

**PUBLIC ACCOUNTS COMMITTEE
(1977-78)**

(SIXTH LOK SABHA)

FORTY SECOND REPORT

**NAVAL DOCKYARD EXPANSION
SCHEME**

MINISTRY OF DEFENCE

**[Action taken by Government on the recommendations
of the Public Accounts Committee contained in their
210th Report (Fifth Lok Sabha) on Naval Dockyard
Expansion Scheme—Ministry of Defence]**

Presented in Lok Sabha on 22-12-1977

Laid in Rajya Sabha on 22-12-1977



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 1977/Aghrahayana, 1899 (S)

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CORRIGENDA

Corrigenda to 42nd Report of Public
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(1977-78)

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*Elected with effect from 23 November, 1977 *vice* Sarvashri Sheo Narain and Jagdamba Prasad Yadav ceased to be Members of the Committee on their appointment as Ministers of State.

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Forty-Second Report on the action taken by Government on the recommendations of the Public Accounts Committee contained in their Two Hundred and Tenth Report (Fifth Lok Sabha) on "Naval Dockyard Expansion Scheme" relating to Ministry of Defence.

2. On 10th August, 1977, an 'Action Taken Sub-Committee', consisting of the following Members was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports :

1. Shri C. M. Stephen—*Chairman.*
 2. Shri Asoke Krishna Dutt—*Convener*
 3. Shri Gauri Shankar Rai
 4. Shri Tulsidas Dasappa
 5. Shri Kanwar Lal Gupta
 6. Shri Zawar Hussain
 7. Shri Vasant Sathe
- } *Members*

3. The Action Taken Sub-Committee of the Public Accounts Committee (1977-78) considered and adopted the Report at their sitting held on 28 November, 1977. The Report was finally adopted by the Public Accounts Committee (1977-78) on 20 December, 1977.

4. For facility of reference the conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. For the sake of convenience, the recommendations/observations of the Committee have also been reproduced in a consolidated form in the Appendix to the Report.

5. The Committee place on record their appreciation of the assistance rendered to them in this matter by the Comptroller and Auditor General of India.

NEW DELHI ;
December 20, 1977.
Agrahayana 29, 1899(S).

C. M. STEPHEN,
Chairman,
Public Accounts Committee.

CHAPTER I

1.1. This Report of the Committee deals with the action taken by Government on the recommendations contained in the Two Hundred and Tenth Report of the Public Accounts Committee (Fifth Lok Sabha) on the Report of the Comptroller and Auditor General of India for the year 1973-74, Union Government (Defence Services) relating to the Ministry of Defence.

1.2. Replies to all the recommendations contained in the Report have been received from Government.

1.3. The Action Taken Notes on the recommendations/observations of the Committee contained in the Report have been categorised under the following heads :—

- (i) Recommendations/observations that have been accepted by the Government :

S. Nos. 5, 11, 20, 21, 23, 25, 27, 28, 29, 35, 39.

- (ii) Recommendations/observations which the Committee do not like to pursue in view of the replies of Government :

S. Nos. 6, 7, 8, 9, 12—14, 26, 31—34, 36-37.

- (iii) Recommendations/observations replies to which have not been accepted by the Committee and which require reiteration:

S. Nos. 1-4, 10, 15, 18, 19, 30, 38.

- (iv) Recommendations/observations in respect of which Government have given interim replies :

S. Nos. 16, 17, 22, 24.

1.4. The Committee hope that the final replies in regard to those recommendations to which only interim replies have so far been furnished will be submitted to them expeditiously after getting them vetted by Audit.

1.5. The Committee will now deal with action taken by Government on some of the recommendations.

Delay in completion of the Project (Paragraphs 5.1, 5.2 and 5.38, S. Nos. 1, 2 and 38).

1.6. Reviewing the overall handling of this project of strategic importance by the Government and expressing concern over the prolonged delay

and escalation in the project cost, the Committee in paragraphs 5.1, 5.2 and 5.38 of the report had observed :

- “5.1. It is disconcerting that a project for the expansion of the Naval Dockyard at Bombay, conceived as far back as in 1949, and which according to the projections of the Consultants to the project should have taken about 9 years, is yet to be completed fully even after lapse of more than 25 years. As early as 1958, the Estimates Committee (1957-58) had felt that in an important matter like the Naval Dockyard, ‘a greater sense of urgency should have been shown’ and had recommended that ‘more effective steps should be taken to secure the expeditious execution of the Expansion Project’. Eight years later, the Public Accounts Committee (1965-66) were again constrained to comment on the ‘tardy manner’ in which this project had been handled by the authorities at different stages. Observing that they could not help getting the impression that ‘the urgency of the matter was not fully appreciated by those who dealt with this scheme’ the Committee had then expressed regret that despite the Estimates Committee’s earlier observations, ‘no serious attempt’ had been made ‘to accelerate the progress of work on the scheme’ and that, in the meanwhile further delay had continued to add to its cost. Another decade has passed since then and the prospect of the project being really completed is still nowhere in sight. Its cost, initially estimated in November, 1952, at Rs. 24 crores, increased by over 50 per cent to Rs. 36 crores and is expected to go up still further. This is certainly a most unsatisfactory state of affairs.
- 5.2. In the preceding chapters of this Report, the Committee have tried to examine, at some depth, the reasons for the delay in completing the project. It appears, on evidence, that much of the delay that had occurred from time to time was not entirely unavoidable and that some of the difficulties alleged could have been well over-come with advance planning. It has been conceded by the Defence Secretary that there had been ‘prolonged delay’ in the execution of the project, though at the same time the delay was sought to be explained away as unavoidable and beyond Government’s control. It would, however, appear that in spite of the strategic importance of the project, its execution has been peculiarly leisurely, and the time-projections made, perhaps, validly, when the project was conceived have been repeatedly upset.
- 5.38 While the representative of the Ministry of Defence conceded that with greater diligence the Expansion Project could have been completed earlier, he contended at the same time that the execution of the Expansion Project has been as per the budgeted allocation of resources. In this contest, the Committee have to draw attention regretfully to the Report of the Estimates Committee (1957-58) wherein they had pointed out that against the estimated expenditure of Rs. 330 lakhs on the development of the Dockyard during the First Five Year Plan, the actual expenditure was Rs. 45 lakhs only.”

1.7. In their reply dated 7 March 1977 and 30 September 1976, the Ministry of Defence have stated:

“5.1, 5.2. As brought out in evidence at para 4.8 of the Report (page 121, second para) the Project Report submitted by the Consultants in 1950 was “more or less a perspective plan showing the extent to which facilities will have to be created for the Dockyard in order to meet the requirements of the expansion of the Navy as it was visualised,” and that “the expansion of the Navy was in itself much slower because resources were not forthcoming to the extent required.” In this connection, Ministry of Defence would like to invite a reference to the directions from the Defence Committee of the Cabinet brought out in para 4.4 of the Report (page 115 first para) “that capital expenditure should be carefully scrutinised and either curtailed or phased over a longer period as far as practicable.

It would not be correct in the circumstances to compare the performance in the execution of the Naval Dockyard Expansion Scheme with the time projections made by the Consultants in their original Project Report. The delays should be judged in relation to the actual approvals and the funds made available for specific parts of this Project. As was brought out in evidence at para 4.9 of the Report, the Navy received a lower priority in the allocation of funds, particularly between 1962 and 1965. The Ministry had, therefore, to fit the Scheme within the resources allocated by Government from time to time.

Ministry of Defence concede that the Scheme was slow to get off the ground. The reasons for limited expenditure during the First Five Year Plan have been separately explained in answer to para 5.38.

Another factor leading to delay in the execution of the Scheme was that it underwent changes in implementation in order to cater to the needs of new acquisitions carrying newer type of armaments and equipments.

5.38. The First Five Year Plan covers the period from 1951 to 1956. During this period, the actual expenditure was far below the allotted funds owing to the fact that:—

- (i) the major Contract *i.e.* Contract No. 1 could be awarded only in September, 1954;
- (ii) the contractor started the work only by June 1955;
- (iii) the contractor thereafter tried to frustrate the whole contract leading to the final abandonment of the contract by him in September 1956 after completing only 15% of the work.”

1.8. The Committee find that the major contract *i.e.* Contract No. 1 of a project for the expansion of Naval Dockyard at Bombay, conceived as far back as in 1949, could be awarded only in September 1954 and even that was finally abandoned by the Contractor in

September 1956 after completing only 15 per cent of the work. Because of this delay in initial execution of the project the actual expenditure on the development of the dockyard during the First Five Year Plan was Rs. 45 lakhs against the estimated expenditure of Rs. 330 lakhs. Therefore, the reply of the Ministry of Defence that the execution of the Naval Dockyard Expansion Scheme could not be synchronised with the time projections made by the Consultants in their original project Report because the Navy received lower priority in the allocation of the funds particularly between 1962 and 1965, does not sound convincing. The Committee feel that with proper advance planning and elimination of avoidable delays, the progress on this national project of strategic importance could have been accelerated. As the delay in the completion of the project not only leads to cost-escalation but also deprives the Navy of an important facility, the Committee desire that firm targets, both physical and financial, should be laid down for the completion of the project and these should be strictly adhered to. The Committee would like to be informed of the latest position in regard to the work still to be completed and the targets fixed for its completion.

Initial delay in execution of stage—I works (Paragraphs 5.3 and 5.4—S. Nos. 3&4)

1.9. Commenting on a period of more than two years taken by Government to consider and approve the Scheme for expansion submitted by the Consultants in June 1950 and another 2 1/2 years to commence work on stage I of the scheme, the Committee, in paragraphs 5.3 and 5.4 of the Report had, observed as follows:

“5.3. For instance, it took more than two years for Government to consider and approve the scheme for expansion submitted by the Consultants in June, 1950 and another 2 1/2 years to commence work on Stage I of the Scheme. The Committee have been informed that the initial period of two years was spent in overcoming the objections of the Bombay Port Trust, the erstwhile Bombay Government and private interests affected by the Dockyard expansion. While the Port Trust appears to have been averse to the scheme on account of its clash with its own expansion plans, the objections of the Bombay Government and also, it seems, the Tatas had certain aesthetic overtones in as much as it was feared that the Dockyard would mar the beauty of Bombay. The Committee feel that if the planning had been so meticulous as to obviate difficulties experienced later in execution, the initial delay of two years could perhaps, even be justified in retrospect. This, however, was by no means the case, and the Committee regret that a project relative to the country's defence requirements was thus held up without sufficient warrant. It appears, extraordinary that even as late as 1975 there was talk of a not unlikely re-designing of the Naval Dockyard Scheme with a view to its being fitted into still hypothetical city beautification plans. Whatever the merits of the latter, this is not, in the Committee's view, the way in which a long standing national project with top Defence priority should be handled.

5.4. Though the administrative approval for Stage I works, costing Rs. 5.5 crores, was issued in November, 1952 and tenders for Contract No. 1 of Stage I were issued in June, 1953, (the interim period having been spent in site investigations, surveys, trial bores, etc.) the contract was concluded in September, 1954 only that is to say, after nearly 22 months. The main reasons for the delay is stated to be protracted negotiations with the Bombay Port Trust from December, 1953 to August, 1954 for taking possession of their assets and their transfer to Government to enable the contract to commence. It is not clear to the Committee why the negotiations in this regard were delayed till the tenders had been reported upon by the Consultants; in fact this matter should have been taken up much earlier after the necessity of the scheme had been accepted by Government. This lapse needs to be explained."

1.10. In their reply dated 7 March, 1977 the Ministry of Defence have stated:

"It is submitted that negotiations with the Bombay Port Trust were not kept pending till the receipt of Consultants' report on the tenders in December 1953. In fact the matter was taken up with the Bombay Port Trust and the Bombay Government as early as 1950. The objections of the Bombay Port Trust, which were also supported by the Bombay Government, the Tatas and some prominent citizens of Bombay, had to be over-ruled at the level of the Cabinet in 1952. Negotiations with the Bombay Port Trust for transfer of land were resumed soon thereafter. It was only the final stages of the negotiations which were carried out between December 1953 and August, 1954."

1.11. The Committee regret to observe that though the objections of Bombay Port Trust, Tatas and some prominent citizens of Bombay were over-ruled at the level of the Cabinet in 1952, the negotiations with the Bombay Port Trust for transfer of land, which were resumed soon thereafter were prolonged till August, 1954. According to Ministry's own admission the matter was taken up with the Bombay Port Trust and Bombay Government as early as 1950. The subsequent delay of 22 months in arriving at a negotiated settlement with the Bombay Port Trust was, therefore, symptomatic of the leisurely manner in which the project was subsequently implemented.

