

MADRAS PORT TRUST **108**

MINISTRY OF SURFACE TRANSPORT

COMMISSIONER  
MADRAS PORT TRUST  
CHENNAI

ANNEXURE

GENERAL INFORMATION

ANNEXURE

# HUNDRED AND EIGHTH REPORT

## PUBLIC ACCOUNTS COMMITTEE (1995-96)

(TENTH LOK SABHA)

MADRAS PORT TRUST

MINISTRY OF SURFACE TRANSPORT

[Action Taken on Sixth Report of Public Accounts Committee  
(Tenth Lok Sabha)]



*Presented to Lok Sabha on 24.8.1995  
Laid in Rajya Sabha on 24.8.1995*

LOK SABHA SECRETARIAT  
NEW DELHI

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**CORRIGENDA TO THE HUNDRED AND EIGHTH REPORT OF THE PUBLIC  
ACCOUNTS COMMITTEE (TENTH LOK SABHA) ON MADRAS PORT TRUST**

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\*Not appended to the cyclostyled copy of the Report.

COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE  
(1995-96)

Shri Ram Naik — *Chairman*

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3. Kumari Mamata Banerjee
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2. Shri G.C. Malhotra — *Joint Secretary*
3. Smt. P.K. Sandhu — *Director*
4. Shri P. Sreedharan — *Under Secretary*

## INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this 108th Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their Sixth Report (10th Lok Sabha) on 'Madras Port Trust.'

2. In their earlier Report the Committee had found that the award of work to firm 'B' for the construction of an outer protection arm for Bharathi Dock in Madras Port was unjustified and guided by considerations other than the interest of Government. In this Report, the Committee have noted that, the extra payment/benefit to the contractor, in the estimation of the inquiry committee which looked into the case exceeded Rs. 4.52 crores as against the figure of more than Rs. 2.00 crores reported by this Committee in their earlier Report. Taking note of the conclusion of the inquiry committee that the main features of this contract namely, the price, the specification and completion period had undergone drastic changes only to suit the requirements of the contractor and that it had resulted in an avoidable expenditure of about Rs. 6 crores the Committee have expressed their deep concern and disapproval over this scandalous states of affairs.

3. The Committee have been dismayed that despite the grave nature of the lapses of the departmental officers now clearly pinpointed by the inquiry Committee, the Ministry of Surface Transport even after the lapse of a period of over 33 months since the receipt the report of the inquiry Committee are yet to take action against even a single officer found responsible for the lapses. In the opinion of the Committee, this makes a mockery of the principle of accountability. Deprecating the inaction on the part of the Ministry in this regard, the Committee have recommended that the report of the inquiry committee should be re-examined in all its ramifications and firm action taken against the officers-serving/retired found responsible for the various lapses, in consultation with other Ministries/Departments concerned, if necessary, at the earliest, preferably within a period of three months.

4. The Committee have strongly deplored the inordinate delay in this case in the submission of action taken notes on the part of the Ministry of Surface Transport. Pointing out that, the delay in this case was avoidable and unwarranted, they have expressed their view that such inexcusable delays in responding to the recommendations of the Committee negate the very principle of enforcement of accountability and is a matter of deep concern to the Committee. Since the delay in this case in furnishing action

(vi)

taken notes was within the knowledge of the highest authority in the Ministry, the Committee have desired that their displeasure in this regard should be specifically brought to the notice of the right quarters.

5. The Report was considered and adopted by the Public Accounts Committee at their Sitting held on 22 August, 1995. Minutes of the Sitting form Part II of the Report.

6. For facility of reference and convenience, the recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in the Appendix to the Report.

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

NEW DELHI;  
23 August, 1995

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1 Bhadra, 1917 (Saka)

RAM NAIK,  
*Chairman,*  
*Public Accounts Committee.*



## CHAPTER I

### REPORT

1.1 This Report of the Committee deals with the action taken by Government on the recommendations and observations contained in their Sixth Report (10th Lok Sabha) relating to Madras Port Trust based on paragraphs 21—23 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1988 (No. 9 of 1989) Union Government (Other Autonomous Bodies).

1.2 The Sixth Report which was presented to Lok Sabha on 20 December, 1991 contained 14 recommendations/observations. Action Taken Notes have been received in respect of all the recommendations/observations and these have been broadly categorised as follows:

- (i) Recommendations/Observations which have been accepted by Government:  
Sl. Nos. 1 to 4, 6 to 8, 12 and 13
- (ii) Recommendations/Observations which the Committee do not desire to pursue in the light of the replies received from Government:  
Sl. Nos. 5, 9, 10 and 14
- (iii) Recommendations/Observations replies to which have not been accepted by the Committee and which require reiteration:  
Sl. No. 11
- (iv) Recommendations/Observations in respect of which Government have furnished interim replies:

—Nil—

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

#### *Construction of Outer Protection Arm to Bharathi Dock*

1.4 The outer harbour of Madras Port Trust, (MPT) named Bharathi Dock, comprises an oil berth, a full mechanised iron ore berth and a container berth. As the draft of 46 feet available in this dock was getting lowered to 38 feet during north-east monsoon (October—January) causing inconvenience to vessels, Government sanctioned in September, 1976 an estimate for Rs. 774 lakhs for construction of an Outer Protection Arm for a length of 1005 metres from the existing arm of the main harbour.

1.5 Tenders were invited in January, 1977 for this work for both departmental design and for contractor's own alternative design. Seven firms tendered of which four tendered for alternative designs also. The

lowest offer was from firm 'A' for its alternative design for Rs. 6.46 crores and next lowest was from firm 'B'. A High Level Committee appointed to go into the tenders, decided in May, 1978 to award the contract to firm 'B' on the basis of revised offers of Rs. 6.82 crores and Rs. 6.48 crores obtained from firm 'A' and 'B' respectively. This was accepted by Government in October, 1978. A contract was entered into with firm 'B' in December, 1978 stipulating August, 1981 as the date for completion of work.

1.6 After the agreement was executed and the work was started, large-scale concessions involving more than Rs. 200 lakh were granted to the contractor, which were neither originally contemplated at the time of calling of tenders, nor provided for in the original agreement. There was an increase in the project cost from Rs. 774 lakhs to Rs. 1103 lakhs. The work which was expected to be completed by August, 1981 was actually completed in March, 1986.

1.7 In their Sixth Report, the Committee had taken a serious view of the manner in which the tenders for the above mentioned work were floated, evaluated and the work awarded to firm 'B'. The Committee had deprecated that in spite of past experience and the adverse comments of the Public Accounts Committee contained in their 208th Report (1975-76) and 39th Report (1977-78), this work was awarded to the same firm and large concessions amounting to more than Rs. 200 lakhs extended to it in the same manner as in the earlier contract. In their 208th Report (Fifth Lok Sabha), the Committee in respect of the work awarded to the same contractor in Tuticorin Port had observed:

"It appears to be another typical case when a private contractor deliberately quotes, to begin with, a lower rate in order to gain contract and after making some progress slackens the pace of work in order to extract lucrative concessions from Government. The Committee feel that if the authorities are vigilant particularly in the matter of ascertaining the experience, performance and standing of competing contractors they would not find themselves in a 'jam' as the confessedly did in the present case."

1.8 Taking note of the inordinate delay of 55 months in completion of the work the Committee had deprecated that instead of taking action against the contractor for failure to adhere to the original time schedule and to cover liquidated damages etc. for the delay in construction, the contractor was allowed several concessions and reliefs which were not provided in the original agreement but were extended through a Supplemental Agreement executed initially in 1981 and later, in 1985 on the recommendations of the High Level Technical Committee constituted by MPT in November, 1983. The concessions allowed to the contractor included, (i) payment for cost escalation in prices (Rs. 166.12 lakhs), (ii) reduction in hire charges for crane resulting in refund of Rs. 11.79 lakhs

(iii) extra payment for handling of stones stacked in the harbour (Rs. 22.59 lakhs) etc.

1.9 Commenting on the irregularities the Committee in paragraph 1.92 of their Sixth Report (10th Lok Sabha) had recommended:—

“The above mentioned extra contractual reliefs and concessions allowed to the contractor amounting to over Rs. 200 lakhs, which were unusual and lacked justification clearly indicate that undue favours were shown to the contractor with scant regard to financial interest of Government. The gravity of the lapses mentioned in this Report indicate either collusion or gross negligence on the part of the officials concerned. The Committee recommend that these lapses should be thoroughly investigated and action taken against all those who are found guilty of failure to safeguard the financial interests of the Government during the various stages of the execution of this project. The Committee be apprised of the outcome within six months of the presentation of the Report.”

1.10 The final action taken note on the above mentioned recommendation duly vetted by Audit was furnished by the Ministry of Surface Transport on 28 July, 1995 as against the prescribed date of 19 June, 1992. The Ministry of Surface Transport had as far back as in December, 1992 stated that the report of the Committee which looked into the irregularities/lapses pointed out by the Public Accounts Committee had been received and was under the consideration of the Government. Since then the Ministry had been seeking extensions from time to time for furnishing the action taken note on the same plea. Five extensions had been sought since February, 1994 after getting the approval at Minister's level.

1.11 In their final vetted action taken note on the recommendation contained in para 1.92 of the Report, the Ministry stated:—

“On the basis of the examination of the report of the Committee appointed by this Ministry, it was revealed that the selection of the unreliable contractor in disregard of adverse criticism of the PAC on earlier occasion, led to a situation whereby the Government and the Madras Port was forced to continue with the contractor, giving him large amount of extra contractual concession. Three officers were found *prima-facie* responsible in this regard. One of these Officers died a few years back. The others retired from the service long back. However, it was considered with reference to the extant Rules, whether any departmental/judicial action could be taken against these retired officers at this point of time. It is seen that it is not permissible to institute such proceedings at this point of time.

In order to avoid recurrence of such incidents, a set of guidelines is contemplated which will be circulated to all the organisations under this Ministry for strict compliance”.

1.12 In reply to a clarification sought, the Ministry of Surface Transport in their communication dated 20 July, 1995 stated that the report was submitted to Government by the Committee set up for the purpose on 30 October, 1992. To a further query about the date when one of the officers concerned died and the two others had retired, the Ministry replied as follows:—

“Available records show that one of the officers died on 9.9.1988 and two others retired on 30.9.1989 and 31.12.1986 respectively.”

1.13 At the instance of the Committee the Ministry of Surface Transport furnished a copy of the report of the Committee appointed by them in pursuance of the recommendations of the Public Accounts Committee contained in paragraph 1.92 of their Sixth Report (10th Lok Sabha).

1.14 The inquiry committee in its report had found several serious lapses in the preparation of desired documents and tendering, functioning of Tender Committee, first Supplemental Agreement (1981), functioning of High Level Technical Committee, second Supplemental Agreement (1985), execution and monitoring of the contract etc., and had identified the officers responsible for the various lapses. Further, while dealing with the issue of fixing up of responsibility the inquiry committee in its report *inter-alia* stated:—

“During our discussion with the MPT officials we have gathered the impression that it has been the feeling in the Madras Port of this contractor being thrust on it so much so that it was preferable to go without the breakwater than to have anything to do with this contractor. We are of course, of the opinion that whatever might be the basis of this feeling there was no reason during the day to day execution of work not to deal with this contractor more firmly by the port authority with fairly large special establishment for this work. In fact, in connection with the PIB deliberation was noticed comments to the effect that project management was deficient. (Para 9.1)

We are of the view that it is not the case of failure of the decision making machinery...instead, there has been failure on the part of the functionaries, participating in the decision making process in regard to their individual judgement or lack of it. There have been confusion, lack of objectivity, determination and leadership in the higher echelon of the officialdom during this long period of 6/7 years. In this kind of regime it is not wonder that the contractor will rule the roost. The project was jinxed from the very beginning.” (Para 9.3)

1.15 Pointing out several lapses on the part of the Tender Committee the report held that the Tender Committee collectively and its members were individually responsible (Para 9.8).

