CHAPTER XVII : MINISTRY OF TEXTILES

17.1 Undermining of Parliamentary Financial Control

The decision of the Secretary, Ministry of Textiles to deposit the amounts forfeited as penalty for failure to fulfil the export quota of textiles/garments into the Public Account rather than the Consolidated Fund of India and release grants directly from it undermined Parliamentary Financial Control, and did not afford opportunity for audit by the CAG of India.

The unauthorised approval of Ministry of Textiles to credit the penalties recovered through Apparel Export Promotion Council (AEPC) on account of the failure of the exporters to fulfil their allotted quota for export of garments and textiles product, outside the Consolidated Fund of India has put the expenditure beyond the financial control of Parliament. This decision of the Ministry is against the provision of Article 266 of the Constitution of India, under which, all revenues received by the Government of India, all loans raised by the Government by the issue of treasury bills, loans or ways and means advances and all moneys received as repayment of loans shall form one Consolidated Fund of India.

Consequent upon introduction of the annual quantitative ceilings for export under textile agreements with different countries, the exporters were allotted specific quota for export by the Textile Commissioner. They were required to submit EMD[1]/bank guarantee to ensure that they fulfil their obligation to export the allotted quota. The EMD/bank guarantee was liable to be forfeited/encashed in case of failure to fulfil the allotted quota.

Secretary approved in 1989 to credit the forfeited amount of EMD/bank guarantee in a deposit account.

Prior to 1989, AEPC was keeping the forfeited amount. Ministry of Finance did not agree to the proposals of the Ministry of Textiles of May 1986 and February 1987 to retain the penalties recovered from the exporters outside the Consolidated Fund of India. Yet, the Secretary, Ministry of Textiles approved in 1989 that the forfeited amount of the EMD/bank guarantee would be credited to a deposit account specifically opened for this purpose in the Public Account. It was further approved that a committee constituted by the Secretary, Ministry of Textiles, which included among others, three members nominated by the Council of the Apparel Export Promotion, would sanction expenditure directly from the Personal Deposit Account for export promotion. The purposes for which this committee could sanction the expenditure included market surveys, sales-cum-study teams, exhibitions and infrastructure facilities.

[1] Earnest Money Deposit

AEPC is a non-Government body consisting of members of Executive committee. It is entrusted with the functions of monitoring of grants/quota for export of readymade garments on behalf of Government of India. AEPC derives its income mainly from the membership subscriptions, council charges and interest received, etc. Chartered Accountants audit the accounts of the council.

The committee constituted by the Secretary released Rs 35.08 crore out of forfeited amount of Rs 66.44 crore.

During 1989-99 the AEPC forfeited a total of Rs 66.44 crore of the EMD and bank guarantee of the exporters on account of their failure to fulfil their export quota, which it deposited in the Public Account as per the direction of the Ministry. The committee constituted by the Secretary, Ministry of Textiles had released a total of Rs 35.08 crore out of it for expenditure on various activities up to January 1999. Of this, Rs 29.46 crore was released to AEPC, Rs 7.50 lakh to ICRIER[2], Rs 5.00 lakh to ISEPC[3] and Rs 5.50 crore to NIFT[4].

The decision of the Secretary, Ministry of Textiles was questionable on the following grounds:

The revenue of the Government ought to be credited to the Consolidated fund of India.

(i) The forfeiture of penalty was in consequence of a statutory rule made by the Ministry and, therefore, it was revenue of the Government. As per Article 266 of the Constitution, it was required to be credited to the Consolidated Fund of India.

Ministry by-passed the authority of the Parliament by spending Rs 35.08 crore without their approval.

(ii) As per Article 114(3) of the Constitution of India, no money can be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with this Article. Since, the amount forfeited as penalty ought to have been credited to the Consolidated Fund of India, in no way expenditure could be met against this, save with the authority of the Parliament. By an irregular decision to credit it to the Public Account and meet the expenditure by directly debiting the Public Account, the Ministry by-passed the authority of the Parliament, without whose approval, no money could be spent. This has rendered the entire expenditure of Rs 35.08 crore illegal.

Ministry did not consult CAG/CCA for changing the accounting procedure/opening the PD Account.