(Paragraph 5.10—S. No. 10)

1.12. Expressing dissatisfaction over the unsatisfactory progress of the execution of the project despite the existence of a Construction Committee constituted specifically in 1953 to expedite the execution of the project, the Committee in paragraph 5.10 of the report had made the following observations:

"In this context the administrative arrangements made for the expansion project merit mention. Initially, in spite of the magnitude of the project, the progress of work was watched only by a

Construction Committee consisting of (i) a representative of the Ministry of Defence, not below the rank of Joint Secretary, who was the Chairman of the Committee, (ii) a representative of the Ministry of Finance (Defence) of appropriate rank (iii) Chief of Material (Navy) or his representative, (iv) Engineer-in-Chief, Army Headquarters or his representative and (v) the Under Secretary (Navy) in the Ministry of Defence who acted as ex-officio Secretary to the Committee. It is deplorable that in spite of the existence since 1953 of such a Committee, constituted specifically to expedite the execution of the project, the progress of work was unsatisfactory. The Estimates Committee (1957-58) had noticed that out of the 40 meetings held by this Committee between April 1953 and November 1957 only one meeting was held in Bombay, and had been constrained to regret that the Construction Committee had not been effective in its work. It would appear that the day-to-day supervision of the project had been largely left to the Consultants. Judging from the initial delay in the departmental execution of the incomplete portion of the work under Contract No. 1, discussed in the preceding paragraphs, the Engineer-Administrator subsequently appointed in February 1957 had also failed to secure expeditious completion of the work. It was only in December 1958 that Government realised the necessity of a closer supervision of the project and appointed a Director General, Naval Dockyard Expansion Scheme, to be in overall charge of the project and responsible directly to Government. The Committee are of the view that for the execution of this vital project, Government ought to have appointed a sufficiently high ranking officer well versed in the technicalities of the work and of proven leadership right from the inception."

1.13. The Ministry of Defence, in their reply dated 30 September 1976 have stated:

"The functions of the Construction Committee were primarily to give policy decisions on all technical, administrative and financial aspects of the Project. The supervision of works was not left to the Consultants alone. The post of a Chief Works Officer of the rank of Brigadier from the Corps of Engineers was sanctioned with effect from 1st April, 1953 for supervision and coordination and to watch the progress of the Works. It will thus be seen that there was adequate arrangement for supervision of works at site.

Only after the Contract No. 1 failed and the Government took the decision to execute the works departmentally was it found necessary to appoint a more senior officer with wider experience of similar work. An Engineer Administrator was thus appointed in February 1957 who had previous experience of Koyna Hydro-Electric Project and who had been a Chief Engineer of Bombay Government. Subsequently, as Government wanted to improve on this arrangement for more expeditious execution of the work a Director General to be in overall charge of the project was appointed."

1.14. It is regrettable that despite supervision by a high ranking officer of the rank of a Brigadier from the Corps of Engineers from I-4-53, the progress in execution of the project had been unsatisfactory resulting in a continual addition to the cost of the project. According to Government's own admission only after the Contract No. 1 had failed and they had taken the decision to execute the work departmentally it was found necessary to appoint a more senior officer with wide experience. The Committee hope that lessons would be drawn from the experience of this project for other projects in future.

Protracted Arbitration Proceedings (Paragraph 5.15, S. No. 15)

1.15. Expressing surprise over the fact that documents in support of a claim of Rs. 1.24 lakhs could not be made available to the Company for inspection as they had been allegedly destroyed under Government rules, the Committee in paragraph 5.15 of the Report had commented as under :

“Hearings of the case could take place only occasionally between October 1965 and 1969 on account of the delay in the final preparation of Government's accounts in support of their claims before the arbitrator. The Committee are concerned to note that this process took as long as four years, in spite of repeated exhortations from the arbitrator. In fact, at one stage of the proceedings, the delay had become so extraordinary that the arbitrator had to order Government to complete the adjustments of accounts other than those relating to the disposal of the assets by 31st March, 1967 or to face the consequences and be debarred from making any further adjustments. The Committee find it very surprising that documents in support of a claim of Rs. 1.24 lakhs could not be made available to the company for inspection as they had been allegedly destroyed under Government rules. It is regrettable that the authorities concerned had not taken adequate care to preserve these documents even though they knew that the litigation was in progress. Similarly, since the incomplete portion of the work was being executed departmentally, at the contractor's risk and cost, the authorities were aware that on the completion of these works, they would have to satisfy the contractor that the expenses incurred on the departmental execution were reasonable. Yet, strangely, the authorities concerned had not maintained these accounts B/Q item-wise or work-wise but had maintained them in accordance with the usual practice in this regard. This, according to the Arbitrator, was wholly unsuitable for the purposes of Clause 63 of the contract under which Government had a right to recover the extra expenditure incurred on the works from the contractor, and had led to considerable complications in adjudicating upon Government's claims. In the opinion of the Committee, these are serious lapses which should be thoroughly investigated. The Committee would like to be informed of the action taken against the delinquent officials.”

1.16. In their reply dated 30 August, 1976, the Ministry of Defence, have stated :—

“To some extent the delay in the submission of accounts was occasioned by the fact that accounts could be submitted only after the

completion of relevant work. For the rest it can only be said that the requirement of accounts for purposes of arbitration proceedings, which was not within the usual experience of the Officers concerned, did occasion some delay because of inexperience. As to the suggestion that accounts should have been kept in the manner in which expected by the Arbitrator or that the original documents should not have been destroyed under normal Government rules, it is to be said that accounting rules, including rules for destruction of documents, are framed on the generality of requirements and not to suit a particular case. It was also expected that the Arbitrator would accept the account Statements of the Naval Dockyard which had no direct interest in the work, particularly when audited by the Controller General of Defence Accounts—an independent authority. In these circumstances, no blame could be attached to anyone.;

1.17. The Committee are surprised at the casual manner in which the recommendation of the Committee has been replied to by the Ministry. They would like Government to investigate whether the destruction of documents during the pendency of arbitration proceedings was due to collusion of the Officials concerned with the defaulting contractors or gross negligence on their part and on the basis of the findings to take action against the delinquent Officials.

(Paragraphs 5.18, 5.19, Sl. Nos. 18 and 19)

1.18. Expressing concern over the manner in which the ceiling fixed on the arbitrator's fees was periodically revised upwards, the Committee in paragraphs 5.18 and 5.19 of the Report had commented as under :

“5.18. The manner in which the ceiling fixed on the arbitrator's fees was periodically revised upwards causes serious concern to the Committee. Initially the fees payable to the arbitrator, fixed on a ‘per sitting’ basis were subject to a ceiling of Rs. 30,000 for the whole case to be shared equally between Government and the contractor. Subsequently, however, when the number of hearings tended to go beyond the anticipated number on which the original ceiling had been based, the arbitrator brought the issue to the notice of the parties with a view to securing an enhancement of the ceiling. On the basis of such requests made by the arbitrator from time to time and the recommendations made in this regard by Government Counsel and on the advice also of the Law Secretary who had appointed the arbitrator and fixed his fees initially the ceiling was raised to Rs. 60,000 in June, 1962, Rs. 1 lakh in February, 1964, Rs. 1.75 lakhs in May, 1965, Rs. 2.50 lakhs in November, 1968 and finally Rs. 3.65 lakhs in October, 1972. No doubt, Government had been placed in an unenviable predicament with the arbitration proceedings dragging on endlessly, and that too partly on account of their own default in not expediting the departmental execution of the work abandoned by the contractor. However, in the absence of any evidence to the contrary, the Committee cannot escape the unhappy conclusion that, prior to 1972, when the final ceiling of Rs. 3.65 lakhs was fixed, the mounting expenditure on the arbi-

tration had not unduly disturbed Government and no concrete steps had been taken to ensure that the fees payable the arbitrator was restricted within reasonable limits.

5.19. What is even more disturbing is the statement made by the Ministry of Defence that in deciding to enhance the ceiling of fees payable to the arbitrator, there seemed to have been a feeling that 'by refusing to revise the ceiling, the Government's case might even get prejudiced'. This is a serious reflection on the Arbitrator's judicial frame of mind. While the Committee for obvious reasons, do not wish to go into this matter at any length, they cannot help feeling that this is perhaps indicative of the kind of unwholesome psychology which was at work at that time. It is also strange that even before the arbitration had commenced, the Arbitrator objected to the original ceiling of Rs. 30,000 when he had been given to understand by the Law Secretary that the matter would be reviewed from time to time and the ceiling suitably revised in consonance with the time taken for the completion of the hearing. It is surprising that instead of making an attempt to complete the arbitration within the period of four months prescribed in the Arbitration Act, an assumption should have been made even before the commencement of the proceedings that these would take a very much longer period of time. This assurance, unwisely given to the arbitrator, must have influenced subsequent decisions."

1.19. The Ministry of Law, Justice and Company Affairs (Legislative Department) in their reply dated 31 August 1976, have stated :

"5.18. This Ministry maintains a panel of Arbitrators, *inter alia*, consisting of retired High Court Judges in Andhra Pradesh, Bihar, Kerala, Madhya Pradesh, Tamil Nadu, Maharashtra, Rajasthan, Uttar Pradesh, West Bengal and Delhi. The fees prescribed for them are Rs. 100 - per hour (not exceeding Rs. 500 - for any single day) subject to the ceiling of Rs. 6000 - in any case. No reading fee will be paid to them. A copy of the O. M. dated 24 July, 1967, issued by this Ministry is enclosed. Normally Arbitrators are nominated from this panel. However, in cases involving high stakes or complicated questions of facts and Law, *ad hoc* appointments are made on higher fees. It is unfortunate that in this case, because of the prolongation of the proceedings duly sanctioned by adjournments given by the High Court as required by law, as observed by the Committee themselves. Government had been "placed in an unenviable predicament with the arbitration proceedings dragging on endlessly". The increase in fees towards the later stages of the case was done by the then Law Secretary after due consultation with all concerned and keeping in view the requirements of the case, including the feeling that the appointment of a new Arbitrator would involve more delay and expenses. Having regard to the circumstances of this particular case, this Ministry is satisfied that the fee of Rs. 3.65 lakhs paid in this case was on the high side but was unavoidable.

5.19. The remark that "by refusing to revise the ceilings, the Government's case might even get prejudiced" was not intended to cast reflection on the Arbitrator's judicial frame of mind. The idea was to have the arbitration concluded by the appointed arbitrator and counsel because change of Arbitrator and counsel at that late stage might have prejudiced the Government's case. Since the other party would have retained their old counsel, it was considered prejudicial to the Government's case to appoint another Arbitrator and counsel after a number of years who would be new and would not have the background knowledge of the proceedings held for so many years and it would have been an uphill task to get them acquainted with each and every document produced and argument advanced."

1.20. **The Committee are not convinced with the replies furnished by the Government to the recommendations contained in paragraphs 5.18 and 5.19 of the original Report. As they have already pointed out in their original recommendation, the ceiling of Rs. 6000/- per case as arbitrator's fee was gradually increased in this case to bring it to a total of as much as Rs. 3.62 lakhs. Thus, for the period of 12 years for which the case remained under arbitration, the arbitrator's fee averaged over Rs. 2500 per month. The Committee cannot but deplore the conduct of the Ministry of Law in perpetuating the arrangement for as long as 12 years without exploring alternatives and of the Ministry of Defence in acquiescing to the continuation of the arrangement.**

Execution and progress of work under Stage-II (works B) (Paragraph 5.30, Sl. No. 30).

1.21. Commenting on a period of 3-1/2 years taken by the Government for an unsuccessful attempt in exploring the possibility of executing the work 'B' departmentally, the Committee had made the following observation in paragraph 5.30 of the Report :

"The Committee find that there has been considerable vacillation over the execution of Works 'B'. Though a decision had been taken as early as October 1966 to execute these works departmentally by acquiring suitable plant and equipment, by no tangible progress had been made in the matter till December 1968 when a proposal was mooted by the Director General of the Expansion Scheme for executing the works through contractors. It took almost a year for this proposal to be approved by Government and after a further lapse of four to six months, Government's approval to the Director General's proposal was finally communicated in April 1970. Thus, for almost four years no worth-while progress had been made in regard to these works. It took another year to advertise for global tenders and to receive a single tender from a Yugoslav firm, and after examination of this tender and further negotiations, the contract was accepted only in January 1972. It is distressing that a vital defence project should have been thus delayed on account of in decision and vacillation. The Committee take a serious view of the delay of about 16 months in the Defence Ministry in communicating Government's approval to the proposal made by the Director General in December 1968 and desire that reasons therefor should be investigated with a view to fixing responsibility."

1.22. In their reply dated 30 September 1976 the Ministry of Defence, have stated :

“The delay in communicating Government’s approval to the proposal made by the Director General, Naval Dockyard Expansion scheme in December 1968 for executing the dredging work through contractors was caused by the fact that the Government were still exploring the possibility of departmental execution of works ‘B’. The decision on the Director General, Naval Dockyard Expansion scheme’s proposal by the Government could, therefore, be taken only in April, 1970. During this period attempts were still being made to acquire suitable dredgers from various sources but these attempts proved unsuccessful and this idea was abandoned in December 1969. In the circumstances, no blame could be attached to anyone for the delay in arriving at a decision on the DG’s proposal.”

1.23. **The Committee consider that a period of 3-1/2 years (October 1966 to April 1970) taken by Government in merely “exploring the possibility of departmental execution of work ‘B’ was unconscionably long”. The adverse effects of this delay have already been admitted by Government in reply to recommendation contained in paragraph 5.29 of the original report. The Committee would once again enjoin upon the Ministry that leisurely ways of working of administrative machinery should give way to streamlined systems and procedures under which decision making may be prompt and timely.**

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

Contract No. 1 was to be completed by May, 1957, but after only about 15 per cent of the physical work had been executed, the contractor (Hind Construction Ltd.) stopped the work in June, 1956 and finally abandoned the contract in September, 1956. The actual work on the contract had also started only in late June, 1955, nearly nine months after the conclusion of the contract. One of the reasons for this delay is stated to be diversion of the dredging fleet earmarked for work elsewhere by the contractor's Italian associates. This was an impermissible and ominous beginning, which foreshadowed the shape of things to come, culminating finally in the forfeiture of the contract in December, 1956 and the almost interminable arbitration proceedings that followed thereafter.

[Sl. No. 5 (Para 5.5) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)]

Action Taken

No comments.