1.16 Regarding the High Level Committee the enquiry committee stated that in all the four stages *i.e.* (i) pre-formation of High Level Committee (ii) High Level Committee and its report (iii) Examination of the report in the Ministry and (iv) Post-selection period in regard to safeguards, there were lapses of significant nature (Para 9.16). The enquiry committee held the members of High Level Committee individually and collectively responsible (Para 9.10). They also held the Development Adviser, Joint Secretary (Ports) and Financial Adviser responsible in the Ministry for the lapses (Para 9.14).

1.17 In spite of the delay on the part of the contractor, huge payment had been made after signing first Supplemental Agreement in 1981 for which the enquiry committee in para 9.17 of its report held the concerned Chief Engineer, Financial Adviser and Chief Accounts Officer, and the Chairman of the Port Trust responsible for the lapses while in the Ministry the Committee held the Development Adviser, Joint Secretary (Ports) and the Financial Adviser responsible for the same. These officials were also found responsible for several other lapses by the enquiry committee. (Para 9.17)

1.18 The enquiry committee also found the second Supplemental Agreement (1985) replete with numerous lapses some of them having huge financial implications. In this connection, the enquiry committee in paragraph 9.20 of its report has *inter-alia* observed:—

“We would only like to point out that the single most serious bungling which has occurred is in allowing the contractor to sell surplus stones 1.66 lakhs tonne worth more than Rs. 2.50 crores. Even though it was as a measure of giving financial relief to the contractor nobody cared to assess what would be the financial implication of this concession. The MPT give a “blank cheque” to the contractor. During our discussion with the officials of the MPT we were amazed to see that nobody knew about the exact financial gain arising out of this concession to the contractor. Chairman, MPT at that time wrote atleast three letters to the Government asking for permission to allow contractor to sell surplus stone even before the recommendations of the High Level Committee were accepted by the Government. This concession was treated as of no significance by merely stating that it had no financial implication to the MPT. It is totally misleading and is not understood how the asset of MPT valued at the market price of Rs. 2.50 crores could be handed-over to the contractor and would still be considered as having no financial implication. It is difficult for us to accept that the actual amount of financial benefit hidden behind this concession was not known to anyone during the contract period and thereafter. CE, FA&CAO and

the Chairman, MPT are primarily responsible for this lapse. They are also responsible for other lapses as pointed out in para 7 alongwith then Joint Secretary (Ports), Development Adviser and Additional Secretary (Ports) in the Ministry. In this connection we would like to mention that the role of the then Development Adviser and Joint Secretary (Ports) at that time was more untenable than others in the Ministry.”

1.19 Commenting on the extra concessions gained by the contractor, the enquiry committee in para 9.21 of its report observed:—

“....The contractor has been able to corner the following amount which alongwith other items of direct additional expenditure on the part of the port amounted to Rs. 5.98 crores. Additional expenditure of such huge magnitude was surely avoidable. With Rs. 4.52 crores additional extra — contractual payment the contractor got more than 100% over and above their basic rate of Rs. 4.32 crores. Besides this substantial amount various other concessions were made available to this contractor throughout the contract period and some of those concessions had monetary implications also:—

*Extra Payment/Benefit to the Contractor*

(1) Lima Crane Hire Charges	Rs. 11,58,472/-
(2) Re-handling of stones	Rs. 22,59,925/-
(3) Disposal of surplus stones/by-products	Rs. 2,50,62,169/-
(4) Escalation	Rs. 1,67,25,000/-
Total	<u>Rs. 4,52,05,566/-</u>

*Additional Expenditure for MPT*

(5) Replacement of Armour stones (Category 'A' Partly)	Rs. 63,94,097/-
(6) Special Establishments	Rs. 32,28,000/-
(7) Contingencies	Rs. 22,66,000/-
(8) Capitalisation of interest on borrowed fund	Rs. 27,00,000/-
Total	<u>Rs. 5,97,93,663/-</u>
	Say <u>Rs. 6 crores</u>

1.20 The enquiry committee summed up the above aspect as follows:—

“Rs. 6 crores is a very high price to pay for the lapses on the part of the officials mentioned above.”

1.21 The enquiry committee in its report had concluded:—

“As has been stated by us in the beginning our investigation is based mainly on documents furnished by the Ministry and the Madras Port Trust. To the extent possible we have also tried to get clarifications

on various issues either through discussions or through written communications which when received from Madras Port Trust from time to time during our investigation have been given due consideration.... The documents pertaining to Quarry Manager's Office and the files relating to tender analysis in the Ministry could not be produced to us, much as we wanted to consult them, as they have been unfortunately destroyed. However, we must point out that three main features of this contract namely the price, specification and the completion period have undergone drastic change only to suit the requirements of the contractor. Our effort has been to go into the various relevant aspects as thoroughly and objectively as possible."

1.22 It is also relevant to reproduce some other extracts from the report of the enquiry committee:—

- It is quite apparent that this contractor had sure access to the officers who were preparing the statements and analysing the tenders at that time in the Ministry. Based on the feedback the contractor was getting, he had been changing his stand from time to time. For this serious lapse, the officers of the Ministry who analysed this tender at the Ministry are responsible. The overall responsibility goes to the High Level Committee which have not taken cognizance of the situation.
- There were all round lapses in administration, financial, technical and engineering and even legal aspects resulting in total failure of leadership and authority of MPT and the Ministry.

1.23 The enquiry committee in its report has also dealt with the remedial/corrective measures necessary to obviate recurrence of such lapses in future, (Paras 10.1 to 10.18)

1.24 The portions of the report of the enquiry committee discussed at length above would seem to indicate that its findings have not been properly reflected and acted upon by Government as per the contents of the relevant action taken notes furnished by the Ministry of Surface Transport to the Committee which has been reproduced in Paragraph 1.11 above.

1.25 In this connection, it is relevant to reproduce the following recommendations of the Public Accounts Committee contained in Paragraphs 1.15 and 1.16 of their 20th Report (7th Lok Sabha — 1980-81):—

1.15 "The Committee also recommend that whenever an Enquiry Committee is appointed by Government in pursuance of any recommendations of the Public Accounts Committee a copy of the report of such Enquiry Committee should invariably be furnished to the Committee immediately on its receipt without waiting for any reference from the Lok Sabha Secretariat. The Committee also

recommend that while furnishing the action taken notes, the findings of the Enquiry Committee should be correctly reflected therein.”

1.16 “The Committee desire that the Ministry of Finance who have constituted a Monitoring Cell to monitor the implementation of recommendations of the Public Accounts Committee should issue general instructions to all the Departments to ensure the fulfilment of above objective.”

1.26 The recommendations of the Committee quoted above were accepted by Government of India and the Ministry of Finance (Department of Expenditure) had accordingly issued instructions on 31 August, 1981 *vide* file No. 1(20)/MC/81 to all the Ministries/Departments of Government of India for future guidance and compliance.

1.27 The facts stated in the foregoing paragraphs clearly reinforce the finding of the Public Accounts Committee made in their Sixth Report (10th Lok Sabha) that the award of work to firm ‘B’ for the construction of an outer protection arm for Bharathi Dock in Madras Port was unjustified and guided by considerations other than the interest of Government. Significantly, the extra payment/benefit to the contractor, in the estimation of the inquiry committee which looked into the case exceeded Rs. 4.52 crores as against the figure of more than Rs. 200 lakhs reported by this Committee in their earlier Report. Pertinently, the conclusion of inquiry committee that the three main features of this contract namely, the price, the specification and the completion period had undergone drastic changes only to suit the requirements of the contractor clearly indicates the extent of collusion of the departmental officers with the contractor in the case resulting in an avoidable expenditure of about Rs. 6 crores as now estimated. The Committee cannot but express their deep concern and disapproval over this scandalous state of affairs.

1.28 What has greatly dismayed the Committee is that despite the grave nature of the lapses of the departmental officers now clearly pinpointed by the inquiry committee, the Government’s attitude towards the matter has been totally casual and deplorably callous. Far from acting with promptitude and sternness, the Ministry of Surface Transport even after the lapse of a period of over 33 months since the receipt of the report of the inquiry committee are yet to take action against even a single officer found responsible for the lapses. Furthermore, after wasting a precious period of about three years in what was described as “examining” of the report, the Ministry have now maintained that three officers were “prima-facie” found responsible, one of whom died and the two others are stated to have retired from the service long back. According to the Ministry it is not permissible to institute departmental/judicial proceedings against them at this point of time. In the face of several officers having been identified by the inquiry committee for the various lapses as briefly dealt with above, the Committee



consider the position explained by the Ministry in the action taken note as unconvincing and hence totally unacceptable. The Committee, in fact, are amazed at the reluctance on the part of the Ministry in effectively dealing with the officials clearly indicted by the inquiry committee. In their opinion this makes a mockery of the principle of accountability. The Committee strongly deprecate the inaction on the part of the Ministry on the findings of the inquiry and desire that the report of the inquiry committee should be re-examined in all its ramifications and firm action taken against the officers-serving/retired found responsible for the various lapses, in consultation with other Ministries/Departments concerned, if necessary, at the earliest, preferably within a period of three months. The Committee would like to be informed of the precise action taken in the matter.

1.29 The Committee are equally perturbed to note that although the inquiry committee had recommended corrective/remedial measures to obviate recurrence of such lapses, the Ministry of Surface Transport, even after the expiry of a period of about three years since the Report was received are yet to initiate concrete steps in pursuance thereof. In their action taken reply, the Ministry have merely stated that a set of guidelines is contemplated which will be circulated to all the organisations in the Ministry for strict compliance. The Committee consider this delay as inexcusable and are constrained to view this as yet another instance of the lack of seriousness on the part of the Ministry. They desire that the corrective/remedial action should be completed within a period of three months. They would like to be informed of the action taken in the matter.

1.30 Another disquieting aspect observed by the Committee related to the manner in which the findings of the inquiry committee was reported to them. Although the governmental instructions warranted suo moto submission of report of the inquiry committees constituted in pursuance of the recommendations of the Public Accounts Committee, in this case the report was submitted to them only after being asked for specifically. Unfortunately, though the governmental instructions to the Ministries/Departments had clearly emphasised the need for proper reporting of the findings of such enquiries to the Public Accounts Committee, in this case it was also not followed properly. Curiously enough, the action taken note did not truly reflect, the findings of the inquiry committee. Even the number of officials indicted as reported in the action taken note looked clearly distorted. The Committee take a serious view of this and desire that responsibility should be fixed for the lapses. The Ministry of Surface Transport should also ensure that such lapses do not recur.

1.31 The Committee further desire that the Ministry of Finance (Department of Expenditure) should reiterate their instructions on this score issued to all Ministries/Departments for strict compliance.

