

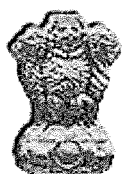
**DOUBTFUL RECOVERY OF
OUTSTANDING DUES BECAUSE OF
FAILURE OF FIDUCIARY DUTY-
BANGALORE INTERNATIONAL
AIRPORT LIMITED, BANGALORE
(BIAL)**

MINISTRY OF CIVIL AVIATION

PUBLIC ACCOUNTS COMMITTEE
(2019-20)

THIRTEENTH REPORT

SEVENTEENTH LOK SABHA



सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

PAC NO. 2194

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सत्यमेव जयते

Presented to Lok Sabha on: 18.03.2020

Laid in Rajya Sabha on: 18.03.2020

LOK SABHA SECRETARIAT
NEW DELHI

March, 2020/

Phalguna, 1941 (Saka)

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*Will be appended at the time of printing.

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2019-20)

Shri Adhir Ranjan Chowdhury

- **Chairperson**

MEMBERS

LOK SABHA

2. Shri T. R. Baalu
3. Shri Subhash Chandra Baheria
4. Shri Sudheer Gupta
5. Smt. Darshana Vikram Jardosh
6. Shri Bhartruhari Mahtab
7. Shri Ajay (Teni) Misra
8. Shri Jagdambika Pal
9. Shri Vishnu Dayal Ram
10. Shri Rahul Ramesh Shewale
11. Shri Rajiv Ranjan Singh alias Lalan Singh
12. Dr. Satya Pal Singh
13. Shri Jayant Sinha
14. Shri Balashowry Vallabhaneni
15. Shri Ram Kripal Yadav

RAJYA SABHA

16. Shri Rajeev Chandrasekhar
17. Prof. M. V. Rajeev Gowda
18. Shri Naresh Gujral
19. Shri P. Bhattacharya¹
20. Shri C. M. Ramesh
21. Shri Sukhendu Sekhar Ray
22. Shri Bhupender Yadav

SECRETARIAT

1. Shri T. G. Chandrasekhar - Joint Secretary
2. Shri. M.L.K. Raja - Director
3. Smt. Bharti S. Tuteja - Additional Director
4. Ms. Malvika Mehta - Under Secretary

¹ Elected w.e.f. 10 February, 2020 in lieu of vacancy caused due to resignation of Shri Bhubaneswar Kalita from Rajya Sabha on 05 August, 2019.

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2019-20), having been authorised by the Committee, do present this Thirteenth Report (Seventeenth Lok Sabha) on "Doubtful recovery of outstanding dues because of failure of fiduciary duty' by Bangalore International Airport Limited, Bangalore (BIAL)" based on Chapter V of C&AG Report No. 12 of 2017 (Compliance Audit Observations, Union Government (Civil)-relating to the Ministry of Civil Aviation.

2. The Report of Comptroller and Auditor General of India was laid on the Table of the House on 21 July, 2017.

3. The Public Accounts Committee (2019-20) selected the subject for detailed examination and report thereon. The Committee took oral evidence of the representatives of the Ministry of Civil Aviation and Bangalore International Airport Limited at their sitting held on 1 October, 2019. The Committee considered and adopted this Report at their sitting held on 17 March, 2020. The Minutes of the Sittings are appended to the Report.

4. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in **bold** and form Part-II of the Report.

5. The Committee would like to express their thanks to the representatives of the Ministry of Civil Aviation and BIAL for tendering evidence before them and furnishing the requisite information to the Committee in connection with the examination of the subject.

6. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the Committee Secretariat and the office of the Comptroller and Auditor General of India.

NEW DELHI:
17 March, 2020
27 Phalgun 1941 (*Saka*)

ADHIR RANJAN CHOWDHURY
Chairperson,
Public Accounts Committee

Part I
Report

- 1.1 This Report is based on Chapter 5 of Audit Report no. 12 of 2017 (Compliance Audit Observations Union Government (Civil) on 'Doubtful recovery of outstanding dues because of failure of fiduciary duty' by Bangalore International Airport Limited, Bangalore (BIAL) pertaining to the Ministry of Civil Aviation (MoCA).
- 1.2 The Public Accounts Committee (2019-20) considered the subject for detailed examination, took oral evidence of the representatives of Ministry of Civil Aviation (MoCA) and BIAL and obtained written replies on the same. Based on the oral evidence and written replies, the Committee examined the subject in detail.
- 1.3 According to audit, the Ministry of Civil Aviation (MoCA) on 5 July 2004, signed a concession agreement with Bangalore International Airport Limited (BIAL) for the development, construction, operation and maintenance of the Bangalore International Airport. Article 8.5.1 of the agreement provides for levy of security fee in terms of the Aircraft Rules, 1937 from each departing passenger.

