

**OIL AND NATURAL GAS COMMISSION—
EXTRA EXPENDITURE OF Rs. 70.31 LAKHS
ON THE PURCHASE OF POUR POINT
DEPRESSED**

Ministry of Petroleum and Natural Gas

**COMMITTEE ON
PUBLIC UNDERTAKINGS
1989-90**

EIGHTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

FIFTY-NINTH REPORT

COMMITTEE ON PUBLIC UNDERTAKINGS (1989-90)

(EIGHTH LOK SABHA)

OIL AND NATURAL GAS COMMISSION—EXTRA
EXPENDITURE OF Rs. 70.31 LAKHS ON THE
PURCHASE OF POUR POINT DEPRESSANT

(MINISTRY OF PETROLEUM AND NATURAL GAS)



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LOK SABHA SECRETARIAT
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(1989-90)

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***Resigned from the membership of the Committee w.e.f. 29-5-1989.

@Resigned from the membership of the Committee w.e.f. 9-6-1989.

INTRODUCTION

1. the Chairman, Committee on Public Undertakings having been authorised by the Committee to present the Report on their behalf, present this Fifty-ninth Report on Oil & Natural Gas Commission—Extra expenditure of Rs. 70.31 lakhs on the purchase of pour point depressant.

2. The subject was examined by the Committee on Public Undertakings (1988-89). The Committee's examination of the working of the Commission was mainly based on an audit para XXXVIII from the Report of the Comptroller & Auditor General of India, 1986, Union Government (Commercial) Part VIII.

3. The Committee took evidence of the representatives of Oil and Natural Gas Commission on 26 October, 1988 and also of the representatives of the Ministry of Petroleum and Natural Gas on 24 November, 1988.

4. The Committee on Public Undertakings (1989-90) considered and adopted the Report at their sitting held on 15 June, 1989.

5. The Committee wish to express their thanks to the Ministry of Petroleum and Natural Gas, Oil and Natural Gas Commission for placing before them the material and information they wanted in connection with examination of the subject. They also wish to thank in particular the representatives of the Ministry of Petroleum and Natural Gas and ONGC who appeared for evidence and assisted the Committee by placing their considered views before the Committee.

6. The Committee also place on record their appreciation of the assistance rendered by the Comptroller & Auditor General of India.

NEW DELHI;

7 July, 1989

16 Asadha, 1911 (S)

VAKKOM PURUSHOTHAMAN,

Chairman,

Committee on Public Undertakings

PART I

BACKGROUND ANALYSIS

EXTRA EXPENDITURE OF RS. 70.31 LAKHS INCURRED BY ONGC ON THE PURCHASE OF POUR POINT DEPRESSANT.

The Oil and Natural Gas Commission had invited tenders in August, 1981 for supply of 3500 MT of Pour Point Depressant (PPD) having 12°C pour point with stipulated schedule of delivery @ 500 MT by the end of May, July, August, October, November, 1982 and January, February, 1983. Tenders were received from 18 firms. Samples submitted by various firms were required to be sent for evaluation to laboratory for preparation of test reports etc.

2. Out of the samples sent for testing, the sample of only one firm (Petrolite, USA) passed the laboratory test. The Tender Committee met in March, 1982 to consider the purchase of material from the firms whose samples had passed the laboratory test (Petrolite, USA) or/and whose product had been established (Chika Ltd., Bombay, Shell Chimie France, Lubrizol, UK, Nutro Chemical, USA). The offer of M/s. Chika Ltd. worked out to be the lowest. Although the firm claimed that it was in a position to supply 1800 MT of PPD per annum @ 150 MT per month, the members of the Tender Committee were apprehensive about the firm's capacity in view of its inability to complete the supply within the stipulated period in respect of an earlier order of 400 MT placed on them in July, 1981, besides taking into consideration the other constraints like plant efficiency, shortage of power supply and import of raw material. The ONGC placed order for purchase of 2400 MT of PPD on M/s. Chika Ltd. and letter of intent was issued by telex to the firm on 23 April, 1982 though the case was cleared by Member (Finance) only on 1 May, 1982.

I. Selection of Suppliers

3. It is reported by audit that the Tender Committee recommended in March, 1982 that a supply order for 1100 MT (60% of capacity claimed by the firm) may be placed on M/s. Chika Ltd. and remaining quantity divided among M/s. Petrolite, USA (400 MT), Lubrizol, UK (1500 MT) and Shell Chimie France (500 MT). However, Member (offshore) decided in consultation with Member (Material) and Member (Finance) that no order should be placed on any foreign party when the indigenous manufacturer M/s. Chika offer was lowest in price.

4. While recommending the proposal for purchase of 2400 MT from M/s. Chika, Director (S&P) stated "due to extremely rigid position of supply vis-a-vis consumption it is obvious that failure of Chika Limited

on any occasion will lead to very acute situation. It is, therefore, recommended that performance of M/s. Chika Ltd. must be reviewed at the end of every month and in case this firm fails to keep up their commitment we may be permitted to go for limited tenders with foreign established sources and also the ones whose samples have passed the laboratory tests in the present tenders."

