P.A.C. No. 702

PUBLIC ACCOUNTS COMMITTEE (1978-79)

(SIXTH LOK SABHA)

HUNDRED AND THIRTY-SIXTH REPORT

RAILWAY EXPENDITURE

MINISTRY OF RAILWAYS
(Railway Board)

[Paragraphs 7, 21 and 32 of the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Railways)]

Presented in Lok Sabha on 30-4-1979
Laid in Rajya Sabha on 30-4-1979

LOK SABHA SECRETARIAT
NEW DELHI

April, 1979/Vaisakha, 1901 (Saka)
Price Rs. 5.75

CORRIGENDA FOR THE 136TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (SIXTH LOK SABHA).

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3. Shri T. R. Ghai—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Thirty-Sixth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraphs 7, 21 and 32 of the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Railways) relating to Railway Expenditure.

2. The Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Railways) was laid on the Table of the House on 16th April, 1978. The Public Accounts Committee (1978-79) examined paragraphs 7 and 32 at their sittings held on 5 and 6 December, 1978. The Committee considered and finalised this Report at their sitting held on 27th April, 1979. The Minutes of the sittings form Part II* of the Report.

3. A statement containing conclusions|recommendations of the Committee is appended to this Report (Appendix III). For facility of reference these have been printed in thick type in the body of the Report.

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

5. The Committee would also like to express their thanks to the Chairman and Members of the Railway Board for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
April 27, 1979
Vaisakha 7, 1901 (*S*).

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

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REPORT

CHAPTER I

DIESEL LOCOMOTIVE WORKS—SUPPLY OF OXYGEN AND ACETYLENE GASES

Audit Paragraph

1.1. Diesel Locomotive Works Administration entered into a contract with a firm of Calcutta on 21st April, 1965 for setting up a plant in its premises for production and supply of oxygen and acetylene gases. The contract was valid for a period of ten years from 1st January, 1966 with an option reserving to the Administration the right to extend the currency of contract for a period not less than five years.

Claims under Arbitration ..

1.2. During the period of the contract certain disputes arose out of the claims of the firm which had led to five arbitration proceedings for a total claim of Rs. 67.10 lakhs. These are discussed below:—

(i) As per the conditions of contract, the Administration was under obligation to purchase from the firm its entire requirement of oxygen and acetylene gases which should not be less than the minimum guaranteed monthly offtake as under:

Period	Oxygen (cubic metres)	Acetylene (cubic metres)
From 1st January, 1966 to 31st December, 1966 .	7,000	1,000
From 1st January, 1967 to 31st December 1967 . .	14,000	2,000
From 1st January, 1968 and onwards	18,000	2,500

Payment was to be made to the firm for the specified minimum quantities of gases subject to *force majeure*, irrespective of whether such quantities were actually lifted or not. In case the minimum guaranteed quantities were found to be in excess of the requirement of the Diesel

Locomotive Works, the firm on receipt of advance information from the Administration was to assist it in selling the excess quantities on its account. If no ready customer was available, the firm would have the option to empty the cylinders on the Administration's account after advising it or dispose of them otherwise. The agreement also provided that all gases supplied by the firm were for the exclusive use of the Diesel Locomotive Works or its duly approved contractors for works inside the factory and were not to be made available to any other outside agency not connected with work of the Administration.

1.3. The minimum guaranteed offi-take of gases was based on the anticipated production schedule of 54 locomotives in 1965-66, progressively increasing to 108 numbers in 1966-67 and 150 numbers in 1967-68 and onwards. For various reasons like erratic availability of foreign exchange, non-availability of materials and components in matching sets, power cuts, etc., the Administration had to drastically cut down the production schedule from year to year. Consequently, the minimum guaranteed quantities of gases could not be lifted throughout the contract period except in the year 1966.

1.4. In November 1966 itself the Administration advised the firm that due to restricted availability of foreign exchange for import of components and raw materials for production of locomotives, the Government had to cut down the production schedule drastically with the result that the guaranteed minimum quantities of gases effective from 1st January 1967 would not be required and that the supplies should be made at the guaranteed level for the year 1966. Similar advice was sent to the firm every year in November|December intimating the reduced requirements for the succeeding year. However, the firm insisted that it was not concerned with the conditions prevailing at the Diesel Locomotive Works and the actual production of locomotives and that under the contract it was entitled to be paid for the guaranteed minimum quantities irrespective of whether such quantities were lifted by the Administration or not. The firm also informed the Administration regularly from 1967 and onwards that the Administration had not lifted the guaranteed minimum quantities of gases offered to the works and that the unlifted quantities of gases were emptied into the air on latter's account.