- 1.4 In this regard, Article 8.5.1 of the concession Agreement states the following:-

"Gol confirms that unless otherwise agreed under this Agreement it shall, on the same terms as it provides such security at all other Major Airports, provide all aviation security at the Airport. Provided that Gol and BIAL may, following mutual discussions, if it is considered appropriate, enter into arrangements to jointly provide aviation security services at the Airport. The Parties recognise that as at the date of this Agreement the fee levied for security is Rs 130 per departing passenger as such fee may be revised uniformly for all Major Airports."

- 1.5 Further, Rule 88A of the Aircraft Rules, 1937 states as under:-

"88A. Aviation security fees - (1) The Central Government, or any other authority designated by it in its behalf, may levy and collect aviation security fees on:

- (a) embarking passengers;
 - (b) cargo transported out of an airport;
 - (c) departing private aircrafts of general aviation;
 - (d) chartered aircraft operations; and
 - (e) any other dedicated civil aviation operations,
- at such rate or rates, as the Central Government may specify from time to time, and different rates may be specified for different categories specified herein, to meet the expenditure on aviation security.

3. The aviation security fee shall be regulated and utilized in the manner as may be specified by the Central Government.

4. For the purposes of this rule -

(a) the expression "Civil Aviation Security" shall mean the protection of the civil aviation operations against the acts of unlawful interference;

(b) the expression "expenditure on aviation security" means any expenditure incurred on—

(i) deployment of any security agency designated by the Central Government for providing the 'Civil Aviation Security'; and

(ii) such other expenditure as may be decided by the Central Government from time to time."

- 1.6 As per the Standard Operating Procedure (SOP) issued by MoCA in January, 2009, this security fee, termed as Passenger Services Fee (Security Component) (PSF (SC)) was to be collected by BIAL through the airlines. BIAL in turn was required to bill the respective airlines for PSF (SC) and the payment so received from the airlines was to be deposited immediately in an escrow account with a scheduled nationalised bank in fiduciary capacity. The SOP required BIAL to ensure realisation of dues from the airlines regularly. BIAL was also required to furnish MoCA with copies of its audited annual accounts.
- 1.7 Audit, however, found that BIAL failed to exercise fiduciary responsibility and airlines were allowed to accumulate dues. As of 31 March 2014, the amount outstanding from the Airlines was ₹16.77 crore out of which ₹9.64 crore was outstanding for a period of more than one year. The outstanding amount further increased and as of 31 March 2016, the same was ₹17.44 crore out of which ₹10.12 crore was outstanding for a period of more than one year. Out of this, ₹9.19 crore was due from Kingfisher Airlines from 2012-13 onwards. Kingfisher Airlines ceased operations in September 2012.
- 1.8 Further according to audit, though, MoCA received periodic accounts from BIAL and Article 13.3 of the agreement provided for the consequences of a 'BIAL Default Event' stipulating payment of dues by BIAL within twenty-one days of a request from Government of India, at no time did MoCA direct BIAL to collect and remit outstanding dues in the escrow account. The SOP also did not provide for levy of penal interest for non-payment of dues by the Airlines on time. In the absence of such a clause, non-recovery of dues constituted an interest free loan to Kingfisher Airlines.
- 1.9 On the matter being raised by audit in February 2014, BIAL sought approval of MoCA in March 2014 to write off the dues recoverable from Kingfisher Airlines. Thus, according to

Audit, Ministry failed to ensure that BIAL fulfilled its fiduciary duty to promptly realise the security fees from the Airlines and deposit the same in escrow account.

- 1.10 When the Ministry were asked what efforts were made by them and BIAL for recovery of dues after audit made its observations, the Ministry submitted the following reply:-

“The overdue outstanding of Rs 9.19 crore from Kingfisher Airlines (KF) limited became irrecoverable since 29 September 2012, Bengaluru International Airport Limited (BIAL) made number of attempts to recover the amount from KF. When payments were getting delayed or not honored on time by KF, as a proactive measure, BIAL had put the operations of KF on Cash and Carry. KF was under Cash and Carry from 23rd June 2011 until 29 September 2012, till the time operations stopped. Kingfisher was paying Rs.25.0 lakh per day from 23 June 2011 until 31 March 2012 and from 1 April 2012 until 29 September 2012, Rs.10 lakh per day due to their reduced size of operation. During the period, BIAL was able to collect a sum of Rs.11.82 crore of PSF (SC) dues on account of implementation of cash and carry. Had cash and carry not implemented by BIAL, the overdue would have been Rs. 21.0 crore as against the Rs.9.19 crore. Proactive Action taken by BIAL helped to contain PSF (SC) outstanding dues to 9.19 crore.