5. During evidence of the representatives of Oil and Natural Gas Commission, the Committee enquired why the source of Chika Limited was classified as established source even before their product was put on field trial. The Group General Manager (Operations) stated that since Chika Limited's product passed all the laboratory tests and in the field also it passed two out of three tests, it was considered to be an established source. The witness also informed the Committee that a chemical which was meeting all the tests in all the laboratories did fail to meet one test in the field and that could not be a valid reason.

6. When the Committee enquired about the reasons for delay in supply of 400 MT of PPD, orders for which were placed by ONGC on Chika Limited earlier in July, 1981, the witness stated *inter alia* as under :—

"It was supposed to have been completed by the middle of January, 1982 and they were able to complete it in the beginning of June, 1982. They were four or five months behind schedule. One of the chemicals used was orthoxylene and it was not supplied to them in time. This was one of the reasons ... On top of it there was great intention to indigenise the product. We were depending on imported source. This was the biggest consideration at that time and govt. was keen that this vital chemical should be produced within the country."

7. When asked what considerations weighed with the Tender Committee to recommend in March, 1982 for placement of a supply order for 1100 MT on M/s. Chika Limited, especially when the members of Tender Committee were apprehensive about the firm's ability to complete supply within a stipulated period, as the firm had earlier failed to complete in time an order of 400 MT placed on them in July, 1981, the witness stated :—

"We had the information from the manufacturer's side that their capacity was 300 MT per month. That was well within the limits of the supplier to supply the chemicals."

8. The Committee enquired as to when did ONGC become aware of their requirement of PPD and how long did they take to process the requirement. In reply, the representative of ONGC stated :—

"We place orders after carrying out a very detailed study as to how much pour point depressant is required and at what point of time. This need could have been met had we imported all

the chemical; but the ONGC decided to try to buy as much of the product as possible from the indigenous sources. We carried out a very detailed study as to how much is required and we also said that if the indigenous supplier fails to meet his schedule, we will place orders on limited tender. We were very closely monitoring and when that particular point of time came, the indigenous supplier was slightly delaying, we got into action and started getting quotation. If you look at the time between our floating telex quotation and placement of orders, all this is done in a matter of two months."

9. In this connection, the Secretary, Ministry of Petroleum & Natural Gas stated :—

"We found that the members of the ONGC had taken a decision based on certain presumptions. They had made presumptions regarding the requirements of the order. They said that in order to save foreign exchange of the country, indigenisation was necessary and it was felt that Chika would be able to perform the job. Based on those presumptions, the members of the ONGC at that time, took this decision. It is true that some of the facts did not turn out to be as they had anticipated."

10. When asked if the past performance of the Company should not have been taken into consideration before placing such a big order on them, the Secretary of the Ministry stated in his evidence :—

"They could have taken. They were also looking at the performance of this company. Probably looking at the aspect of saving foreign exchange they decided to place their trust with this Company."

11. The Committee desired to know though Lubrizol India Limited quoted on behalf of U.K. Principal whose product was established, why no order for purchase of PPD was placed with them in consonance with the recommendation of the Tender Committee. To this, the representative of ONGC replied :—

"The Committee's recommendations were not accepted *in toto* because there was a great pressure to indigenise the material. This material was imported. The Lubrizol material involved total foreign exchange. In preference to that, we preferred an Indian supplier. Chika was making it in the country, only some constituents were imported."

12. When the Committee enquired why orders for balance quantity of 1100 MT of the requirement (3500—2400) were not placed with any established party to maintain buffer stock till indigenous source was established, the representative of ONGC, in his reply, stated :

“A very detailed study was made as to what is the amount in stock, what is the monthly requirement and what is the delivery schedule. Based on that, it was decided that we could wait. If, we kept a constant monitoring, it should be possible for us to manage with this much quantity and watch the performance of indigenous company before going in for large import purchase.”

13. In this connection, the Secretary of the Ministry also informed the Committee during evidence that at that time it was felt that keeping in view the requirements, 2400 MT would be adequate for the whole year. Later on, the requirements were more than the estimate.

14. The Committee desired to know the comparative rates of imported and indigenous offers based on which material supplied by Chika was assessed to be cheaper. In a written note, the ONGC stated the position as under :—

“(i) Dai Ichi Kaikari . . .	Rs. 36,250.00/MT	(May to Aug. 82 delivery)
	Rs. 37,200.00/MT	(Sept. to Nov. 82 delivery)
	Rs. 38,800.00/MT	(Dec. 82—Feb. 83 delivery)
(ii) Lubrizol, UK . . .	Rs. 50,919.48/MT	
(iii) Petrolite, USA . . .	Rs. 51,392.23/MT	
(iv) Nutro, USA . . .	Rs. 55,802.21/MT	
(v) Shell, France . . .	Rs. 64,246.83/MT	(1000 MT Shipment before June 1982)
	Rs. 64,897.04/MT	(For Shipment before July 1982)

Figures at (ii) to (v) above were arrived at after adding 0.75 per cent landing cost on CIF prices and also 94.40 per cent custom duty (on CIF price + landing cost).”

