poor performance. To complete the targets for training and placement, spillover of funds to the above PIAs was granted in 2019-22 action plan.

In Nalanda Institute for Computer and Vocational Training, the achievement of targets of training and placement was low as detailed under sub-paragraph (v). Due to poor performance of the above PIA, the SRLM terminated (February 2019) the project by imposing penalty/ recovery of ₹ 0.63 crore in terms of provision of the Memorandum of Understanding (MoU). In the absence of adequate Performance Guarantee (PG) as required under the provision of State Financial Rules/ GOI instructions (September 2017) *ibid*, the SRLM could not enforce the execution of the projects and enforce recoveries from the PIAs.

The matter for recovery of ₹ 0.58 crore (excluding penal recovery amount of ₹ 0.05 crore) paid to the PIA as advance (first installment) along with interest thereon was taken up (September 2019) by the Department with the Collector-cum-District Magistrate, Indore, to effect recoveries from assets of the PIA as arrears of land revenue under Revenue Recovery Act of the State.

Hence, SRLM failed to enforce the recoveries of ₹ 0.74 crore<sup>57</sup> from the PIAs, as of March 2021.

**(iii) Non- recovery of interest due to non-commencement of project**

The SRLM and AFC India Limited had signed MoU on 19 July 2017 for implementation of project at a cost of ₹ 4.11 crore. First installment of ₹ 1.03 crore was released to the PIA in September 2017. However, the PIA backed out (December 2017) without implementing the project and accordingly, the SRLM terminated the contract in February 2018. The PIA refunded (February 2018) the first installment of ₹ 1.03 crore to the SRLM, but the SRLM refunded (February 2018) the PG of ₹ 0.10 crore to the PIA without effecting recovery of the interest of ₹ 0.05 crore from PIA, on ₹ 1.03 crore, which remained with PIA for six months (From September 2017 to February 2018 at the rate of 10 *per cent* per annum). The SRLM had failed to effect recovery of the interest as of March 2021.

The Director, Rural Development stated (February 2021) that the interest amount was calculated on the assumption that interest may have been earned by the PIA. But it was confirmed that no interest had been earned by PIA as it was an overdraft account and there was no question of recovery of interest. The fact, however, remained that the PIA concerned had kept the amount of ₹ 1.03 crore with it for six months. Though the PIA had not earned interest on its overdraft account in bank, the same was liable to pay interest at the rate of 10 *per cent* per annum in terms of provision (condition No.12.5) of the MoU. Accordingly, the SRLM should have effected recovery of interest from the PIA.

**(iv) Short receipt of performance bank guarantee from PIAs**

Central Government General Financial Rules (GFRs)/ Himachal Pradesh Financial Rules (HPFRs) provide for obtaining of PG from successful contractor on award of the contract for an amount between five and 10 *per cent* of the value of the contract. Further, with an objective to ensure an assurance to the Government in the event of inadequate or delayed performance or a violation of guidelines and protocols by a PIA in DDU-GKY project, the GOI had introduced (September 2017) obtaining of PG from the PIA for a minimum value of 6.25 *per cent* of the total approved cost of the project.

However, the SRLM had neither changed the MoU by inserting performance guarantee clause from PIAs at minimum value of 6.25 *per cent* of the total approved cost of the project as per above GOI instructions (September 2017) nor obtained performance guarantee at minimum rate of five *per cent* of the total approved cost of the project in terms of GFRs/ HPFRs *ibid*. Contrarily, the SRLM had obtained PG on the first instalment released to the PIAs resulting in shortfall of PG of ₹ 2.06 crore from the PIAs as detailed in **Table-5.13.2**.

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<sup>57</sup> ₹ 0.63 crore to be recovered from Nalanda Institute for Computer and Vocational Training and ₹ 0.11 crore from ongoing nine projects as detailed in **Appendix-5.2**.