1.5. The Administration repeatedly disputed the firm's claims for unlifted gases, stating, *inter alia*, that it had not rendered the required assistance for selling the surplus gases to outsiders as provided

in the agreement. The firm, however, denied that the Administration had over sought its assistance for selling the surplus gases to outsiders and also disowned its obligation to act as a selling agent of the Administration for the excess quantities and locate buyers for the same. The firm claimed from the Administration a sum of Rs. 17.94 lakhs on this account. The Administration, however, made payments only for the actual quantities of gases lifted from year to year.

1.6. In 1972 when the Administration had on certain occasions diverted some quantities of surpuls gases to the Railway workshops and depots at Gorakhpur and Mughalsarai, the firm claimed liquidated damages of rupees one lakh for breach of contract.

(i) The agreement provided for the supply of gases in cylinders of 3 cubic metre to 12 cubic metre capacity. The free time allowed was only 3 days for the return of empty cylinders. The rental payable for delayed return of the cylinders was rupee one per cylinder per week or part thereof for the first four weeks and thereafter rupees three per cylinder per week or part thereof, counting the period from the date of delivery of the cylinders to the Administration. The empty gas cylinders had not been returned to the firm within the free time in many cases. The claim of the firm for the years 1966 to 1969 (Rs. 0.65 lakh) for rental charges was initially not admitted by the Administration.

(ii) The agreement provided that the Administration should supply electric power of 175 KW capacity round the clock to the firm's factory and lighting etc., at 400|200 volts, three phase 50 cycles at bulk rates charged by the Uttar Pradesh State Electricity Board from time to time including statutory duty, if any. Consequent on the levy of coal surcharge, fuel price variation, etc., by the Uttar Pradesh State Electricity Board for power supplied to the Diesel Locomotive Works the Administration included these elements of charges in the bills preferred on the firm for power consumption and recovered the amount. The firm disputed the recovery of these charges and claimed refund of Rs. 5.26 lakhs.

(iii) The firm also claimed from the Administration a sum of Rs. 8.48 lakhs towards damages caused to its plant and loss of production due to power fluctuations and failures.

1.7. The contractor, not being satisfied with the decisions of the Administration, sought arbitration on five occasions for a total claim of Rs. 67.10 lakhs as mentioned in the table below. These included claims for items like compensation for damages to cylinders, shortage of acetone, non-supply of power and water in time and round the clock, non-provision of approach roads, surface drainage facilities, etc., in addition to the claims arising out of the items mentioned in sub-paragraphs (i) to (iii) above.

Period of claims	Amount of compensation claimed by the firm for		Position of settlement of the claims
	non-lifting the minimum guaranteed off-take of gases	Other items	
	(Rupees in lakhs)		
First Arbitration 1966 and 1967	1·02	8·83	Rs. 1·99 lakhs awarded by the sole Arbitrator.
Second Arbitration 1968 and 1969	3·20	9·16	The claim for non lifting of gases dis allowed by the Umpir who awarded only Rs. 0·81 lakh for other items.
Third Arbitration 1970 to 1972	6·33	5·44	Arbitration in progress.
Fourth Arbitration		13·04	Do.
Fifth Arbitration	7·39	12·69*	Do.
TOTAL	17·94	49·16	
	Rs. 67·10 **		

*Ad hoc payment of Rs. 3·50 lakhs made towards escalation in prices of gases lifted during January 1973 to October, 1975.

**Itemwise details of claims are contained in Appendix I.

Appointment of Arbitrator

1.8. For the first arbitration case, the firm appointed an Arbitrator from its side in March 1967 and requested the Administration to appoint its Arbitrator as per the terms of the agreement. The Administration, however, did not appoint its arbitrator within the stipulated time of 15 days as required under the Arbitration Act. Thereupon, the firm nominated its arbitrator as the sole arbitrator in April 1967. The Administration challenged this position and appointed its

arbitrator in May, 1967. But this was not accepted by the firm. The petitions filed by the Administration in Civil and High Courts for setting aside the appointment of the sole Arbitrator were dismissed in October, 1968 and November, 1969 by the respective Courts as the Administration could not show sufficient reasons for its failure to appoint its Arbitrator within the scheduled time. The firm's nominee therefore, became the sole arbitrator and gave as award of Rs. 1.99 lakhs in favour of the firm (which, *inter alia,* included Rs. 1.02 lakhs as compensation for not lifting the minimum guaranteed off-take) despite the Administration's plea that due to unforeseen circumstances the availability of foreign exchange had become erratic and production schedule had to be drastically curtailed under orders of the Railway Board, thereby attracting the *force majeurs* clause.