DADS has seen.

[M. of D. u. o. No. 45 (1)/76 5.5 D (N-IV) dated 30-9-76.]

Recommendation

If the departmental execution of Contract No. 1 was ineffective, its handling of the arbitration proceedings was inept. The arbitration proceedings relating to Contract No. 1 commenced on December, 1959 when the arbitrator held the first hearing. Unfortunately, before he could proceed with the substantive matters of the dispute, he died in March, 1961. Thirty-one hearings had been held but the death necessitated appointment of a second arbitrator. Under the Arbitration Act, an award requires to be made within four months after reference subject to the right of the Court, if invoked, to grant extensions. What happened here is that the arbitration proceedings dragged on for more than twelve years, during which period, as many as 779 hearings were held by the second arbitrator, as many as eight extensions were secured from the Court, and 23 adjournments of the proceedings were mutually agreed to and granted. As on 1 July 1975, a total expenditure of Rs. 19.74 lakhs had been incurred on the arbitration by Government as against the net amount of Rs. 15.70 lakhs finally awarded to Government by the arbitrator in February, 1974. To be fair to the Ministry of Defence, its representative frankly conceded that this agony of an arbitration had neither been 'profitable nor creditable' to Government.

[Sl. No. 11 (Para 5.11) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)]

Action Taken

The contents of the para are factual and call for no comments.

DADS has seen.

[M. of D. u.o No. 45(1)/76/5 .11/D(N-IV) dated 30-9-1976.]

Recommendation

What irks the Committee most in this distasteful episode is that the Arbitrator suspended the proceedings at one stage until the parties made up their mind to revise the ceiling of his fees. The Committee was told by the Law Secretary that it was not open to the arbitrator to suspend the proceedings in this manner merely because his fees had not been enhanced. He added, however, that a refusal to agree to the enhancement might have meant appointing another arbitrator and starting the proceedings *de novo*. Government, unfortunately, appear to have been caught on the horns of a dilemma and faced with a predicament and chose what was thought the lesser of the two evils. It pains the Committee that person of the eminence of a retired Chief Justice of a high Court should have behaved in this manner in the middle of a long-drawn arbitration proceedings.

[S. No. 20 (Para 5.20 of Appendix V to the 210th Report (5th Lok Sabha)]

Action Taken

The conclusions are noted. A person of the eminence of a retired Chief Justice of a High Court was appointed as Arbitrator with the best of intentions.

The observations made by the PAC will be kept in view while considering the question of appointment of retired Judges of the High Courts as Arbitrators.

[Ministry of Law, Justice and Company Affairs, (Deptt. of Legal Affairs) D. O. No. G 25015(27) 76-B&A, dated 31 August, 1976]

Recommendation

While Government's share of the arbitrators' fees amounted to Rs. 1.95 lakhs, the Senior and Junior Counsel appointed to conduct Government's case before the arbitrator were paid such large sums as Rs. 11.52 lakhs, as on 1 July, 1975, out of which Rs. 9.04 lakhs represent the Senior Counsel's fees. No ceiling had, however, been fixed in regard to the Counsels' fees. The Committee have been informed that the Senior Government Counsel, an advocate of the Supreme Court, was paid at the rate of Rs. 1600 per hearing for the first 30 hearings and Rs. 1000 per hearing thereafter. The Committee feel strongly that in our country this kind of expenditure is an extravagance which the public exchequer cannot be expected to bear. The decision to brief, at a very heavy price, a Senior Counsel practising in the Supreme Court appears to have been taken on the basis of the largeness of the contractor's claim (Rs. 85 lakhs) before the arbitrator. The stakes

were, no doubt, heavy in this case, but the Committee cannot countenance the idea that except at stupendous cost the defence of Government's case before the arbitrator could not have been properly performed. Arbitration proceedings, in any case, do not normally require the most expensive type of counsel, and in this case, judging from its results, and also the manner of Government Counsel's functioning, the Committee are afraid that the selection was unsound. The Committee further feel that, after this unhappy experience, Government should evolve procedures whereby competent but not too expensive advocates, practising in the High Courts or even in lesser tribunals, can be requisitioned for more purposive espousal of Government cases.

[S. No. 21 (Para 5.21) of Appendix V to the 210th Report (5th Lok Sabha)].

Action Taken

The conclusions/recommendations are noted. This Ministry has already got a panel of Advocates to appear for arbitration cases at Delhi. In deference to the recommendations of the Committee, this Ministry will prepare a panel of competent but not too expensive Advocates, practising in the High Courts and even in lesser Tribunals and suitable counsel out of such panel will be nominated to conduct arbitration cases on behalf of the Government.

[Ministry of Law, Justice and Company Affairs, (Deptt. of Legal Affairs) D. O. No. G-25015(2):76-B&A dated 31 August, 1976 .

Recommendation

The Committee are concerned that there appears to be no specific machinery within Government to monitor and supervise concurrently the conduct and progress of arbitration proceedings to which Government is a party. The Committee learnt with consternation from the Law Secretary that so far as arbitrations are concerned, the Law Ministry suggests the names of counsel only and does not watch the progress and expenses, and that apart from rendering advice on specific legal issues which may be referred to it by the administrative Ministries concerned, the Ministry does not keep itself abreast of what is happening in regard to the arbitration. Such a passive role, in the opinion of the Committee, is hardly becoming of an agency entrusted with the responsibility of safeguarding Government's legal interests. The Law Ministry could and should play a more positive role in such matters instead of remaining content with leaving the matter to the administrative Ministries which in any cases, lack the necessary expertise and wherewithal and have to necessarily rely on the former. This is also not the first occasion when the Committee have found the Law Ministry's performance in legal matters somewhat wanting. The Committee are keen that Government should take very serious note of this deficiency and ensure that the Law Ministry, instead of being a largely passive agency, invariably maintains a careful and thorough check on the conduct of arbitration and other legal proceedings involving Government. The Country will suffer gravely if this is not done in a meaningful and purposive manner.

[S. No. 23 (para 5.23) of Appendix V to the 210th Report (5th Lok Sabha)].

Action Taken

With a view to exercise more effective control over the conduct of arbitration cases, this Ministry have issued an Office Memorandum dated 29th May, 1976, mentioned above, in reply to para 5.12.

[Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs) D.O. No. G-25015(2)/76-B&A, dated 31 August, 1976].

Recommendation

Even after the prolonged arbitration proceedings, resulting in a net award of Rs. 15.70 lakhs to Government, the Committee learnt that the contractor has decided to contest the award in Court and that consequently the amount has not been decreed for recovery. Without implying any disrespect to our judicial processes, the Committee fear that this is yet another ruse by the contractor to trap Government into further expenditure and delay. The Committee can only hope that commonsense and goodwill should prevail and that the court proceedings would end soon and the agony of the law's delay be minimised.

[(S. No. 25) (Para 5.25) of Appendix V to the 210th Report 5th Lok Sabha)].

Action Taken

This Ministry have instructed its Branch Secretariat at Bombay to make all possible efforts to have the matter disposed of expeditiously. A copy of the instructions issued is enclosed. (Annexure).

Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs) D.O. No. G-25015(2)/76-B&A, dated 31 August, 1976].

ANNEXURE

P. K. KARTHA,
Additional Legal Adviser.

D.O. No. F. 25(8)/76-Judl.
Ministry of Law, Justice and
Company Affairs
(Department of Legal Affairs).

New Delhi, the 27th July, 1976.

Dear Shri Mukherjee,

Please refer to your D.O. letter No. 6716-Lit. 76 dated the 22nd July, 1976, regarding arbitration cases of Hind Construction & Engineering Co. Vs. Union of India. It is seen that the matter was released on 30th March, 1976 by Desai J. and it is felt that in view of the importance of the case prompt steps should have been taken to have the matter heard earlier. The Public Accounts Committee, (1975-76) (Fifth Lok Sabha) in their Two Hundred and Tenth Report have observed, as under about this matter:—

“5.25. Even after the prolonged arbitration proceedings, resulting in a net award of Rs. 15.70 lakhs to Government, the Committee learn that the Contractor has decided to contest the award in court and that consequently the amount has not been decreed for

recovery. Without implying any disrespect to our Judicial processes, the Committee fear that this is yet another ruse by the contractor to trap Government into further expenditure and delay. The Committee can only hope that commonsense and good will should prevail and that the court proceedings would end soon and the agony of the Law's delay be minimised."

You are, therefore, requested to take all necessary steps to ensure that the matter is heard at an earliest especially in view of the above mentioned observations of the PAC.

With kind regards,

Yours sincerely,
(Sd.) P. K. KARTHA,

Shri R. L. Mukerjee,
Solicitor to the Central Government at Bombay,
Ministry of Law, Justice & Company Affairs,
Department of Legal Affairs,,
Aayakar Bhavan Annexe,
New Marine Lines, Fort, Bombay.

Recommendation

There appears to have been some confusion over the provision proposed earlier, of a railway line inside the dockyard. The Committee find that out of a total length of 1622 metres of railway line laid under Stage I at a cost of Rs. 7.81 lakhs, 690 metres laid at a cost of Rs. 2.74 lakhs, between February 1970 and December 1970, has not been utilised so far. Various views on the utility of the railway line were expressed on different occasions by the then Commodore Superintendent of the Naval Dockyard and the Naval Headquarters. Though the Consultants had recommended the laying of railway lines to feed the existing workshops to be modernised and the new ones to be established on the reclaimed land within the Dockyard, and the idea had also been accepted by Government, the plan for the construction of workshops in the Dockyard prepared subsequently, in November 1969, by the National Industrial Development Corporation necessitated further consultations and discussions to revise the lay out of workshops and roads so as to permit the linking of the railway lines from the area reclaimed under Stage I to that being reclaimed under Stage II. In the interim period, some *ad-hoc* facilities constructed to meet the Navy's immediate requirements, appear to have precluded the use of the railway line so far laid. The Committee feel that all this could have been avoided had the various components of the project been synchronised carefully with a little advance planning and steps taken to coordinate, in an integrated manner, the various activities in the Dockyard, both present and future, by means of perspective plan (Para 5.27).

The Committee have been assured in this connection by the representative of the Ministry of Defence that there would be enough traffic to justify the railway line once the entire project is completed. The Committee trust that all necessary steps would be taken to ensure the optimum utilisation of

this facility in the non-too-distant future and that the expenditure thereon would not ultimately prove to be infructuous. (Para 5.28).

[Sl. Nos. 27 & 28 (Paras 5.27 & 5.28) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action Taken

Basically the plan for laying down of railway lines a sound one and its execution will have saved Government money in view of escalation in costs that would have been occasioned by deferring this construction. The lines were also constructed in a coordinated manner along with the roads. If they had been constructed subsequently, this would have meant additional work, including breaking up of the concrete roads or encroaching on areas reserved for construction of other facilities. The lines that have been laid also required no particular maintenance and even if some portion of the lines have not been made use of because of the construction of a temporary facility in between, the long-term utility of the railway lines is not in doubt.

DADS has seen.

[M of D. u.o. No. 45(1)/76/5.27 & 5.28 D(N-IV) dated 30-9-76].

Recommendation

As regards Stage II of the Dockyard Expansion Scheme, the Committee are concerned to observe that though the Defence Committee of the Cabinet had envisaged a period of 7 years (1964-65 to 1970-71) for the completion of the works under this stage, all the works are yet to be completed and that the administrative approval for this stage had not even specified any time schedule for the completion of these works. This indicates a serious lacuna in programming the works. For instance, though works 'A' under Stage II have been completed, also after the scheduled date stipulated in the contract, in October 1973 and the basin is ready, the facilities provided could be put only to limited use by the Naval Ships as the dredging of the basin to be executed under works 'B' had not been completed. This, to say the least, represents a sorry state of affairs.

[Sl. No. 29 (Para 5.29) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha).]

Action Taken

Para 5.29. It was explained during oral evidence that a suitable Contractor to execute the works of Stage II as a composite work was not available. This compelled the Govt. to split the work into three parts, A, B, & C and to set an order of priorities. The seven years' period envisaged initially for the completion of Stage II could not, therefore, be adhered to. Government's unsuccessful efforts to form a dredging fleet of their own (on itself a laudable project to save foreign exchange) to do the dredging departmentally were responsible for the delay in carrying out work 'B' by the original target date. Instructions have been issued to N.H. Qrs./

Dte. of Works, DGNP, Vizag and DGNDES, Bombay that the target date of completion of work in future be included in the Administrative approval. A copy of the instructions issued in this regard is enclosed. (Annexure I).

[Min. of Def. No. 45(1)/76/5.29/D(N-IV) dated 7-3-1977].

ANNEXURE I
Ministry of Defence
D (N-IV)

SUBJECT : *Time for Completion of Works Projects*

A copy of DADS (Annexure II) Note dated 28-9-76 on the above subject is enclosed. NHQ are requested to ensure that in all draft Government letters conveying administrative approval to works projects put up for Government sanction/sanction issued by lower CFAs should invariably indicate the probable date of completion of the project as required under para 17 of the Revised Works Procedure. The suggestion contained in para 1 of the DADS note should also be kept in view while preparing the AE's for specific projects.

2. Steps should also be taken to specify the dates of completion of the project listed at item 3 in the statement received with DADS note by issue of suitable corrigendum.

Sd-

(D. C. Sankhla)
Under Secretary

NHQ Dte. of Works

M of D.u.O. No. 2768/D(N-IV) dated 13-10-76

Copy together with a copy of DADS note under reference forwarded to :

1. DGNP, Visakhapatnam
 2. DG NDES A/29 Gun Gate Bombay
- } for information & compliance of instructions.

Copy for information forwarded to DADS New Delhi.