Table-5.13.2: Short-obtaining of performance guarantee from PIAs

(₹ in crore)

Sr. No.	PIA	Project cost	First instalment released	PG required*	PG obtained #	Short PG
1.	AFC India Ltd.	4.11	1.03	0.21	0.10	0.11
2.	Apollo Medskills Ltd.	9.44	2.36	0.48	0.24	0.24
3.	Cardiac Research and Edu. Foundation	11.78	2.95	0.59	0.29	0.30
4.	Disha Education Society	8.76	2.19	0.44	0.22	0.22
5.	Heraud Trg. and Edu. India Pvt. Ltd.	4.55	1.14	0.23	0.11	0.12
6.	Manav Vikas Evam Sewa Sansthan	3.23	0.81	0.16	0.08	0.08
7.	Mass Infotech Society	7.17	1.79	0.36	0.18	0.18
8.	Nalanda Institute for Comp. & Voc. Trg.	2.31	0.58	0.12	0.06	0.06
9.	Orion Security Solutions Pvt. Ltd.	7.06	1.77	0.35	0.18	0.17
10.	Power to Empower Skills Pvt. Ltd.	4.52	1.13	0.23	0.11	0.12
11.	Smart Brains	4.24	1.06	0.21	0.11	0.10
12.	Samvit Edu. Trust	4.22	1.05	0.21	0.11	0.10
13.	Team Lease Service India Ltd.	10.43	2.61	0.52	0.26	0.26
<b>Total</b>		<b>81.82</b>	<b>20.47</b>	<b>4.11</b>	<b>2.05</b>	<b>2.06</b>

Source: Information supplied by Department.

\*At the rate of minimum five per cent of total project cost as per provision of General Financial Rules (GFRs)/ Himachal Pradesh Financial Rules (HPFRs).

# At the rate of 10 per cent of first instalment.

Short receipt of PG (being an instrument of deterrent) from the PIAs had put the Government money at risk, in case of failure of the PIAs to comply with the guidelines of the scheme, in implementation of the projects. As a result, the SRLM could not get the projects implemented from the PIAs on time and had to terminate the projects of three PIAs without completion as indicated below under sub-paragraph (v).

#### (v) Selection of PIAs and non-achievement of targets

##### ➤ Selection of PIAs

Selection of PIAs includes issuance of Request for Proposals (RFP) by SRLM, online submission of proposal by PIAs, appraisal of proposal by appraisal agency (screening, qualitative appraisal, field visit to PIAs headquarters and submission of reports to SRLM), approval of projects by project approval committee (PAC) headed by Secretary (Rural Development).

After approval of the action plan for 2016-19, the SRLM floated (August 2016) RFP and assigned the appraisal of proposals to Himachal Pradesh Kaushal Vikas Nigam (HPKVN) as appraisal agency as it was a 100 per cent Government owned corporation and fulfilled the requisite requirements for selecting PIAs. After detailed evaluation of the proposals, HPKVN submitted recommendations in respect of 22 PIAs (First Phase: eight and Second Phase: 14) to the SRLM for approval of the PIAs by the PAC chaired by the Secretary (Rural Development). In the first phase, the

PAC approved (March 2017) six<sup>58</sup> (out of eight) PIAs and in the second phase, the PAC approved seven<sup>59</sup> (out of 14) PIAs.

➤ **Non-achievement of targets**

As per Action Plan for 2016-19, target of imparting training to 15,000 candidates at a projected cost of ₹ 135.04 crore was allocated to Himachal Pradesh SRLM. As per approval of Project Approval Committee, the SRLM engaged (between May 2017 and August 2017) above 13 PIAs to impart training in placement linked skill development courses<sup>60</sup> and to ensure job placement through post placement support. As per training capability and placement tie-ups of these PIAs, target of training 11,100 candidates with project cost of ₹ 81.82 crore was allocated to them. The PIAs were to provide placement to 70 per cent of the trained candidates. In case, placement was below 70 per cent, costs would be admissible to the PIAs proportionately.

The projects were to be implemented by the PIAs within two years from the date of sanction (May 2017 and August 2017). The payments to PIAs were to be released in four instalments in the ratio of 25:50:15:10 as per the sanction order issued. First instalment was provided to all the 13 PIAs (₹ 20.45 crore) and second instalment was provided to seven PIAs (₹ 15.43 crore) up to July 2020. The project-wise details of achievement of training targets and placement are given in **Table-5.13.3**.