1.9. The sole arbitrator's award was made absolute and rule of the Court, as the Administration failed to file objections separately as directed by the Court in January, 1972. The Administration's appeal for review was dismissed by the District Court and the High Court did not admit the appeal. The Administration, therefore, had to pay Rs. 2.01 lakhs towards this arbitration award and the cost of the suit.

1.10. In the second arbitration case (pertaining to the years 1968, and 1969) where the Administration appointed its Arbitrator in time the decision was different. As the Arbitrators of both the parties could not come to an agreement an umpire was appointed by Calcutta High Court. The Umpire reduced the total claim of the firm from Rs. 1.36 lakhs to Rs. 0.81 lakh disallowing, *inter alia,* the firm's claim of Rs. 3.20 lakhs towards compensation for not lifting the minimum quantities of gases.

1.11. The awards in the third, fourth and fifth arbitration proceedings are awaited. The Administration has incurred so far (August, 1977) and expenditure of Rs. 1.22 lakhs by way of legal expenses, Arbitrator's fees, etc., in dealing with the five arbitration cases filed by the firm.

1.12. In September, 1970 the Diesel Locomotive Works Administration asked the firm to furnish statements of daily production of gases during 1966 and 1967, Gas Inspector's certificate about the production of gases and documents regarding sales to parties other than the Diesel Locomotive Works. The latter objected to the demand and did not produce these documents for vearification. The claim of the firm about the quantity of gases discharged into air to empty the cylinders thus remained to be established.

Delay in return of empty gas cylinders

1.13. As mentioned earlier, the agreement provided for a free loan period of three days for the return of empty cylinders. Out of the free loan period of three days, the time available for consumption of gases in the shops is only two days excluding the date of receipt of the cylinders. The time actually taken by the shops for consumption of the gases in cylinders varies from 1 hour to 6 days depending on the nature of the gas (consumption of oxygen being faster than acetylene) and tempo of work at the consumption point and also on the size of the cylinder. As a result the return of empty cylinders to the firm was delayed entailing payment of rental charges of Rs. 1.56 lakhs (including Rs. 0.65 lakh claimed and awarded on the first two arbitration cases) during the period from 1966 to 1975.

Renewal of contract

1.14. After inviting tenders in April, 1975 and taking into account the rates in the rate contract of the Director General, Supplies and Disposals operative from 1st May, 1974 to 30th April, 1976 for supply of these gases, the Administration after negotiations with this firm extended in May, 1976, the April, 1965 contract for a further period of 7 years beyond 31st December, 1975. The monthly off-take was reduced to the level as currently estimated and the payment therefor was to be made at the rates to be determined by the Chief Cost Accounts Officer, Ministry of Finance and these were to be applicable from 1st July, 1976.

1.15. While extending the contract opportunity was, however, not taken to modify certain terms and conditions of the existing contract which had led to disputes and arbitration, namely, liability for payment of statutory duty on electricity, coal surcharge, etc., on power supply liability for damages caused to the plant and losses of production due to power fluctuations and failures.

1.16. About the failure to appoint its Arbitrator in the first arbitration case, the Diesel-Locomotive Works Administration stated (October, 1975) that an Arbitrator appointed either by the firm or by it would have acted more or less in a judicial capacity and was expected to take a balanced and dispassionate view of the issues involved. It also held that by reason of the award going against the interest of the Administration, it might not be fair to conclude that participation of the Arbitrator nominated by the Diesel Locomotive Works might have led to a different decision.

1.17. It further stated (October, 1976) that it was not practicable to have fixed yardstick of per loco requirement of gases before arriving at the minimum off-take and that the supplier might not have

gone in for installation of a plant, if the minimum off-take was fixed too low. It also stated that the stand of Diesel Locomotive Works had been that drawal of gases less than the minimum off-take was due to *force majeure* conditions and that it was not liable to pay for the unlifted quantities of gases.

