

A Case Study In Union Government (Civil)



Avoidable expenditure of ₹3.32 crore (Compliance Audit)

Regional Training Institute
Indian Audit and Accounts Department
Kolkata

PREFACE

Regional Training Institute, Kolkata was declared as Knowledge Centre for Compliance Audit in August 2012. In pursuit of excellence in our assigned areas of Knowledge Centre, we attempt to bring out series of interesting cases of frauds / deviation from rules and regulation etc. reported and reflected in the Union Civil Compliance Audit Report of different Central Governments Departments, as case studies. In preparing the instant case study, the models adopted by INTOSAI and some other business schools have been followed.

The case study "Avoidable expenditure of ₹3.32 crore" has been prepared based on the Audit Para 10.1 appeared in Audit Report No. 13 of 2012-13 of Comptroller and Auditor General of India – Union Government Civil in respect of Department of Atomic Energy..

I hope that the readers would benefit from this .The suggestion, if any, are welcome and would help us in future.

RTI, Kolkata

September, 2013

Arabinda Das Principal Director

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Avoidable expenditure of ₹3.32 crore

1. Background:

The General Financial Rules, 2005, say that in high value purchases, bids should be obtained in two stages- the technical bid being evaluated first and the financial bid thereafter. As per Financial Rules, 1978 of the Department of Atomic Energy (DAE), if limited tender value exceeds ₹3 crore, the concurrence of Member (Finance) of DAE is required. The time limit prescribed (2005) by the Directorate of Purchase and Stores(DPS), the centralized purchase unit of DAE, for processing two part tenders is that proposals for approval of Member (Finance) be sent within six months from the date of raising of indents.

One limited tender was invited (August, 2007) by DPS from three firms for manufacturing, material procurement, fabrication mockup, inspection testing and safe delivery of a 'Discharge Assembly Transfer Cask' along with accessories at an estimated cost of ₹13 crore, against an indent (June, 2007). The due date of receipt was 24th September, 2007 and date of opening being 25th September, 2007 for technical bid while 30th November, 2007 for the price bid. There was a clause in the tender document viz. "Purchase Preference Clause" based on the Purchase Preference Policy prescribed by the Department of Public Enterprises, Govt. of India. According to the clause, a Central Public Sector Enterprise (CPSE) participating in a tender would get purchase preference over other participating private sector firms, provided, (i) its offer was technically suitable, (ii) the difference of price quoted by it and the lowest priced offer was within 10 per cent and (iii) the CPSE was willing to match the lowest quoted price. The Price Preference Policy (PPP) of the Department of Public Enterprises was valid till 31st March, 2008 only.

2. Environment:-

The procurement exercises adopted by DAE in the instant case revealed flaws in tender evaluation. For example, there was a consideration of an offer in favour of an entity, which was not eligible to be considered for the price preference benefit, at the price evaluation stage. There were protracted and inexplicable delays at various stages in processing the purchase case leading to rejection and retendering with the impact of an additional expenditure of ₹3.32 crore.

3. Opportunity to Prevent irregularity:-

- i) DAE could avoid the additional expenditure by placing the purchase order on the lowest valid bidder in the first instance.
- ii) DAE could avoid the additional expenditure if the timeline (6 months) prescribed by DPS for sending the proposal for approval of Member (Finance) was maintained.
- iii) Central Manufacturing Technology Institute (CMTI) was not a Central Public Sector Enterprise, but a registered society. Hence it was not eligible to enjoy the benefit of price preference clause.

Therefore, DAE could avoid the additional expenditure by not accepting the certificate issued by Ministry of Commerce and Industries, Government of India for treating the CMTI, who was the second lowest bidder, as a CPSE with regard to price preference, as the certificate was submitted by CMTI on a date after the price bid was opened on 30 November 2007. This could be construed as a post-tender negotiation with a firm other than the lowest bidder in contravention of Central Vigilance Commission's (CVC) guidelines.