*Delay in furnishing of action taken notes*

1.32 Action taken notes on the observations/recommendations of the Committee contained in their Sixth Report (10th Lok Sabha) were required to be furnished by the Ministry of Surface Transport by 19 June, 1992. Out of the 14 recommendations/observations vetted action taken notes in respect of three recommendations (Sl. Nos. 12, 13 & 14) were received on 28 December, 1994, *i.e.* after a lapse of a period of 2½ years after the prescribed date; notes in respect of 10 recommendations/observations (Sl. Nos. 1 to 10) were furnished on 27 June, 1995, *i.e.* after a lapse of three years after the due date and the final action taken note in respect of one recommendation (Sl. No. 11) was furnished on 18 July, 1995.

1.33 The reasons for the delay in submission of action taken notes as explained by the Ministry in their communications seeking extension of time have already been dealt with earlier.

1.34 The Committee strongly deplore the inordinate delay in the submission of action taken notes on the part of the Ministry of Surface Transport. As observed by them earlier, the delay in this case was avoidable and unwarranted. Such inexcusable delays in responding to the recommendations of the Committee negate the very principle of enforcement of accountability and is a matter of deep concern to the Committee. Since the delay in this case in furnishing action taken notes was within the knowledge of the highest authority in the Ministry, the Committee desire that their displeasure in this regard should be specifically brought to the notice of the right quarters. The Ministry of Surface Transport should also take appropriate corrective action and ensure that such notes are submitted in future to the Committee within the prescribed time itself.

## CHAPTER II

### RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY GOVERNMENT

#### Recommendation/Observation

With a view to providing tranquility condition in the approach channel and turning circle area in Madras harbour so as to permit handling of deep-draughted vessels even during the north-east monsoon months when the drought had to be reduced due to rough and choppy sea conditions, the Government sanctioned in September, 1976 an estimate for Rs. 7.74 crores for construction of an outer protection arm for Bharathi Dock, the outer harbour of Madras Port Trust (MPT).

[Sl. No. 1, Appendix III, Para No. 1.21 of 6th Report of Public Accounts Committee (Tenth Lok Sabha)]

#### Action taken

No action is to be taken, as this is a statement of facts.

(M/o. Surface Transport O.M. No. PD/25011/1/92-MPT dt. 27-6-95)

#### Recommendation/Observation

The Committee find that out of 7 tenders received, for the work, the evaluated offer of firm 'A' was found to be the lowest and his name was recommended in June 1977, by MPT to the Ministry for according sanction for award of the contract. However, instead of accepting the recommendation of MPT, the Government on receipt of some representations, appointed a High Level Committee to go into the question of award of the contract. The Committee negotiated with two main competitors namely Firm 'A' and Firm 'B' obtained revised quotations from them and decided in May 1978 (nearly one year after the proposal was received from the MPT) towards the work to Firm 'B' whose revised offer of Rs. 6.48 crores was found to be the lowest. The reasons advanced for awarding the contract to the firm 'B' were that tender documents did not include a definite formula for payments to the contractors on account of cost escalation during the execution of the project. Consequently, the tenderers quoted different escalation rates in their respective tenders. The Tender Committee constituted by MPT evaluated these tenders by assuming an escalation rate of 18%. On the other hand, when the case for award of contract was under examination in the Ministry of Shipping and Transport,

the escalation rate on the basis of the trend of price index then made available worked out to only 6%. This made the comparative evaluation of the tenders by the Tender Committee and the recommendation for award of work to Firm 'A' being the lowest, a disputable issue since decline in escalation rate beyond a certain point made the offer of Firm 'B' lower than that of Firm 'A'. The High Level Committee, therefore, negotiated with the two main competitors to withdraw their respective escalation clauses ostensibly on the ground that these clauses quoted by the two firms had big potential for future disputes during the execution of the project and then awarded the work to Firm 'B' on the basis of revised offer.

[Sl. No. 2, Appendix III, Para No. 1.22 of 6th Report of Public Accounts Committee (Tenth Lok Sabha)]

#### **Action taken**

No action is to be taken, as this is a statement of facts.

(M/o. Surface Transport O.M. No. PD/25011/1/92-MPT dt. 27-6-95)

#### **Recommendation/Observation**

The Committee take a serious view of the manner in which the tenders for the work were floated, evaluated and the work was awarded to the firm 'B'. It is regrettable that the tender documents did not contain a rational formula for calculation of cost escalation during the period of contract although, as admitted by Secretary of the Ministry during evidence, a rational escalation clause was now-a-days being prescribed in all major tenders. The Committee also feel that instead of asking the tenderers to withdraw their escalation clause, they should have been asked to accept rational escalation formula. Such course of action would have not only rectified the initial error of not stipulating an escalation formula in the tender documents but would have also saved the Government from making heavy escalation payments to the contractors to the tune of Rs. 166.12 lakhs during the course of execution of the project as brought out subsequently in this Report.

[Sl. No. 3, Appendix III, Para No. 1.23 of the 6th Report of Public Accounts Committee (Tenth Lok Sabha)]

#### **Action Taken**

In the submission made by the then Secretary (SFT) during his evidence before the Public Accounts Committee the following was mentioned vide para 1.50 of the Report of the PAC:—

“As audit has correctly said, we tried to delete the escalation clause. At the time of issuing the notice inviting tenders, there was no provision for escalation. But now, when we invite tenders, we provide for an escalation formula. That is, if the labour cost, during the period, goes up, this provision will be for neutralisation, if

material cost goes up, this provision will be for neutralisation. So, during the period of contract, if the cost of the inputs goes up, he is allowed to ask for escalation. In this case, at that time, there was no such principle followed by the Government. Absolutely, there was no mention made about the escalation. One person quoted 100% neutralisation and another quoted 1% neutralisation. It has become a very crucial issue..... But the basic problem was that there was no provision for escalation”.

Rational escalation clauses now-a-days are, however, being prescribed in all the major tenders.

(M/o Surface Transport O.M. No. PD/25011/1/92-MPT dt. 27-6-95)

#### **Recommendation/Observation**

The Committee also note that the work was awarded to the Firm 'B' in spite of bad experience of the execution of the work by it in the past which was also commented upon by the PAC in their Two Hundred and Eighth Report (1975-76) and Thirty-ninth Report (1977-78). In respect of the work awarded to this contractor in Tuticorin Port, the Committee had observed that “It appears to be another typical case when a private contractor deliberately quotes, to begin with, a lower rate in order to gain contract and after making some progress slackens the pace of the work in order to extract lucrative concessions from Government. The Committee feel that if the authorities are vigilant particularly in the matter of ascertaining the experience, performance and standing of competing contractors they would not find themselves in a ‘jam’ as they confessedly did in the present case.” The Committee deprecate that in spite of past experience and the adverse comments of the PAC, the work was awarded to the same firm 'B' and large concessions amounting to more than Rs. 200 lakhs extended to the contractor in the same manner as in the earlier contract as brought out later in this Report. In the circumstances, the Committee cannot help observing that the award of the work to the Firm 'B' was unjustified and, was guided by considerations other than safeguarding the financial interests of Government.

[Sl. No. 4, Appendix III, Para No. 1.24 of 6th Report of Public Accounts Committee (Tenth Lok Sabha)]

#### **Action Taken**

On the basis of evaluation of tender, initially it was proposed by the Madras Port to award the contract to M/s. ESSAR whose tender was the lowest. When this proposal of Madras Port was considered in the Ministry of Shipping and Transport due note was taken of the observations of the Public Accounts Committee on the action of one of the tenderers namely M/s. ACC in connection with a project of Tuticorin Port. As the Ministry had received several representations/complaints against the recommendations of the Port Trust authorities a decision was taken in the Ministry that

they should all be processed thoroughly and a High Level Committee consisting of 3 senior officers of Ministry of S&T should be appointed to go into the whole question. It was also directed that parties concerned should be invited to negotiate so that the work is allotted to the lowest tenderer and the possibility of distribution of work to the parties to facilitate early completion may also be considered. In order to remove the uncertainties of escalation clause which was built into the tenders submitted by the tenderers, the High Level Committee decided to obtain offers on fixed price basis. In the process, M/s. ACC who was earlier the 2nd lowest bidder, became the lowest tenderer at an evaluated bid of Rs. 6,48,30,000/- while M/s. ESSAR became 2nd lowest at an evaluated cost of Rs. 6,81,83,200/-. Therefore, it was recommended to award the contract to M/s ACC.

*Further observation of the Audit*

“The Committee desires that the authorities concerned before taking a decision in such cases should take into account the past experience gained in dealing with a particular firm their reliability etc., so that similar losses could be avoided”.

*Action taken by the Ministry of Surface Transport on the further observation made by the Audit*

The observation of the Public Accounts Committee as brought out in the further observations of the Audit has been noted for compliance.

(M/o Surface Transport O.M. No. PD/25011/1/92-MPT Dt. 27.6.95)

**Recommendation/Observation**

The Committee deprecate that instead of taking action against the contractor for failure to adhere to the original time schedule and to recover liquidated damages etc. for the inordinate delay in construction, the contractor was allowed several concessions and reliefs amounting to more than Rs. 200 lakhs. These concessions and reliefs which were not provided in the original agreement were extended through a supplemental agreement executed in 1981 and on the recommendation of High Level Technical Committee constituted by MPT in November, 1983. The concessions allowed to the contractor included (i) payment for cost escalation in price (Rs. 166.12 lakhs), (ii) reduction in hire charges for crane resulting in refund of Rs. 11.79 lakhs and (iii) extra payment of rehandling of stones stacked in the harbour (Rs. 22.59 lakhs) as detailed in the following paragraphs.

[Sl. No. 6, Appendix III, Para No. 1.87 of Public Accounts Committee  
(Tenth Lok Sabha)]

### Action Taken

It has been observed by the PAC that instead of taking action against the contractor for failure to adhere to the original time schedule and to recover liquidated damages etc. for the inordinate delay in construction, the contractor was allowed several concessions and reliefs amounting to more than Rs. 200 lakhs. The difficulty in this regard was explained by the then Secretary (SFT) in his evidence before PAC stating as under:—

“Government was faced with a very difficult choice as to what to do with a contract which was gone quarter-way or half-way through. If we retender, the ultimate cost of the entire project will be much more than what will be the cost if we give some concession to the contractor. The estimate made at that time was that it would cost about Rs. 15 crores for construction of the work if the work was to be terminated and the present contractor expelled from the site. This was done on the basis of a tender which was actually called for during the work of about 168 metres of the Outer Arm. Secondly, there would have been possible legal delay on account of this contractor going to the court, getting stay and therefore, this particular project which was considered essential would have been delayed. We really had a difficult problem. So we took a decision that we would have a bad choice either way. If we terminated the contract it was also felt that we would run into a lot of difficulties, run into much more cost. If we do not terminate the contract, we will have to come to some sort of a compromise. Government, after considering all these aspects, decided that it would be better to come to an understanding and a compromise with the contractor and give him some concession.”

It is therefore, seen that Government was in a dilemma and grant of certain extra contractual concession was decided upon considering both the options available and the circumstances prevailing at the time of execution of the Project.

As regards Committee's observation that some of the concessions were granted to the contractor on the recommendation of High Level Technical Committee, it may be stated that High Level Technical Committee (HLTC) was appointed to go into the issues raised by the contractor regarding slow progress of the work attributing the same, *inter alia*, to the failure of quarry provided by the Madras Port Trust (MPT) to produce the required quantity of stones of the specified nature. Since the HLTC came to the conclusion that there was little possibility of work being completed in future unless some relief was given to the contractor these concessions were made to the contractor.

However, in view of the observations made by PAC in this para utmost care would be taken to enforce the provisions of contracts relating to the Projects to prevent unjustified time and cost overrun on account of contractors.