**Table-5.13.3: Details of achievement of training targets and placement in jobs during May 2017 to March 2021**

Sr. No.	PIA	Date of sanction	Project cost	Exp.	Training targets, achievement and placement in numbers		
					Target	Trained	Placed
1.	AFC India Ltd.	August 2017	4.11	0	700	0	0
2.	Apollo Medskills Ltd.	May 2017	9.44	1.00	800	221 (28)	0
3.	Cardiac Research and Edu. Foundation	August 2017	11.78	5.32	1,400	611 (44)	176 (29)
4.	Disha Education Society	August 2017	8.76	0.25	1,300	224 (17)	26 (12)
5.	Heraud Trg. and Edu. India Pvt. Ltd.	May 2017	4.55	2.03	800	286 (36)	181 (63)
6.	Manav Vikas Evam Sewa Sansthan	August 2017	3.23	3.14	500	406 (81)	170 (42)
7.	Mass Infotech Society	May 2017	7.17	2.85	1,300	627 (48)	248 (40)
8.	Nalanda Institute for Computer and Vocational Training	August 2017	2.31	0.80	400	148 (37)	44 (30)
9.	Orion Security Solutions Pvt. Ltd.	May 2017	7.06	5.37	1,200	950 (79)	256 (27)
10.	Power to Empower Skills Pvt. Ltd.	August 2017	4.52	2.13	700	541 (77)	124 (23)
11.	Smart Brains	May 2017	4.24	2.75	500	411 (82)	223 (54)
12.	Samvit Edu. Trust	August 2017	4.22	0.75	700	324 (46)	212 (65)
13.	Team Lease Service India Ltd.	May 2017	10.43	7.54	800	513 (64)	232 (45)
<b>Total</b>			<b>81.82</b>	<b>33.93</b>	<b>11,100</b>	<b>5,262 (47)</b>	<b>1,892 (36)</b>

Source: Information supplied by Department.

<sup>58</sup> Apollo Medskills Ltd.; Team Lease; Heraud Trg. and Edu. India Pvt. Ltd.; Orion Security Solutions Pvt. Ltd.; Mass Infotech Society and Smart Brains.

<sup>59</sup> AFC India Ltd.; Cardiac Research and Edu. Foundation; Disha Education Society; Manav Vikas Evam Sewa Sansthan; Nalanda Institute for Computer and Vocational Training; Power to Empower Skills Pvt. Ltd. and Samvit Edu. Trust.

<sup>60</sup> Agriculture, health care, automotive, electronics, hospitality, construction, travel and tourism, etc.

- For achievement of targets of training as per action plan 2016-19, the SRLM had not allocated the overall target of training 15,000 candidates, which indicated shortfall of 3,900 candidates at the outset.
- One of the PIAs (AFC India Limited) had backed out (December 2017) without implementing the project. The achievement of target of training by three PIAs (Apollo Medskills Limited, Disha Education Society and Nalanda Institute for Computer and Vocational Training) ranged between 17 and 37 *per cent*. None of the trained candidates were facilitated for placement by Apollo Medskills Limited. The percentage of placement by Disha Education Society and Nalanda Institute of Computer and Vocational Training was 12 and 30 respectively. Due to slow pace of execution of these three projects, the Department terminated (September 2019) these projects. Thus, the expenditure of ₹ 2.05 crore<sup>61</sup> incurred by the PIAs on the projects did not result in training and placement of the intended number of candidates.
- The remaining nine PIAs had achieved 36 to 82 *per cent* of the allocated target of training as of March 2021. Achievement of target of placement by these PIAs ranged between 23 and 65 *per cent*. This indicated that in spite of lapse of period of 19 to 22 months from the stipulated date of completion, none of the PIAs had achieved the target of training and placement.

➤ **Lack of monitoring**

Non-achievement of target of training and placement as discussed above can be attributed to lack of monitoring as indicated below:

**(a) Review Meetings of SRLM**

The SRLM had not prescribed the periodicity of review meetings of the PIAs by the officers of the SRLM. Details of achievement of target of training and placement were not discussed in certain review meetings of SRLM held during July 2018, October 2018, December 2018 and July 2019 under the chairmanship of Chief Executive Officer, SRLM/ Director-cum-Special Secretary (Rural Development).

**(b) Inspection of PIAs/ training centres**

As per paragraph 5.2.1.2 of Standard Operating Procedure of DDU-GKY, Quality team will inspect a training centre at least six times in a year.