4. Opportunity to detect and proving irregularity:-

Red Flag Indicators:-

- i) A limited tender was invited (August 2007) from three firms for manufacturing, material procurement, fabrication mockup, inspection testing and safe delivery of a 'Discharge Assembly Transfer Cask' along with accessories at an estimated cost of ₹13 crore. But the tender was not processed within the time limit prescribed for getting the approval of competent authority. Hence, the purchase proposal was rejected by the competent authority and no purchase order was issued.
- ii) A second tender was issued and the tender was ultimately awarded to the single tenderer who was incidentally the lowest tenderer on the 1st occasion. The difference in rates between the two occasions of Rs.3.32 crore had to be borne by the DAE as an additional expenditure.

Follow up of Red flag: - Audit Examination and evidence collection.

- a) Acting on these red flag indicators, the Audit party conducted the scrutiny of Tender Register, Purchase Order Register, List of Central Public Sector Enterprise (CPSE), CVC guidelines and price Preference clause etc. and it was revealed that limited tender was invited (August 2007) from three firms.
- b) There was a clause in the tender document viz. "Purchase Preference Clause" based on the Purchase Preference Policy prescribed by the Department of Public Enterprises, Govt. of India.
- c) In course of detailed scrutiny of the tender documents it was found that Godrej was the lowest and the only eligible bidder on the opening of price bid. The DPS, however, accepted the Ministry of Commerce and Industry's certificate submitted by the second lowest bidder (CMTI) on 5.12.2007, i.e., well after the opening of the price bid on 30 November 2007 for treating the second lowest bidder (CMTI) as a CPSE with regard to price preference. Detailed scrutiny also revealed that the second bidder was only a registered society and could not be considered as CPSE eligible for availing of the Price Preference clause.
- d) Negotiation was held with the 2^{nd} lowest tenderer violating the CVC guidelines permitting negotiation with the lowest bidder only.
- e) On scrutiny of relevant papers, it was noticed that after processing the case a proposal for approval, as required in the case, was sent to Member (Finance) DAE after a lapse of 10 months. The instructions of

- DAE, however, prescribed a time limit of six months from the date of raising the indent to sending the proposal for approval for processing such type of purchase.
- f) Finally, Secretary, DAE turned down the proposal on the ground that PPP was no longer valid and instructed the DPS to issue a fresh limited tender.
- g) On scrutiny of fresh tender documents along with Purchase Order Register, it was assessed in audit that DAE has incurred an additional expenditure of ₹3.32 crore for not placing the purchase order on the lowest valid bidder at the first instance.

5. Lessons Learnt:-

- DAE accepted the Ministry's certificate, submitted by CMTI after the opening of the price bid on 30 November 2007, for treating the second lowest bidder (CMTI) as a CPSE with regard to price preference and that amounted to post-tender negotiation with a firm other than the lowest bidder in contravention of Central Vigilance Commission (CVC) guidelines
- DAE considered the offer of the Central Manufacturing Technology Institute (CMTI), Bangalore as a Central Public Sector Enterprise but it was not eligible to be considered for the price preference benefits as it was a registered society only. Thorough scrutiny of tender documents along with the eligibility certificates are essentially required to be examined at the time of processing such cases.
- iii) DPS and the indenting division had not adhered to the prescribed time frames causing unexplained delays at various stages in processing the purchase case, leading to rejection and retendering.
- iv) DAE had incurred an additional expenditure of ₹3.32 crore for not placing the purchase order on the lowest valid bidder at the first instance.

6. Enclosure for reference:-

- Audit Para 10.1 appeared in Audit Report No. 13 of 2012-13 of Comptroller and Auditor General of India –Union Government Civil in respect of Department of Atomic Energy.
- ii) Draft Para issued to DAE.
- iii) Reply of the Department on the Draft Para.

Report No. 13 of 2012-13

CHAPTER X: DEPARTMENT OF ATOMIC ENERGY

10.1 Avoidable expenditure of ₹ 3.32 crore

Failure of the Directorate of Purchase and Stores under the Department of Atomic Energy in adhering to the purchase procedure and consequent delay in finalising a purchase proposal within the validity period resulted in avoidable expenditure of ₹ 3.32 crore.