BIAL Management had the deposit of 2 months billing as security deposit from Kingfisher i.e. an amount of Rs.14 Crore. Upon stoppage of operations from Bengaluru airport and on account of default of the payments by the KF, BIAL management initiated legal action towards invocation of Corporate Guarantee. BIAL authorities sent a request to this Ministry for writing off Rs.9.19 Crore on account of the dues of PSC (SC) collections outstanding from M/s Kingfisher Airlines. In this regard, BIAL was advised by MoCA that in case Rs.9.19 crore is not covered under an existing suit or any other ongoing litigation filed for recovery of the said amount then BIAL should consider the option for taking legal action for recovery of Rs.9.19 Crore and any other outstanding amount.

Based on Ministry's advice BIAL initiated legal action. The outcome of the legal proceedings was that the Court directed the court's registry to draw a cheque in favor of Bangalore International Airport Limited. The outstanding dues of Kingfisher Airlines of Rs.9.19 crore were recovered by realizing the Bank Guarantee through Court and credited to Escrow account of PSF-SC on 08.1.2018. This, therefore settled the CAG para 5.1 of Report 12 of 2017 regarding doubtful recovery of outstanding dues because of fiduciary capacity.”

- 1.11 On being asked if the amount that was due on 31.3.2016 had been recovered fully and whether any penalty had been imposed for the delays in payment of Government dues, the Ministry submitted the following:-

“The entire amount of outstanding that was due on 31.03.2016 has been recovered in full. BIAL has not made payment of collection charges to the Kingfisher airlines (2.5% of PSF-SC collection) on the delayed payments.”

- 1.12 When asked why BIAL did not insist upon the Airlines for regular payment of Passenger Service Fee (Security Component), the Ministry gave the following written submission:-

"BIAL had been following up with the Airlines for the recovery of the dues regularly on weekly basis and for all the cases of delays BIAL sent regular reminders and had meeting with the senior officials of the airlines."

- 1.13 The Committee wished to know whether BIAL or Ministry of Civil Aviation had any system of internal controls in place to ensure timely realization of PSF (SC) dues from various airlines. The Ministry submitted the following response:-

"BIAL has strong internal process to ensure prompt collection and does weekly follow up meetings with the airline officials for collection of dues. We have been successful in collecting the PSF (SC) dues on time except for the Kingfisher airlines.

There is provision of audit by C&AG of accounts of airport operators wherein any discrepancy in accounts including non –realization of dues is highlighted. When it came to the knowledge of MoCA, BIAL was issued advisories for recovery of dues from Kingfisher airlines. BIAL approached Ministry for writing off the dues as they seemed irrecoverable considering Kingfisher airlines had stopped operation. However, MoCA advised BIAL to explore options for recovery of dues. BIAL, therefore, went for legal proceedings and the pending dues were recovered."

- 1.14 The Committee desired to know if the Ministry prepares any monthly/ periodic record of its dues recoverable from different airports/airlines under different heads. If not, the Ministry was asked to indicate the mechanism they have to ensure that the dues were being paid on time. The Ministry in this regard gave the following reply:-

"There is no mechanism of keeping records/accounts in the Ministry. The accounts are kept by the concerned airport operators which are periodically audited by C&AG. Any discrepancy is brought to notice of the Ministry and action as required is initiated.

Airlines spend some money for the purpose of collection. They have to make a software application, keep accounts etc. For this purpose, there is an incentive in the form of collection charge which they get for depositing the collections to PSF [SC) escrow account within 15 days. But if they exceed the time limit they have to forgo the incentive. This means, they would be spending money for all the accounting systems but they would not be getting anything in return if they do not do it in the time limit; rather, they would be incurring some expenditure. So, a system of positive reinforcement is put in place instead of a penal system for ensuring compliance. Few airport operators internally have also incorporated penal provisions in case of default."

- 1.15 In this regard, the Committee desired to know why Ministry of Civil Aviation did not direct BIAL to collect and remit outstanding dues in the escrow account, as provided under Article 13.3. The Ministry submitted the following:-

"Ministry had advised BIAL for collection and remission of outstanding dues on escrow account. When the dues became irrecoverable, Ministry advised BIAL for explore options for recovery. BIAL initiated legal proceeding to invoke bank guarantee following which the Court ordered in favor of BIAL and pending dues of kingfisher airlines were recovered."

1.16 As per Audit, after the matter was raised by them, BIAL sought approval of MoCA to write off the dues recoverable from Kingfisher Airlines in March 2014. The Committee desired to know why BIAL proposed writing off the dues of Kingfisher Airlines instead of making efforts for its early recovery. In response, the Ministry submitted the following:-

“BIAL has been following up with the Airlines regularly on weekly basis and in case of defaulting airlines on frequent basis by sending reminders and meeting with the senior officials of the airlines on periodical basis and even putting the airlines on cash and carry. BIAL has realized Rs. 1412 crore against billing of Rs. 1416 crore on account of PSF (SC) dues since inception (23.05.2008) and remitted regularly to escrow account.