1.18. The Administration further stated (November, 1977) that (a) quite often contractors lodge claims and this was not an unusual feature in dealing with contracts particularly covering a long period and (b) the detention of cylinders beyond the free period of 3 days which was to be fixed for the shops as a whole, became unavoidable at times and considering the number of cylinders in circulation in various consumption points on any day the average monthly rental of Rs. 1,300 might not be considered too high.

[Paragraph 32 of the Report of Comptroller and Auditor General of India for the year 1976-77—Union Government (Railways)]

1.19. From the information made available to the Committee it is seen that limited tender enquiries had been issued by Diesel Locomotive Works Administration in February, 1964 to the following:—

(1) Indian Oxygen Ltd., Kanpur.

(2) Industrial Gases Ltd., Calcutta.

(3) Asiatic Oxygen Ltd., Calcutta.

(4) Indian Air Gases Ltd., Kanpur.

1.20. The Committee enquired when the tender enquiries were issued in February, 1964, whether any target date had been stipulated by which time the firms could send in their quotations and whether all the replies had been received in time. In a note, the Ministry of Railways have stated:

"The enquiry issued in February, 1964 was of an exploratory nature and intended to locate sources of guaranteed supply of the required quantity of Oxygen and Acetylene gases, leaving the option to the suppliers in regard to the system of supply. This enquiry stipulated the submission of quotation by not later than 20th March, 1964.

Considering the fact that such sources for guaranteed supply were limited and considering also the fact that a large quantity of these gases was essentially required without interruption for the manufacturing activities in DLW, all

the possible avenues of such sources had to be fully explored. This meant necessary clarifications etc. to be furnished to them to enable them to submit their offer stipulating their terms and conditions.

Out of the four firms to whom the enquiry was addressed only the Indian Air Gases Ltd., gave a positive response through their letter of 19th March, 1964 enclosing a copy of the draft agreement containing the rates and other terms and conditions. Indian Oxygen Ltd., in their letter of 13th March, 1964 wanted that the matter be kept pending till the next DGS&D Rate contract was finalised. The Industrial Gases Ltd., in their letter of 9th March, 1964 sought some clarifications. Asiatic Oxygen Ltd., in their letter of 2nd April, 1964 awanted an extension of due date until 25th April, 1964 which was followed by their letter of 15th May, 1964 and they were advised in DLV Administration's letter of 20th May, 1964 that the due date was being extended by 15 days more and they gave their detailed offer, *vide* letter of 15th June, 1964. It will thus be seen that initially there was only one positive response out of the four firms addressed in the matter."

1.21. From the above it is clear that only the Indian Air Gases Ltd., Kanpur sent in an offer on 19th March, 1964. The Industrial Gases Limited, Calcutta had *vide* their letter dated 9th March, 1964 asked for certain clarification before they could submit any quotation. The Committee have been informed that the following reply was sent to the Industrial Gases Ltd., Calcutta by the DLW Administration on 17th March, 1964:—

"We have received your letter No. T|2168|Varanasi|5093, dated 9th March, 1964 and would request you to submit a quotation before anything can be decided in respect of the points raised in your letter under reference."

1.22. The Committee desired to know whether any formal offer was then received from the Industrial Gases Ltd., and if so on what date. In a note, the Ministry of Railways have stated:—

"With the receipt of the offer of M|s Asiatic Oxygen Ltd., through their letter of 15th June, 1964 only two offers including the one from M|s Indian Air Gases Ltd. were available. Subsequently, Asiatic Oxygen Ltd., had withdrawn their offer leaving only one firm *i.e.*, M5s Indian Air Gases Ltd. in the field. As no further offer came

from the Industrial Gases Ltd., till receipt of their letter dated 24th February, 1965, evincing interest in setting up a plant for Oxygen and Acetylene Gases at DLW and also for laying pipelines etc. at their cost, discussions were held with the representatives of this firm on 11th March, 1965 after which the firm furnished the details in their letter dated 27th March, 1965, copy enclosed. Since the firm had not indicated the rates of Gases in their letter of 27th March, 1965 they were requested in the Administration's letter of 31st March, 1965 to do so by 7th April, 1965 on which their telegram dated 5th April, 1965, was received. The consideration of the offer of M/s. Industrial Gases Ltd., has to be viewed in the context of the guaranteed requirement of considerable quantity of these essential gases for productnon activities in DLW and inadequate response received from the limited sources available in the country for such Gases."