ANNEXURE II

Office of the Director of Audit
Defence Services, L-II Block
Brassey Avenue, New Delhi.

SUBJECT :—*Time for completion of works projects.*

Para 17 of the Revised Works Procedure contemplates that when demands for new services are initiated, the initiating authority has to state the target date by which the work is required to be completed. The approximate time required by the Engineers for carrying out the work will also be specified in the Engineer Appreciation put up to the CFA. If the target date implies that special measures will be necessary to achieve it, these will also be brought out and the extra cost, if any, involved by the date given. While conveying the administrative approval, the approximate time required for physical completion of works under normal circumstances from

the date of orders to commence the work has also to be specified by the competent financial authority in the Approximate Estimates Part I (Sl. No. 9 of proforma at Appendix B refers).

We find in actual practice, however that even in the sanctions issued by Ministry of Defence, Col. 9 of AE Part I is either left blank or omitted all together. A few illustrative instances of the recent past where the period of time required for physical completion has not been specified are appended.

As a result of a reference made by us to the Ministry regarding the omission to indicate the time required for completion in a specific project-married accommodation for officers Phase II, Defence Services Staff College, Wellington instructions have since been issued by the QMG's Branch to all the Army Commands enjoining that the PDC should invariably be indicated in the administrative approvals to works projects QMG's letter No. B/01247/QMG(Pol) dated 21 Aug 76 refers.

Since this requirement is a general one and has to be complied with by all CFAS, it is suggested that the Ministry may consider issuing instructions to all Service HQrs. drawing specific attention to Para 17 and Sl. No. 9 of Appendix B to RWP, and also ensure that in the sanctions issued by Govt. the time required for completion of the work is invariably specified. A copy of the instructions issued may kindly be endorsed to this office in due course.

Sd/-

G. Dwarakanathan

Encl. one sheet

Min of Def./DW-I) (Shri M. L. Dave, Joint Secy).

DADS UO No. 1104/D W 7 76 KW-10 MES AT dt. 28-9-76

Recommendations

5.35. Apart from the delay in the completion of works 'A', the Committee find that on account of the changes in design, the consequent delay and increase in expenditure for the execution of the contract, the Yugoslave firm have preferred a claim for Rs. 1.38 crores. This claim is stated to be under examination by a Negotiating Committee constituted in December 1974. Now that more than a year has elapsed since this committee was constituted, the negotiations should by now have been completed, if it has not already been done, and adequate steps taken to safeguard the financial interests of Government.

[Sl No. 35 (Para 5.35) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha).]

Action taken

5.35. The Negotiating Committee constituted in Dec. 1974 concluded their deliberations by Oct 75. As a result, all the claims and counter claims

have been settled amicably, and the Govt. sanction to this effect has been issued on 13-11-75 (copy enclosed as annexure).

DADS has seen.

[M. of D. u.o. No. 45(1)/76/5.35/D (N-IV), dated 2nd December 1977].

Annexure

No. 65(7)/73/D (N-IV)/Vol. III
Government of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya
New Delhi, the 13th November, 1975
22 Kartika 1897

To
The Chief of the Naval Staff
(With 5 spare copies)

SUBJECT :—*Settlement of claims with M/s. Ivan Milutinovic PIM in respect of Stage II Works 'A' of the Naval Dockyard Expansion Scheme, Bombay.*

Sir,

I am directed to convey the sanction of the President to the payment of Rs. 83.50 lakhs (Rupees eighty three lakhs and fifty thousand only) to M/s. Ivan Milutinovic-PIM in settlement of all outstanding claims of the contractor in respect of Stage II Works 'A' (Contract No. II/1) of the Naval Dockyard Expansion Scheme, Bombay subject to the condition that queried material at Karanja for which a claim of Rs. 30 lakhs (Rupees thirty lakhs only) had been made by the contractor would be the property of the Government of India.

2. The expenditure involved is debitable to Major Head 469 Defence Capital Outlay, Main Head 3 Naval Dockyard, Minor Head (A) of Defence Services Estimates.

3. This letter issues with the concurrence of the Ministry of Finance *vide* their u.o. No. 1235/W-III of 1975.

Yours faithfully,

'sd/-

(P. K. Brahma)]

Under Secretary to the Govt. of India.

Copy to :—

1. The CGDA New Delhi
2. The DADS New Delhi
3. The Sr. DDA DS (SC) Pune
4. Sr. DDA DS Bombay
5. CDA (SC) Pune } with one copy signed in ink
6. CDA (N) Bombay } }
7. DGNDES Bombay 5 copies
8. DFA (W) 2 copies
9. DFA (N) 2 copies

Recommendation

5.39. Viewed in retrospect, it is evident that there has been a truly disturbing delay in completion of an essential national project. Admittedly, this delay has resulted in the postponement of the advantages initially anticipated. Though the extent to which the operational efficiency of our Navy might have been adversely affected by this delay may not be exactly quantified the fact remains that the facilities envisaged have not been adequately available, and there had to be much avoidable utilisation of the ship's own machinery, resulting in greater maintenance effort and longer refit periods. This is a sad reflection on the performance of our planning and of our administration. The Committee trust that Government would conduct a careful review of what went wrong at different stages of the project, derive a lesson from this unhappy saga of delays and doldrums, and ensure that such defaults do not recur at least in national project of strategic importance.

[Sl. No. 39 (Para 5.39) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha).]

Action Taken

5.39. After a perusal of the replies furnished in the various action taken notes, it will be obvious that in undertaking such a large marine project for the first time in the Naval history of our country certain unavoidable circumstances like stoppage of work on Contract No. 1 by contractor, non-availability of suitable contractor for execution of Stage II of the project and the consequent splitting up a Stage into works A, B & C contributed in a large measure to the delay in the final execution of the project as a whole. Government would like to assure the committee that every effort is being made to complete the remaining components of the project as early as possible. It may be further added that Government have ensured that the operational efficiency of the Indian Navy is in no way jeopardised by any delay in the execution of any component of this project. The achievements of the Indian Navy in the 1971 conflict will bear out this statement. The Govt. have taken every care in subsequent period to avert all potential delays in the conclusion and execution of contracts pertaining to the services required for the operational efficiency of the Indian Navy. Four such contracts are in an advance stage of completion and are generally on schedule. Wherever services could not be made available on permanent basis, temporary services have been provided in the meantime to sustain the Fleet. This tempo is expected to be maintained in respect of the Fitting-Out Wharf Services which are being programmed on Scientific Critical Path Principles. The major contract for Civil Construction in respect of Fitting-Out Wharf is due to be concluded shortly and all preliminary action in respect of Wharf Crane and Technical Buildings contract is in hand. The mistakes of the previous Phase are not being allowed to be repeated in any form, by ensuring simultaneous and concurrent action in respect of all the sequences to be followed for timely execution.

DADS has seen.

[M. of D. u.o. No. 45(1)/76/5.39/D (N-IV), dated 2nd December 1977].

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendation

It is significant in this context that, initially, global tenders had been invited for the work on the ground that there were no Indian contractors with the necessary expertise. Somewhat paradoxically, however, the contract was finally awarded to an Indian firm without previous experience in dockyard construction, on the strength of an assessment by the Consultants of the firm's previous experience in dockyard construction, on the strength of an assessment by the Consultants of the firm's previous experience in the Konar Dam, and because they were also the lowest tenderers. Another factor which weighed with the Consultants in selecting the firm for the work was that the firm had taken as partners an Italian firm, Societa Italiana Per Lavori Maritimi, presumably endowed with the requisite know-how and experience. While the Committee certainly welcome preference being given to Indian entrepreneurs in the execution of national projects, it is a moot point whether at that particular point of time when Indian expertise was admittedly not available, Government was justified in undertaking a risk that turned out to be a protracted and costly experiment in a strategic project.

[Sl. No. 6 (Para 5.6) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action taken

The Contract was awarded to M/s. Hind Construction Company because they were an Indian concern and had an experienced Italian firm as their partners. This was done on the recommendations of the Consultants. In the judgement of Government, saving of foreign exchange and encouragement of Indian construction companies were worthwhile considerations.

DADS has seen.

[M. of D. u. o. No. 45(1)/76/5.6/D (N-IV), dated 30-9-76].

Recommendations

After the contract was forfeited in December 1956, Government decided to execute the incomplete portion of the work departmentally, at the firm's risk and cost, through a departmental organisation to be set up for the purpose. Though an Engineer Administrator was appointed for this purpose in February 1957, the work could not even be recommended till November 1957 for the following alleged reasons:—

- (ii) time required to complete survey and inventory and evaluate the assets left behind by the defaulting contractor, valued at approximately Rs. 16 lakhs;

(b) renovating and reactivating the equipment and machinery left by the contractor in a 'deplorable state' and which had been inactive from June 1956; and

(c) assembling the staff required for the purpose.

The departmental execution of the work, thus tardily started, lingered on for nine long years and could be completed only in November 1966.

[Sl. No. 7 (Para 5.7) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action taken

The reasons indicated for the delay in recommencement of the work were real. It may be mentioned in this connection that the balance of the work taken up departmentally in November, 1957 was *substantially* completed in December, 1963 and therefore, it took about 6 years for completing the major portion of the work as brought out in the evidence *vide* para 1.8 of the Report (page 8). Between 1963 and 1966 only certain residual works like rock dredging, laying of connecting roads in the reclaimed area etc. were done.

DADS has seen.

[M. of D. u. o. No. 45(1)/76/5.7/D (N-IV), dated 30-9-76].

Recommendation

5.8. It has been stated by the representative of the Ministry of Defence that the comparative inexperience of the Government agency entrusted with the departmental execution might explain the delay to some extent. Nine years spent on this work appears, however, to be abnormal and the reasons for the delay are neither clear nor cogent. Government witnesses before the Committee have tried to explain only the initial delay of nine months in recommending the work abandoned by the contractor. The Committee, however, find from the award of the arbitrator, on the reference entered on 8 January 1962, that between February 1957, when the Engineer Administrator was appointed, and December, 1958, when the project was placed under the overall charge of a Director General, very little work was done in spite of the Consultants' constant complaints. The arbitrator also went on record that taking into consideration the reasonable time required for preparing the inventories, getting the plants in working order, etc., he was not satisfied that the Engineer Administrator had acted diligently in not commencing the work before November/December, 1957. It would, therefore, appear that the Engineer Administrator had been lax in ensuring expeditious completion of the work. The Committee would like to be informed whether any action had been taken in this matter, for it appears that Government had also been concerned about the slow progress of the work which prompted them to reorganise the project in November 1958 and place a Director General in overall charge.

[Sl. No. 8 (Para 5.8) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action taken

Considering the initial difficulties already explained to the committee *vide* para 4.8 of the Report (page 119) the Engineer Administrator could not be held responsible for the slow progress of work and, therefore, no action was contemplated against him.

The material facts relating to the period when Engineer Administrator was in position are as follows :—

- (a) Feb. 1957 Engineer Administrator appointed.
- (b) May 1957 Inventory of contractor's stores and plant completed & Engineer Administrator's proposals for execution of work and requirement of staff submitted to Ministry of Defence.
- (c) Oct. 1957 Key members of staff began to arrive at site.
- (d) Nov. 1957 Engineer Administrator given 'go ahead' to start work. Repair and recommissioning of plant commenced.
- (e) Work between November, 1957 & October, 1958
 - (i) Mint Bank completed with imported and Cofferdam material,
 - (ii) Mint culvert completed,
 - (iii) Cofferdam excavation carried out.

It is true that inspite of a great deal of efforts for starting rock dredging operations, very little progress was made in the matter during the tenure of the Engineer Administrator. The reason is that the Rock Breaker was in need of extensive repair and could work for a total of only 25 days between November, 1957 and mid August, 1958. Further, there was also no progress in soft dredging and reclamation during the period in question because of non-availability of suitable dredgers.

It may be mentioned in this connection that the post of Director General was created in October, 1958 in replacement of the then existing Construction Committee and not in replacement of the Engineer Administrator and under the new set up the Engineer Administrator was placed under the Director General.

DADS has seen.

[M. of D. u.o. No. 45(1)/76 5.8/D(N-IV), dated 26 November 1977]

Recommendation

As regards the contention of Government that some delay could be attributed to the fact that this work was not in the normal line of operation of the agency entrusted with the work, the Committee feel that in view of the project's strategic importance, Government should have taken adequate steps to appoint experienced administrators and engineers familiar with maritime works. The Committee also find from the arbitrator's award referred to in the preceding paragraph that Government in fact

appoint such officers and engineers. In the circumstances and in view of the fact that another main civil engineering component of Stage I, namely, the extension of the Ballard Pier, had been successfully executed departmentally at about the same time, the Committee find it difficult to accept this explanation. As has been pointed out by the arbitrator, Government should have made special efforts to avoid all unnecessary delays and ensured completion of the works as soon as possible, especially in view of the fact that the cost of carrying out these works was also continuously increasing from year to year. That this was not done is indicative of negligence in overall supervision.

[Sl. No. 9 (Para 5.9) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)]

Action Taken

Though the best available Engineers were appointed for the departmental execution of the work, they lacked adequate experience in marine works. In fact, the experience gained in the execution of this work helped in the successful execution of Ballard Pier extension work which was taken up in 1963 after the Barrack and Destroyer wharves under contract No. I were substantially completed. The Ballard Pier extension work was completed in January, 1967.

DADS has seen.