15. The Committee enquired whether Tender Committee put on record its doubts about Chika Ltd. capacity to give timely supplies. To this, the representative of ONGC stated :—

“The members of the Tender Committee have observed that Chika Ltd. have claimed to be in a position to supply 1800 MT per annum, at the rate of 150 MT per month. The members of the Committee are, however, doubtful about this in view of the time taken by the firm in effecting last ordered quantity of 400 MT only, besides taking into consideration the other constraints like plant efficiency, the shortage of power supply, import of raw material. It was felt by the members of the Tender Committee that

the firm may be in a position to supply about 60% of the above-said claimed rated capacity. Therefore, the Tender Committee recommends that order for 1100 MT may be placed on Chika Ltd., at the rate of Rs. 36,250 per MT."

16. In view of the fact that the Tender Committee had recommended placement of orders for 1100 MT only on Chika Limited, the Committee wanted to know if Member (Offshore) had made any note on the file for increasing the order. The representative of ONGC then informed the Committee that Member had asked for information on the following points :—

"What is the total quantity of PPD required/year ? What was the amount indented/required/in stocks ? And why should any order be placed on a foreign party, leave alone 2 or 3 foreign parties."

17. The Committee were further informed that a study was then made and on the basis of that study the following position emerged :—

"We may depend only on indigenous sources instead of buying from foreign countries, where foreign exchange will be required, provided the indigenous supplier maintains the commitment as made by them. In view of this, it is recommended that a quantity of 2400 MT may be ordered on Chika Ltd. which will enable us to continue upto March, 1983.

This is signed by Director (Material Management) as a result of a meeting that he had with the Member, and General Manager (Production)—the same people who evaluated the earlier Tender Committee's recommendations."

18. During evidence of representatives of Ministry of Petroleum and Natural Gas, the Committee pointed out that the Tender Committee had recommended in March 1982 that a supply order for 1100 MT of PPD i.e., 60% of the capacity claimed by the firm might be placed on M/s. Chika Limited and the remaining quantity divided among M/s. Petrolite, USA (400 MT), Lubrizol, UK (1500 MT) and Shell Chimie, France (500 MT). However Member (offshore) decided in consultation with Member (Material) and Member (Finance) that no order should be placed on any foreign party when the indigenous manufacturer M/s. Chika offer was lowest in price. When the Committee enquired about the comments of the Ministry with regard to purchase of 2400 MT from Chika Limited, the Secretary, Ministry of Petroleum and Natural Gas stated :—

"No doubt, the Tender Committee which is the first level of examination had made certain recommendations. But above them there is a purchase Committee which consists of the Members of the ONGC who are the highest technical officers of the

Commission. Each member after examining all the pros and cons came to the conclusion that it would be in the interest of ONGC as well as the indigenisation programme to place the order for this limited quantity on M/s. Chika."

II. Supply of PPD

19. According to the supply order placed on Chika Limited on 21 June, 1982, the firm was required to supply 2400 MT of PPD to ONGC from May, 1982 to March, 1983 in accordance with the following terms :

Delivery/Supply Schedule	Quantity	Rate per M.T.	Amount
1. 150 MT every month from May, 1982 to August, 1982.	600 (MT)	Rs. 36,250.00	Rs. 2,17,50,000.00
2. 150 MT in Sept. 1982 and 300 MT in October, 82 and 300 MT in November, 82	750(MT)	Rs. 37,200.00	Rs. 2,79,00,000.00
3. 300 MT per month from December, 82 to February, 1983 and 150 MT in March, 1983.	1050(MT)	Rs. 38,800.00	Rs. 4,07,40,000.00
Total	2400 (MT)		Rs.9,03,90,000.00

20. As against the monthly commitment made by the supplier, the actual monthly supply position was as under :—

Month	Supply made (MT)
May, 1982	Nil
June, 1982	Nil
July, 1982	102
August, 1982	303 (Approx.)
September, 1982	147 (Approx.)
October, 1982	92 (Approx.)
November, 1982	308 (Approx.)
December, 1982	Nil
January, 1983	400
February, 1983	Nil
March, 1983	Nil
April, 1983	200
May, 1983	40 (Approx.)
June, 1983	139 (Approx.)
July, 1983	250 (Approx.)
August, 1983	171 (Approx.)
Total (Approx.)	2153 (MT)

21. In a communication dated 19-9-1983, ONGC is stated to have pointed out to M/s. Chika Ltd. as under :—

“...against our order of June 1982 for 2400 MT PPD, you have so far supplied 2150 MT leaving a balance of 250 MT which is supposed to be supplied by you during the current month.

It is seen that you have supplied about 1550 MT MNF 1205 during the period from July, 1982 to April, 1983, i.e. within 10 months the average monthly supplies come to 155 MT.

Similarly, the latest supplies during the period from May, 1983 to September, 1983 are about 600 MT and the average monthly supplies during this period comes to only about 150 MT.”