1.23. The letter dated 24th February, 1965 received from the Industrial Gases Ltd., Calcutta reads as under:—

"We understand that you wish to have Pipelines and Plants for Oxygen and Acetylene gases at your Works. We have, with us, one Oxygen and one Acetylene Plant surplus to our requirements at Kanpur, and if terms can be agreed upon, we are prepared to transfer these Plants to your Works at Benaras and also by pipelines, etc., at our cost.

It is suggested that we should be allowed to discuss the proposal with you at a meeting at your convenience. We suggest a date in the second or third week of March, 1965."

1.24. Another letter dated 27th March, 1965 received from the Industrial Gases Ltd., *inter alia* reads as under:—

"This has reference to the correspondence resting with your letter No. m. mc. 17.2 dated the 5th instant and the meeting which our Industrial Products Division Chief Engineer, Mr. H. S. Ramaswamy, had with Shri H. K. Bhalla, the Financial Adviser and Cost Accounts Officer, Mr. Vishwanathan, the Deputy Chief Mechanical Engineer, Mr. Dass Gupta, the Manager (Plant), Mr. Shukla, the Assistant Manager/Plant and Mr. Charanjiv Singh, Assistant Works Manager (Engine Division) at your Works on the 11th instant. We are very thankful to you

for the courtesy extended and help given to Mr. H. S. Ramaswamy in exploring the possibilities of installation of an Oxygen and an Acetylene Plant at your Works Site with a view to meet your requirements of gases.

We are seriously interested in the proposal and because we have one Oxygen and one Acetylene Plant surplus to our requirements at Kanpur, we can immediately transfer them to Banaras, provided of course, terms can be agreed." ..

1.25. The Committee have been further informed that Asiatic Oxygen Ltd. Calcutta had requested for an extension of the due date for submission of their offer and the firm had been informed on 20th May, 1964 regarding the extension of time by 15 days. The firm had then submitted their formal offer on 15th June, 1964.

1.26. So far as Indian Oxygen Ltd., Kanpur was concerned the position was that on 13th March, 1964 they wrote a letter to Diesel Locotive Works Administration, which *inter alia* mentioned:—

"We thank you for your enquiry dated 27th February, 1964 for oxygen and acetylene gases required for your factory.

You are already aware that the current DGS&D Rate Contract for supply of various gases is due to expire on 31st March, 1964 and we have already submitted to the DGS&D our offer for a Rate Contract covering supplies during the period 1st April, 1964 to 31st March, 1966. The decision on the next Rate Contract has not yet been known but we expect the matter to be finalised towards the end of this month.

As you are eligible for and would expect to be supplied on terms applicable to DGS&D indentors|consignees, the question of our supplying the quantities you have in view is tied up with the Rate Contract. We shall be able to see how best and from which works your requirements can be met only on receipt of the projected Rate Contract.

In view of the foregoing, we are not submitting any offer at the moment against your enquiry under reference and we shall request you to keep the matter pending till the next Rate Contract is finalised."

1.27. The Committee desired to know whether any action had been taken on the request made by Indian Oxygen Limited, Kanpur

and why no further reference was made to the firm although further correspondence appeared to have been carried out with the Asiatic Oxygen Ltd., and Industrial Gases Ltd., in regard to their offers/ quotations. In a note, the Ministry of Railways have stated:

> "With the large quantity of gases required continuously and without 'let-up' for diesel loco production in DLW, it was essential to have a guaranteed supply arrangement. The DLW enquiry to supplying firms, therefore, outlined gas requirements in detail, and pipeline arrangements with pressure levels to be maintained. It was optional for intending suppliers to lay pipelines for gases in our Works, or to quote for guaranteed supplies, if necessary, by manufacturing gases here in DLW. Guaranteed supplies were the vital aspect.
>
> In all this context, therefore, the Indian Oxygen Ltd., reply merely referring to the next supply contract to be finalised by DGS&D, and adding that DLW would be eligible to supplies on terms applicable to DGS&D indentors/ consignees was felt inadequate for fulfilment of special conditions outlined by DLW. DLW, therefore, felt no need to keep the matter pending till the next rate contract was finalised, as requested by this firm, when their reply gave no assurance of guaranteed supplies."

1.28. During evidence the Committee enquired whether any effort had been made to find out why Indian Oxygen did not respond, as they were the biggest manufacturers in the country. The Member Mechanical stated:—

> "In this case they were going to set up a plant at Varanasi where there was no other industrial infra-structure. Perhaps it did not attract them."