[Ministry of Defence u.o. No. 45(1)/76/5.9/D(N-IV) dt. 23 Sept., 1977]

Recommendation

The Committee are not unwilling to concede that after the contractor had chosen to invoke the arbitration clause in the contract, there was not much that Government could do to extricate itself from the peculiar chain of consequences that followed. The Committee are also aware that the case being a complicated one, some delay in its examination might have been unavoidable. However, the prolongation of the proceedings from four months prescribed, in the Arbitration Act to more than twelve years appears to be, *prima facie*, unconscionable and inexplicable. The Committee cannot help the impression that adequate steps had certainly not been taken to ensure that the arbitration proceedings were not unnecessarily protracted. The evidence before the Committee also indicates that the conduct of the case by Counsel whom Government lavishly compensated for their pains, was informed neither by a sense of urgency over a nationally important project nor of the patriotic responsibility which such assignments call for. The Committee consider that this issue is so grave that Government should examine the position in all its implications and decide also the role which in such cases should be played by the Ministry of Law.

[S. No. 12 (Para 5.12) of Appendix V to the 210th Report (5th Lok Sabha)]

Action Taken

The Ministry of Law, on being requested by the Ministry of Defence, advised on the appointment of a suitable arbitrator as well as Dousel,

The Ministry of Defence on their side nominated an officer fully conversant with the project details to assist the Counsel in the prosecution of Government's case before the Arbitrator. It is unfortunate that as the Committee have themselves indicated "after the contractor has chosen to invoke the arbitration clause in the contract, there was not much that Government could do to extricate themselves from the peculiar chain of consequences that followed." Having regard to the conclusions and recommendations of the Committee, the Ministry of Law have issued an Office Memorandum No. F. 25(6)/76-Judl. dated 29th May, 1976 whereby all Ministries/Departments have been requested to furnish to the Ministry of Law quarterly returns showing the particulars of arbitration cases pending for more than one year in the prescribed proforma. This has been done with a view to ensure that the arbitration proceedings are not unnecessarily protracted and that the fees are not increased without proper scrutiny of the requests made by the administrative Ministry for increasing the ceilings in exceptional cases. A copy of the said Office Memorandum is enclosed. (Annexure I).

As the time of appointment of the Counsel, his performance is assessed by this Ministry. The observations made by the Public Accounts Committee have been noted and will be borne in mind while reviewing the panel of Counsel from time to time. The procedure to be formulated in this regard has not yet been finalised.

[Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs), D.O. No. G. 25015(2)/76-B&A].

ANNEXURE I

MOST IMMEDIATE

No. F. 25(6)/76-Judl.

GOVERNMENT OF INDIA

BHARAT SARKAR

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Vidhi, Nayaya aur Kampany Karya Mantralaya)

DEPARTMENT OF LEGAL AFFAIRS

(VIDHI KARYA VIBHAG)

New Delhi, the 29th May, 1976

OFFICE MEMORANDUM

SUBJECT : 210th Report of the Public Accounts Committee (1975-76) on Naval Dockyard Expansion Scheme—Quarterly return in respect of pending Arbitration cases.

The Public Accounts Committee, in their 210th Report to the Lok Sabha, have taken a serious view of the inordinate delay that took place in the completion of the Arbitration proceedings relating to the Naval Dockyard expansion Scheme. The Committee have in para 5.23 of the said Report, *inter alia*, observed that a careful and thorough check on the conduct of arbitration proceedings involving Government should be main-

tained. In order to ensure that the Arbitration Proceedings are not unnecessarily protracted, it has been decided, to call for a quarterly return of Arbitration cases pending over a year on a regular basis commencing from the quarter ending 30th June, 1976.

2. Ministry of Home Affairs, other Ministries and Departments are, accordingly, requested to furnish a quarterly return for the quarters ending 30th June, 30th September, 31st December and 31st March, showing the particulars of arbitration cases pending for more than one year in the prescribed proforma (copy enclosed) (Annexure II) so as to reach the Department of Legal Affairs latest by the 20th of the month following the end of the quarter to which the return relates. The return should be sent in duplicate in respect of the Ministry/Department as a whole and should also contain information in respect of their attached and subordinate offices. 'NIL' returns may be furnished in case the Ministry/Department have nothing to report for any particular quarter. The return for the quarter ending 30th June, 1976 may be furnished by the 20th, July of 1976 and thereafter the quarterly returns may be sent on a regular basis so as to reach this Department by the 20th of the month following the quarter to which the return relates.

Sd/-

(P. K. BOSE)

Solicitor to the Government of India.

To

1. All Ministries Departments of the Government of India.
2. Admn. II(LA)/Admn. II(LD) Sections.

ANNEXURE II

Name of Ministry _____

Name of Department _____

Statement showing particulars of arbitration cases pending for more than one year for the quarter ending _____

S.No.	Brief particulars of the case indicating and authority e.g. the terms of agreement or orders of court which referred the matter to Arbitration.	*Amount (s) of Claim/Counter Claim involved and by whom preferred	Date of				Total number of hearings held so far	Date on which Award was to be originally given.	Date upto which extension granted by High Court/Competent authority or by consent	No. of extensions granted
			1st hearing	last hearing	next hearing	conclusion of proceedings				
1	2	3	4	5	6	7	8	9	10	11

*the names of parties.

Grounds on which extensions given	Date of Award if any	Total expenditure incurred on		Miscellaneous expenses including TA, DA etc.	Remarks giving detailed reasons in cases where progress of proceedings has been prolonged for over a year
		Arbitrators' name and Fees paid	Counsel's. name and fees paid and Solicitor/Junior Advocate/or Junior Lawyers engaged to instruct Counsel and fees paid.		
12	13	14	15	16	17

Recommendation

The Committee find from the arbitrator's award, for instance, that at no stage did any party object to the procedure adopted by him for bringing oral and documentary evidence of the parties on record. Neither of the parties had also ever objected to the procedure adopted by the arbitrator for hearing their respective arguments, such procedures having been adopted with the prior consent of Counsel for both parties. The contractor's stand seems understandably motivated by a desire to prolong the proceedings as much as possible. His refusal to accept a suggestion of the arbitrator that the proceedings could be cut short by conducting the examination-in-chief of the witnesses through affidavits filed by the parties and by the examination of the witnesses by the opposite party thereafter, found support, strangely, from Government Counsel who agreed to an elaborate procedure which virtually turned the arbitration proceedings into something like the never-ending Original Side proceedings in a court. The Committee can only regretfully conclude that the prosecution of the case by Government Counsel was impermissibly inefficient.

[S. No. 13 (Para 5.13) of Appendix V to the 210th Report (5th Lok Sabha)].

Action Taken

The Law Ministry selected a Counsel of known integrity and competence commensurate with the requirements of the case. Thereafter it is normal practice and expectation that the selected Counsel will look after and protect Government interests.

[(Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs), D.O. No. G25015(2)/76-B&A)].

Recommendation

On the arbitrator's own averment very little progress was made in the case between 1965 and 1969. It is also seen from the award that the parties at the initial stages were, apparently, not keen to expedite the proceedings, one reason for it being that Government was in the course of completing the No. 1 Contract works in question. According to the arbitrator's award, the company perhaps felt that Government's experience would prove the former's case, while Government thought that this experience would demolish the company's case, and also that Government claims based on estimated expenses would then become based on actual expenses. Thus, delay in completing the departmental execution of the works under Contract No. 1 contributed, in no small measure, to delay in the progress of the arbitration proceedings.

[Sl. No. 14 (Para 5.14) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action Taken

The factual position is that the departmental works relating to contract No. 1 were substantially completed in 1963 whereas the Company's evidence, which was taken up first, continued right upto 1965. Delay

in completing the departmental execution of work under Contract No. 1 does not therefore seem to have had any bearing on the delay in the progress of arbitration proceedings. In fact the arbitration proceedings continued for another 8 years after 1965.

DADS has seen.

[M. of D. u.o. No. 45(1)/76/5.14/D(N-IV) dated 2nd December 1977].

Recommendation

The Committee learn that apart from Contract No. 1, the other components of Stage I of the project have been completed without any difficulty and that no unhappy experience has been reported in regard to the contractors entrusted with these works. The Committee, however, find that the other major work of Stage I, the construction of the Crusier Graving Dock scheduled to be completed in January 1959, was actually completed only in November 1960. One of the reasons for the deviation from the original schedule is stated to be 'delays for which the contractor was wholly responsible and for which he was liable for liquidated damages.' The Committee would welcome some additional details in regard to the contractor's lapses in this case and would like to know the amount of liquidated damages levied and recovered.

[Sl. No. 26 (Para 5.26) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action Taken

The lapse on the part of the contractor was delay in completion of works relating to the construction of Crusier Graving Dock. The due date for completion of contract was 26-1-59. The due date of completion was subsequently extended by the Consultants, under the provisions of the contract, to 11-5-60. The work under the contract was actually completed on 26-11-60. The liquidated damages at Rs. 10,000 per week were therefore determined as the liability of the contractor and recovered from him in March 1962. Subsequently, on representation from the contractor, the Consultants revised the due date of completion to 11-7-69. The liquidated damages were therefore reduced. The contractor had also certain substantial claims against the Government. While finally settling the contractor's claims, as part of an over-all settlement, the liquidated damages were finally waived by the Government. The details of the claims of the contractor are given in this Ministry's letter No. 16(1)/6/D(NDES)/Vol. IV/488, dated 26th August 1967 (copy enclosed Annexure).

DADS has seen.

[Min. of Def. No. 45(1)/76/5.26/D(N-IV) dated 7-3-77].

ANNEXURE

No. 16(1)/62/D(NDES)/Vol. IV/488

**GOVERNMENT OF INDIA
MINISTRY OF DEFENCE***New Delhi, the 26th August 1967.*

To

The Director General,
Naval Dockyard Expansion Scheme,
A/29, Gun Gate BOMBAY-1.SUBJECT : Settlement of the Contractor's final bill Stage I Contract No.
2 Naval Dockyard Expansion Scheme, Bombay.

Sir,

I am directed to convey the sanction of the President to the settlement of the final bill relating to Contract No. 2 of Stage I of the Naval Dockyard Expansion Scheme Bombay on payment of Rs. 16,99,647.37 (Rupees Sixteen lakhs ninety nine thousand six hundred forty seven and thirty seven paise) as under :—

	Rs.
(a) Item 318(1)—Claim for extra cost of hiring Navy's Dredging Fleet	1,016
(b) Item 318(2)—Claim for refund of hire charges in respect of Navy's Dredging Fleet	11,290
(c) Item 318(3)—Claim 113(2) Claim for extra works due to unforeseen heavy siltation.	83,761
(d) Items 451—DP—Claim for refund of Customs Duty	3,49,289
(e) Item 451—S & 451—Z(2)—Claim for unexpected additional financial expenses	3,03,927
(f) Items 451—Y & 113(1)—Claim for reimbursement of overhead expenses.	6,00,000
(g) Item 451—R—Claim for re-imburement of additional excise duty on High Speed, Diesel and Furnance Oil	94,293/6
(h) Payment of the balance against the full amount determined by the Engineers	2,56,071
G. TOTAL	16,99,647/6
	<i>i.e.</i> Rs. 16,99,647.37 paise.

2. Sanction is also accorded to the waiver of Government claim for liquidated damages for the period 11-7-65 to 25-11-65 on account of delay on the part of Contractor in completion of the Works.

3. The expenditure is debitable to NDES Major Head 130 Defence Capital Outlay—Sub-Head B of the Defence Services Estimates.

4. The above issues with the concurrence of Ministry of Finance (Defence) vide their U.Q. No. 618/SW/III dated 25-8-1967.

Yours faithfully,
Sd/-

(S. D. CHATTERJEE)

Under Secretary to the Government of India.

Copy of the above forwarded to :—

The CGDA, New Delhi
The CDA, SC, Poona
The Dy. DADS, SC, Poona
The DFA(W)—(2)
The DADS, New Delhi
The CDA (Navy), Bombay
The A.A.O. C/o DGNDDES Bombay
The DFA(N)—(2)
Naval Headquarters New Delhi

Copy signed in ink is forwarded to :—

The CDA (SC) Poona

Recommendation

The contractor for works 'A' and 'B' of Stage II is the same Yugoslav firm and apparently no element of competitive tenders was involved in entrusting works 'B' to a contractor. The Committee feel—that the decision to entrust these works on contract could have well been taken in November 1967 along with works 'A' or at least in December 1968 itself when formal proposals in this regard were made by the Director General. It has, however, been contended by Government spokesmen that these works could not be carried out simultaneously as all the dredging adjacent to the break-water and in the working area of works 'A' could only be carried out after the break-water was completed and because works 'B' also involved a certain amount of dredging in rocky strata requiring blasting. The Committee would like to know whether the consultants had also envisaged at the time of splitting the works under Stage II into three groups 'A', 'B' and 'C' in October 1966 (after the attempts to execute all the works as one contract had proved abortive) that works 'B' would have to be taken up only after the completion of works 'A', and whether the possibility of dredging those areas away from the break-water, excluding rock-blasting, had been explored so as to ensure that at least some dredging was carried out simultaneously with works 'A'.

[Sl. No. 31 (Para 5.31) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha).]

Action taken

It would not be correct to infer that no element of competitive tenders was involved in awarding Works 'B' to the Yugoslav firm which was carrying out Works 'A'. Works 'B' were advertised on a global basis and

twelve firms from Europe, United States and Japan (6 Dutch and 1 each from USA, UK, Japan, Italy, Belgium and Yugoslavia) were pre-qualified for issue of tender documents. However, at the time of opening of the tenders only one tender was received from the Yugoslav firm. As the quotation was considered reasonable by Government and recommended by the Consultants, it was accepted.