Even in case of Kingfisher airlines BIAL has followed up and written various letters to Kingfisher Airlines to pay the dues and made number of visits to meet CFO of the airline with specific request for clearing the PSF-SC dues. Even after many correspondences, the Airlines defaulted the payment. Finally, when the Airline has stopped operation in September 2012 BIAL has initiated legal action on immediate basis by filing following cases:

- a). Criminal complaint in the Court of Chief metropolitan Magistrate, Bangalore for dishonour of cheques.
- b). Summary suit in the court of City civil judge at Bangalore for encashment of Corporate guarantee of United Breweries holdings Limited.
- c). Complaint in the court of Principal Civil judge and JMFC at Devanhalli for criminal breach of trust, cheating and related offences.

However, as at that point of time, there was no certainty of revival of the airline and recovery of dues in normal course of action, as a matter of conservative accounting policy, BIAL has sought the approval of Ministry for write off of the PSF(SC) dues and not to favour the airline.

BIAL has never been lethargic in complying with fiduciary duty of collection of PSF(SC) dues from all the airlines. Even in case of Kingfisher airline BIAL has put the airline on cash and carry and realized Rs11.82crore of PSF-SC dues and post the stoppage of operation by airline in September 2012, BIAL pursued the long drawn legal battle up to Honourable Supreme Court of India and recovered the dues.”

1.17 On being asked if BIAL collected security Deposit/Bank Guarantee from other airlines also to avoid losses and whether in view of the setting up of National Aviation Security Trust, the system of collecting bank guarantee/security deposit was still in practice, the Ministry submitted the following:-

“BIAL has collected the Bank Guarantee from all other Airlines except Air India group, as being National Carrier, they have not given Bank Guarantee and Kingfisher airline had given corporate guarantee.”

1.18 Since MoCA received periodic accounts from BIAL, the Ministry were asked whether the internal audit of the Ministry of Civil Aviation made any observation about non-payment of dues by the Airlines/ BIAL and if so, what remedial steps were taken. The Ministry replied thus:-

“When it came to the knowledge of MoCA, BIAL was issued advisories for recovery of dues from Kingfisher airlines. BIAL approached Ministry for writing off the dues as they seemed irrecoverable considering Kingfisher airlines had stopped operation. However, MoCA advised BIAL to explore options for recovery of dues. BIAL, therefore, went for legal proceedings and the pending dues were recovered.”

1.19 When asked whether the responsibility of officials of BIAL for not fulfilling their fiduciary duty and Ministry of Civil aviation for ineffective monitoring had been fixed, the Ministry stated the following:-

“BIAL officials have made continuous and persistent efforts to recover the overdue amounts from time to time. BIAL has followed up at highest level and written various letters to Kingfisher Airlines to pay the dues and made number of visits to meet CFO of the airline by BIAL CFO, with specific request for clearing the PSF-SC dues. BIAL has also written to the Ministry regarding the overdues of the Airline. When the payments were getting delayed or not honored by Kingfisher Airlines, with due intimation to Ministry and DGCA, BIAL has put the Airline operations on cash and carry from 23rd June 2011 until 29th September 2012. BIAL has collected an amount of Rs.11.82 crore of PSF(SC) dues on account of implementation of cash and carry. However, at the time of stoppage of operations by airline an amount of Rs.9.19 crore was still pending.

For the recovery of the same BIAL has initiated legal action on immediate basis by filing following cases:

- a) Criminal complaint in the Court of Chief metropolitan Magistrate, Bangalore for dishonour of cheques.
- b) Summary suit in the Court of City Civil Judge at Bangalore for encashment of Corporate guarantee of United Breweries Holdings Limited.
- c) Complaint in the court of Principal Civil judge and JMFC at Devanhalli for criminal breach of trust, cheating and related offences.

Honourable City Civil Court has passed Judgement and decree in the above mentioned case at (b) dt.3rd January 2015 entitling BIAL for payment of Rs.14.00 crore but UBHL has filed Writ Petition in Honourable High Court of Karnataka the same was dismissed and UBHL further filed Special Leave petition (SLP) before Honourable Supreme court of India. The Honourable court has dismissed SLP on 23.02.2017. BIAL has received Rs. 10.40 crore from Court Registrar on 5th January 2018 and transferred Rs. 9.19 crore to PSF(SC) escrow account with that the entire dues of King- Fisher Airline was fully recovered.

As and when the matter of outstanding dues came to the forefront, Ministry inquired from BIAL the steps taken for recovery and to initiate legal proceedings for the same. The

matter was continuously followed up. BIAL had informed about filing legal proceedings and the case status was regularly sought and finally through legal proceedings the amount pending was recovered.”