(iii) For any change in the accounting procedure, Ministry is required to consult the Comptroller and Auditor General of India. The Ministry did not consult him before changing the accounting procedure. Even the Controller General of Accounts was not consulted as it was mandatory under Rule 191(2) of the Receipts and Payment Rules of the Government of India.

The Ministry credited the amount to Public Account despite having prior knowledge of irregularity of such action.

(iv) The Secretary, Ministry of Textiles approved crediting the amount to the Public Account rather than to the Consolidated Fund of India despite prior knowledge of the irregularity of such action and requirement for consultation with the Comptroller and Auditor General of India through such specific advice of the Ministry of Finance.

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[2] Indian Council for Research on International Economic Relations
[3] Indian Silk Export Promotion Council
[4] National Institute of Fashion Technology

Unauthorised release of grants directly from Public Account denied CAG's Audit over such expenditure.

(v) Since, the accounts of the AEPC are not audited by the Comptroller and Auditor General of India, the expenditure by means of grants directly from the Public Account was unauthorisedly taken out of purview of his audit, though it is the duty of the Comptroller and Auditor General of India to audit all expenditure from the Consolidated Fund of India.

Items of expenditure for which grants were provided from Public Account ought to have been met out of its own resources or from assistance by the Ministry.

The decision to meet expenditure of different types from the Public Account was flawed as it provided an opportunity to by-pass the normal procedure of expenditure from the Consolidated Fund of India. The items of expenditure for which grants were provided from the Public Account are given in the **Annex**. While all items for which the grants were provided to the AEPC were such, which ought to have been met out of its own resources or out of the Market Development Assistance provided for in the grant of the Ministry, some of the important items were: Rs 8.77 crore for Apparel Training and Design Centre buildings at Mumbai, Tirupur, Jodhpur and at other places, Rs 1.50 crore for construction of exhibition complex at Tirupur, Rs 12.10 crore for land cost of Gurgaon plot for AIM[1], Rs 1.13 crore for computerisation in AEPC, Rs 5.96 crore for various trade delegations, freight subsidy and fashion show/road-shows.

Additional funding of Rs 5.50 crore to NIFT had the effect of denial of total picture to the Parliament.

Similarly, the committee released Rs 4.50 crore for the building project and an unusually large amount of Rs one crore for fashion show to the NIFT. This institute is provided grants-in-aid regularly from out of the grant of the Ministry and this arrangement of additional funding had the effect of denial of total picture to the Parliament.

The Ministry stated in October 1999 that it had taken approval of Ministry of Finance in May 1998 for arrangement to retain the money in PD Account.

The contention of the Ministry is not correct. A perusal of the submission note of the Ministry of Textiles in obtaining the approval of the Ministry of Finance (Department of Expenditure) establishes the fact that the Ministry had not sought explicit approval of the Ministry of Finance for keeping such forfeited funds in the PD Account since 1989 but only of the mechanism to approve categories of expenditure out of this fund. The earlier categorical denial by the Ministry of Finance in May 1986 and February 1987 was not brought out in the note. Neither was it disclosed that the approval of the Comptroller and Auditor General of India was required to keep this forfeited amount outside the Consolidated Fund of India.

It is recommended that the balance in the Public Account should be merged immediately with the Consolidated Fund of India and instructions for depositing the future forfeitures into the Consolidated Fund of India should be issued with immediate effect. The matter also calls for an investigation as to how the decision makers flouted the statutory requirements, despite clear knowledge that their decision was unauthorised.

[1] Apparel International Mart

Annex

Statement of amount released from Public Deposit Account of the EMD/BG forfeited amount from the Ministry of Textiles Govt. of India to AEPC