For financial years 2017-19, inspection of PIAs (training centres) were conducted on online platform- MRIGS (Monitoring and Regulation of Improved Governance of Skill Development) owned by Hardshell Private Limited recommended by GOI Ministry of Rural Development. However, due to some technical issues online inspection reports were not available. As a result, the authenticity of inspections

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<sup>61</sup> Apollo Medskills Limited: ₹ 1.00 crore, Disha Education Society: ₹ 0.25 crore and Nalanda Institute for Computer and Vocational Training: ₹ 0.80 crore.

conducted during above period could not be verified in audit. As per data of inspection reports provided by the SRLM, against the prescribed 54 inspections of nine PIAs to be conducted by Quality Team of SRLM during 2019-20, it had conducted only 31 inspections<sup>62</sup> resulting in shortfall of 23 inspections. However, the inspection reports for August-October 2019 and January-February 2020 made available to audit by SRLM do not specify the non-achievement of targets by the PIAs. No inspection was conducted during 2020-21 due to COVID-19 Pandemic.

Thus, the implementation of the projects under the scheme was marred by the following deficiencies:

- Against available funds of ₹ 84.87 crore during 2016-21, the SRLM had incurred an expenditure of ₹ 32.84 crore (39 *per cent*) leaving unspent balance of ₹ 52.03 crore, which indicated slow pace of execution of projects.
- The SRLM had failed to enforce penalty/ recovery of ₹ 0.74 crore from the defaulters (PIAs) for non-performance/ poor performance.
- Against PG of ₹ 4.11 crore required to be obtained from the PIAs on the total project cost, the SRLM had obtained PG of ₹ 2.05 crore resulting in shortfall in PG of ₹ 2.06 crore.
- In spite of availability of adequate funds, the SRLM failed to expedite implementation of the projects for the last five years resulting in training of 5,262 (47 *per cent*) candidates out of the target of 11,100 candidates (3,900 less against the initial target of 15,000). Further, against the required job placement of 70 *per cent* of the trainees, the PIAs could facilitate placement of 36 *per cent* only.
- Due to poor performance both in respect of training and placement, the SRLM had to terminate three projects and expenditure of ₹ 2.05 crore did not serve the intended objective of the scheme.

The Additional Chief Secretary (Rural Development) stated (April 2022) that the requisite targets could not be achieved due to exhaustive criteria and sudden break out of COVID-19 Pandemic. Further, recovery of the amount due from the three defaulter PIAs of the terminated projects could not be made as the matter in respect of two PIAs (Apollo Medskills Limited, Hyderabad and Disha Education Society, Raipur) was sub-judice in High Court of Himachal Pradesh and the action for recovery against the third PIA (Nalanda Institute for Comp. & Voc. Trg., Indore) was under progress. The fact, however, remains that due to lack of monitoring, the SRLM had failed to ensure the execution of the project from the PIAs in time. As per State Financial Rules the performance guarantee was to be obtained on the total value of the project cost and not on the amount released so as to secure public money against loss/ mis-utilisation of funds.

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<sup>62</sup> Team Lease: four; Cardiac: three; Orion: four; Power to Empower: three; Mass Infotech: three; Samvit: five; Manav Vikas: four; Smart Brains: three and Heraud: two.

*The Government may consider:*

- *Putting in place systems and procedures to ensure the proper monitoring of progress of the scheme.*
- *Making appropriate changes in contracts to make the provisions enforceable in respect of performance guarantee and recover it at appropriate rates from the PIAs on total cost of the project.*

## Transport Department

### 5.14 Contradiction in provisions resulting in unjust collection of *Adda fees* by the Concessionaires of Bus Stands

**Unjust enrichment of Concessionaires by ₹ 2.76 crore by allowing them to collect *Adda fees* from the date of signing of Agreement instead of date of completion.**

Himachal Pradesh City Transport and Bus Stands Management and Development Authority (HPCTBSMDA) invited proposals for construction and development of Modern Bus Terminus with Commercial Complex at the existing bus stands at Chintpurni (March 2016), Dharmshala (July 2017) and Kullu (March 2017) through Public Private Partnership (PPP<sup>63</sup>) on Design, Build, Finance, Operate and Transfer (DBFOT) basis. The works were awarded to two concessionaires followed by signing of concession agreements (agreement).

As per the clause 3.4 of the agreements / decision of Board of Directors (BOD), the concession period for the projects was 30 years from the date of completion of construction. The construction period was to be 36 months from the date of signing the agreement. This was further extendable for another ten years if the concessionaire applies for the same in writing.