1.29. Asked whether it had been specifically enquired from them, the Chairman, Railway Board stated:—

> "Normally we do not enquire."

1.30. When asked whether efforts would not be made to get a big organisation interested in the offer, the Chairman, Railway Board stated:—

> "There are two other competitors. Since this is a small plant, I do not think that Indian Oxygen would have ever been interested in it."

1.31. On being pointed out that efforts were being made to bring in some party and the real ones were not interested in coming forward, a representative of the Ministry of Railways stated:—

> "Banaras is really an industrially backward area. There is no big industry there. The nearest parties to be attracted were at Kanpur and Durgapur. We had to get some one from those places. Until we gave this work to the Industrial Gases Ltd., we were getting gases from Kanpur or Durgapur for three or four years to meet our requirements."

1.32. The Committee desired to know the reason for accepting the offer of M|s. Industrial Gases Ltd. In a note, the Ministry of Railways have stated:—

> "Detailed discussions were held with the representatives of M|s. Industrial Gases Ltd., M|s. Asiatic Oxygen Ltd. and M|s. Indian Air Gases Ltd. from time to time. M|s. Indian Oxygen Ltd. had requested DLW to pend the decision till the finalisation of the DGS&D rate contract and no further communication was received from them. Arising out of such discussions, various modifications to the proposals submitted by the firms were also made. Asiatic Oxygen Ltd. in a telegram of 31st March, 1965 indicated their unwillingness to set up a plant at Varanasi. The final position that emerged has been brought out in the copies of notes given in Appendix II.
>
> Based on the evaluation of the offers by the heads of Mechanical and Accounts Departments and their recommendations, G.M., DLW had accorded his approval to the award of the contract in favour of M|s. Industrial Gases Ltd., As will be seen from these notings the main reason for which the quotation of M|s. Industrial Gases Ltd., was found acceptable was their cheaper rate as compared with the rates of M|s. Indian Air Gases Ltd., the only other firm left in the field."

1.33. Various facilities that were given to the firm for setting up the plant for production of oxygen and acetylene gases and the terms and conditions thereof are given in Clauses 3, 15 and 16 of the Agreement entered into with the firm, which are reproduced below:—

Clause 3.

> "The buyers agree to give the suppliers the following facilities for construction of Oxygen and Acetylene plants:

(a) About 2.5 acre plot of land duly demarcated and as delineated in the Plan annexed hereunto on lease for a period of 30 years from 21st day of April 1965. The land so leased shall only be used by the Suppliers for the specific purpose of installation of the plants for production and sale of Oxygen and Acetylene gases and their by-products and accessories connected with the use and|are supply of said gases, and ancillary sheds and buildings including Guest House and staff quarters etc. The drawings of buildings so constructed shall be got approved from the Buyers, Factory Inspector and Chief Inspector of Explosives. The Suppliers shall have no right to sub-let the entire or any portion of the land so leased to any other party except that the Suppliers may assign the lease dated 21st April 1965 and its rights to the U.P. Government State Financial Corporation only with prior intimation and approval of the Buyers, which approval shall not be withheld, subject to assignee observing and performing all the obligations of the Suppliers under this Agreement as well as the terms and conditions of the lease agreement aforesaid.

(b) Provide surface drainage facilities, and allow use of the approach and other roads.

(c) Supply 10,000 gallons per day of clean potable water subject to force majeure; connection being given at suppliers' factory site. The water so supplied shall be charged at 50 p. per 1000 gallons and shall be measured by means of metres to be installed by the Buyers at Buyers' cost at Suppliers' factory.

(d) Supply electric power of 175 KW capacity round the clock for factory and lighting etc., all electrical energy at 400|420 Volts, three phase, 50 cycles at bulk rates charged by the U.P. State Electricity Board including statutory duty, if any, from the Buyers from time to time; connection being given at suppliers' factory site. The electric energy shall be measured by means of metres to be installed at Suppliers' factory by the Buyers at the Buyers' cost.

For giving the facilities aforesaid, namely, leasing of land, providing surface drainage, giving a connection for supply of water and for giving connection of electric energy at suppliers factory, the Suppliers shall pay Rs. 400|- per

month as the rental for this purpose. This will be exclusive of the charges for consumption of electricity and water as mentioned hereinbefore. Readings of meters for consumption of electricity and water shall be taken jointly.