(M/o Surface Transport O.M. No. PD/25011/1/92-MPT dt. 27-6-95)

#### **Recommendation / Observation**

The Committee note that during negotiations the contractor had withdrawn his escalation clause in consideration of a lump sum addition of Rs. 40 lakhs in the revised offer made by him. In spite of it, he represented in September, 1980 that due to runaway inflation it would not be possible for him to continue the work without compensation for escalation in cost. The Committee find it rather intriguing that Government instead of pressing the contractor to expedite the work, allowed him heavy extra contractual payment by way of escalation amounting to Rs. 166.12 lakhs by entering into a supplemental agreement with him on the fallacious plea that in view of the financial position of the contractor this would have resulted in further delay in the execution of work. It is pertinent to note that the heavy slippages in work continued even thereafter and the work was actually completed in March, 1986 *i.e.* after the delay of 55 months as against the original schedule. The Committee also found no justification for the payment of escalation to the contractor till completion of the project in March, 1986 in spite of a specific stipulation by the High Level Technical Committee for making such payments only upto 31 October, 1985.

[S.No. 7, Appendix III, Para No. 1.88 of the 6th Report of Public Accounts Committee (Tenth Lok Sabha)]

#### **Action Taken**

As stated by PAC the contractor had withdrawn the escalation clause during the negotiation in consideration of a lump sum of Rs. 40 lakhs in the revised offer made by him. In spite of it, he represented that due to runaway inflation it would not be possible for him to continue to work without compensation for escalation in cost. During the evidence before the Committee, the then Secretary (SFT) had brought to the notice of the Committee that what was quoted by the contractor was not sufficient in view of the fact that the increase in prices was as much as 2% per month.

As regards Committee's observation that it was intriguing the Government instead of pressing the contractor to expedite the work, allowed him heavy extra contractual payment by way of escalation amounting to Rs. 166.12 lakhs by entering into supplemental agreement with him on the fallacious plea that in view of the financial position of the contractor this would have resulted in further delay in the execution of the work, it may be stated that while the progress of the work was very poor and the contractor was slipping a show-cause notice was issued on 28.1.81 for the termination of the contract. It was also considered whether 1/3rd portion



of the work from the other end could be executed through other agency and with the approval of the Government tenders were invited for carrying out the work. Since the cost of the work for the balance portion itself was abnormally high, this was dropped. In this context 6 alternatives were considered and discussed. It was finally decided to allow the present contractor to complete the work by giving financial reliefs/concessions in the interest of the work. At that point of time this course of action was thought to be in the best interest of the project as brought by the then Secretary (SFT) during the course of evidence before the Committee which has been taken on record by PAC *vide* para 1.45 and 1.46. The Project suffered due to the inability of the contractor to give the necessary inputs.

As regards Committee's observation that there was no justification for the payment of escalation to the contractor till completion of the project in March, 1986 inspite of making such payments only upto 31.10.1985 it may be stated that the High Level Technical Committee gave its recommendation on 10.5.1984. Government's approval in this regard was received on 23.3.1985. The contractor represents that in view of inordinate delay in affording them reliefs recommended by HLTC and also in view of the sewer damage to the breakwater due to cyclone during November, 1984 the contract period had to be extended beyond 30.10.1985 till date of completion of work. The contractor's representation was carefully examined and the extension of the contract period was granted upto 31.3.1986. However, care had been taken to ensure that the total escalation payment did not exceed the ceiling of Rs. 167.25 lakhs fixed by HLTC for payment of escalation.

*Further Observation of the Audit on the Action Taken Note*

"The Committee notes that there was inordinate delay of ten months in getting the approval of Government on the recommendation of High Level Technical Committee which is quoted as reasons for extending contract period beyond 30th October, 1985. The Committee feel that such delays should be avoided at the level of decision making authorities".

*Action taken by the Ministry of Surface Transport on the further observation made by the audit*

The observation of the Public Accounts Committee as brought out in the further observations of the Audit has been noted for compliance.

(M/o Surface Transport O.M. No. PD/25011/92—MPT dt. 27-6-95)

**Recommendation/Observation**

The Committee note that as per original contract hire charges at the rate of Rs. 1.30 lakhs per month for the lima crane were to be recovered from the contractor during the period of the contract. Strongly enough these hire charges were reduced to Rs. 0.65 lakhs per month from January, 1982 as per the supplemental agreement in 1981. Again on representation from the contractor the HLTC recommended that monthly recoveries be limited to 15 per cent return on the residual capital value of the equipment from

1 November, 1982 till the completion of the work. This resulted in refund of Rs. 11,78,633 to the contractor. During evidence, the Secretary, M/o Surface Transport admitted that the basis of charging 15 per cent return on the residual value of the crane was wrong. The committee are of the considered view that this recommendation of the HLTC was of an unusual nature and lacked any justification.

[Sl. No. 8, Appendix III, Para No. 1.89 of the 6th Report of Public Accounts Committee. (Tenth Lok Sabha)]

### **Action Taken**

As explained by the Secretary (SFT) during his evidence before the Committee that, taken in isolation, the residual value as a basis of charging for the crane was wrong *vide* para 1.64 of the Report. However, it was also clarified by him that this was done mainly to give relief to the contractor and it came as part of packages of relief recommended by the High Level Technical Committee.

(M/o Surface Transport O.M. No. PD/25011/92—MPT dt. 27-6-95)

(Action Taken Note on the recommendations contained in the 6th report of the PAC—10th Lok Sabha)

### **Recommendation / Observation**

In terms of Section 52 of the Major Port Trust Act, 1963, every scale of rates and every statement of conditions framed by a Board should be submitted to Central Government for sanction and will have effect when so sanctioned and published in the official gazette. The Committee, however, find that MPT Board decided on 27 January, 1984, to reduce the gantry crane hire charges and the reduced rates were made effective from that date itself in contravention of the said Section. While MPT Board sought approval of the Central Government for the reduction in hire charges in February 1984, the Central Government rejected the proposal in April, 1985 and the rates were restored to the original level by MPT with effect from 2 April, 1985. In another case, MPT Board decided to reduce the hire charges for providing reefer plug points with effect from 1 October, 1984, despite the fact that the sanction for reduced rates was accorded by Central Government in June, 85 and the rates were notified in the official gazette only on 4 September, 1985.

(Para 2.14 of the 6th Report of Public Accounts Committee  
—10th Lok Sabha)

### **Action Taken**

The Ministry issued instructions *vide* letter No. PR-14012/1087-PG dated 5th Jan., 1988 that under no circumstances any rates fixed or revised by the Board under Sections 48 to 50 of the Major Port Trusts Act shall become effective without the prior approval of the Government under Section 52 of the Major Port Trusts Act and its publication by the Board in the Official Gazette.

2. The Ministry *vide* letter No. PR-19017/1/91-PG dated 20th March, 1992 has reiterated their instructions to all the Ports that under no circumstances Ports should enforce any revision or reduction of rates/charges without the prior approval of the Government. The Port have also been informed that the Chairman of the Port Trust will be personally responsible for ensuring compliance with these instructions.

(O.M. No. PR-19017/1/91-PG dated 23/12/94.)

### **Recommendation/Observation**

The Committee expressed their unhappiness over the manner in which MPT authorities in contravention of Section 52 of Major Port Trust Act, 1968, gave effect to their proposals for reducing the rates prescribed in the scale of rates without seeking prior sanction of the Central Government and also before publishing the same in the official gazette. Considering the Plea of the Secretary, Ministry of Surface Transport that "this was a sort of aberration committed by the MPT", the Committee feel that the cases under examination reveal a need for a very close coordination and understanding between the Ministry of Surface Transport and Port Trusts authorities so that the various provisions of the Act are not only interpreted in right prespective but also followed scrupulously. Although instructions to all Port Trusts saying that any reduction in the rates cannot be done without prior approval of the Government, are stated to have been issued by the Ministry, the Committee would like to emphasise strict compliance of the same to avoid such occurrences in the future.

(Para 2.15 of the 6th Report of P.A.C.—10th Lok Sabha)

### **Action Taken**

After obtaining the legal opinion of the Ministry of Law and Justice, the Ministry informed all the Major Ports *vide* letter No. PW/PGR-1584 dated 18th September, 1956 that the Board's powers of exemption from the payment of port charges and remission of charges provided in Section 53 of the Major Port Trusts Act, 1963 to not include powers of reduction in the prescribed charges. The Ports were advised that any reduction in the prescribed rates will amount to prescribing a separate rate under Sections 48 to 51 of the Act and prior approval of Central Government will be necessary under Section 52 of the Major Port Trusts Act, before such rates can be brought into operation.

2. These instructions have been reiterated by the Ministry *vide* letter No. PR-19017/191-PG dated 20th March, 1992. It has been enjoined on all the Port Trusts to follow the instructions issued for strict compliance. Ports have been asked to ensure that under no circumstances they should enforce any revision or reduction of rates/charges without prior approval of the Government. The Ports have also been informed that the Chairman of the Port Trust will be personally responsible for ensuring compliance with these instructions.

(Ministry of Surface Transport O.M. No. PR-19017/191-PG  
dated 23.12.94)

### CHAPTER III

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

##### Recommendation / Observation

The Committee regret to note that the progress of execution of the project was extremely slow from the very beginning. While the contract to Firm 'D' was awarded on 15th November, 1978 the work at site could commence only on 15th March, 1979. As against the total contract period of 33 months hardly 5 per cent of work was completed in November, 1979 i.e. one year after the award of contract. Although the work was originally scheduled to be completed by August, 1981, it was actually completed by March, 1986 i.e. after the delay of 55 months. The Committee find that the Deputy Development Adviser (Ministry of Shipping & Transport) after the inspection of the work in November, 1979 stated that he was not sure whether it would at all be possible for the contractor to adhere to the time schedule as the slippages that had occurred could hardly be made up; that any delay in the completion of the work would mean a heavy burden on the contractor on account of the prevailing rate of inflation which in turn would undermine the efforts of the contractor for providing more inputs; that the contractor might further retard the pace of work, concessions were given before achieving progress; and that the contractor be bound over for a realistic programme without the MPT itself getting committed to condone the delays. The Committee, however, find no evidence to suggest that these observations were duly taken note of and acted upon. This lapse become all the more serious and significant in the light of the fact that even the high level Committee while recommending award of work to the contractor had emphasised the need for strict vigilance and monitoring of progress of work. Although regular meetings are stated to have been conducted by the official with the contractor, the Committee are unhappy to observe that such meetings failed to serve any purpose.

[Sl. No. 5 Appendix III Para No. 1.86 of 6th Report of Public Accounts Committee (Tenth Lok Sabha)]

##### Action Taken

The issue relating to slow progress of work and remedial action to be taken was discussed at several meetings in the MPT Board and with officials of the Ministry. Minutes of the meetings held on 10.9.1980, 23.3.1981, 6.2.1982 (Show cause Notice), 24.7.1982, 25.5.1983, 16.7.1983, 21.9.1983 & 29.10.1983 are appended to this Note which would establish that the recommendation of the Dy. DA(Ports) were taken seriously. The

Board and the Ministry took all possible steps to find alternatives in order to get the work completed early and it was only on account of the initiatives taken by the Board and the Ministry that the work could get completed at all.