As per clause 32.1 (a) of the agreements, the concessionaires were entitled to levy, collect, retain and appropriate *Adda fees*<sup>64</sup> (at the year-wise pre-determined rates) from the users from the operation date *i.e.*, the date on which the Independent Engineer appointed by the HPCTBSMDA issues a provisional certificate and the concessionaire commences the commercial operations. Hence, the concessionaires could levy *Adda fees* and user charges<sup>65</sup> only upon the completion of the project and the right to collect *Adda fees* during the period of construction rested with the HPCTBSMDA.

<sup>63</sup> State Government had only to provide the encumbrance free land.

<sup>64</sup> *Adda fees* is the charge or tariff payable by all the buses with or without passengers at the exit gate of the Bus Terminal.

<sup>65</sup> User Charges means the charges, levies, tariffs, prices, sub-licenses fees, parking fees, night parking fees, advertisement revenues or all sources of revenue or amounts of money other than *Adda fees* by whatever name called levied, demanded, collected, retained and appropriated by the Concessionaire from Users.

Further, clause 32.1(e) conferred the right to the concessionaires of Dharmshala and Kullu to levy the *Adda fees* from the date of signing of agreements. However, this provision was absent in respect of Chintpurni.

Scrutiny of the records (November 2020) revealed that the concessionaires started charging *Adda fees* right after signing the agreements. It was noticed that an amount of *Adda fees* of ₹ 2.76 crore (excluding GST) was collected by the concessionaires by 31 March 2021 as given below:

**Table-5.14.1: Detail of Projects and *Adda fees* collected**

(₹ in crore)							
Sr. No.	Name of the Bus Stand	Name of the Contractor	Date of Award	Date of agreement	Period of collection of <i>Adda fees</i>	<i>Adda fees</i> collected (excluding GST)	Status of operation
1	Chintpurni	M/s Mukesh Ranjan contractors, Punjab	10.08.2016	29.11.2016	01.12.2016 to 23.09.2017	0.07	24.09.2017
2	Dharmshala	--do--	23.08.2017	25.08.2017	06.09.2017 to 31.03.2021	1.44	Work not started
3	Kullu	CSA Infratech Pvt. Ltd., New Delhi	13.06.2017	16.08.2017	22.09.2017 to 31.03.2021	1.25	Under progress
<b>Total</b>						<b>2.76</b>	

While in cases of Dharmshala and Kullu, the collection before the operation date was made under clause 32.1(e) of the contract; in case of Chintpurni, the collection was made despite there being no clause in the original agreement. The irregular collection in case of Chintpurni was ratified by the BOD in its 58<sup>th</sup> meeting (27.05.2017). However, after it was pointed out by audit, the decision of BOD was withdrawn (03.12.2019) and HPCTBSMDA worked out a recovery of ₹ 0.89 crore from the concessionaire. The recovery was later modified to ₹ 0.07 crore based on the representation of the concessionaire.

Thus, inclusion of contradictory provisions in the agreements in cases of Dharmshala and Kullu and irregular allowance in case of Chintpurni resulted in unjust enrichment of the concessionaires by ₹ 2.76 crore. It was logical that the concession period started after completion of construction. This would have allowed the concessioning authority to have a clearcut view of allowable cost recovery time frame to the concessionaire. Without this, the concessionaire would be incentivised to delay construction. This was also evident from the fact that the concessionaire had already collected *Adda fees* from 06.09.2017 to 31.03.2021 without starting the work at Dharmshala. Similarly, the work at Kullu was still under progress from 22.09.2017 to 31.03.2021. As per the contract, the construction work was to be completed within 36 months. Thus, the conflicting clauses were acting as enabling tools for unjust enrichment for the concessionaire.

The Government, in its reply (May 2022) stated that collection was rightly made in terms of the RFP in terms of Dharmshala and Kullu; however, directions had been issued (March 2019) to examine the involvement of HRTC officers in framing such a

faulty bid document, bid conditions and terms of the agreement. It further stated that the amount collected in case of Chintpurni of ₹ 0.07 crore was yet to be recovered from the concessionaire.

***The Government must put in place, systems and procedures, to avoid repeat of such acts in future and avoid unnecessarily burdening the common people.***