The General Financial Rules, 2005, enjoin that in the case of high value purchases, bids should be obtained in two stages, with the technical bid being evaluated first and the financial bid thereafter. As per the Exercise of Financial Rules, 1978 of the Department of Atomic Energy (DAE), cases involving limited tenders with financial outlays exceeding ₹ three crore are required to be sent for the concurrence of the Member (Finance), DAE. The timelines prescribed (2005) by the Directorate of Purchase and Stores (DPS), the centralized purchase unit of DAE, for processing two-part tenders specify that proposals for approval of the Member (Finance) should be sent within six months from the date of raising of indents.

The DPS received an indent raised in June 2007 for manufacturing of a discharge assembly transfer cask¹ from the Light Water Reactor Division of the Bhabha Atomic Research Centre. It invited (August 2007) limited tenders from three firms for manufacturing, material procurement, fabrication mockup, inspection testing and safe delivery of a discharge assembly transfer cask along with accessories at an estimated cost of ₹ 13 crore, with the due date for receipt of tenders being 24 September 2007.

The tender document included a Purchase Preference clause², according to which, a Central Public Sector Enterprise (CPSE) participating in a tender would get purchase preference over other participating private sector firms, provided, (i) its offer was technically suitable, (ii) the difference of price quoted by it and the lowest priced offer was within 10 per cent and (iii) the CPSE was willing to match the lowest quoted price. The Price Preference Policy (PPP) of the Department of Public Enterprises was valid only till 31 March 2008.

The DPS received offers from M/s. Godrej & Boyce, Mumbai (Godrej) and the Central Manufacturing Technology Institute (CMTI), Bangalore. On opening of the technical bids on 25 September 2007, both the bidders were

¹ Transfer cask is required to transfer the spent fuels to spent fuel storage pool.

² This clause was based on the Purchase Preference Policy prescribed by the Department of Public Enterprises, Government of India. This policy was discontinued after 31 March, 2008.

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declared as technically qualified. The price bids were opened on 30 November 2007. Godrej quoted a basic price of ₹ 11.35 crore³, whereas CMTI quoted ₹ 12.18 crore⁴. The indenting division conveyed (28 December 2007) its recommendation for placing the order on CMTI. After due negotiations, CMTI agreed (January 2008) to match its price with that of Godrej at ₹ 12.77 crore (post tax). The Stores Purchase Committee (SPC) approved the proposal for the purchase on 30 January 2008.

Scrutiny in audit revealed the following:

- (i) Godrej was the lowest bidder after opening of the price bids. However, subsequent to opening the bids, CMTI submitted a letter on 6 December 2007, along with a certificate issued by the Ministry of Commerce and Industry, Government of India dated 5 December 2007 that the firm may be treated at par with CPSUs with regard to price preference. It is to be noted that CMTI was a registered society and not a CPSE and was thus not covered under the Purchase Preference Clause. The decision of DAE to accept the offer of CMTI, which was not a CPSE was, therefore, irregular.
- (ii) Despite Godrej being the lowest and the only eligible bidder on the opening of price bids, DPS accepted the Ministry's certificate for treating CMTI at par with CPSEs with regard to price preference, even though this certificate was received after the opening of the price bid on 30 November 2007.
- (iii) As this case was being processed on a limited tender basis and had a financial outlay exceeding ₹ three crore, it required the approval of the Member (Finance), DAE. While the instructions of DAE prescribed a time limit of six months for processing such purchase cases, it was observed that in the instant case, the proposal was sent to the Member (Finance) DAE for approval only on 21 April 2008, i.e. 10 months after raising of the indent. Secretary, DAE turned down the proposal on 29 July 2008 on the ground that the validity of the PPP was no longer valid and instructed the DPS to issue a fresh limited tender.
- (iv) It was observed that there were considerable delays within the DPS in examining the proposal. As against the prescribed time limit of six months for processing such purchase cases, the DPS took two months to issue the limited tender inquiries to the three firms and a further

³ Post tax price of ₹ 12.77 crore.

⁴ Post tax price of ₹ 13.70 crore.

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three months to approve the technical bid. The stages thereafter included opening and examining the financial bids and in the instant case, sending it to Member (Finance), DAE for obtaining his approval.