[M/o Surface Transport O.M. No PD-25011/1/92-MPT Dt. 27-6-95]

**MINUTES OF THE DISCUSSIONS HELD IN CHAIRMAN'S ROOM AT 10.30 A.M. ON 10.9.1980 TO REVIEW THE PROGRESS OF WORKS OF CONSTRUCTION OF OUTER PROTECTION ARM BY CONTRACTORS M/S. ANDHRA CIVIL CONSTRUCTION COMPANY.**

**PRESENT..... Shri H.R. Laxminarayanan,  
Development Adviser,  
Ministry of Shipping and Transport.**

**Shri V. Selvaraj, I.A.S.,  
Chairman, M.P.T.**

**Shri P.K. Kandaswamy,  
Chief Engineer, M.P.T.**

**Shri K. Thiagarajan,  
Sr. Dy. Chief Accounts Officer,  
M.P.T.**

**Later Part;**

**Shri B. Hanumantha Rao, M/s. A.C.C.  
Shri Seshagiri Rao, M/s. A.C.C.**

Initiating the discussions, the Development Adviser explained that the timely completion of the Outer Protection Arm Project is of vital importance to the development of the Madras Port Trust especially in view of the proposal to increase the export of iron ore as well as developing the Container Handling Facilities in the Port. He also opined that any delay in the timely completion of the project will attract attention at the highest level. He further opined that the longer the construction is delayed the greater will be the problem both for the Port as well as the contractors in view of the spiralling escalation in the price index. The D.A. therefore, concluded that all efforts must be made to ensure the timely completion of the Project.

The progress of Construction of the Outer Protection was generally reviewed. It was noticed that the progress very slow *i.e.* about 14.4% of the work has been completed upto run-out level as against the targeted progress of 77%. At this rate, it was apprehended that the work may not be completed even by the end of 1982.

Chairman explained that he had held review meetings and impressed upon the contractors the necessity for improving the tempo of the work to ensure its timely completion; but so far no appreciable progress has been

made. Even on the question of casting of tetrapods, the Contractor's progress is far below the target. The Development Adviser stated that the Contracts had already represented on several constraints like financial, physical etc. and at present they are doing around 700/800 tonnes per day. If these constraints are allowed to persist the progress of the work will deteriorate further and a stage may come when the work may come to a grinding halt. Chairman observed that apart from physical and financial constraints, the managerial efficiency of the Contractors has to be toned up considerably. It is, therefore, necessary that an experienced officer of the Trust, not below the rank of an Executive Engineer, is sent on deputation to the Contractors to critically monitor the physical target and to act as a feed back to the administration from time to time. D.A. said that if this would improve the efficiency of the Contractors, the Port Trust is free to take action in this regard.

The following alternative courses of action to improve the progress of the work were then considered:

1. Reducing 1/3 of the quantity as agreed to by the contractors M/s. A.C.C. and having the same carried out by other agencies; the remaining 2/3 portion of the work being done by M/s. A.C.C. by rendering suitable assistance to them by way of relaxation in the mode of recoveries etc.
2. Terminating the contract of M/s. A.C.C. and having the work carried out by other agency adopting the same all-rubble-mound design.
3. Considering the alternative of substituting major portion of the stones by core concrete blocks so that the bottleneck of quarry output is overcome.

The Chief Engineer was requested to examine the above alternatives and submit a detailed note after informally ascertaining that there are suitable and capable contractors available for doing 1/3rd portion of the work. The Development Adviser also opined that even if the above alternatives involve increase in the cost estimates, it would be advisable to take a firm decision instead of allowing the work to drag on, in the overall interest of the Port. C.P.T. observed that any further assistance to the Contractors M/s. A.C.C. can be considered only if they show reasonably good progress in the next three months as compared to the programme.

The reasons attributed by the Contractors in their letters for the slow progress was discussed. D.A. observed that one of the main constraints appears to be poor cash flow and also the Pallavaram Quarry not yielding the desired quantity of Armour stones. C.E. stated that he had inspected the Pallavaram Quarry and he is of the opinion that the Pallavaram Quarry can yield over 2,000 tonnes of stones per day. The D.A. mentioned that if the Contractors are unable to get the required quantity of stones from the Pallavaram Quarry and are prepared to bring stones from other quarry, whether payment for extra lead can be considered. To this, C.E. said that

even if extra payment for extra lead is to be considered, it must be ensured that contractors transport the maximum possible quantity of stones from the Pallavaram Quarry and only the minimum required quantity is brought from other quarries. This will have to be examined in detail. The request of the Contractors for changing the pattern of recovery of interest on advances paid and postponing the recovery of hire charges for Trust's Lima Crane was also considered. C.P.T. observed that the above requests can be examined and considered sympathetically provided the Contractors maintain the targeted outturn in the ensuing 3 months since any further concessions can only be considered on the basis of actual performance.

At this juncture, Shri B. Hanumantha Rao and Shri Seshagiri Rao, Representatives of M/s. Andhra Civil Construction Co., were called in. The D.A. observed that comparison of the past performance of the Contractors at Tuticorin has no relevance to the present contract. The D.A. observed that in case the Contractors do not show any substantial improvement in the tempo of work during the next 3 months, the Trust will be constrained to think in terms of terminating the contract with all the attendant risks. To this, Shri Hanumantha Rao assured that they are not thinking on these lines and are determined to step up the production and complete the work as scheduled provided the Port administration shows some concessions to improve their cash flow and consider the following requests:

1. Changing the manner of recovery of hire charges for Lima Crane from their running bills from the present flat rate of Rs. 1,30,000/- per month irrespective of the outturn.
2. Changing the mode of recovery of interest on the advances given as is being done by the Bombay Port Trust.
3. Payment of extra rate for extra lead if the stones are brought from more distant quarries other than Pallavaram.
4. Escalation for the various items of work in view of the steep increase in the price index.
5. Purchase of vehicles by the Port Trust for use on the work by the Contractor.

The C.P.T. and D.A. observed that all the above requests cannot normally be agreed to. As regards the request for changing the mode of recovery of interest and hire charges for the Lima Crane, payment of extra rate for extra lead if stone materials are quarried and transported from more distant quarries other than Pallavaram, these can be considered provided the Contractors show definite improvement in their performance during the next three months. The Development Adviser also observed that the recovery of interest on the advances and hire charges for the Lima Crane can be suspended for the next 3 months from the Bill for August '80 to the bill for the month of October '80 and this will provide financial



relief to the Contractors. The Contractors stated that this by itself will not help them and requested that the excess recoveries made towards interest and hire charges on Lima Crane should be refunded to them to enable them to plough back the amount. The C.P.T. and D.A. observed that recoveries already made can not be refunded. There are no guarantees as on date that the performance of the Contractors will improve. Hence, future recoveries can be suspended for 3 months to enable the contractors to step up the progress of work.

C.E. mentioned that as per the agreement Rs. 1.3 lakhs per month has to be recovered towards hire charges for the Lima Crane and if the contract period extends beyond the original agreed period of completion, there is no provision to restrict the recovery of hire charges to the maximum of Rs. 42.9 lakhs (33 × Rs. 1.3 lakhs). The contractors made a request that as on date about Rs. 23 lakhs has already been recovered whereas the progress of work is hardly 14.4% and this recovery has very much crippled their cash flow. They further stated that the total recovery may be restricted to Rs. 42.9 lakhs for 33 months and this recovery may be made on a prorata basis related to the progress of work. F.A. & C.A.O. and C.E. pointed out that the request of the contractors is not provided for in the Agreement.

The Contractors also represented that the Port Trust has stopped payment of hypothecation advance. D.A. and C.P. stated that if more plants are required for the work and if the Contractors are able to procure and hypothecate them, payment of further hypothecation advance can be considered subject to the limits in the Agreement. The contractors made a request that additional funds are required for repairing the lorries for use on the work and for this purpose, the excess recoveries made towards interest and hire charges on Lima Crane may be refunded, which was not agreed to. The Contractors thereafter represented that payment may be made against Bank Guarantee. This was not agreed to as no further mobilisation advance is due. The contractors were informed that any further payment upto the limit prescribed in the agreement can be made only on plants purchased, brought to site and hypothecated to the Trust.

The Contractors requested that as at present considerable difficulty is being experienced by them in procuring vehicle for transportation of stoned, the Port Trust may arrange to explore the possibility of procuring vehicles, treating the cost as hypothecation advance within the maximum limit prescribed in the Agreement. D.A. and C.P.T. said that this will be considered.

Thereafter, D.A. requested the Contractors to improve the progress of the work and said that the position will be reviewed at the end of 3 months. To this, the Contractors assured that they will do their best. The Contractors said that the ensuing 3 months will be monsoon period and it may not be possible for them to achieve a higher outturn. C.E. also said

that the progress during the period will not be a correct assessment. Chairman said that according to the programme of work already furnished at the time of contract the contractors have to do certain quantum of work during the monsoon period and if they keep up that quantity or an outturn very near to that, their requests will be considered D.A. said that the monsoon period may affect the dumping of stones; however, the contractors should be able to carry out quarrying, transporting and collecting the materials at the site of work. The Contractors assured that they will take all efforts to improve the performance. The Contractors left at this stage.

C.E. pointed out that watching the performance of the Contractors during the ensuing monsoon period, realistic assessment will be made considering the present extent of mobilisation of the Contractors, his past performance during similar period in 1979. Taking all the factors into consideration, C.E. mentioned that the following targets can reasonably be assumed.

October, 1980.	.. 15,000 Te.
November, 1980.	.. 10,000 Te.
December, 1980.	.. 10,000 Te.

Referring to the request of the Contractors on the question of recovery of hire charges for the Lima Cranc, the D.A. said that since this condition has been provided for in the Agreement by the Trust, the Port Trust can re-examine this and take a suitable decision. If the Port Trust consider that the sanction of the Government of India is required for modification of the terms of agreement in this regard, they may do so. He also mentioned that any consideration of such request can be only after watching the performance of the Contractors during the next 3 months.

Concluding, D.A. requested C.E. to examine all the above aspects to achieve better results.

Sd/- H. P. Laxminarayan,  
D.A.

Sd/- V. Salvaraj,  
C. P. T.

Sd/- P. K. Kandaswamy,  
C. E.

Sd/- K. Thiagarajan,  
Sp. DY. C.A.O. (E)

**NOTE ON THE ALTERNATIVE PROPOSALS DISCUSSED DURING THE BOARD MEETING HELD ON 23.3.1981 ON THE QUESTION OF EARLY COMPLETION OF THE CONSTRUCTION OF OTHER PROTECTION IN THE MADRAS PORT:**

The proposals for executing about 1/3 portion of the outer Protection Arm by end-on method by inducting a new contractor in conjunction with the existing contractors M/s. A.C.C. was discussed in detail in the Board meeting held on 23.3.81. During the discussions, the following alternative were broadly considered.

**Alternative No. 1**

**TERMINATING THE EXISTING CONTRACT WITH M/s. A.C.C. AND EXECUTING THE BALANCE WORK BY END-011 METHOD BY ANOTHER AGENCY BY INVITING FRESH TENDERS:**

By this course of action, it is estimated that the cost of the work will get increased from Rs. 774 lakhs to Rs. 1500 lakhs at current rates, amounting an increase of approximately 100%.

The risk in this alternative is that M/s. A.C.C. may resort to legal action and obtain a stay order prohibiting the Port Trust from entrusting the balance work to another agency and thereby retarding the timely completion of the work by a new contractor. Apart from that considerable legal complication may arise in realising the money due to the Port from the contractor.