S.No	Date	Amount (Rs)	Description
1.	07.12.89	2200000	Overseas Publicity IV & V Garment Fair
2.	22.01.90	1116062	BSM for winter Garment Japan (Tokyo)
3.	30.01.90	620269	Trade Delegation to Latin America (7 Mom)
4.	24.01.90	1725500	Survey of Readymade Garments
5.	22.03.90	8000000	Computersation in AEPC
6.	07.12.89	12000000	ATDC Building at Bombay
7.	14.01.92	1040000	IDS Inc Washington EOI
8.	08.04.92	800000	Kimijama Fashion Show in May-92
9.	09.05.92	193980	Trade Delegation to Cyprus Oct-92
10.	17.06.92	547000	BSM in Panama, Brazil, & Mexico during Nov-92
11.	21.01.91	2500000	ATDC Building at Bombay
12.	02.07.92	647000	Trade Delegation to EEC (Poland, GDR) July -90
13.	27.07.92	5050000	ATDC Tirupur
14.	16.08.92	243000	Overseas Publicity during 90-91
15.	23.09.92	358354	Knitwear Delegation to Hungry, C2H-March 92
16.	21.10.92	3300000	Computersation in AEPC
17.	21.10.92	129938	Subsidy given to Exports Extralights-1989
18.	18.11.92	223397	BSM in Caracas & Curacao during Nov-90
19.	18.11.92	500000	ATDC Jodhpur
20.	12.03.93	583449	Sample subsidy given to Exporters
21.	13.12.93	7957084	Air Freight Subsidy for Latin American Countries
22.	14.01.94	1568500	IDS Inc Washington EOI
23.	Feb-94	95288	World Fashion Fair Osaka Japan
24.	17.02.94	220996	Delegation to Hong Kong & South Korea
25.	22.08.94	126521	Air Freight Subsidy for Non-Scheduled Flights
26.	19.04.95	42150000	ATDC Project at various places
27.	31.07.96	10000000	One Man Offices Abroad
28.	02.08.96	25500000	ATDC Project at various places
29.	07.04.97	981000	Prof Friedler Roessior
30.	17.03.98	889000	Upgration of AEPC-SITRA Knitwear, Tirupur
31.	22.04.98	15000000	Construction of Exhibition Complex of IKF at Tirpur
32.	28.04.98	5700000	IDS Inc Washington EOI
33.	28.04.98	1800000	IDS Inc Washington EOI
34.	28.04.98	1053000	Prof Frledler Roessior
35.	28.04.98	8400	Subsidy given to Exporters Extra Flights
36.	07.01.89	121000000	Land Cost of Gurgaon Plot -AIM
37.	07.01.99	18764000	Road show-Paris-USA-UK
	Total (A)	**294591738**	

Statement of amount released from Public Deposit Account of the EMD/BG Forfeited Amount from the Ministry of Textiles Govt. of India to Other Offices

S.No.	Date	Amount (Rs)	Description
1.	06.04.90	750000	ICRIER Prof Sri Ram Khanna
2.	29.09.90	500000	ISEPC Asia Silk Fair OCT-90
3.	07.11.91	18000000	NIFT-Campus Building New Delhi
4.	22.07.92	6400000	NIFT-Building Project
5.	25.01.93	6600000	NIFT-Building Project
6.	22.06.93	14000000	NIFT-Building Project
7.	25.01.96	10000000	NIFT-Fashion Rendezvous at New Delhi
	Total (B)	**56250000**	
	Total A+B	**350841738**	

17.2 Failure to recover the penalty

Failure of the Textile Commissioner, Mumbai to enforce the conditions of agreement for export quota of cotton and to forfeit the bank guarantees resulted in non-recovery of penalty of Rs 3.82 crore for non-fulfilment of export obligations besides compensation of 24 per cent of the bank guarantees.

The Government of India releases the export quota of staple cotton each year to Private Trade, Cotton Corporation of India, Cotton Growers Federation, etc.

Textile Commissioner, Mumbai allotted in January 1996 an export quota of 1560 tonne of raw cotton to four exporters.

The Textile Commissioner, Mumbai allotted in January 1996 an export quota of 1560 tonne of Indian raw cotton to four exporters for a combined total value of Rs 38.24 crore. The exporters were to fulfil the export obligations by 31 July 1996. As per the terms and conditions of allotment of export quota, the four exporters furnished bank guarantees aggregating Rs 3.82 crore valid up to 30 April 1997 as under:

(Rs in crore)

Sl.No	Name of the exporter	Quantity (tonne)	FOB Value	Bank guarantee
1.	M/s GPB Fibres Ltd., Mumbai	416.5	10.64	1.06
2.	M/s The Punjab Cotton Co., (Exp. Impt.) Ltd., Mumbai	416.5	9.98	1.00
3.	M/s Bhagwati Cottons Ltd., Mumbai	416.5	10.38	1.03
4.	M/s. U.L. Trading Corporation, Mumbai	310.25	7.24	0.73
	Total	**1559.75**	**38.24**	**3.82**

In terms of the agreement between the Textile Commissioner, Mumbai and the exporters, in the event of failure of the exporters to fulfil their export obligations, the bank guarantees furnished by them were liable to be forfeited. In addition, exporters were also liable to pay compensation in the form of interest at 24 *per cent per annum* on the amount of the bank guarantee with effect from 1 August 1996 till realisation thereof.