22. Audit has also informed the Committee that the supplier (M/s. Chika Ltd.) could not adhere to the delivery schedule and the supply of PPD, effected by them was not of right quality to maintain pour point of 15°C. This qualitative and quantitative slippage resulted in depletion of stock as not only timely replenishment of stock was not done but also due to inferior quality, consumption increased.

23. In this connection, the Secretary, Ministry of Petroleum and Natural Gas stated before the Committee in his evidence that the order was placed in April, 1982. In May and June, 1982 there was no supply at all and therefore on 12 June, 1982 tenders were invited from abroad. He also admitted that the supply was not according to the schedule and was completed only in September, 1983.

24. When the Committee pointed out that due to qualitative and quantitative slippages the consumption increased resulting into loss to the Commission, the representative of ONGC stated :—

“This was a continuing process. As far as quality is concerned, the manufacturers said that they will improve the quality.”

25. Asked whether ONGC had carried out the monthly review of the performance of the firm as recommended by the Director (S&P), the representative of ONGC informed the Committee that the review was carried out and on the basis of such a review, the Commission had immediately

30. The Committee desired to know if it was the normal practice followed in ONGC to obtain approval of Member (Finance) on telephone without recording anything on the file, the Secretary of the Ministry stated :

“It is not the normal practice to obtain orders over phone. But in this case, because the matter was urgent, order was obtained over phone and the Member signed it later on.”

31. When the Committee enquired whether the Ministry had accepted the explanation of ONGC with regard to urgency, the witness stated *inter-alia* as under :—

“This (PPD) was to be supplied in the month of May and it was already April. The supplies had to start immediately and therefore it was felt very urgent.”

32. When enquired if there was any other buyer of this product from Chika Ltd., the representative of ONGC replied in the negative.

33. The Committee pointed out that since ONGC was the sole buyer of this product, it should have dictated the terms with regard to the last date of placement of order and not the supplier. When suggested that the whole matter about telephonic approval of the supply order placed on the firm and for not recording this fact on the file even thereafter should be examined in detail, the Secretary of the Ministry then assured the Committee : “We will do it Sir, I accept the suggestion.”

34. When the Committee enquired about the date on which Chika Ltd. supplied 62.5 tonnes of PPD which was not in conformity with the ONGC standards, the representative of ONGC informed the Committee that the material was offered by the firm in November, 1981 and after performing laboratory tests it was delivered to ONGC in February, 1982. The field test was done in May, 1982 and the material was found to be sub-standard in May, 1982, i.e. after the letter of Intent for supply of 2400 MT of PPD was placed on the firm on 23-4-1982.

IV. Terms of Contract

35. From The Tender Notice issued by the Commission in October, 1981 for supply of PPD it is seen that the Commission had included the following penalty clause to be imposed on the suppliers who failed to supply stores by the due date stipulated in the supply order :—

“(a) 2 per cent of price at any stores each month or part thereof during which period the stores may be in arrears which the Contractor fails to deliver by the due date.

(b) If the material is required urgently and the Contractor has failed to supply the same by the due date, supply order or part thereof can be cancelled and the material purchased at the risk and cost of Contractor to meet the emergency. In such case the Contractor shall have no right to claim for any loss, damages or compensation of any kind.

(c) If the Contractor is unable to effect delivery of stores by the due date, he must apply for the extension in time in writing, giving valid reasons thereof. In case, the contractor fails to apply in time for extension he would be liable to be penalised even if the reason given by the firm about the delay are beyond their control."

36. Further, clause 14 of the Tender document specifically provided as under :—

"If the Commission finds that materials are not of the correct quality or not according to specification required or otherwise not satisfactory owing to any reason of which this Commission will be the sole judge, the Commission will be entitled to reject materials, cancel the contract and buy its requirements in the open market at the risk and cost of the suppliers reserving always to itself the right to forfeit the security deposit placed by the supplier for the due fulfilment."

37. The actual contract for the supply of 2400 MT of PPD entered into with the firm on 21 June, 1982 contained the following provisions :—

"20. Failure and Termination

If the contractor fails to deliver the stores or any instalments thereof within the period fixed for such delivery in the schedule or at any time repudiates the contract before the expiry of such period the purchaser may without prejudice to any other right or remedy available to the purchaser to recover damages for breach of the contract—

- (i) Recover from the contractor as ascertained and agreed, liquidate and not by way of penalty a sum of equivalent to 2 per cent of the price of any stores which the contractor has fixed to deliver within the period fixed for delivery in the schedule for each month or part of arrears where delivery thereof is accepted after expiry of the aforesaid, or

- (ii) Purchase or authorise the purchase elsewhere without notice to the contractor, on the account and at the risk of contractor of the stores not so delivered or other of a similar description where stores exactly complying with the particulars are not in the opinion of the purchaser, which shall be final, readily procurable without cancelling the contract in respect of instalment not yet due for delivery or
- (iii) Cancel the contract or a portion thereof and if so, desired purchase or authorise the purchase of the stores not so delivered others of a similar description where stores exactly complying with particulars are not in the opinion of the purchaser, which shall be final readily procurable at the risk and cost of the contractor.
- (iv) It may be noted that clause (i) above provides for recovery of liquidated damages on the cost of delayed supplies at the rate of 2 per cent per month or a part month delayed Liquidated Damages for delay in supplies thus accrued will be recovered by the paying authorities of the purchaser specified in the supply order from the bill for payment of the cost of stores submitted by the contractor or his foreign principles in accordance with the terms of the supply order.