- 1.20 When asked what steps had been taken to avoid such default in future, the Ministry stated the following:-

“BIAL has been following up with the Airlines regularly on weekly basis and in case of defaulting airlines on frequent basis by sending reminders and meeting with the senior officials of the airlines on periodical basis and even putting the airlines on cash and carry.

BIAL has been insisting on Bank guarantee only and not corporate guarantee for the easier mode of encashment in case of default by the airlines. Also, any delay and continuous default of payment by airline, due notification is being made to Ministry to put the operations of the airline on cash and carry.

Further, MoCA has tried to bring accountability, where the National Aviation Security Fee Trust has been formed and the fee collected and deposited in the Trust. The SOPs for the airlines as well as the airport operators have been communicated. The collection and disbursement of ASF would now be done by the Trust instead of airport operators. Airport Operators would only help the Trust to raise the invoice and collect the money from the airlines. There would not be any intermediary like airport operator which was part of the system earlier.”

- 1.21 The Committee desired to know whether same provisions also existed in other concession agreement with other airport operators and if so, whether those airport operators collected the PSF (SC) regularly and remitted the fees in their respective escrow accounts. The Ministry submitted the following response:-

“Yes, similar provisions also exist in agreements entered with other airport operators. Private/JV Airport Operators used to collect PSF (SC) and remit it in their respective escrow accounts.”

- 1.22 Since the non-realization of the PSF (SC) resulted in considerable over dues, the Committee desired to know whether the Ministry had sufficient funds to attain the objective of the PSF (SC) and if not, from which head did the Ministry provide funds for meeting the expenditure incurred on aviation security. The Ministry stated the following in their written reply:-

“The aviation security is funded through PSF (SC)/ASF collections only. PSF (SC)/ASF is levied on embarking passengers at Rs.150/- per domestic pax and USD 4.85 per international pax. The funds collected from these levy are used for funding aviation security. The PSF (SC)/ASF was enhanced w.e.f. 01.07.2019 to meet the enhanced security cost at airports. There is no separate budget provision for the same.”

1.23 As per the submission made by the Ministry during evidence, the amount of PSF (SC) was raised and indexed to the Consumer Price Index (CPI). In view of this, it was asked whether any surplus had been generated to which the Ministry responded thus:-

"It is submitted that the enhancement has been effected from 01.07.2019 and the new system is in process of being stabilized, it will only be over a period of time that the status of surplus may be really known."

1.24 In this context, the representative of MoCA submitted the following during oral evidence:

"...we used to collect the charges from the airlines who would collect it from the passengers. It is fiduciary capacity; it is the requirement of the Ministry in which we are asking airlines to collect it and give it to us.... Whatever they collect, they have to deposit. There is an SOP within which they have to function and deposit fee to the airport operators along with the tax which is also the part of the PSF including the 18 per cent GST. This fund has been deposited in an escrow account because this money cannot be spent for any purpose other than the aviation security. It is auditable, both by the internal auditors as well as by the CAG audit. We have been pursuing and we have been sincerely submitting all the Action Taken Reports. But we identified that this process cannot be continued because one of the hon. Member was mentioning that there has been a huge gap in the money we collect and the disbursement we make for CISF. In last two years, there has been an acute deficit. So, the Ministry had taken a review of the entire process...., it has been decided that a single escrow account would be maintained."

1.25 The representative of MoCA further submitted the following:-

"Sir, we will certainly try to improve whatever we can do. We had this gap some time back and it became acute and we had to take a lot of corrective measures in which the first measure was that we will have a single account and all the amount which has been collected from various airport would be pooled in one place and used for the aviation security. At the same time, we have to keep the surplus. This will answer one of the questions raised by our hon. ex-Minister, whether the surplus has been made or not. We were earlier collecting Rs. 130 per passenger which has been now enhanced to Rs. 150. To keep the burden on the domestic passengers low, we have enhanced proportionately more on the international ticket which earlier used to be 3.25 dollars; now it has become 4.85 dollars. With this every year, we generate a very small amount of surplus which would provide some cushion. We have used this formula and as suggested at that point of time, we have also put the indexation of the CPI so that every year it need not be coming for decision. Otherwise, since 2006, we have not enhanced the rate at all. Now, the calculation formula has been finalised. Every time it need not come back to the Ministry or it should not be depending on the individuals, but gradually it will increase. This will address the issue of the cost of deployment of CISF and all the benefits which they are supposed to get, like timely disbursement of their medical charges, barrack charges, accommodation etc., and the amount would be raised accordingly."

1.26 On being asked if any other statutory or Government dues which were to be collected by the BIAL/other airport operators/airlines remained unrealized, the Ministry stated the following:-

"The dues relating to service tax due on space rent in respect of concessionaires at various airports are being disputed and are subjudice."