Exporters failed to fulfil their export obligations.

All four exporters failed to export any quantity against their allotted quota within the prescribed period up to 31 July 1996. On the representations of the exporters, the Textile Commissioner granted extension up to 28 February 1997. Despite this, the exporters did not fulfil the export obligations.

Textile Commissioner, Mumbai failed to invoke bank guarantee and recover penalties from the four exporters.

Despite their failure to fulfill the export obligations, the Textile Commissioner did not invoke the bank guarantees within their validity period up to 30 April 1997. Finally, when he invoked the bank guarantees on 15 May 1997, after the last date of their validity, the bank repudiated the claim. The Textile Commissioner did not take any action for recovery of the compensation at 24 *per cent* of the value of bank guarantee also.

The Ministry stated in September 1999 that it was a lapse on the part of officers not to invoke the bank guarantees within their validity period and added that an enquiry has been instituted to fix responsibility for lapse in encashing the bank guarantees.

The Ministry further added that summary suits had been filed in the High Court of judicature, Mumbai for recovery of the amount equivalent to the lapsed bank guarantee and compensation at 24 *per cent* on the bank guarantee. The actual recovery and the result of enquiry were awaited.

17.3 Inadmissible payment of subsidy of Rs 22.77 lakh under Janata Cloth Scheme

On a representation to the Ministry of Textiles, the Ministry released subsidy of Rs 22.77 lakh arbitrarily. None of the grounds on which claims were rejected twice in past had undergone any change.

DCH released inadmissible subsidy of Rs 22.77 lakh to the cooperative societies in Gujarat which was rejected earlier twice.

Sample check of payment of subsidy[1] under the Janata Cloth Scheme by DCH[2], a subordinate office of the Ministry of Textiles disclosed a case of release of inadmissible subsidy of Rs 22.77 lakh during 1997-98 through the State Government of Gujarat to the Cooperative Societies in Gujarat. The claim was earlier rejected twice; first by SLIC[3] in 1992 and then by DCH in 1993 on the ground that 24 cooperative societies who had claimed the subsidy did not fulfill any of the conditions for grant of the subsidy.

[1] Subsidy at the rate of Rs 3.40 per Sq. Mtr. of Janata on handloom.
[2] Development Commissioner for Handloom (DCH)
[3] State Level Implementation Committee (SLIC)

The DCH reversed its earlier considered stand on admissibility of the subsidy on receipt of representations of implementing agency[4] and forwarded by some Members of Parliament to the then Minister of Textiles in July and August 1996. The fresh claims by the cooperative societies did not contain any material new evidence in support of the claims except the affidavits of the weavers/societies containing assertions about production of handloom cloth.

DCH released the subsidy arbitrarily.

The decision of the Ministry to release subsidy of Rs 22.77 lakh was arbitrary since none of the grounds on which the claims were rejected twice in the past had undergone any change. Some of the more important grounds on which SLIC and DCH had rejected the claims in 1992 and 1993 were as under:

(i) In case of 24 cooperative societies who claimed the subsidy, there was no evidence of production of Janata Cloth.

(ii) Subsidy was admissible on actual production and distribution and not on the basis of estimated production.

(iii) In some cases it was also established that yarn issued was in form of cone, which is usable in power loom only.

(iv) Production of cloth by derecognised societies was done on power looms.

(v) Assessment made on the possible production in handloom was also not in order as there were no working looms in almost all the societies.

Upon being pointed out by Audit, DCH took up the issue with the state government.

DCH stated in October 1999 that the entire issue of release of Rs 22.77 lakh had been re-examined in the light of the audit observations and that they had taken up the issue with the State Government to reach at the facts of the claims. Further development in the matter was awaited as of December 1999.

[4] Gujarat State Handloom and Industrial Cooperative Federation Ltd. (Implementing Agency)