21. Commission reserves the right to reject any part or full of the supplies, not found according to the specification."

38. When enquired whether any penalties on account of delay in supply of PPD were provided for in the contract entered into with M/s. Chika Limited, the representative of ONGC stated :—

"Liquidated damages are mentioned, not the penalties. Liquidated damages presumes that there have to be damages. Because the corresponding supply was cheaper, there were no liquidated damages."

39. Again asked whether liquidated damages were to be recovered for non-observance of the delivery schedule, the witness stated that "it was for quality; no damages were levied for non-observance of the schedule. They are leviable only if we suffer losses."

40. On being pointedly asked if there was no penalty clause in the contract, the witness categorically stated, "No. Not for delayed supplies. The penalty clause deals with liquidated damages for delayed supplies."

41. In this connection, the Secretary of the Ministry informed the Committee in his evidence that there was a penalty clause in the Contract but it was not invoked.

42. When the Committee asked why penalty clause was not insisted upon for supply of sub-standard material and for non-observance of delivery schedule, the witness stated during evidence :—

"ONGC did recover the money for late delivery but there was no penalty imposed because they did not want to place any stringent condition on the firm."

43. After the Ministry's evidence, ONGC was asked to intimate whether all the terms and conditions laid down in the Tender Notice were incorporated in the contract entered into with M/ρ. Chika Limited and if not, to specify the terms and conditions which were modified or omitted in the Contract and the reasons for the same. THE ONGC stated in written note as follows :—

"All the relevant terms and conditions laid down in the Tender Notice were incorporated in the supply order (contract) placed on M/ρ. Chika Limited except that the word "penalty" was substituted with "Liquidated Damages" which is the standard term used in all supply orders/contract."

44. As regards the reasons for not invoking the penalty clause even when the supplier had not adhered to the delivery schedules, the ONGC intimated in a written reply as under :—

"Liquidated Damages clause (Penalty) is not invoked where extension in the delivery schedules is granted."

45. The Committee desired to know as to how much money ONGC would have recovered from Chika Limited if the penalty clause for not observing the delivery schedules or for not supplying material of requisite quality had been invoked. The ONGC in a written note stated :—

"For not observing the delivery schedules liquidated damages amounting to Rs. 17,51,829.85 would have become recoverable from the firm."

46. When enquired if the Commission did not incur more expenditure on account of qualitative and quantitative slippage, the witness informed the Committee that "to the extent we used higher quantity, we penalised the firm and made a recovery out of them."

47. When asked about the amount actually recovered from the firm due to the extra usage of the material, the witness informed that Rs. 6,43,000 were recovered for the extra dosage used to achieve the desired result. The Secretary of the Ministry also confirmed during his evidence that a sum of Rs. 6,42,131 was deducted from the firm for the extra dosage used.

48. The Committee enquired if the amount deducted from the firm on account of extra doses used was later on refunded to them. To this, the Ministry of Petroleum and Natural Gas stated in a written reply as under :—

“Since the delivery schedules were refixed after taking into consideration various reasons for delay in delivery, the deductions earlier made towards liquidated damages were released. Apparently, the decision to reschedule the deliveries and to levy penal damages, was based on a felt need to promote indigenisation.”

49. When the Committee enquired whether the amount deducted on account of extra doses used because of the poor quality of material supplied by Chika Limited was refunded to the firm, the ONGC in a written reply stated as under :—

“An amount of Rs. 6,42,131.00 (probably rounded to Rs. 6,43,000/-) was deducted on account of difference in quality of material and the same was not refunded to M/s. Chika Limited.

Because of the complex nature of interaction of PPD with the crude and actual usage in field being different from theoretical factors, it is not practicable to identify an extra amount spent. As mentioned above, actual amount deducted on account of difference in quality was Rs. 6,42,131/-.”

50. When asked to state the number of times the delivery schedules were refixed and reasons therefor, the ONGC stated in a written note :—

“The delivery schedule for supply of 2400 MT Pour Point Depressant were refixed thrice. Reasons being that one of the essential ingredients for manufacture of PPD was orthoxylene. This was being manufactured by Indian Petro Chemicals Ltd. The firm had represented that they could not get timely supplies of this ingredient. Also for some time firm's supply was deferred on account of difference in quality and they were asked to improve quality and then offer the material. Therefore, with a view not to discourage this genuine indigenisation effort, delivery schedules were refixed.”