**Alternative No. 2**

**ALLOWING THE PRESENT CONTRACTOR TO CONTINUE THE WORK AT THE SAME RATES:**

The present contractor may be allowed to continue the work at the same rates, terms and conditions. In this method, the period of completion cannot be reasonably estimated. This may result in the Quier Protection Arm not being available in time for handling larger iron ore carriers and also for putting up the container handling facilities, this may result in an estimated national loss of over Rs. 2 crores per annum effecting the economy of the country. As it is the existing contractor M/s. A.C.C. have repeatedly made clear to the Port Trust that their financial position does not permit them to setup the work. This alternative plan result in a stalemate thereby the contract will not be completed by October 1982. According to the contractor, due to a runaway inflation, the contract has become frustrated one and if he is allowed to continue without relief at the existing terms and conditions, it is not unlikely that the work may come to a grinding halt after certain stage. As it is in the current running bills, recoveries have over taken the payments due.

**Alternative No. 3**

*Allowing the existing Contractor to Continue to do the Work by Giving them Additional Financial Relief:*

The existing contractor may be allowed to do the work by giving him financial assistance. Any financial assistance that may be given to him will be extra contractual and as such will require sanction of the Government. This extra financial assistance will be in the shape of restructuring the hypothecation advance within the prescribed limit of Rs. 77 lakhs, amendment to the manner of recovery of principal and interest on advances, giving him escalation in the cost of diesel from a particular date, relief in the matter of recovery of hire charges for Lima Cranc. Under this alternative also, since the basic rates are not be increased, even with the financial assistance, there is no guarantee that the contractor will be able to complete the work by October, 1982.

**Alternative No. 4**

*Allowing the Existing Contractor to continue by engaging a sub-contractor of his choice at Negotiated new rates*

The present contractor may be allowed to engage a sub contractor of his choice subject to the concurrence of the Port Trust. While engaging the sub contractor the Port Trust may allow the new rates to M/s. A.C.C. by negotiation. These rates will not be more than the weighed average rate for 1/3 portion of the balance work at the new tender rates and for 2/3 portion at M/s. A.C.C.'s existing rates both put together. The revised estimated cost of the entire work will go up to Rs. 10.5 crores. M/s. A.C.C. will be asked to sign an agreement that the increased rates will be at their risk and cost, if the work is not completed by them jointly with the sub-contractor of their choice by October 82. If the work is completed by the above date, the condition of recovering the extra cost from M/s. A.C.C. may be waived. This agreement may also be filed in the court. The contractor's concurrence will have to be obtained for the above. This will virtually be a new contract at renegotiated rates and will require the approval of the Government.

**Alternative No. 5**

*Executing 180 Metres of the Breakwater by island method by engaging a contractor:*

By this course of action the estimated cost will be increased to Rs. 12 crores. Under this alternative, even if 100 metres is completed, there can be no certainty that the entire work will be completed by October 1982 since the 2/3 portion to be done by M/s. A.C.C. will not be co-terminus. Further, under this arrangement, the financial problem of the present contractor remains unresolved. Hence the problems envisaged under Alternative 2 will have to be faced.

**Alternative No. 6**

*Engaging a New Contractor M/s. Utam Singh Dugal for about 1/3 portion of the work as on date of the award of contract by end-on Method*

*as per their alternative offered in the tender for 180 Metres by island and Method in conjunction with the existing contractor M/s. A.C.C.*

Under this alternative, the offer of M/s. Uttam Singh Dugal for executing the 1/3 portion of the balance work by end-on method in conjunction with M/s. A.C.C. may be considered. By this method, the cost of the entire work will get revised upwards to Rs. 10.5 crores. The present contractor M/s. A.C.C. may be given financial assistance for his portion of work as indicated below:

**1. Long Range:**

(i) The rate of recovery of monthly hire charges for Lima Crane to be reviewed refixed at the end of the present contract period after effecting recovery for 33 months at the present rates.

(ii) To change the manner or recovery of interest on the advances with effect from 1.4.1981.

(iii) For payment of escalation in the case of diesel from 1.1.1981 with reference to the base price prevailing on the date of award of contract to them.

**Immediate relief:**

(i) To grant further hypothecation advance not exceeding Rs. 25 lakhs on re-hypothecation of the plants and equipment already hypothecated to the Trust after their value is reassessed, and

(ii) To grant additional hypothecation advance on hypothecation of additional plants and equipment subject to the total advance on both the account not exceeding Rs. 77 lakhs also subject to other terms and conditions prescribed in the agreement relevant to hypothecation.

M/s. Uttam Singh Dugal & Co., will procure stones from quarries other than the Trust's quarry at Pallavaram.

M/s. Uttam Singh Dugal & Co., will enter into a separate agreement with Madras Port Trust for their portion of work.

A separate agreement to be entered into between M/s. A.C.C. and M/s. Uttam Singh Dugal & Co., on the one hand and the Trust on the other hand offering all co-operation and facilities intersce between themselves so that the required progress of work will be maintained. Under the agreement, provision should be made for both the contractors to idemnify the Trust against all losses and damages arising out of breach of the conditions of Agreements. Both the firms will furnish programme to complete the work by October 82.

This proposal will also be subject to the following further conditions:

M/s. A.C.C. will not go for arbitration at any time.

M/s. A.C.C. will not claim any further escalation and this will be in full and final settlement of any claim that he may have under the present contract.

**M/s. A.C.C. will not claim the increased rates allowed to M/s. Uttam Singh Dugal for his portion of work.**

**The extra rates paid to M/s. Uttam Singh Dugal will be at the risk and cost of M/s. A.C.C. if the work is not completed by October 1982 and this condition may be waived if the work is completed before the above date.**

**The above conditions will have to be discussed with M/s. A.C.C. for their concurrence. However, before operating this alternative, it has been decided to reinvite tenders from the already prequalified tenderers for 180 metres of breakwater by Island Method for executing about 1/3 portion of work by end-on method in conjunction with M/s. A.C.C. to ensure the competitiveness of the final rates offered by M/s. Uttam Singh Dugal.**

**Sd/- V. Selvaraj,  
C.P.T.  
C.E.P.K.K.  
Intd.**

**BY REGD. POST ACK. DUE**

**IF/34959/78/E**

**6-2-1982**

**From**

**The Chief Engineer**

**To**

**M/s. Andhra Civil Construction Co.,  
No. 1, Vijayaraghavachari Ist Street,  
T. Nagar, Madras-600 017.**

**Sirs,**

**Sub: Contracts — Contract for construction of Outer Protection Arm — Agt. No. 55 of 1978 and Supplemental Agt. No. 69 of 1981 — Unsatisfactory progress of work — Issue of Notice — Reg.**

The contract for the above work was awarded to you on 6.11.1978 and the work is deemed to have been commenced from 15.11.78 and the same was to be completed within 33 months *i.e.* by 14.8.81. But you actually commenced the work at breakwater site in March 1979 only.

As per the terms of Agreement, mobilisation fee and mobilisation advance have been paid to you and hypothecation advances are also paid as and when due and payable. In addition to this, the Trust's Lima Crane has also been hired to you.

On your representation in your letters dt. 1.1.81 and 24.4.81 requesting for financial reliefs/concessions, the Board granted some reliefs/concessions and the terms & conditions were set out in the supplemental Agreement No. 69 of 1981. In accordance with this supplemental agreement, the Trust has also paid to you the escalation due from 1.1.81 to 31.8.81 amounting to Rs. 14.03 lakhs on 17.9.91 after the initial performance Bank guarantee for Rs. 20 lakhs was furnished by you on 31.8.81.

As per the supplemental agreement, you should furnish the Rs. 30 lakhs of Bank guarantee in equal instalments of Rs. 10 lakhs each during September, October and December, 1981 but the same was not compiled with by you within the stipulated time. Instead, a consolidated Bank guarantee for Rs. 30 lakhs was furnished by you only on 21.1.82.

The progress of work has not kept pace even as per the revised programme in the supplemental agreement as will be evident from the enclosed statement showing the progress of work upto 31.1.82 (Annexure I).

It is also noticed that you have not made satisfactory progress by increasing the plant and equipment, production in the quarry etc. till date. As per the supplemental agreement, you should have mobilised additional plant and equipment but the same has not been kept up as per schedule. A

statement showing the same with the numbers yet to be mobilised is enclosed. It will be seen therefrom that even after a lapse of 5 months after the supplemental agreement, you have not mobilised the additional plant and equipment especially transport vehicles. One extra barge and additional 2 cranes are yet to be mobilised on the job. Even out of the 44 vehicles available with you in Madras, on an average only 30 vehicles are actually engaged on the work. The repairs to sick vehicles are also not being done expeditiously with the result 8 of them are on major repairs for a long time.

From the above it will be evident that in spite of all possible assistance from the Trust as per the agreement and supplemental agreement, you have not shown the necessary progress as per programme to complete the work for the full length of 1005 metres upto run out level by 31.10.82 and the entire work by 31.10.83 as per the revised programme. It is obvious that at this rate, you will not be able to complete the work even as per the revised programme in the supplemental agreement.

Under the circumstances, you are hereby required to show cause, within fifteen days from the date of receipt of this notice, why the Trust should not take action by involving clause 25 of Schedule 'A' read with Clauses 5 and 31 of Schedule 'C' of the Agreement No. 55 of 1978 and clauses (5) and (6) of the Supplemental Agreement No. 69 of 1981.

Yours faithfully,

Encls: Two

O/C  
For CHIEF ENGINEER  
SE(P)  
AA(D) Ex(P)I



**EXTRACT FROM THE PROCEEDINGS OF THE BOARD MEETING HELD ON SATURDAY, THE 24TH JULY, 1982**

**Board's Resolution**

**No. 99: Read (i) B.R. No. 242 dated 29.1.1982 (ii) B.R. No. 290 dated 24.3.1982, (iii) B.R. No. 54 dated 22.6.1982 and (iv) Chairman's note dated 19.7.1982 reporting on the progress of the Outer Arm Work made by the Contractors, Messrs Andhra Civil Construction Company, Madras and suggesting the following for the consideration of the Board and approval:—**

- (1) As already decided by the Board at its meeting held on 22nd June, 1982, the contractors may be given extension of time upto 30th April, 1983 for completion of the entire Outer Arm upto run-out level.**
- (2) The above extension will be subject to the present terms and conditions of the contract and no further financial assistance or concession will be given to the contractor.**
- (3) The contractor will be allowed upto the end of April, 1983, escalation as per the formula prescribed in the supplemental agreement for the run-out level quantities ensuring that the escalation amount paid does not exceed the original amount of estimated escalation upto run-out level.**
- (4) The penal clauses in the supplemental agreement such as encashment of bank guarantee in the event of the cumulative shortfall in the quantities dumped exceeding the monthly target for dumping, termination of contract etc. will be held in abeyance till April, 1983.**
- (5) Recoveries from the contractor's bills with reference to the monthly targets fixed will be regulated by the Chairman in such a way that the contractor gets adequate cash flow for execution of the work.**
- (6) Fresh review of the progress of the work of the contractor in doing the work upto run-out level will be made during March, 1983 to decide further course of action in case the work is not likely to be completed by April, 1983.**

After detailed discussion, the Board resolved to approve the suggestions contained in items 1 to 6 above subject to the following conditions without prejudice to any of the rights of the Trust in this regard in any manner:—

- (i) The progress made by the contractor would be reviewed at each Board Meeting.
- (ii) The recoveries from the contractor would be made at the rate of 40,000 tonnes per month or actuals whichever is higher as may be decided by the Chairman.
- (iii) A detailed review of the matter in all its aspects would be done in April, 1983.
- (iv) A detailed reply to the contractor's letter dated 28th June, 1982 would be sent, meeting all points raised, in consultation with the Trust's Legal Adviser.