While in retrospect it may appear that the decision to entrust Works 'B' on Contract could have been taken by December, 1968, Government were not in a position to take the decision at that time as efforts to carry out the work departmentally through acquisition of the requisite Dredging Fleet were still underway.

At the time the works under Stage II were split into Works 'A', 'B' and 'C', the Consultants did not envisage that Works 'B' would have to be taken up only after the completion of Works 'A'. The Consultants were not aware at that time of the existence of rock in the area of South Break-Water (Works 'A') and no rock dredging was originally included in Works 'B'. The presence of rock in the south Break-water area came to light only during execution of Works 'A'. As brought out in para 1.7 of the Report "the entire rock dredging element, which was originally included in Works 'C', was transferred to Works 'B'" in our larger overall interest.

Works 'A' were completed in October 1973 and works 'B' commenced in January 1972. These works were thus carried out concurrently for 22 months in any case.

The possibility of dredging those areas away from the Break-water, excluding rock blasting, being commenced earlier was considered and eventually rejected as the area would have got silted up again while rock blasting and dredging was in progress. Such dredging would thus have been of no practical benefit and would have resulted in unnecessary expenditure as the area would have required dredging again.

DADS has seen.

[M. of D. U.O. No. 45(1)/76/5.31 D(N-IV) dated 7-3-77].

Recommendation

The works under Stage II were divided into groups 'A', 'B' and 'C' on the advice of the Consultants. Since such a division apparently created more complications and made synchronisation of works 'A' and 'B' not technically feasible, the Committee would like to be informed whether any action has been taken or contemplated against the Consultants.

[Sl. No. 32 (Para 5.32) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action Taken

The division of Stage II works into three groups was necessitated because suitable contractors to execute the work as a whole did not come forward in response to global tenders. Complete synchronisation of Works 'A' & 'B' being technically not feasible was due to factors like change in design of caissons, which was unforeseen and transfer of rock dredging from Works 'C' to Works 'B' by Government. In the circumstances, the question of taking action against the consultants does not arise.

DADS has seen.

[M. of D. U.O. No. 45(1)76/5.32/D(N-IV) dated 30-9-76].

Recommendation

As pointed out earlier, some delay had also occurred in the completion of works 'A'. The Committee find that though these works were to be completed in 60 months, that is, by November 1972, the execution did not proceed according to schedule, on account of various difficulties, necessitating the revision of the time schedule periodically. While an extension of 115 days was considered necessary on account of existence in the sea-bed of rocks requiring blasting, which had not been detected during site investigations, a further extension of 185 days was granted to the contractor on account of the changes introduced, after the conclusion of the contract, in the design of the caissons required for the break-water. The Committee are surprised that though detailed bore-hole data to determine the sea-bed conditions had been collected with the help of a specialist firm (Cementation Co. Ltd.), the existence of rocks had not been detected during site investigation. Another instance where the bore-hole data furnished by the same firm for the expansion of Mormugao Port ultimately proved wrong has also been brought to the Committee's notice. Such recurrently incorrect estimates, leading to disputes and avoidable extra expenditure, would lead the Committee to conclude that the performance of this firm has been far from satisfactory. The Committee, therefore, ask for an inquiry into the circumstances leading to incorrect estimation of the sea-bed conditions, and for adoption of appropriate corrective measures.

[Sl. No. 33 (Para 5.33) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action Taken

The circumstances leading to the incorrect estimation of bore hole-data have been gone into. The places where the sea-bed was to be investigated were plotted and the depths to which the sea-bed had to be bored were also prescribed by the consultants. The execution of work was entrusted to Cementation Co. Ltd. with the approval of the consultants who did not find any fault with the execution of this work. As bore

hole data can only give representative sampling of the sea-bed, neither the company nor the consultants could be held to blame for failure to detect the presence of rock in a small portion of the sea bed area. No action against the contractor can, therefore, be taken.

DADS has seen.

[M. of D. U.O. No. 45(1)/76/5.33/D(N-IV) dated 30-9-76].

Recommendation

As regards the change in the design of the caissons, the Committee learn that this arose out of the revised electrical and mechanical requirements which were not projected earlier. The Committee find that a review of the scope of these services was undertaken only in mid-1968 and was referred to the Consultants only a year later. Since the delay is somewhat conspicuous, the Committee would like to know when the 'new acquisitions' of the Navy had been thought about and whether Government had not considered it necessary to review the requirements in this regard in the light of the experience of the 1965 war. The reasons for one whole year's delay in referring the matter to the Consultants also needs to be explained.

[Sl. No. 34 (Para 5.34) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action taken

The Naval requirements for new acquisition were constantly under review especially after 1965, as a result of which new ships were required. The decision on the last of these acquisitions was finalised in 1969. This together with the fact that full details of services required for the earlier acquisitions were not available till early 1969 accounted for the delay in estimating the requirements of electrical and mechanical services.

DADS has seen.

[M. of D.U.O. No. 45(1)/76/5.34/D(N-IV) dated 30-9-76].

Recommendation

More than 9 years have elapsed since the works under Stage II were split up into three groups. Yet, works 'C' have not yet even been taken up for execution. The Committee have been informed (August 1975) that the Consultants' report and estimates were received in April 1975 and that these were under examination for the issue of administrative approval. While the Committee trust that these works would at least now be completed with the required expedition, they would like to know why it had not been possible to finalise the scope and quantum of these

works for as long a period as 9 years after the Consultants had suggested that these works should be taken up separately as a separate group.

[Sl. No. 36 (Para 5.36) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action taken

The portion of Works 'C' relating to rock dredging has already been completed alongwith Works 'B'. Similarly, removal of sheet piles which was a part of Works 'C' is also in progress as part of Works 'B'. Regarding the remaining portion of Works 'C' viz., the fitting out wharf, the Government had given low priority to it as the fitting out of ships is being done with the existing facilities in the dockyard. The final decision to go in for the fitting out wharf has been taken on 12-2-76.

DADS has seen.

[M. of D. U.O. No. 45(1) /76/5.36/D(N-IV) dated 30-9-76].

Recommendation

Though the major portion of the civil engineering works have after long delay been completed, various mechanical and electrical services are yet to be provided to make the said works fully useful. The Committee are concerned that considerable delay has occurred in the provision of these facilities. It is not clear to the Committee why these services were sanctioned only on a provisional basis in 1964 and why re-evaluation of the services, in the light of the changing requirements of the Navy, could not have been under-taken earlier than 1968-69, that is to say, considerably after the 1965 war. It is distressing that even after this 're-evaluation', it took about 3 years for Government to give the 'Go ahead' sanction and yet another 2½ years to conclude the first contract for a portion of the work. The contract for the electrical services has been concluded only as recently as July 1975 and that for the mechanical equipment and pipe work services is still to be processed. The Committee are perplexed by this apparently lackadaisical approach and would like to be satisfied that all this delay in completing a strategic project which, presumably, has been urgently required by the Navy, was really unavoidable.

[Sl. No. 37 (Para 5.37) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action taken

The reason why services were sanctioned only on a provisional basis in 1964 was that no decision had been taken at that time as to what class of ships would be acquired for the Navy as part of the phased programme for replacement of overage ships. It will be recalled that during the

years 1963-64 and 1964-65 the Navy received a relatively low priority in allocation of resources (*vide* evidence at para 4.9 pages 123 and 124 of the report).

Modern warships fitted with sophisticated weapons equipment and machinery require services of an equally sophisticated nature. As explained in reply to para 5.34, full details of the equipment fitted in the new acquisitions from the Soviet Union became available only in 1969.

Revised estimates for Services were received from the Consultants in November 1970 and after scrutiny by Director General Naval Dockyard Expansion Scheme were submitted to Ministry of Defence in March 1971. The "go ahead" sanction was given by Government after consultations with the Ministry of Finance, in January 1972. Detailed drawings and draft tender documents for the various services contracts were received from the consultants between December 1972 and June 1973. The users comments on these were communicated to the consultants between March and December 1973. Tenders for the Cranes and Electrical Services were issued by end 1973 and the remainder between July and September 1974.

The response from tenderers was not entirely satisfactory and contained various unacceptable conditions and substitutes. No valid offer was received for the mechanical equipment and pipeline services and this work had to be re-advertised in early 1975. The offers received for the Electrical Services were based on a large component of imported equipment and were higher than the estimates. Scrutiny of tenders and negotiations with tenderers thus took longer than is normally the case.

All services for South Breakwater have now been contracted for, including the mechanical and pipework services, the tender for which was accepted in December 1975.

Ministry of Defence would like to assure the Committee that there was no slackness on the part of any of the authorities concerned with the processing of these works. The apparent delays were unavoidable.

DADS has seen.

[M. of D. U.O. No. 45(1)/76/5.37/D(N-IV) dated 30-9-76].

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation

It is disconcerting that a project for the expansion of the Naval Dock yard at Bombay, conceived as far back as in 1949, and which, according to the projections of the consultants to the project, should have taken about 9 years, is yet to be completed fully even after lapse of more than 25 years. As early as 1958, the Estimates Committee (1957-58) had felt that in an important matter like the Naval Dockyard, 'a greater sense of urgency should have been shown' and had recommended that 'more effective steps should be taken to secure the expeditious execution of the Expansion Project. Eight years later, the Public Accounts Committee (1965-66) were again constrained to comment on the 'tardy manner' in which this project had been handled by the authorities at different stages. Observing that they could not help getting the impression that 'the urgency of the matter was not fully appreciated by those who dealt with this scheme' the Committee had been expressed regret that despite the Estimates Committee's earlier observations, 'no serious attempt' had been made 'to accelerate the progress of work on the scheme,' and that, in the meanwhile, further delay had continued to add to its cost. Another decade has passed since then and the prospect of the project being really completed is still nowhere in sight. Its cost, initially estimated in November 1952, at Rs. 24 crores, increased by over 50 per cent to Rs. 36 crores and is expected to go up still further. This is certainly a most unsatisfactory state of affairs. [Para 5.1].

In the preceding chapters of this Report, the Committee have tried to examine, at some depth, the reasons for the delay in completing the project. It appears, on evidence, that much of the delay that had occurred from time to time was not entirely unavoidable and that some of the difficulties, alleged could have been well over come with advance planning. It has been conceded by the Defence Secretary that there had been 'prolonged delay' in the execution of the project, though at the same time the delay was sought to be explained away as unavoidable and beyond Government's control. It would, however appear that in spite of the strategic importance of the project, its execution has been peculiarly leisurely, and the time projections made, perhaps, validly, when the project was conceived, have been repeatedly upset. [Para 5.2].

[Sl. No. 1 & 2 (Paras 5.1 & 5.2) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha).]

Action Taken

As brought out in evidence at para 4.8 of the Report (page 121, second para) the Project Report submitted by the Consultants in 1950 was "more or less a perspective plan showing the extent to which facilities will have to be created for the Dockyard in order to meet the requirements of the expansion of the Navy as it was visualised," and that "the expansion of the Navy was in itself much slower because resources were not forthcoming to the extent required." In this connection, Ministry of Defence would like to invite a reference to the directions from the Defence Committee of the Cabinet brought out in para 4.4 of the Report (page 115 first para) "that capital expenditure should be carefully scrutinised and either curtailed or phased over a longer period as far as practicable."

It would not be correct in the circumstances to compare the performance in the execution of the Naval Dockyard Expansions Scheme with the time projections made by the Consultants in their original Project Report. The delays should be judged in relation to the actual approvals and the funds made available for specific parts of this Project. As was brought out in evidence at para 4.9 of the Report, the Navy received a lower priority in the allocation of funds, particularly between 1962 and 1965. The Ministry had, therefore, to fit the Scheme within the resources allotted by Government from time to time.

Ministry of Defence concede that the Scheme was slow to get off the ground. The reasons for limited expenditure during the First Five Year Plan have been separately explained in answer to para 5.38.

Another factor leading to delay in the execution of the Scheme was that it underwent changes in implementation in order to cater to the needs of new acquisitions carrying newer type of armaments and equipments.

DADS has seen.

[M. of D. U.O. No. 45(1)/76/5.1 & 5.2 D(N-IV) dated 7-3-1977].

Recommendation

For instance, it took more than two years for Government to consider and approve the scheme for expansion submitted by the Consultants in June, 1950 and another 2½ years to commence work on Stage I of the scheme. The Committee have been informed that the initial period of two years was spent in overcoming the objections of the Bombay Port Trust, the erstwhile Bombay Government and private interests affected by the Dockyard expansion. While the Port Trust appears to have been averse to the scheme on account of its clash with its own expansion plans, the objections of the Bombay Government and also, it seems, the Tatas and certain aesthetic overtones in as much as it was feared that the Dockyard would mar the beauty of Bombay. The Committee feel that if the planning had been so meticulous as to obviate difficulties experienced later in execution, the initial delay of two years could perhaps, even be justified in retrospect. This, however, was by no means the case, and the Committee regret that a project relative to the country's defence requirements was thus held up without sufficient warrant. It appears, extraordinary that even as late as

1975 there was talk of a not unlikely redesigning of the Naval Dockyard Scheme with a view to its being fitted into still hypothetical city beautification plans. Whatever the merits of the latter, this is not, in the Committee's view, the way in which a long standing national project with top Defence priority, should be handled. [Para 5.3]

Though the administrative approval for Stage I works, costing Rs. 5.5 crores, was issued in November, 1952 and tenders for Contract No. 1 of Stage I were issued in June, 1953, (the interim period having been spent in site investigations, surveys, trial bores, etc.), the contract was concluded in September, 1954 only, that is to say, after nearly 22 months. The main reasons for the delay is stated to be protracted negotiations with the Bombay Port Trust from December, 1953 to August, 1954, for taking possession of their assets and their transfer to Government to enable the contract to commence. It is not clear to the Committee why the negotiations in this regard were delayed till the tenders had been reported upon by the Consultants; in fact this matter should have been taken up much earlier after the necessity of the scheme had been accepted by Government. This lapse needs to be explained. [Para 5.4].