V. Import of PPD

51. Audit has stated that the Commission placed supply order in July, 1982 for 2000 MT of additional supply of PPD of desired specification on Shell International, UK on the basis of limited tenders. The supplies to be shipped “Ex-stolt Avenier”, were expected to be available for use around 20th October, 1982. However, the stock of reliable PPD was expected to last only upto 18th September, 1982. To meet the gap between 19th

September and 20th October, 1982 the Commission took following action involving additional expenditure of Rs. 70.31 lakhs :

- (i) to air freight 300 MT of PPD in packs through Air India;
- (ii) to convert 200 MT of PPD from bulk into packs for loading on India Flag vessel on 4th and 6th October, 1982.

52. The Commission informed Audit in March, 1986 that the urgent import of oil with the additional expenditure of Rs. 70.31 lakhs on air freight was necessary as PPD supplied by M/s. Chika Ltd., was not giving the pour point of 15°C. The PPD was urgently required in order to meet export commitment of crude oil which Oil Coordination Committee (OCC) had entered into with foreign buyer.

53. When asked whether the PPD procured from M/s. Shell International U.K. was at the rates at which it was to be procured from M/s. Chika Ltd. and if not, what was the additional expenditure incurred in this regard, the Secretary of the Ministry stated :—

“The price of Shell International was subsequently lower when it was procured. There was no additional expenditure to Government. So, there was no loss to the Government. At that time, the average price of Chika Ltd. was Rs. 37,663 MT and the average price when it was bought from Shell International was Rs. 23,525 MT.”

54. When specifically asked if there was no additional expenditure for ONGC at that time, the witness stated that there was additional expenditure in the sense that this quantity had to be imported over and above the order placed on Chika Ltd.

55. In reply to a question if the import price of the material included custom duty also, the Secretary of the Ministry informed that there was no custom duty then. Since Chika Ltd. was an indigenous firm the question of custom duty did not arise but in respect of Shell International U.K. it was Rs. 23,525 c.i.f. When asked about the total cost of the imported material as compared to Chika, the witness stated that Rs. 70 lakhs was for the airfreight and other things.

56. On an enquiry if there was any customs duty at the time the order was placed on Shell International, the witness stated :—

“When the order was placed on Chika, there was a customs duty of 94 per cent. When the second order was placed on M/s. Shell International and when it was received, there was no duty.”

The Committee were, however, informed that the customs duty was withdrawn on 28 June, 1982 (vide Notification No. 173/82).

57. On being enquired about the quantity of the material actually air-lifted, the representative of ONGC informed in evidence :—

“The total air-freighted quantity was about 300 tonnes, out of which 150 tonnes were air-freighted due to our additional requirement; and the balance was due to the particular ship having failed to lift it, at the point of the port in question.”

58. When asked about the reasons for airlifting the material and the loss suffered by the Commission, the representative of ONGC stated :—

“We did not have to airlift the entire thing. We were able to place orders for 2200 MT at a price lower than they originally quoted. . . . Because of the additional requirement of crude oil of the Government around September, 1982, we had to expedite the delivery. One of the ships went into unscheduled dry-docking. So, a very small quantity was airlifted. The total money spent was less even after taking into account the airfreight. There was no financial loss in this transaction.”

59. When the Committee pointed out that the ONGC had to incur additional expenditure to the tune of Rs. 70.31 lakhs in importing PPD, the witness stated, “Even after adding that, we paid less money to the alternative supplier.”

60. In this connection, the Chairman, ONGC informed the Committee that the indigenous price was very high as compared to the imported price. Even after paying for the airlifting, the total cost of imported material was less.

61. When enquired about the cost of material airlifted, the representative of ONGC stated that 300 tonnes of PPD was airlifted at a total cost of Rs. 45 lakhs, including the cost of Shipping. He also informed that the order was in bulk and a part of it was got packed into barrels. When asked about the actual cost of packing, the witness stated that the total cost of packing of 500 MT of PPD was Rs. 25 lakhs.

PART II

CONCLUSIONS/RECOMMENDATIONS OF THE COMMITTEE

62. On the basis of a paragraph which appeared in the Report of the Comptroller & Auditor General of India, Union Government (Commercial) 1986, Part VIII, the Committee have examined the Oil and Natural Gas Commissions' action of placing order for the entire requirement of 2400 MT of Pour Point Depressant (PPD) on a single indigenous firm, M/s. Chika Limited, whose capability in effecting timely supplies had been doubted by the Tender Committee and which resulted in a situation where the Commission was forced to take resort to imports and got the material airlifted at an additional avoidable expenditure of Rs. 70.31 lakhs. The Committee's findings and their recommendations are set out in the succeeding paragraphs.