(v) The DPS again invited tenders in August 2008 from the same three firms. However, only Godrej responded to the tender notice and quoted a basic price of ₹ 15.80 crore⁵. DPS negotiated the price and a purchase order was placed on the firm at ₹ 16.09 crore (post tax) in February 2009. Godrej received final payment for this order in December 2010.

The procurement exercise adopted by DAE in the instant case revealed flaws in tender evaluation such as making an offer to an entity which was not eligible to be considered for the price preference benefit at the price evaluation stage. Further, there were protracted delays at various stages in processing of the purchase case, leading to rejection and retendering, which finally resulted in an additional expenditure of ₹ 3.32 crore.

DAE replied (May 2012) that the qualification process for any Company after submission of the offer is based on the status of the Company/its offer, on the due date of submission of the offer as per the purchase price procedure in vogue, which was 25 September 2007 in this case. Therefore, DPS had the perception that the PPP would be applicable to M/s CMTI in this purchase file. The offer of M/s CMTI, Bangalore was kept valid upto 31 July 2008.

The reply is not acceptable as DPS had overlooked the fact that the firm was not eligible for price preference benefit on the date of opening of the financial bid on 30 November 2007, since the certificate of eligibility for treating it at par with CPSEs with regard to price preference was issued to it only on 5 December 2007. Further, even if we consider that DAE was not aware of the fact that the benefit of price preference would lapse on 31 March 2008, the decision of DAE to accept the offer of CMTI, which was not a CPSE, was irregular.

Thus, by failing to place the purchase order on the lowest valid bidder in the first instance, DAE not only delayed the entire procurement process but also incurred an additional expenditure of ₹ 3.32 crore.

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⁵ Post tax price of ₹ 17.78 crore.

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DRAFT PARAGRAPH

Avoidable expenditure of Rs. 3.32 crore

Failure of Directorate of Purchase and Stores under Department of Atomic Energy in adhering to purchase procedure and consequent delay in finalising of a purchase proposal within the validity period of the Purchase Preference Policy resulted in an additional financial burden of ₹ 3.32 crore.

KD.4/A1

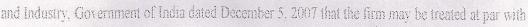
DPS received offers from M/s. Godrej & Boyce Mumbai (Godrej) and Central Manufacturing

Technology Institute (CMTI), Bangalore. The firms quoted basic price of ₹11.35 crore and ₹12.18 kD-5 /4.2 kD-4 /P-5, kD-6 /P-3, kD-1 / P-4

crore respectively. Both the offers were valid up to 27 February 2008. Subsequently, CMVI

kD-15 [F-1] kD-15 [F-6] submitted a letter on December 6, 2007 along with a certificate issued by Ministry of Commerce

KD-15 P.G



KD-7 [P-1

CPSUs with regard to price preference. DPS accepted the certificate though it was received after KD-1/P-4

the opening of the price bid on November 30 2007 which amounted to post-lender necotiations

with a firm other than the lowest priced firm. This was in contravention of CVC guidelines. The

Indenting Division conveyed its recommendation (December 28, 2007) for placement of the order on CMTI on the consideration that CMTI had experience of developing similar equipment on earlier occasions and also that it had furnished a certificate from Ministry of Commerce and

Industry. Government of India that the firm may be treated at par with CPSUs with regard to price

preference.

After due negotiations. CMTI agreed (January 2008) to match its price with that of L1 at ₹12.77 | RD-6 | P.7 crore (post fax). The Stores Purchase Committee (SPC) approved the proposal for the purchase on 30 January 2008.

10-14 P-1

As per the Exercise of Financial Rules 1978 of DAE, the case was to be sent to the Member

(Finance), DAE for concurrence since it involved limited tenders with financial outlay exceeding

40.17/F-1 ₹ 3 crore. Timelines prescribed (2005) by DPS for processing two-part tenders specify that

proposals for approval of DAE should be sent within six months from the date of raising of indent KD-1/P-6

(June 18, 2007) by the indenting division i.e. by December 2007. Proposal was however sent to the KN-818-6

Member for approval only on April 21 2008 as a consequence of which the price preference policy

KD-2 121

Tapsed on March 31, 2008. DAE turned down the proposal in July 2008 on the grounds that the PPP

KD-2 | P-1 RD-9 1P-1

had lapsed on 31 March 2008 and instructed the DPS to issue a fresh limited tender.