- 1.27 Since the CISF is also providing security to the infrastructure created by the airport operators at the Airports, the equipment of the airlines as well as other staff deployed on the airports and the commercial establishments set up at the airports, the Committee desired to know whether airport operators, airlines and the vendors who have set up their shops at the airports were making any financial contribution towards aviation security provided by the CISF. To this, the Ministry replied the following:-

"In the backdrop of the hijacking of Indian Airline Flight IC-814 in December, 1999, airport security was reviewed by the Government. It was decided in the meeting of the Committee of Secretaries (CoS) held on 07.01.2000 to induct CISF at airports in phases. CISF took over the security of Jaipur airport on 3 February, 2000. As of now, CISF is deployed at 60 airports. The provision of funding for civil aviation security is provided under Section BBA of Aircraft Rules, 1937. Also, Security being a sovereign function, the responsibility of providing security lies with the Government."

- 1.28 When asked whether the entire financial requirement for security component is contributed by the passengers, the representative of the Ministry stated:-

"Yes, Sir, it is totally contributed by the passengers."

- 1.29 As per the submission made by the Ministry during the oral evidence, the amount of PSF(SC) is utilized for aviation security purposes till the time passenger boards the plane and after the passenger lands from the plane whereas passenger security on board is taken care of by the airlines themselves. The Committee desired to know how were airlines providing security to the passengers on board. The Ministry stated the following:-

"Airlines security personnel are appropriately trained and certified according to the requirements of Security regulator (BCAS) and National Civil Aviation Security programme. The functions to be carried out by aircraft/airlines operator are regulated through the oversight of Regulations."

- 1.30 The Committee wished to know the steps taken by BIAL/ MOCA to recover dues to the tune of Rs 4 crore which were outstanding mainly from Air India and its allied airlines on account of PSF (SC). The Ministry submitted the following written reply:-

“Out of about Rs.4.27 crore outstanding as referred in above paragraph an amount of Rs.0.90 crore recovered from Air India and an amount of Rs.0.07 crore from other airlines recovered. As on date an amount of Ps.3.26 crore from Air India and Rs.0.04 crore from other Airlines is due. BIAL has sent letter to Air India for making payment and it has been informed that they have ensured to make payment shortly.”

1.31 On being asked about the monitoring by MoCA of the efforts being made for recovery of pending dues, the representative of the Ministry of Civil Aviation submitted the following during the evidence:-

“ The collection for the last almost 11 years from the date of the initiation of BIAL airport since 2008 to 2009 has been Rs.1,412 crore against Rs.1,416 crore, which is the invoices which were supposed to be coming to the account. So, there have been monitoring and continuous efforts to make the collections and there have been systems and mechanisms in place... We have been liberal in only one case of Air India and Alliance Air, where there is some problem and we gave some leverage; their payment are expected to be delayed a little bit.”

1.32 On being asked why the Ministry did not contemplate penal interest on amount due from airlines in respect of PSF (SC) and how would the Ministry justify allowing airlines to withhold the amount already collected by them from the passengers, the Ministry made the following written submission:-

“There is a system of positive reinforcement i.e. incentive for timely payment to of dues by airlines and foregoing the said incentive in case the collections are not paid in PSF (SC) account on time. Also, they are spending some money in collection of the Fee. It is also relevant to point out here that airlines, given an option, will not be willing to involve in process of collection of PSFICS)/ASF. However, as the levy forms a part of the ticket, it is only viable for airlines to collect the fee. So, there is no provision made for penalty on the airlines. Also, as the airlines are doing this fiduciary job for Ministry so putting a penalty would be double jeopardy for them.

Further, MoCA has tried to bring accountability, wherein the National Aviation Security Fee Trust has been formed and the fee is collected by the Trust now. The SOPs for the airlines as well as the airport operators have been communicated. The collection and disbursement of ASF would now be done by the Trust instead of airport operators. Airport Operators would only help the Trust to raise the invoice and collect the money from the airlines. There would not be any intermediary like airport operator which was part of the system earlier.

With the present system, we hope to have more accountability and the default would not happen in the future. The National Aviation Security Trust would have a wing of audit and accounts people who would be able to continuously monitor and take course corrections if there have been any deviation.”

1.33 The Committee asked if the Ministry had taken any steps to improve amenities/ facilities being provided to the CISF personnel from the PSF (SC) Fund, the Ministry replied the following:-

“CISF is a paramilitary force. The facilities/amenities extended to CISF are as per norms prescribed by Ministry of Home Affairs. The amenities include medical facility, accommodation as per prescribed norms etc.”