[Sl. No. 3 & 4 (Paras 5.3 & 5.4) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action Taken

It is submitted that negotiations with the Bombay Port Trust were not kept pending till the receipt of Consultants' report on the tenders in December 1953. In fact, the matter was taken up with the Bombay Port Trust and the Bombay Government as early as 1950. The objections of the Bombay Port Trust, which were also supported by the Bombay Government, the Tatas and some prominent citizens of Bombay, had to be over-ruled at the level of the Cabinet in 1952. Negotiations with the Bombay Port Trust for transfer of land were resumed soon thereafter. It was only the final stages of the negotiations which were carried out between December 1953 and August 1954.

DADS has seen.

[M. of D. u.o. No. 45(1)/76/5.3 & 5.4/D (N-IV) dated 7-3-1977].

Recommendation

In this context, the administrative arrangements made for the expansion project merit mention. Initially, in spite of the magnitude of the project, the progress of work was watched only by a Construction Committee consisting of (i) a representative of the Ministry of Defence, not below the rank of Joint Secretary, who was the Chairman of the Committee, (ii) a representative of the Ministry of Finance (Defence) of appropriate rank, (iii) Chief of Material (Navy) or his representative, (iv) Engineer-in-Chief, Army Headquarters or his representative, (v) the Under Secretary (Navy) in the Ministry of Defence who acted as ex-officio

Secretary to the Committee. It is deplorable that in spite of the existence since 1953 of such a Committee, constituted specifically to expedite the execution of the project, the progress of work was unsatisfactory. The Estimates Committee (1957-58) had noticed that out of the 40 meetings held by this Committee between April 1953 and November 1957, only one meeting was held in Bombay, and had been constrained to regret that the Construction Committee had not been effective in its work. It would appear that the day-to-day supervision of the project had been largely left to the Consultants Judging from the initial delay in the departmental execution of the incomplete portion of the work under Contract No. 1, discussed in the preceding paragraphs, the Engineer-Administrator subsequently appointed in February 1957 had also failed to secure expeditious completion of the work. It was only in December 1958 that Government realised the necessity of a closer supervision of the project and appointed a Director-General, Naval Dockyard Expansion Scheme, to be in overall charge of the project and responsible directly to Government. The Committee are of the view that for the execution of this vital project, Government ought to have appointed a sufficiently high ranking officer well versed in the technicalities of the work and of proven leadership right from the inception.

[Sl. No. 10 (Para 5.10) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action Taken

The functions of the Construction Committee were primarily to give policy decisions on all technical, administrative and financial aspects of the Project. The supervision of works was not left to the Consultants alone. The post of a Chief Works Officer of the rank of Brigadier from the Corps of Engineers was sanctioned with effect from 1st April 1953 for supervision and coordination and to watch the progress of the works. It will thus be seen that there was adequate arrangement for supervision of work at site.

Only after the Contract No. 1 failed and the Government took the decision to execute the works departmentally was it found necessary to appoint a more senior Officer with wider experience of similar work. An Engineer Administrator was thus appointed in February 1957 who had previous experience of Koyna Hydro-Electric Project and who had been a Chief Engineer of the Bombay Government. Subsequently, as Government wanted to improve on this arrangement for more expeditious execution of the work, a Director General to be in overall charge of the Project was appointed.

DADS has seen.

[Min. of Def. u.o. No. 45(1)/76/5.10/D(N-IV) dated 30-9-1976].

Recommendation

Hearings of the case could take place only occasionally between October 1965 and 1969 on account of the delay in the final preparation of Government's accounts in support of their claims before the arbitrator. The Committee are concerned to note that this process took as long as four years, in spite of repeated exhortations from the arbitrator. In fact, at one stage of the proceedings, the delay had become so extraordinary that the arbitrator had to order Government to complete the adjustments of accounts other than those relating to the disposal of the assets by 31 March, 1967 or to face the consequences and be debarred from making any further adjustments. The Committee find it very surprising that documents in support of a claim of Rs. 1.24 lakhs could not be made available to the company for inspection as they had been allegedly destroyed under Government rules. It is regrettable that the authorities concerned had not taken adequate care to preserve these documents even though they knew that the litigation was in progress. Similarly, since the incomplete portion of the work was being executed departmentally, at the contractor's risk and cost, the authorities were aware that on the completion of these works, they would have to satisfy the contractors that the expenses incurred on the departmental execution were reasonable. Yet, strangely, the authorities concerned had not maintained these accounts B/Q item-wise or work-wise but had maintained them in accordance with the usual practice in this regard. This, according to the Arbitrator, was wholly unsuitable for the purposes of Clause 63 of the contract under which Government had a right to recover the extra expenditure incurred on the works from the contractor, and had led to considerable complications in adjudicating upon Government's claims. In the opinion of the Committee, these are serious lapses which should be thoroughly investigated. The Committee would like to be informed of the action taken against the delinquent officials.

[Sl. No. 15 (Para 5.15) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action Taken

To some extent the delay in the submission of accounts was occasioned by the fact that accounts could be submitted only after the completion of relevant work. For the rest it can only be said that the requirement of accounts for purposes of arbitration proceedings, which was not within the usual experience of the officers concerned, did occasion some delay because of inexperience. As to the suggestion that accounts should have been kept in the manner in which expected by the Arbitrator or that the original documents should not have been destroyed under normal Government rules, it is to be said that accounting rules, including rules for destruction of documents, are framed on the generality of requirements and not to suit a particular case. It was also expected that the Arbitrator would accept the account statements of the Naval Dockyard which had no direct interest in the work, particularly when audited by the Controller General of Defence Accounts an independent authority. In these circumstances, no blame could be attached to any one.

[M. of D. u.o. No. 45(1)/76/5.15/D(N-IV) dated 30-8-76].

Recommendation

The manner in which the ceiling fixed on the arbitrator's fees was periodically revised upwards causes serious concern to the Committee. Initially, the fees payable to the Arbitrator, fixed on a 'per sitting' basis were subject to a ceiling of Rs. 30,000 for the whole case to be shared equally between Government and the contractor. Subsequently, however, when the number of hearing tended to go beyond the anticipated number on which the original ceiling had been based, the arbitrator brought the issue to the notice of the Parties with a view to securing an enhancement of the ceiling. On the basis of such requests made by the arbitrator from time to time and the recommendations made in this regard by Government Counsel and on the advice also of the Law Secretary who had appointed the arbitrator and fixed his fees initially the ceiling was raised to Rs. 60,000 in June, 1962, Rs. 1 lakh in February, 1964, Rs. 1.75 lakhs in May, 1965, Rs. 2.50 lakhs in November, 1968 and finally Rs. 3.65 lakhs in October, 1972. No doubt, Government had been placed in an unenviable predicament with the arbitration proceedings dragging on endlessly, and that too partly on account of their own default in not expediting the departmental execution of the work abandoned by the contractor. However, in the absence of any evidence to the contrary, the Committee cannot escape the unhappy conclusion that, prior to 1972, when the final ceiling of Rs. 3.65 lakhs was fixed, the mounting expenditure on the arbitration had not unduly disturbed Government and no concrete steps had been taken to ensure that the fees payable to the arbitrator was restricted within reasonable limits.

[S. No. 18 (Para 5.18) of Appendix V to the 210th Report (5th Lok Sabha)].

Action Taken

This Ministry maintains a panel of Arbitrators, *inter alia*, consisting of retired High Court Judges in Andhra Pradesh, Bihar, Kerala, Madhya Pradesh, Tamil Nadu, Maharashtra, Rajasthan, Uttar Pradesh, West Bengal and Delhi. The fees prescribed for them are Rs. 100/- per hour (not exceeding Rs. 500/- for any single day) subject to the ceiling of Rs. 6000/- in any case. No reading fee will be paid to them. A copy of the O.M. dated 24th July, 1967, issued by this Ministry is enclosed (Annexure). Normally Arbitrators are nominated from this panel. However, in cases involving high stakes or complicated questions of facts and Law, *ad hoc* appointments are made on higher fees. It is unfortunate that in this case, because of the prolongation of the proceedings duly sanctioned by adjournments given by the High Court as required by law, as observed by the Committee themselves, Government had been "placed in an unenviable predicament with the arbitration proceedings dragging on endlessly." The increase in fees towards the later sages of the case was done by the then Law Secretary after due consultation with all concerned and keeping in view the requirements of the case, including the feeling that the appointment of a new Arbitrator would involve more delay and expenses.

Having regard to the circumstances of this particular case, this Ministry is satisfied that the fee of Rs. 3.65 lakhs paid in this case was on the high side but was unavoidable.

[Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs)
D. O. No. G 25015(2)'76-B & A, dated 31 August, 1977]

ANNEXURE

No. F. 25(5)/67-J
 GOVERNMENT OF INDIA
 MINISTRY OF LAW
 (DEPARTMENT OF LEGAL AFFAIRS)

the 24th July, 1967
 NEW DELHI _____
 Sravana 2, 1889(s)

OFFICE MEMORANDUM

SUB: *Fees of Retired High court Judges Acting as Arbitrators or Umpires in Central Government Arbitration Cases in Delhi and Bombay.*

The undersigned is directed to say that the Ministry of Works, Housing & Supply in their O.M. No. Pur-5(8)/52 dated the 1st March, 1959 had fixed the fees of the retired High Court Judges acting as Arbitrators or Umpires in Central Government arbitration cases in Delhi and Bombay as under:

- (A) Rs. 60/- per hour for hearing, if the hearing is for less than three hours on any day;
 Rs. 200/- per day, if the hearing on that day lasts for three hours or more but less than five hours;
 Rs. 400/- per day if the hearing lasts that day for five hours or more and reading fee of Rs. 400 -.
 Provided that the total fee including the reading fee shall not exceed Rs. 4,500/-.
- (B) Travelling Allowance & Daily Allowance etc. will be as admissible to the Retired High Court Judges under Ministry of Home Affairs Notification No. 11/45/55-Judl. I dated the 23rd October, 1956 as amended from time to time.

This Ministry have since reconsidered the question of payment of fees to the retired High Court Judges acting as Arbitrators or Umpires in Central Government Arbitration cases in Delhi and Bombay and have decided that henceforth in future arbitration cases they may be paid fees as follows:

- (A) Rs. 100/- per hour (not exceeding Rs. 500/- for any single day) subject to the ceiling of Rs. 6,000/- in any case and that no reading fee need be paid to such judges appointed as Arbitrators or Umpires.
- (B) Travelling Allowance & Daily Allowance etc. will be as admissible to the Retired High Court Judges under Ministry of Home Affairs Notification No. 11/45/55-Judl. I dated the 23rd October, 1956 as amended from time to time.

Sd/-

(M. B. RAO)

DEPUTY LEGAL ADVISER TO THE GOVERNMENT
 OF INDIA.

To

All Ministries/Departments in the Govt. of India.

Recommendation

What is even more disturbing is the statement made by the Ministry of Defence that in deciding to enhance the ceiling of fees payable to the arbitrator, there seemed to have been a feeling that 'by refusing to revise the ceiling, the Government's case might even get prejudiced'. This is a serious reflection on the Arbitrator's judicial frame of mind. While the Committee for obvious reasons, do not wish to go into this matter at any length, they cannot help feeling that this is perhaps indicative of the kind of unwholesome psychology which was at work at that time. It is also strange that even before the arbitration had commenced, the Arbitrator objected to the original ceiling of Rs. 30,000 when he had been given to understand by the Law Secretary that the matter would be reviewed from time to time and the ceiling suitably revised in consonance with the time taken for the completion of the hearing. It is surprising that instead of making an attempt to complete the arbitration within the period of four months prescribed in the Arbitration Act, an assumption should have been made even before the commencement of the proceedings that these would take a very much longer period of time. This assurance, unwisely given to the arbitrator, must have influenced subsequent decisions.

[(S. No. 19) (Para 5.19) of Appendix V to the 210th Report (5th Lok Sabha)]

Action taken

The remark that "by refusing to revise the ceilings the Government's case might even get prejudiced" was not intended to cast reflection on the Arbitrator's judicial frame of mind. The idea was to have the arbitration concluded by the appointed Arbitrator and counsel because change of Arbitrator and counsel at that late stage might have prejudiced the Government's case. Since the other party would have retained their old counsel, it was considered prejudicial to the Government's case to appoint another Arbitrator and counsel after a number of years who would be new and would not have the background knowledge of the proceedings held for so many years and it would have been an uphill task to get them acquainted with each and every document produced and argument advanced.

[Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs, D. O. No. G 25015(2)/76-B & A, dated 31 August, 1977)]

Recommendation

The Committee find that there has been considerable vacillation over the execution of works 'B'. Though a decision had been taken as early as October 1966 to execute these works departmentally by acquiring suitable plant and equipment, no tangible progress had been made in the matter till December 1968 when a proposal was mooted by the Director General of the Expansion Scheme for executing the works through contractors. It took almost a year for this proposal to be approved by Government and after a further lapse of four to six months, Government's approval to the Director General's proposal was finally communicated in April 1970. Thus, for almost four years no worth-while progress had been made in regard to these works, It took another year to advertise for global tenders and to receive a single tender from a Yugoslav firm, and after examination of this tender and further negotiations, the contract was accepted only in

January 1972: It is distressing that a vital Defence Project should have been thus delayed on account of in decision and vacillation. The Committee take a serious view of the delay of about 16 months in the Defence Ministry in communicating Government's approval to the proposal made by the Director General in December 1968 and desire that reasons therefor should be investigated with a view to fixing responsibility.

[Sl. No. 30 (Para 5.30) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha)].

Action taken

The delay in communicating Government's approval to the proposal made by the Director General Naval Dockyard Expansion Scheme in December 1968 for executing the dredging work through contractors was caused by the fact that the Government were still exploring the possibility of departmental execution of Works B. The decision on the proposal of Director General Naval Dockyard Expansion Scheme by the Government could therefore, be taken only in April, 1970. During this period attempts were still being made to acquire suitable dredgers from various sources but these attempts proved unsuccessful and this idea was abandoned in December 1969. In the circumstances, no blame could be attached to any one for the delay in arriving at a decision on the Director General's proposal.

DADS has seen.

[M. of D. u.o. No. 45 (1) 76/5.30/D (N-IV) dated 30-9-76.]

Recommendation

While the representative of the Ministry of Defence conceded that with greater diligence the Expansion Project could have been completed earlier, he contended at the same time that the execution of the Expansion Project has been as per the budgeted allocation of resources. In this contest, the Committee have to draw attention regretfully to the Report of the Estimates Committee (1957-58) wherein they had pointed out that against the estimated expenditure of Rs. 330 lakhs on the development of the Dockyard during the First Five Year Plan, the actual expenditure was Rs. 45 lakhs only.

[Sl. No. 38 (Para 5.38) of Appendix V to the 210th Report of the Public Accounts Committee (1975-76)—(5th Lok Sabha).]

Action taken

The First Five Year Plan covers the period from 1951 to 1956. During this period, the actual expenditure was far below the allotted funds owing to the fact that:—

- (i) the major Contract *i.e.* Contract No I could be awarded only in September, 1954;

- (ii) The contractor started the work only by June 1955.
- (iii) the contractor thereafter tried to frustrate the whole contract leading to the final abandonment of the contract by him in September 1956 after completing only 15% of the work.

DADS has seen.

[M. of D. u.o. No. 45 (1)/76/5.38/D (N-IV) dated 30-9-76.]

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

The Committee are intrigued by a statement made by the Senior Government Counsel that the delay that had occurred in this case was beyond his control and that the lacunae in the existing Arbitration Act made the arbitrator's position in speeding up the matter difficult. The Counsel had, however, not spelt out what the lacunae were, and it appears to be the view of the Law Ministry that, *prima facie*, there are no lacunae in this Act which has been long on the statute book. Nevertheless, the Law Ministry seemed to admit that in practice, wrongful advantage could be taken of the provisions relating to adjournments, extension of the proceedings, etc. as had apparently happened in this particular case. Besides, as has been stated by the Defence Secretary during evidence before the Committee, 'all possible legal methods seemed to have been used' in this case to drag out the proceedings. In fact, the representative of the Ministry of Defence has even gone to the extent of conceding that in addition to the contractor's own motivation for prolonging the proceedings 'there may be other people who may have had their own reasons for prolonging it'. The Arbitration Act had been framed by Parliament with the intention of ensuring that disputes arising out of contracts are resolved expeditiously without having to go through other more time-consuming processes of law. Since the purpose for which the Act had been conceived has apparently been largely defeated in this case where the proceedings have been prolonged for more than 12 years, the Committee would urge Government to learn from the rather unsavoury experience of this case as well as of other which have come to the notice of the Committee and examine urgently whether amendments to the Act are necessary to obviate scope for such abuses.

[(S. No. 16, Para 5.16) of Appendix V to the 210th Report (5th Lok Sabha)].

Action taken

It appears to this Ministry that there are no apparent lacunae in the Arbitration Act, 1940. The built-in safeguards for extension of time to make awards are considered sufficient since the ultimate control is vested in the Court. However, in deference to the recommendations of the Committee, the question of referring the Arbitration Act, 1940, to the Law Commission for a review is under the active consideration of this Ministry.

A further note containing the outcome of review and examination of these issues will be submitted to the P.A.C.

[Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs),
D. O. No. G 25015(2)/76-B & A, dated 31st August, 1977].

Recommendation

Incidentally, the Committee also find that under the Arbitration Act, the Arbitrator is not bound to give any reasons for the award. The result is that often it becomes difficult to challenge such non-speaking awards on any particular ground. The Committee are of the view that it should be made obligatory on arbitrators to give detailed reasons for their awards so that they may, if necessary, stand the test of objective judicial scrutiny. The Committee desire that this aspect should be examined and the necessary provisions brought soon on the Statute Book.

[(S. No. 17, Para 5.17) of Appendix V to the 210th Report (5th Lok Sabha)].

Action taken

The object of the Arbitration Act is to ensure speedy finalisation of disputes by avoiding never-ending litigation in courts. If the Arbitrator gives reasons for the award, the aggrieved party is given a handle to agitate the matter in courts. A non-speaking award will be binding on the parties as it will be extremely difficult to challenge the same in courts, having regard to the provisions of Section 30 of the Arbitration Act. Under Section 30, the only ground for setting aside an award are that the Arbitrator mis-conducted himself or the proceedings or that there is an error apparent on the face of the award. In deference to the recommendations of the Committee, this Ministry is actively considering the suggestion to refer this aspect of the matter to the Law Commission for examination.

A further note containing the outcome of review and examination of these issues will be submitted to the PAC.

[Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs), D. O. No. G 25015 (2)76—B & A, dated 31st August, 1977].

Recommendation

It is strange that in selecting Government Counsel, the Law Ministry should have ignored its own standing counsel who, the Committees presume, are appointed on the basis of certain well-defined criteria. In this connection, the Committee have been informed that while the Law Ministry does not normally engage counsel from outside the panel, the wishes of the administrative Ministry concerned are taken into account in appointing counsel. The Committee are of the view that, as far as possible, arbitration proceedings like the one under examination should be conducted with arbitrators who are persons of proven integrity, judicially inclined, fair and competent enough but not too expensive and with counsel who should be drawn from those echelons of the legal profession which are experienced and well versed in these matters but not unconscionably expensive. The Law Ministry, in particular should be able to draw valuable lessons from the experience of this case and play a more positive role in the conduct of Governments cases before arbitrators and other judicial bodies. Government should also

seriously consider the possibility of regulating the fees of arbitrators and counsel on a fixed lump-sum basis, depending upon the complexities of each case, instead of regulating such fees with reference to the number of hearings.

[(S. No. 22, Para 5.22) of Appendix V to the 210th Report (5th Lok Sabha)]

Action taken

As pointed out above in reply to para 5.12, this Ministry have issued an Office Memorandum dated 29th May, 1976 prescribing quarterly returns in respect of pending arbitration cases to be submitted to this Ministry by the Ministries/Departments of the Government of India. It would enable this Ministry to know the duration of arbitration cases and to exercise an effective control over the conduct of these cases. The question of regulating the fees of Arbitrators and Counsel on a fixed lump sum basis, depending upon the complexities of each case, is under active consideration of this Ministry.

A further note will be submitted to the PAC in due course when the question of regulating the fees of arbitrators and counsel on a fixed lump-sum basis, depending upon the complexities of each case, has been fully considered and finalised.

[Ministry of Law, Justice and Company Affairs (Deptt. of Legal Affairs),
D. O. No. G 250/15(2)/76—B & A, dated 31st August, 1977].

Recommendation

In this particular case, though the Ministries concerned felt from time to time that, *prima facie*, there was something wrong with the conduct of the arbitration proceedings they appear to have somewhat helplessly reconciled themselves to the delay. A number of shortcomings on the part of Government have also been pointed out by the Arbitrator in his award. All this indicates that the conduct of the entire proceedings was far from satisfactory. Now that the arbitration proceedings have at least come to a close, a detailed probe must be undertaken not only into the causes of the peculiarly prolonged arbitration proceedings but also of the delay in the departmental execution of the work. Responsibility of the delinquent officials should also be fixed and remedial measures adopted.

[(Sl. No. 24, para 5.24) of Appendix V to the 210th Report of the
Public Accounts Committee (1975-76) (5th Lok Sabha).]

Action taken

The delay in the arbitration proceedings has already been explained in detail *vide* para 2.27 *et seq* of the Report. Ministry of Law is already seized of the matter and has taken certain remedial measures. A copy of the instructions issued *vide* Min. of Law O.M. dated 29-5-76 has been appended to the action taken note 5.12 furnished by Min. of Law to the PAC. With regard to delay in the Departmental execution of the work,

Government propose to appoint an officer of the rank of Joint Secretary, assisted by an Engineer, to examine the causes for the delay, suggest remedial measures and apportion blame wherever any person is, found to be at fault. A further note indicating the result of the probe by Government in this regard will be communicated to the PAC.

DADS has seen.

[Min. of Def. u.o. No. 45(1)/76/5-24/D(N-IV) dated 30-9-76.]

NEW DELHI;

December 20, 1977

Agrahayana 29, 1899 (s)

C. M. STEPHEN

*Chairman,
Public Accounts Committee.*

APPENDIX

Statement of Conclusions/Recommendations

Sl. No.	Para No. of the Report	Ministry Concerned	Conclusion/Recommendation
1	2	3	4
1.	1.4	Ministry of Defence	The Committee hope that the final replies in regard to those recommendations to which only interim replies have so far been furnished, will be submitted to them expeditiously after getting them vetted by Audit.
2.	1.8	Do.	The Committee find that the major contract <i>i.e.</i> Contract No. 1 of a project for the expansion of Naval Dockyard at Bombay, conceived as far back as in 1949, could be awarded only in September 1954 and even that was finally abandoned by the Contractor in September 1956 after completing only 15 per cent of the work. Because of this delay in initial execution of the project the actual expenditure on the development of the dockyard during the First Five Year Plan was Rs. 45 lakhs against the estimated expenditure of Rs. 330 lakhs. Therefore, the reply of the Ministry of Defence that the execution of the Naval Dockyard Expansion Scheme could not be synchronised with the time projections made by the Consultants in their original project Report because the Navy received lower priority in the allocation of the funds particularly between 1962 and 1965, does not sound convincing. The Committee feel that with proper advance planning and elimination of avoidable delays, the progress on this national project of strategic importance could have been accelerated. As the delay in the completion of the project not only leads to cost-escalation but also deprives the Navy of an important facility, the Committee

desire that firm targets, both physical and financial, should be laid down for the completion of the project and these should be strictly adhered to. The Committee would like to be informed of the latest position in regard to the work still to be completed and the targets fixed for its completion.

3. I. 11 Do.

The Committee regret to observe that though the objections of Bombay Port Trust, Tatas and some prominent citizens of Bombay were overruled at the level of the Cabinet in 1952, the negotiations with the Bombay Port Trust for transfer of land, which were resumed soon thereafter, were prolonged till August, 1954. According to Ministry's own admission the matter was taken up with the Bombay Port Trust and Bombay Government as early as 1950. The subsequent delay of 22 months in arriving at a negotiated settlement with the Bombay Port Trust was, therefore symptomatic of the leisurely manner in which the project was subsequently implemented.

4. I. 14 Do.

It is regrettable that despite supervision by a high ranking officer of the rank of a Brigadier from the Corps of Engineers from 1-4-53, the progress in execution of the project had been unsatisfactory, resulting in a continual addition to the cost of the project. According to Government's own admission only after the Contract No. 1 had failed and they had taken the decision to execute the work departmentally it was found necessary to appoint a more senior officer with wide experience. The Committee hope that lessons would be drawn from the experience of this project for other projects in future.

5. I. 17 Do.

The Committee are surprised at the casual manner in which the recommendation of the Committee has been replied to by the Ministry. They would like Government to investigate whether the destruction of documents during the pendency of arbitration proceedings was due to collusion of the officials concerned with the defaulting contractors or gross negligence on their part and on the basis of the findings to take action against the delinquent officials.

1	2	3	4
6.	1.20	Ministry of Defence <hr/> Ministry of Law, Justice and Company Affairs.	<p>The Committee are not convinced with the replies furnished by the Government to the recommendations contained in paragraphs 5.18 and 5.19 of the original Report. As they have already pointed out in their original recommendation, the ceiling of Rs. 6000/- per case as arbitrators fee was gradually increased in this case to bring it to a total of as much as Rs. 3.65 lakhs. Thus, for the period of 12 years for which the case remained under arbitration, the arbitrator's fee averaged over Rs. 2500 per month. The Committee cannot but deplore the conduct of the Ministry of Law in perpetuating the arrangement for as long as 12 years without exploring alternatives and of the Ministry of Defence in acquiescing to the continuation of the arrangement.</p>
7.	1.23	Ministry of Defence	<p>The Committee consider that a period of 3½ years (October 1966 to April 1970) taken by Government in merely "exploring the possibility of departmental execution of works 'B' was unconsciously long. The adverse effects of this delay have already been admitted by Government in reply to recommendation contained in paragraph 5.29 of the original report. The Committee would once again enjoin upon the Ministry that leisurely ways of working of administrative machinery should give way to streamlined systems and procedures under which decision making may be prompt and timely.</p>

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