Alternatively, the Suppliers may arrange for their own electric power and water supply and connections therefor at their factory and drainage facilities for which the Buyers give their consent. In the event the Buyers' responsibilities shall only be restricted to leasing about 2.5 acres land as mentioned hereinbefore for which a monthly rental of Rs. 70|- only will be payable by the Suppliers to the Buyers as provided in the Lease.

All the facilities aforesaid will be made available to Suppliers at the rental aforementioned for the period of 30 years for which land aforesaid is being leased by the Buyers to the Suppliers irrespective of the fact whether the Buyers continue to buy gases from the Suppliers after expiry of the contracted period of 10 years or not; but in case of electric energy and water the rates payable by the Suppliers to the Buyers after the contracted period of ten years or any renewal thereof shall be as applicable to outsiders as per Railway rules, in case agreement for supply of gases is not renewed with the Suppliers after the initial contracted period of 10 years, or any renewal thereof.

The Suppliers agree that they shall maintain their factory area and the township therein and the environs thereof neat and clean."

Clause 15.

"The Buyers agree to give the Suppliers facilities for the use of Diesel Locomotive Works main roads, approach roads, First Aid Post without restriction and free of cost. The Suppliers can use hospital, club, canteen, co-operative stores, Fire Station and Fire Fighting equipment as per Railway rules applicable to outsiders. The Buyers further agree to provide quarters not exceeding six in number from date of agreement at rates applicable to outsiders, provided such quarters are available.

The Buyers also agree to provide at their discretion crane and routine workshop facilities to the Suppliers for erection of the Suppliers plants free of charge."

Clause 16

"The Buyers undertake to assist the Suppliers in obtaining quotas, permits or import licences for their requirements of building material, iron and steel raw materials, components, spares and any other such facilities which are required for regular manufacture and supply of gases to the Buyers."

1.34. In terms of the agreement entered into with M|s. Industrial Gases Ltd., the DLW agreed to take the following guaranteed quantities of gases from the firm each month:—

	Oxygen	Acetylene
From 1-1-66 to 31-12-66	7000 cum	1000 cum
From 1-1-67 to 31-12-67	14000 cum	2000 cum
From 1-1-68 onwards	18000 cum	2500 cum

1.35. Clause (2) of the Agreement also provided that:

"In case the minimum guaranteed quantities stipulated hereinbefore are found to be in excess of the requirements of the Buyers, the Suppliers shall assist the Buyers in selling the said excess quantities of gases on Buyers' account on receipt of advance information from the Buyers. But if no ready customer is available the Supplier shall have the option to empty their cylinders on Buyers' account after advising the Buyers or dispose of otherwise."

1.36. The Committee enquired what was the overall advantage which the Railway Administration sought to secure by entering into this agreement with the firm. In a note, the Ministry of Railways have stated:

"The overall advantage which the DLW Administration sought to secure by this arrangement was an assured source of supply of oxygen and dissolved acetylene gases which are vital consumable items required for day-to-day production and maintenance activities in DLW."

1.37. From the terms of the agreement it is seen that the contract for supply of gases was valid for a period of 10 years only with an option reserving the right of the Administration to extend its currency for a period of not less than 5 years. However, the

facilities such as provision of land on lease, supply of water and electric power, provision of surface drainage facilities and use of approach and other roads were to be made available to the firm for a period of 30 years irrespective of whether DLW continued to buy gases from the firm after the expiry of the contracted period of 10 years or not. The Committee desired to know the considerations on which the Administration agreed to provide the facilities to the firm for a period different from that stipulated in the agreement for supply of the gases. In a note, the Ministry of Railways have stated:

> "The facilities that were made available to the Industrial Gases Ltd. were those that were required by them for setting up the plant and operating the same....It would also be seen therefrom that the land with other facilities should be leased for a period of 30 years as they felt that such a period was required from the point of view of their investment on plant etc. The stipulation of period of supply of gas for a period of 10 years with an Option clause for further extension for a period of not less than 5 years is to be viewed as an initial contract, with ultimate intent of extended 30-year period, provided the contractor's supply performance was satisfactory and reassuring for extensions. This way, DLW production would not be jeopardised by a supply contract if it showed up repeated failures."

1.38. During evidence the Member Mechanical stated:

> "In the matter of lease of land they were insistent because they were making an investment of Rs. 25 lakhs or so and they were naturally wanting an adequate return."