1.34 The Committee desired to know if, with the setting up of National Aviation Security Trust, the Ministry was thinking of broadening the facilities for the CISF personnel, for providing services round the clock on the airports, like provision of accommodation for them and schools for their wards in the vicinity of the airports etc. The Ministry stated the following in their written submission:-

“CISF is a paramilitary force; the facilities/amenities extended to CISF are as per norms prescribed by Ministry of Home Affairs. The amenities include medical facility, accommodation as per prescribed norms etc.”

1.35 The representative of Ministry of Civil Aviation made the following oral submission before the Committee:-

“We completely acknowledge the contribution of the CISF and they have been providing these services very professionally. It is because of their deployment that they have become a specialized aviation security force. Earlier, we thought of having a separate force. But raising such a force is a huge task. So, the CISF itself has become a specialized force for us and we acknowledge their contribution.... We will certainly improve the process which we have and provide whatever best we can. But we are very sincere and whatever has been the entitlement of the CISF, we have ensured that airports provide that. We have a regular interaction with the CISF and their grievances are addressed from time to time.”

Part -II

Observations/Recommendations of the Committee

1. The Committee note that the Ministry of Civil Aviation signed a concession agreement with Bangalore International Airport Limited (BIAL) for the development, construction, operation and maintenance of the Bangalore International Airport. The agreement included *inter-alia* levy of security fee as required under Rule 88A of the Aircraft Rules, 1937 from each departing passenger which was to be collected by BIAL through the various airlines operating from the airport. The payment so received from the airlines was to be deposited immediately in an escrow account with a scheduled nationalised bank in fiduciary capacity. The Committee note that the Standard Operating Procedure (SOP) required BIAL to ensure realization of dues from the airlines regularly and furnish MoCA with copies of its audited annual accounts. However, BIAL failed to fulfill its fiduciary duty to promptly realise the security fees from the airlines and remit the same in the designated escrow account and as a result, outstanding dues against airlines accumulated and recovery of ₹9.19 crore from Kingfisher Airlines was rendered doubtful. The Committee's observations and recommendations based on the examination of audit findings and discussions with the representatives of the Ministry as well as written replies submitted by them are elucidated in the succeeding paragraphs.

Failure of BIAL to act in accordance with SOP

2. The Committee note that the BIAL failed to exercise its fiduciary responsibility and airlines were allowed to accumulate dues. As of 31 March 2014, the amount outstanding from the Airlines was ₹16.77 crore out of which ₹9.64 crore was outstanding for a period of more than one year. The outstanding amount further increased to ₹17.44 crore as on 31 March 2016, out of which ₹10.12 crore was outstanding for a period of more than one year. Of this, ₹9.19 crore was due from Kingfisher Airlines that ceased operations in September 2012. The Committee observe that after Audit raised the issue of dues of Kingfisher Airlines in February, 2014, BIAL sought approval of the Ministry to write them off. However, the Ministry advised BIAL to consider legal action for recovery of ₹9.19 crore and, consequently, outstanding dues were recovered by invoking the corporate guarantee through Court. The Committee further note from the reply of the Ministry that as there was no certainty of

revival of the airline and recovery of dues in normal course of action, as a matter of conservative accounting policy, BIAL had sought approval of the Ministry for writing off the PSF(SC)dues. The Committee observe that though BIAL had a deposit of 2 months billing of Kingfisher as security deposit i.e. an amount of Rs.14 crore, it proposed writing off the dues which is indicative of an utter disregard for the fiduciary responsibility bestowed upon BIAL under the agreement. The Committee, while noting that the SOP neither provided for levy of penal interest for non-payment of dues by the Airlines on time nor imposed any penalties on the airport operators for not carrying out their duties, desire the Ministry to ensure, henceforth, that any concession agreement entered into by the Ministry and a private party may invariably contain a general penal clause for imposition of penalty in cases where the private party concerned fails to discharge its assigned duties.

Tighter monitoring by MOCA

3. The Committee note that Article 13.3 of the agreement provided for the consequences of a 'BIAL Default Event' stipulating payment of dues by BIAL within twenty-one days of a request from Government of India. In this regard, the Committee note the Audit's finding that though Ministry received periodic accounts from BIAL, it did not direct BIAL to collect and remit outstanding dues in the escrow account. The Ministry advised BIAL to explore actions for recovery only after the matter was pointed out by Audit. The Committee are disappointed to note from the written submission of the Ministry that it does not have any mechanism of preparing a periodic record of dues recoverable from different airport/ airlines under different heads. As per the reply of the Ministry, the accounts are kept by the concerned airport operators which are periodically audited and when any discrepancy is brought to notice of the Ministry, action as required is initiated by it. The Committee are of the considered opinion that instead of waiting for audit to point out discrepancies, the Ministry should be proactive in its approach and call for periodic statements of dues outstanding beyond the prescribed period and action taken for their recovery from the airlines to ensure that the money already collected from the passengers is not withheld by them. In this regard, the Committee recommend that the Ministry may consider developing an online system that monitors compliance of all terms and conditions, particularly collection and payment of dues, periodically, say, on quarterly basis. The Committee

further desire that the internal audit system in the Ministry may be strengthened to ensure that such defaults are brought to the notice of the Ministry at the earliest.