63. The Committee note that the Oil and Natural Gas Commission had invited tenders in August, 1981 for supply of 3500 MT of PPD having 12°C pour point. Out of 18 firms who had submitted their tenders, the sample of only one firm, Petrolite USA, passed the laboratory test. In March 1982 the Tender Committee considered, in addition to Petrolite USA, the offers of Chika Limited Bombay, Shell Chimie France, Lubrizol UK and Nutro Chemical, USA, whose product had been established. The Tender Committee found the offer of M/s. Chika Limited to be the lowest. Although this firm had claimed that it was in a position to supply 1800 MT of PPD per annum at the rate of 150 MT per month, the Tender Committee were apprehensive about the firm's capacity to supply this material as the firm had earlier failed to complete within the prescribed period an order placed on them in July, 1981 for supply of 400 MT of PPD. Taking all these factors into consideration, the Tender Committee recommended in March, 1982 that supply order for 1100 MT only might be placed on M/s. Chika Limited (an indigenous firm) and the remaining quantity of 2400 MT might be divided among three foreign companies viz., M/s. Petrolite USA (400 MT), Lubrizol UK (1500 MT) and shell Chimie France (500 MT). Strangely, in total disregard of the recommendation made by the Tender Committee, Member (Offshore) decided in consultation with Member (Materials) and Member (Finance) that since M/s. Chika's offer was the lowest, no order should be placed on any foreign party. Accordingly, an order for supply of 2400 MT was placed by the Commission on Chika Limited in April, 1982.

64. From the information furnished to them, the Committee find that in accordance with the supply order placed on Chika Limited on 21 June, 1982, the firm had undertaken to supply PPD of requisite specifications at

the rate of 150 MT every month from May, 1982 to September, 1982, 300 MT per month from October 1982 to February 1983 and the remaining quantity of 150 MT in March 1983. As against the stipulated period of 11 months, M/s. Chika Ltd., took an inordinately long time of 17 months in supplying the material completing the last instalment in September 1983 only. The apprehension of the Tender Committee regarding the ability of Chika Ltd. to supply the quantity as per scheduled dates was thus proved to be true. This was not the first time when the firm had failed to complete its order in time. Earlier also an order for supply of 400 MT placed on them in July, 1981 was delayed by five months.

65. The Committee find that not only the firm did not adhere to the delivery schedule but the supply effected by them was also not of right quality in as much as though the material supplied by Chika Ltd. is reported to have passed all laboratory tests but it failed in the field tests. The secretary, Ministry of Petroleum & Natural Gas when asked by the Committee if the past performance of the company should not have been taken into account before placing the order on them, did admit and stated : "They could have taken". The Committee regret to note that though in May, 1982 ONGC found the supply of 62.5 tonnes of PPD by Chika Ltd. against an earlier order to be substandard, no action was taken to cancel the contract. The reply of the ONGC that the material had passed all laboratory tests is far from satisfactory, especially, when the earlier supply of 62.5 tonnes of PPD had also failed to stand the field test despite the fact that it too had passed a similar laboratory test. It is a known fact that majority of the work is done in the field and not in the laboratories. The Committee wonder why ONGC persisted with Chika's supply, especially when the material had failed to give the desired results in the field. Naturally, due to the supply of inferior quality of material, consumption increased which resulted in depletion of stock. The Committee, therefore, deplore the hurried manner in which ONGC went ahead with placing the order of 2400 MT of PPD on Chika Ltd. without awaiting the field tests in respect of the earlier supply.

66. Both ONGC and the Ministry of Petroleum & Natural Gas have tried to justify the deal with the firm on the grounds of indigenisation and saving of foreign exchange. The quality of the product and other factors such as assured regular supply could not be totally sacrificed for the sake of indigenisation. The Committee are, therefore, not satisfied with such unconvincing replies and have their reservations about the whole deal. Against the above background, the Committee are unable to appreciate the circumstances under which the Member (Offshore) took such a big risk in awarding the contract for the entire quantity of 2400 MT of PPD to M/s. Chika Limited whose past record was not at all satisfactory. It is really strange that despite the apprehensions expressed by the Tender Committee

in no uncertain terms about the firm's capability, ONGC placed an order of 2400 MT on this firm. Looking to the facts of the case, the Committee are led to believe that the decision of ONGC in awarding such a big contract to this firm is not above suspicion. Evidently there is an inexplicit tilt in favour of M/s. Chika Limited.

67. The Committee note that Letter of Intent for supply of 2400 MT of PPD was issued by ONGC to M/s. Chika Limited on 23 April, 1982 whereas the case was actually cleared by Member (Finance) on 1st May, 1982 only. The Committee were informed during evidence that this was done on a request made by the firm that they would be able to implement the delivery schedule only if they had the Letter of Intent by 26th April. Explaining the reasons why the Member (Finance) did not take a decision before 26th April, 1982, the representative of ONGC informed the Committee, "He was not physically placed at the same station. I am making a statement which is not on record. I am very sure that this was discussed on telephone. But this is not recorded in file." The Secretary, Ministry of Petroleum & Natural Gas also stated in his evidence that "because the matter was urgent, order was obtained over phone and the Member signed it later on". The Committee are of the view that ONGC had shown undue haste in awarding the contract to the firm. They feel that such an important matter might not have cropped up suddenly. Much groundwork might have been done before arriving at the decision to award the contract to M/s. Chika. It is very surprising that to meet the deadline given by the firm, the normal procedure was circumvented in favour of the firm. The Committee cannot help expressing their displeasure over the fact that the concurrence of the Member (Finance) for placing the order was obtained on phone and this fact was not even recorded in the file. The Committee feel that since ONGC was the sole buyer of PPD from M/s. Chika, it was ONGC who should have dictated the terms and not the supplier. The Committee had pointed out these lapses on the part of ONGC to the Secretary of the Ministry during his evidence and had also suggested examination of the whole matter in detail. The Secretary had thereupon assured the Committee, "we will do it Sir, I accept the suggestion". The Committee, therefore, desire that the whole matter should be thoroughly probed with a view to laying down a fool-proof procedure for awarding a contract and its scrupulous observance, leaving no scope for arbitrary decisions at any level.