(TRUE EXTRACT)

Sd/-  
ASSISTANT SECRETARY,  
MADRAS PORT TRUST.

*EXTRACT FROM THE PROCEEDINGS OF THE MADRAS PORT TRUST BOARD MEETING HELD ON WEDNESDAY THE 25TH MAY, 1983.*

B.R. No. 40. Read (i) the Resolution Nos. 99, dated 24th July 1982, 315 dated 26th March, 1983 and 19 dated 26th April, 1983 and (ii) the note dated 21st May, 1983 from the Chairman proposing to the Board to reaffirm its earlier resolution to continue the existing contractor Messrs Andhra Civil Construction Company, Madras, subject to ratification by the Government of the points referred to in paragraph (14) of the note.

Resolved, after detailed discussion, to approve of the following:—

- (a) Taking into account the steps taken by the Trust, the progress of work and the further representations made by the contractor in his various letters referred to in the note and his letter dated the 24th May, 1983 placed before the Board, to refer the matter to Shri T. Raghavan, Advocate, for his advice regarding the contention raised in the Contractor's letters with a view to issue a notice to the Contractor stating that all requests made by him are rejected and that the Trust would exercise all its rights under the Contract Agreement against the Contractor and that the Contractor is informed that unless he performs the work diligently according to the contract, the Trust will invoke Clause 25 of Schedule 'A' of the Contract Agreement read with other relevant clauses.

(b) To maintain the *status-quo* including the continuation of the work by the Contractor as explained in paragraph 14 of the note.

Resolved further that it will neither be feasible nor practicable to execute the balance of work either departmentally or by splitting the work among various sub-contractors.

(TRUE EXTRACT)

Sd/-

SECRETARY,  
MADRAS PORT TRUST.

***EXTRACT FROM THE PROCEEDINGS OF THE BOARD MEETING HELD ON SATURDAY, THE 16TH JULY, 1983***

Read (i) Resolution No. 99 dated 24.7.1982, No. 315 dated 26.3.1983, No. 19 dated 26.4.83, No. 40 dated 25.5.83 and No. 73 dated 28.6.83, and (ii) the note dated 11th July, 1983 by the Chairman seeking the directions of the Board regarding further course of action to be taken in respect of the contract for construction of the Outer Protection Arm and the contractors' letter dated 12.7.1983.

2. Resolved after discussion to recommend to the Government that either a Committee be constituted by the Board or by the Government of India to examine and to give its recommendations on the following:—

- (i) Whether the Pallavaram Quarry placed at the disposal of the contractors by the Trust is capable of yielding various categories of stones as required under the contract at the time of award of the contract.
- (ii) Whether the contractors are at fault in not exploiting the full potential of the quarry, and
- (iii) If the potential of the quarry is found to be inadequate, is the contractor entitled for any relief and if so, what is the quantum of relief.

3. The above decision is subject to the condition that the findings of the Committee on the above issues would be binding on the contractors without any reservation and that the contractors would unconditionally withdraw their other claims, as agreed to by the contractors during the Board Meeting. A letter of consent agreeing to this, should also be obtained from the contractors.

4. The above decision is also without prejudice to the Trust's rights under the existing terms and conditions of the original and supplemental agreements entered into with the contractors.

5. Resolved also to ratify the sanctions of the Chairman for the various concessions given to the Contractor as referred to in para 15 of the Board Note.

(TRUE EXTRACT)

Sd/-

ASSISTANT SECRETARY,  
MADRAS PORT TRUST.

**EXTRACT FROM THE PROCEEDINGS OF THE BOARD MEETING  
HELD ON 21ST SEPTEMBER, 1983**

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4. Read (i) Resolutions No. 99, dt. 24.7.1982, No. 315, dt. 26.3.1983, No. 19, dt. 26.4.1983, No. 40 dt. 25.5.1983, No. 73, dt. 28.6.1983, and No. 93, dt. 16.7.1983 (ii) letter No. P/PDM14/83, dt. 1.9.1983 from the Government of India and (iii) the note by the Chairman dt. 9.9.1983 seeking sanction for the constitution of a High Level Technical Committee as suggested by the Government and for the terms of reference laid down in the above letter from the Government, in respect of the construction of the Outer Protection Arm.

Resolved, after discussion, to approve of the constitution of the High Level Technical Committee in this regard with the composition of members mentioned in the Government's letter cited.

As the Trustees held the view that the terms of reference made by the Trust were specific while the terms of reference contained in the Government's letter are at slight variance with the recommendations of the Board, it was resolved further that the Chairman be authorised to finalise the terms of reference in consultation with the Government.

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(TRUE EXTRACT)

Sd/-

ASSISTANT SECRETARY,  
MADRAS PORT TRUST.

*DRAFT RESOLUTION*

Read (i) B.R. No. 19 dated 26.4.83 (ii) the note by the Chairman dated 20.10.83 seeking approval for grant of extension of time for completion of Outer Protection Arm Work and to regulate the prerata recoveries based on quantum of work actually done etc.

Resolved after the detailed discussion to approve of the following on the proposals made in para 13 of Chairman's note subject to review after receipt of recommendations of the High Level Technical Committee.

1. To grant extension of time upto 30.4.84 to the contractor for completion of work upto runout level and upto 31.10.84 for completion of work in all respects, and payment of their bills including escalation beyond 31.10.83 pegging down to the price index prevailing in April, 1983 and October, 1983 or the index for the corresponding month whichever is lower for the quantities

upto runout level and above runout level respectively and limited to the overall ceiling limit of escalation of Rs. 167.25 lakhs. On receipt of Government's sanction for the extended contract period, the payment of escalation will be worked out on the index of the corresponding months subject to the overall ceiling of Rs. 167.25 lakhs.

2. To regulate prerata recoveries based on the quantum of work actually done (and not on any national target) on proportionate basis subject to the stipulation that the entire advances are to be liquidated by the time 90% of the contract value is paid.
3. To keep in abeyance implementation of the penal provisions as per the main and supplemental agreements including the value pertaining to levy of liquidated damages for delayed execution pending Government's ratification in the matter. Resolved further to seek Govt.'s is sanction for the above proposals.

Sd/-

ASSISTANT SECRETARY,  
MADRAS PORT TRUST.

#### **Recommendation/Observation**

The Committee also find that the contractor was allowed 60 percent of the agreed rate for the stones slacked at the harbour during the monsoon months to enable him to have a better cash flow. This was agreed to by MP on the specific condition that the contractor would not claim any extra charge for handling the stones from the stacked ples. Despite this, it is incomprehensible to the Committee as to how the HLTC recommended for payments to the contractor on account of rehandling of the stones also with the result that he gained as much as Rs. 22.59 lakhs on this count alone.

[Sl. No. 9 Appendix III Para No. 1.90 of the 6th Report of Public Accounts Committee (Tenth Lok Sabha)]

#### **Action Taken**

The grounds on which HLTC recommended payments to the contractor on account of rehandling of stones were that it involved additional work and consequent expenses. This reason has been brought on record *vide para 1.66* of PAC Report.

[M/o Surface Transport O.M. No. PD/25011/192—MPT Dt. 27-6-95]

#### **Recommendation/Observation**

The Committee note that the original project report contemplated use of armour stones weighing 5 tonnes and above for execution of the project. The armour stones were to be brought to port site from MPT's quarry at Pallavaram and the prospective tenderers were required to satisfy

themselves regarding the adequacy of stones. The MPT, at the request of the contractor, had also taken on lease another quarry at Pammal (near Pallavaram) and handed it over to the contractor for exploitation. As the contractor was unable to produce the stones of requisite size required for the efficient progress of work, MPT had even agreed for use of armour stones of another size. The Committee are distressed to find that inspite of this concession, the contractor was not able to progress with the work as per schedule and the HLTC recommended replacement of armour stones by concrete slabs without imposing any penalty on the contractor for his failure to extract and transport required quality and quantity of stones.

[Sl. No. 10 Appendix III Para No. 1.91 of the 6th Report of Public Accounts Committee (Tenth Lok Sabha)]

#### **Action Taken**

One of the reasons for appointment of HLTC was that the contractor had complained that due to the nature of the quarry. It was not possible to produce the required categories of stones in sufficient quantity to sustain the desired pace of work. The HLTC came to the conclusion that relief to the contractor was justified consequent on the quarry not being in a position to economically produce beyond a limit the requirement of category 'A' stones in particular. The contractor sought shelter under the 'Force Majeure' clause on this account. It would have been possible to impose penalty on the contractor on account of slow progress of work attributing this failure solely to him, but such an action would have jeopardised the progress of the work. Therefore, in the overall interest of the Project, the concessions were extended to the contractor.

[M/o Surface Transport O.M. No. PD/25011/1/92—MPT Dt. 27-6-95]

#### **Recommendation/Observation**

The Committee deplore the dismal picture that has emerged in regard to the unduly long time taken by the Ministry in conveying their decision on the rate revision proposal forwarded by Madras Port Turst in both the cases under examination of the Committee. Apparently, the Ministry have neither evolved any clear out policy on the subject nor issued proper guidelines to the Port Trusts for formulating their rate revision proposals with the result that considerable time is lost by the Ministry in seeking clarifications. However, the Committee have now been informed that the procedure for considering the rate revision proposals from the Port Trust have since been simplified in the Ministry and the approval of the Government is now being normally communicated within a period of 8 to 12 weeks. While welcoming this belated but essential step, the Committee consider it desirable that suitable guidelines for formulating rate revision proposals should be issued to all Port Trusts so that valuable time is not lost in conveying the decision. Keeping in view the fact that rate revisions have a vital bearing on the economy of the Port Trusts, the Committee

would like the Government to further gear up their decision-making machinery so that their decision on such proposals is communicated within the shortest possible time.

[Para 2.16 of the 6th Report of PAC — 10th Lok Sabha].

#### Action Taken

As regards laying down suitable guidelines for formulating rate revision proposals, it is stated that guidelines in this regard already exist. The Government had issued certain guidelines in May, 1975 regarding formulation of rates revision proposals and these were reiterated from time to time. The important guidelines with regard to rate revision are as follows:

(i) The scale of rates once approved should normally be applicable for a period of 3 years, as stability in the rates is desirable. This is not to rule out a review under exceptional circumstances, such as commissioning of new major facilities, or major unforeseen escalations in expenditure on account of wage cost etc. The revision of rates should provide for recouping past deficits, say, for the last 4 years and during a similar period in future. The past surpluses, if any, should also be taken into account.

(ii) Provision should be made for likely escalations in wages and costs.

(iii) Provision should be made for building two reserve funds, one for replacement, rehabilitation and modernisation of capital assets and the other for development, repayment of loans and contingencies 3% of capital employed should be separately provided for each of these funds. This provision should also be taken into account while determining the deficit for the past period.

(iv) The Port being a service organisation, must relate the charges for a particular service, to the cost thereof to the extent practicable. While doing so, it must also take into account the repercussions that any drastic change in the existing pattern is likely to have on the overseas trade in general and the trade handled in the port in particular.

(v) The activities should be classified into two main principal activities, viz. (i) handling and storage of cargo (ii) Port and dock facilities. Each principal activity should again be divided into a number of sub-services like handling and storage of cargo, warehousing, crange, POL handling, towing, berthing and mooring, pilotage, water supply to shipping, dry docking etc. Each sub-service under each principal activity is deemed to be a cost centre and efforts should be made to match the income with the cost in each case. If this is likely to lead to very steep increase and hence found impracticable, attempts may be made to moderate the increases first within each sub-service and only in exceptional cases between two sub-services,

It may thus be seen that comprehensive guidelines are already available. It is felt that delay in implementation of the rates had arisen mostly on account of procedural formalities rather than lack of guidelines. Efforts have, therefore, been made to bring in improvements in the procedural matters.