Imposition of penalty on airlines for withholding dues meant for security

4. The Committee observe that the Ministry pays an incentive for timely payment of dues by airlines and forego the said incentive in case the collections are not paid to the PSF(SC) account on time. The Committee further observe from the submission of the Ministry that, given an option, airlines are not willing to involve in process of collection of PSF(SC) as they are doing this fiduciary job for the Ministry and hence imposing a penalty would be double jeopardy for them. The Committee note that taxation laws also provide for taxes to be collected and deposited by a party other than the party which is liable to pay the tax and the collecting party is further liable to pay interest/penalty in case of default. Accordingly, the Committee opine that the airlines should not be allowed to withhold Government dues which they are supposed to collect and deposit in fiduciary capacity and recommend that the Ministry impose a provision of penalty in proportion to the delay in depositing of the passenger security fee in the trust fund along with interest for the period of delay.

Recovery of Dues from Air India

5. The Committee note from the reply of the Ministry that an amount of ₹3.26 crore from Air India and ₹ 0.04 crore on account of Passenger Services Fee (Security Component) (PSF (SC) from other Airlines are still outstanding. Further, the Committee note from the submission made by the representative of the MoCA that in the cases of Air India and Alliance Air, the Ministry has been liberal and has given them leverage and, therefore, their payment is expected to be delayed. The Committee are disappointed to note that despite being a Government owned airline, Air India has not been making its payments on time, although there is no deficit in collecting this amount as it is being collected from passengers. The Committee while opining that the conduct of the national carrier should be exemplary, recommend that the Ministry of Civil Aviation direct Air India to pay the outstanding dues immediately and henceforth, not to give the airline any leverage to pay the dues meant for security personnel guarding the airports.

National Aviation Security Fee Trust

6. The Committee observe from the written submission by the Ministry that a National Aviation Security Fee Trust (NASFT) has recently been formed to collect the security fee through a centralized accounting system and for better management of Aviation Security Fee (ASF). The Committee note that the collection and disbursement of ASF would now be done by the Trust instead of airport operators who would only help the Trust to raise the invoice and collect the money from the airlines. While noting that the appropriate SOPs for the airlines as well as the airport operators have been communicated, the Committee desire that a comparative statement of the resultant improvement in collection of dues from airlines may be furnished within six months of presentation of this Report .

Provision of amenities to CISF personnel

7. The Committee note from the oral submission of the representatives of the Ministry that the passenger fees that is collected by the airlines is used only for the purpose of aviation security which includes the cost of deployment of CISF personnel and other expenses such as medical expenses of the CISF personnel, barrack expenses and transportation expenses. The Committee also note that since CISF is a paramilitary force, the facilities/amenities extended to CISF are as per norms prescribed by Ministry of Home Affairs. The Committee observe that CISF has been providing security facilities professionally and have become a specialized aviation security force at airports. In view of the above, the Committee desire that with the setting up of National Aviation Security Trust, the Ministry should , in coordination with Ministry of Home Affairs, broaden the facilities extended to CISF personnel, for providing services round the clock at airports, including provision of accommodation for them and schools for their wards in the vicinity of the airports.

Distribution of Passenger Security Fee amongst all beneficiaries

8. The Committee note that aviation security is funded through PSF (SC)/ASF collections only and that PSF (SC)/ASF is levied on embarking passengers at Rs.150/- per domestic pax and USD 4.85 per international pax. The funds collected from this levy are used for funding aviation security. The Committee note that there is a huge gap between the money collected by the Ministry through imposition of this fee and the

amount disbursed to the CISF for providing security at the airports. In order to handle this situation, the Ministry has decided to maintain a single escrow account, form a National Aviation Security Fee Trust (NASFT) and raise the amount of PSF(SC) to be collected from the passengers which is to be indexed to the Consumer Price Index(CPI). The Committee are of the considered view that since CISF also provides security to the infrastructure created by the airport operators at airports, the equipment of airlines and their staff deployed on the airports as well as the commercial establishments set up at the airports, the burden of paying for security should be distributed amongst all the users and not just the passengers. As the CISF is deployed at 60 airports across the country, this would increase the corpus of the security fund, address the issue of acute deficit and enable provision of more amenities to CISF personnel as recommended by the Committee in their previous recommendation. The Committee accordingly recommend that the Ministry may make a formula whereby the cost of security may be equally borne by all i.e. airport operators, airlines and vendors who have set up their shops at the airports, apart from passengers.

NEW DELHI;
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