68. The Committee find that clause 14 of the Tender Letter issued to M/s. Chika Limited specifically provided that if the materials supplied to the Commission were found to be not of the correct quality or not according to specification required or otherwise not found satisfactory, the Commission would be entitled to reject materials, cancel the contract and buy its requirements in the open market at the risk and cost of the supplier. The tender also contained a penalty clause which mentioned that penalty

would be imposed on the supplier for failure to supply the stores by the due date stipulated in the supply order. This clause, however, gave relief to the supplier that in case he was unable to effect delivery of stores by the due date, he must apply for extension in time giving valid reasons for that. But from the supply order (called contract by ONGC) placed on the firm, the Committee find that the terms which were advantageous to ONGC had been watered down. ONGC has now informed that the word "penalty" had been substituted with "liquidated damages". The Committee, on a specific enquiry whether any penalties on account of delay in supply of PPD were provided in the the contract, had been informed by the representative of ONGC during evidence, "Liquidated damages are mentioned, not the penalties". According to ONGC liquidated damages were leviable only if the Commission had suffered losses. The Committee were also informed that liquidated damages clause (Penalty) is not invoked where extension in the delivery schedule is granted and it was also stated that liquidated damages amounting to Rs. 17,51,829 would have become recoverable from the firm for not observing delivery schedules. The Committee find that ONGC had recovered a sum of Rs. 6,43,000 from Chika Ltd. on account of extra usage of the material to achieve the desired result. According to them liquidated damages were not levied because ONGC did not suffer any loss as the corresponding material was cheaper in the market due to waiver of custom duty which accounted for 94 per cent of the price.

69. The Committee fail to understand why penalty clause was omitted in the contract. By omitting the penalty clause in the contract the ONGC allowed the firm to safely escape the penalty for not adhering to the delivery schedule agreed upon with them. Further, instead of rejecting the sub-standard materials being supplied and cancelling the contract at the cost and risk of Chika Ltd. in May 1982 itself, when ONGC had also found that 62.5 tonnes of material supplied by the same firm earlier had failed during the field test, ONGC went on giving extensions for delay in supply of the material even though it was not provided in the contract. The reasons put forward by ONGC that delivery schedule was refixed because the firm had failed to procure the timely supply of orthoxylene—one of the essential ingredients, for manufacture of PPD are far from convincing. The Committee are convinced that had the penalty clause been provided in the contract and invoked for non-observance of the delivery schedule and poor quality of the material, ONGC might have recovered from the firm a substantial amount as their rightful due which the Commission was otherwise deprived of. The Committee feel that omission of penalty clause in the contract was a calculated move which not only proved advantageous to the firm but on the other hand very adversely affected the financial interests of the Commission.

70. The Committee regret to note that the Commission placed supply order in July 1982 for 2000 MT in bulk of additional supply of PPD of desired specification on Shell International, UK on the basis of limited tenders. The supply to be shipped was expected to be used around 20 October, 1982. The stock of reliable PPD was expected to last only upto 18 September, 1982. To meet the gap between 19 September and 20 October, 1982, the Commission decided (i) to air freight 300 MT of PPD in packs through Air India; (ii) to convert 200 MT of PPD from bulk into pack for loading on India Flag vessel on 4th and 6th October, 1982. This resulted in an additional expenditure of Rs. 70.31 lakhs. The Committee strongly feel that had the Chika Ltd. supplied the material of the required quality and maintained the delivery schedule, the Commission would not have been forced to take resort to imports and get the material airlifted at an additional avoidable expenditure of Rs. 70.31 lakhs. Therefore, in Committee's view the Commission's action of placing order for the entire requirement of PPD on one single firm against the recommendation of the Tender Committee on the mere plea of indigenisation, is deplorable as the capability of this firm in effecting timely supplies and maintaining proper quality was not established.

71. The Committee, therefore, recommend that, though belated, a thorough probe by C.B.I. should be made into the whole deal and the persons found responsible for deliberately misleading the Commission into awarding this contract to this firm should be punished and the possibility of recovering the losses incurred by ONGC from M/s Chika Ltd. should also be examined.

NEW DELHI;
7 July, 1989
Asadha, 1911 (S)

VAKKOM PURUSHOTHAMAN
Chairman
Committee on Public Undertakings