RD-5 P.

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KD-10/4-1

The DPS again invited tenders in August 2008 from the same three firms. However, only M/s. kD-11/P-1/B Godrej responded to the tender notice and quoted a basic price of ₹15.80 crore. DPS negotiated the price and a purchase order was placed on the firm at ₹16.09 crore (post tax) in February 2009. kD-12/P-1

DAE replied in May 2012 that qualification process for CMTI after submission of offer is based on the status of the Company/offer on the due date of submission of its offer on September 25, 2007. It

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further stated that if CMTI had not claimed purchase preference subsequent to submission of its

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offer, the order would have been placed on M/s. Godrej & Boyce at a cost of ₹ 12.77 crore (post

tax) as per normal procedure.

Reply of DAE is not tenable since CMTI was not covered by the PPP as on date of submission of k0+5)P offer as the certificate was issued by the Ministry only on December 5, 2007. Hence evaluation of k0-17 | P-5 tender of CMTI on PPP consideration was not valid. Further, inordinate delays at various stages of k0-18/e-3

the processing of the tender resulted in expiry of offers of Godrej and CMTI in February and July k \(\begin{align*} \begin{

Thus the DPS, a unit of DAE which was set up with a view to accelerate the procurement and prompt delivery of the intended material, failed to adhere to the CVC guidelines and prescribed time frames in processing of the tender. This indicated a weak internal control over the procurement process which caused an additional expenditure of ₹3.32 crore to be incurred.

Deputy Director

(DP-730)

8m. A.O. 1 AP Cell

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& F16.09 - KC-12/P-1 - £12.77 - KD-6/P-7 £3.32



डा. सी.बी.एस. वेंकटरमण, आई एएस Dr. C.B.S. VENKATARAMANA, IAS संयुक्त सचिव JOINT SECRETARY

D.O. No.27/1/2012/BARC/R&D-I/ 4707

Dear Smt. Geetali Tare,

परमाणु ऊर्जा विभाग अणुशक्ति भवन, छत्रपति शिवाजी महाराज मार्ग, मुंबई - 400 001.

GOVERNMENT OF INDIA DEPARTMENT OF ATOMIC ENERGY

ANUSHAKTI BHAVAN CHHATRAPATI SHIVAJI MAHARAJ MARG. MUMBAI - 400 001.

May 2, 2012

Please refer to your D.O. Letter No. PDA(SD)/Rep.3(28)/DAE/Mumbai/2010-11/542-45 dated 23/2/2012 regarding draft para titled "Avoidable expenditure of

The matter has been examined in the department in consultation with Department of Purchase and Stores, a constituent unit of this Department. The facts of the case are indicated below.

The Directorate of Purchase & Stores is a service organization of Department of Atomic Energy (DAE) entrusted with the responsibility of procurement of different types of equipments and materials for various constituent units of DAE. In all conventional material management organizations, the procurement cycle starts with the planning of material and progresses by placement of purchase order, satisfactory execution of the same and ends with settlement of payment. However, in DAE, there is a clear division of responsibility and the Indenting Officer (user Department) plans the requirement, raises indent, carries out technical evaluation of bid and recommends placement of purchase order. Whereas the Directorate of Purchase & Stores initiate tendering action against the indent, settle the commercial terms and conclude the purchase order following the purchase procedure, approved by DAE in line with that of Government Departments and observing the rules & regulations issued by the Central Government as well as Central Vigilance Commission (CVC), etc. The decision of procurement is taken by various committees constituted by the Department at various levels depending upon the purchase value and check and balance in the system is ensured.

The chronology of events while processing the case under question is depicted at Annexure A.

As per the procedure in vogue, Part-I (techno-commercial bids) received from M/s. Godrej & Boyce Mfg. Co. Ltd., & CMTI, Bangalore was opened and the user Department confirmed the technical suitability of both the offers after technical evaluation. Part-II (price bids) of the above firms were opened on 30.11.2007 and the case file was sent to user department on 07.12.2007, along with the offers and a letter No. 312/200(11)/07/BARC/DATC dated 06.12.2007, received form M/s CMTI, Bangalore intimating that they should be treated on par with CPSUs with regard to PPP (Purchase Preference Policy).