**2. In order to ensure prompt decision on the proposals received from the Major Ports regarding revision of tariff structure, instructions have been issued to all the Major Ports on 20th March, 1992 enjoining upon them to ensure that the following essential information is invariably furnished along with their proposals:**

- (1) Boards resolution along with a copy of agenda.**
- (2) 16 Col. proforma, duly completed in all respect.**
- (3) Cost calculation sheet.**
- (4) Draft notification with their Hindi version to be published by the Port Trust / Ministry.**
- (5) Copies of previous notification, if any along with Hindi version.**

**(3) The Ports have also been asked to send the clarifications called for by the Ministry on the proposal expeditiously. The Ports have also been informed that if no decision of the Ministry on the proposal of the Port Trust is received by the Port Trust within 4 weeks of receipt of the proposal in the Ministry, the matter should be reported by the Chairman, demi-officially to the Secretary (Surface Transport).**

**4. The disposal of the tariff proposals is being monitored in the Ministry at the highest level.**

**[Ministry of Surface Transport O.M. No. PR-19017/1/91-PG  
dated 23.12.94.]**



## CHAPTER IV

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

#### Recommendation / Observation

The above mentioned extra contractual reliefs and concessions allowed to the contractor amounting to over Rs. 200 lakhs, which were unusual and lacked justification clearly indicated that undue favours were shown to the contractor with scant regard to financial interest of Government. The gravity of the lapses mentioned in this Report indicate either collusion or gross negligence on the part of the officials concerned. The Committee recommend that these lapses should be thoroughly investigated and action taken against all those who are found guilty of failure to safeguard the financial interests of the Government during the various stages of the execution of this project. The Committee be apprised of the outcome within six months of the presentation of the Report.

[Sl. No. 11, Appendix III, Para No. 1.92 of the 6th Report of the Public Accounts Committee (Tenth Lok Sabha)]

#### Action Taken

In the ATN dated 27.6.95 it was indicated that further action was being contemplated on the basis of the examination of the report of the Committee appointed by this Ministry and the final outcome would be made known to Public Accounts Committee in due course.

2. On the basis of the examination of the report of the Committee appointed by this Ministry, it was revealed that the selection of the unreliable contractor in disregard of adverse criticism of the PAC on earlier occasion, lead to a situation whereby the Government and the Madras Port was forced to continue with the contractor, giving him large amount of extra contractual concession. Three officers were found *prima-facie* responsible in this regard. One of these Officers died a few years back. The others retired from the service long back. However, it was considered with reference to the extant Rules, whether any departmental/ judicial action could be taken against these retired officers at this point of time. It is seen that it is not permissible to institute such proceedings at this point of time.

In order to avoid recurrence of such incidents, a set of guidelines is contemplated which will be circulated to all the organisations under this Ministry for strict compliance.

*Further comments of Audit on the Action Taken Note:*

Progress made in the issue of guidelines (contemplated) to all organisation under the Ministry for strict compliance may be intimated to the PAC in due course.

[M/o Surface Transport O.M. No. PD/25011/1/92-MPT dt. 18.7.95]

**Recommendation / Observation**

The above mentioned extra contractual reliefs and concession allowed to the contractor amounting to over Rs. 200 lakhs, which were unusual and lacked justification clearly indicated that undue favours were shown to the contractor with scant regard to financial interest of Government. The gravity of the lapses mentioned in this Report indicate either collusion or gross negligence on the part of the officials concerned. The Committee recommend that these lapses should be thoroughly investigated and action taken against all those who are found guilty of failure to safeguard the financial interests of the Government during the various stages of the execution of this project. The Committee be apprised of the outcome within six months of the presentation of the Report.

[Sl. No. 11, Appendix III, Para No. 1.92 of the 6th Report of Public Accounts Committee (Tenth Lok Sabha)]

**Action Taken**

In pursuance of this recommendation, the Ministry of Surface Transport constituted a Committee consisting of two senior officers of this Ministry. The report of the Committee has been received in this Ministry and is being processed. The outcome would be made known to the Committee.

*Further observation of the Audit on the Action Taken Note*

“Public Accounts Committee may be kept apprised of the outcome of the Committee Report stated to be under process.”

*Action taken by M/o Surface Transport on the further observations:*

“The report submitted by the Committee appointed by this Ministry to go into alleged lapses has been examined in this Ministry. Further action is being contemplated on the basis of the examination. Final outcome will be made known to the Public Accounts Committee in due course.

[M/o Surface Transport O.M. No. PD/25011/1/92-MPT dt. 27-6-95.]

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

—NIL—

NEW DELHI;  
23 August, 1995  
*1 Bhadra, 1917 (Saka)*

**RAM NAIK,**  
*Chairman,*  
*Public Accounts Committee.*

## PART II

### MINUTES OF THE NINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (1995-96) HELD ON 22 AUGUST, 1995

The Committee sat from 1500 hrs. to 1630 hrs. on 22 August, 1995 in Room No. 51 (Chairman's Chamber), Parliament House, New Delhi.

#### PRESENT

Shri Ram Naik—*Chairman*

#### MEMBERS

#### *Lok Sabha*

2. Dr. F. Azam
3. Shri Anil Basu
4. Shri Dileep Singh Bhuria
5. Shrimati Maragatham Chandrasckhar
6. Shri Gopi Nath Gajapathi
7. Maj. Gen. (Retired) Bhuwan Chandra Khanduri
8. Shri Peter G. Marbaniang
9. Shrimati Geeta Mukherjee
10. Shri Shravan Kumar Patel
11. Shrimati Vasundhara Raje

#### *Rajya Sabha*

12. Shri Rahasbihari Barik
13. Shri Misa R. Ganesan
14. Shri Ajit P. K. Jogi
15. Shri Rajubhai A. Parmar

#### SECRETARIAT

1. Shri S. N. Mishra — *Additional Secretary*
2. Shri G. C. Malhotra — *Joint Secretary*
3. Shri P. Sreedharan — *Under Secretary*

#### REPRESENTATIVES OF THE OFFICE OF COMPTROLLER AND AUDITOR GENERAL OF INDIA

1. Shri Dharam Vir *Deputy Comptroller & Auditor  
General of India*
2. Shri S. H. Manghani *Addl. Deputy C&AG*



## APPENDIX

### STATEMENT OF RECOMMENDATIONS / OBSERVATIONS

Sl. No.	Para No.	Ministry / Deptt.	Recommendations
1	2	3	4
1	1.27	Ministry of Surface Transport	The facts stated in the foregoing paragraphs clearly reinforce the finding of the Public Accounts Committee made in their Sixth Report (10th Lok Sabha) that the award of work to firm 'B' for the construction of an outer protection arm for Bharathi Dock in Madras Port was unjustified and guided by considerations other than the interest of Government. Significantly, the extra payment / benefit to the contractor, in the estimation of the inquiry committee which looked into the case exceeded Rs. 4.52 crores as against the figure of more than Rs. 200 lakhs reported by this Committee in their earlier Report. Pertinently, the conclusion of inquiry committee that the three main features of this contract namely, the price, the specification and the completion period had undergone drastic changes only to suit the requirements of the contractor clearly indicates the extent of collusion of the departmental officers with the contractor in the case resulting in an avoidable expenditure of about Rs. 6 crores as now estimated. The Committee cannot but express their deep concern and disapproval over this scandalous state of affairs.
2	1.28	-do-	What has greatly dismayed the Committee is that despite the grave nature of the lapses of the departmental officers now clearly pinpointed by the inquiry committee, the Government's attitude towards the matter has been totally casual and deplorably callous. Far from acting with promptitude and sternness, the Ministry of

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Surface Transport even after the lapse of a period of over 33 months since the receipt of the report of the inquiry committee are yet to take action against even a single officer found responsible for the lapses. Furthermore, after wasting a precious period of about three years in what was described as "examining" of the report, the Ministry have now maintained that three officers were "prima-facie" found responsible, one of whom died and the two others are stated to have retired from the service long back. According to the Ministry it is not permissible to institute departmental/judicial proceedings against them at this point of time. In the face of several officers having been identified by the inquiry committee for the various lapses as briefly dealt with above, the Committee, consider the position explained by the Ministry in the action taken note as unconvincing and hence totally unacceptable. The Committee, in fact, are amazed at the reluctance on the part of the Ministry in effectively dealing with the officials clearly indicted by the inquiry committee. In their opinion this makes a mockery of the principle of accountability. The Committee strongly deprecate the inaction on the part of the Ministry on the findings of the inquiry and desire that the report of the inquiry committee should be re-examined in all its ramifications and firm action taken against the officers-serving/retired found responsible for the various lapses, in consultation with other Ministries/Departments concerned, if necessary, at the earliest, preferably within a period of three months. The Committee would like to be informed of the precise action taken in the matter.

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1	2	3	4
3.	1.29	Ministry of Surface Transport	<p>The Committee are equally perturbed to note that although the inquiry committee had recommended corrective/remedial measures to obviate recurrence of such lapses, the Ministry of Surface Transport, even after the expiry of a period of about three years since the Report was received are yet to initiate concrete steps in pursuance thereof. In their action taken reply, the Ministry have merely stated that a set of guidelines is contemplated which will be circulated to all the organisations in the Ministry for strict compliance. The Committee consider this delay as inexcusable and are constrained to view this as yet another instance of the lack of seriousness on the part of the Ministry. They desire that the corrective/remedial action should be completed within a period of three months. They would like to be informed of the action taken in the matter.</p>
4.	1.30	-do-	<p>Another disquieting aspect observed by the Committee related to the manner in which the findings of the inquiry committee was reported to them. Although the governmental instructions warranted <i>suo moto</i> submission of report of the inquiry committees constituted in pursuance of the recommendations of the Public Accounts Committee, in this case the report was submitted to them only after being asked for specifically. Unfortunately, though the governmental instructions to the Ministries/Departments had clearly emphasised the need for proper reporting of the findings of such enquiries to the public Accounts Committee, in this case it was also not followed properly. Curiously enough, the action taken note did not truly reflect, the findings of the inquiry committee. Even the number of officials indicted as reported in the action taken note looked clearly distorted. The Committee take a serious view of this and desire that responsibility should be fixed for the lapses. The Ministry of Surface Transport should also ensure that such lapses do</p>



1	2	3	4
			not recur.
5.	1.31	Ministry of Finance (Department of Expenditure)	The Committee further desire that the Ministry of Finance (Department of Expenditure) should reiterate their instructions on this score issued to all Ministries/Departments for strict compliance.
6.	1.34	Ministry of Surface Transport	<p>The Committee strongly deplore the inordinate delay in the submission of action taken notes on the part of the Ministry of Surface Transport.</p> <p>As observed by them earlier, the delay in this case was avoidable and unwarranted. Such inexcusable delays in responding to the recommendations of the Committee negate the very principle of enforcement of accountability and is a matter of deep concern to the Committee. Since the delay in this case in furnishing action taken notes was within the knowledge of the highest authority in the Ministry, the Committee desire that their displeasure in this regard should be specifically brought to the notice of the right quarters. The Ministry of Surface Transport should also take appropriate corrective action and ensure that such notes are submitted in future to the Committee within the prescribed time itself.</p>