प्रथान निदेशक संचितालय वैज्ञानिक विभाग Pr. P.A. (S.D.) दिनाँक- कि कि कि कि

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दूरभाष / TELEPHONE 022 - 2202 2816, 2286 2571 (O) 2364 4636 (A) • फैक्स 022-2204 8476 / 2202 6728, 2284 6213 • तारः एटमर्ग / GRAM: ATOMERG ई-मेल /E-MAIL : jsim@dae.gov.in

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- 6. M/s. CMTI, Bangalore, had never mentioned earlier that they are entitled for PPP at par with central PSUs, as per Department of Public Enterprises (DPE) OM No.DPE/13(19)/91-Fin. dated 13.1.1992 and the issue of PPP became relevant only after receipt of the letter dated 06.12.2007 from M/s. CMTI, Bangalore.
- 7. After evaluation of the offers, user Department furnished purchase recommendation for placement of order on M/s. CMTI, Bangalore, taking into account their PSU status and as the offer was within the range of 10% of the lowest offer submitted by M/s. Godrej & Boyce Mfg. Co. Ltd., Mumbai. Hence with the approval of competent Authority in DPS, a letter was issued to M/s. CMTI, Bangalore on 14.01.2008 advising them to match the lowest price offered by M/s. Godrej. M/s. CMTI, Bangalore accepted the request vide their letter No. PCR-BARC-TRANSFER-CASK-08 dated 22.01.2008.
- 8. Since the procurement cost exceeded Rs. 3 crores, as per the Exercise of Financial Powers (DAE) Rules, approval of DAE/Member for Finance, AEC is required for placement of the order. Hence, approval of Stores Procurement Committee (SPC), PRP, BARC, was taken on 30.01.2008 and the case file was referred to user Department on 22.02.2008 for completing the DAE proposal forms giving details of project sanction and head of account. The case file was returned by the user Department on 11.04.2008 and after detailed scrutiny at various levels in DPS, the proposal was handed over to DAE on 22.04.2008.
- 9. The Price Preference Policy (PPP) was valid upto 31.03.2008 as per OM No. DPE.13(12)/2003-Fin.Vol.II dated 18th July, 2005 issued by Department of Public Enterprises. Point No. (vi) of the above OM states that "PSEs should be subject to the same qualification process as any other bidder. If the PSE does not meet the minimum qualifications, it should be subject to disqualification."
- 10. It may further be noted that the qualification process for any Company after submission of offer is based on the status of the Company its offer, on the due date of submission of the offer as per the purchase procedure in vogue, which was 25.09.2007 in this case. Therefore, DPS had the perception that the PPP will be applicable to M/s. CMTI in this purchase file. The offer of M/s CMTI, Bangalore was kept valid upto 31.07,2008.
- The Department, in consultation with the Legal Advisor (DAE), did not approve the proposal for placement of order on M/s. CMTI and advised DPS to take further necessary action to issue a fresh limited tender (on two part basis) for the above procurement vide ID note dated 29.07.2008.
- 12. It may also be noted that irrespective of the fact whether there is any change anticipated in the PPP or any other policy of the Government, DPS follows all the necessary procedural requirement which ensure proper checks and balance in the system.

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- 13. From the chronological events tabulated at Annexure-A, it is clear that there has not been any delay in DPS. Further it may be noted that if M/s. CMTI had not claimed Purchase Preference subsequent to submission of its offer, the order would have been placed on M/s. Godrej & Boyce Manufacturing Company Ltd. at a cost of ₹ 11.35 Crores exclusive of taxes and duties, as per the normal procedure. Since, there were complications for placing the Purchase order on M/s. CMTI, Bangalore, based on Purchase Preference, the order was not placed on them.
- 14. In view of the foregoing, the draft para may please be dropped.

Yours sincerely,

(Dr. C.B.S. Venkataramana)

Encl: As above

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New Delhi-110 002.

** YU. 11 / 111/ 20/ **