1.39. The Committee pointed out that the facilities given to the firm appeared to be such as would normally be available in a big industrial area like Calcutta or Kanpur. When asked why the firm still insisted on a guaranteed minimum quantity of gases to be taken by DLW, the Member Mechanical stated:

> "When a person is sicking Rs. 25 lakhs in a place where there is not enough industrial infrastructure and he is not likely to get good custom, he has either to price his product high or ensure a minimum guaranteed offtake. From the noting in the file it appears that no entrepreneur worth his name would make an investment in a place like Varanasi unless some concessions were offered by the Railways."

1.40. Justifying the provision regarding guaranteed minimum intake by the DLW, the Member Mechanical stated:

> "In the beginning we had CKD parts coming from imports. But as we started making indigenously more and more parts and importing less and less parts, we were expecting that, as we reached the full capacity of the plant, we would need even more oxygen and acetylene. At the stage the people who were planning at that time thought that the minimum would come in the way. They thought that getting the maximum might be a problem. We could not ensure the maximum. The firm was assured of only to minimum."

1.41. In the same context the Chairman, Railway Board added:

> "It was really for the mutual benefit of each other that the minimum guarantee was necessary. This minimum was worked out on the basis of the production which we envisaged at that time."

1.42. When asked why it was not considered expedient to make necessary provision in the agreement enabling the Administration to revise|modify the minimum guaranteed offtake suitably as may be warranted by fluctuations in actual production vis-a-vis the anticipated schedule, the Ministry of Railways (Railway Board) have stated:

> "The minimum quantities stipulated were expected to be less than the actual requirement of shops. In fact the agreement also provides for an increase in requirement upto about 30,000 cm. of oxygen gas and 7500 cm. of acetylene gas per month. This was the situation obtaining at that time for anticipations of production of locomotives for which the workshop was set up. The minimum quantity was also subjected to *force majeure* clause. It may also be mentioned in this connection that an unduly low minimum quantity would not have induced any supplier to set up gas generation facility and would have had a repercussion on the prices. As may be seen from the copies of notings dated 16-4-65 even at the stage of the agreement an increase in the rate of DA gas was asked for by the firm and had to be accepted by the Administration, as compared to the rates of DA gas per month was considerably reduced."

1.43. It is seen that under the contract provisions the firm had the option to empty the cylinders on the Administration's account, if no ready customer was available for selling the excess quantities of gases. The Committee asked how did the Administration justify this provision and why did not the Administration provide for diversion of such surplus supplies to other Railway workshops such as Mughalsarai. In a note, the Ministry of Railways have stated:

> "The provision for emptying of cylinders in case of less drawal of gas by the Administration and non-availability of other customers for such gas was for contingencies other than *force majeure*. Further, the legal opinion obtained in 1972 was that the gas from this firm could be drawn by DLW and supplied to other Railways as clause 11 of the agreement mentions about the requirement of buyers which in this case is President of India. Some quantity of gas was also supplied to other Railways based on this legal opinion whereupon the firm claimed damages of Rs. one lakh in the arbitration proceedings relating to supply of gas during the years 1970, 1971 and 1972. The matter is sub-judice, the arbitration case being still in progress. The assistance to other Railways could not, therefore, be continued on a long term basis."

1.44. The Committee enquired whether DLW also provided any assistance to the firm for procurement of raw materials like calcium carbide etc. required for production of gases. In this connection, the Ministry of Railways have, in a note, stated:

> "Assistance for raw material to the firm was not a regular feature. However, in view of clause 16 of the agreement, on receipt of specific request from the firm, DLW issued recommendatory letter No. 05/29-1/Gases dated 17-2-66 requesting STC/New Delhi to allot the required quantity of calcium carbide to M/s. Industrial Gases Ltd. as and when they approach for the allotment. Subsequently *vide* letter No. 05/29-1/Gases dated 18-3-66 M/s. Industrial Gases' application was forwarded to DGTD for allotment of 45 MT of calcium carbide."

1.45. During evidence the Committee pointed out that instead of giving the firm all the special facilities as enumerated in the Agreement, the DLW could have perhaps got their requirements of gases—oxygen and acetylene—from the nearby centres like Durgapur or Kanpur. The Member Mechanical stated:

> "In both cases we had experience. We had tried this. We were getting both from Kanpur and Durgapur for our

limited requirements, but even in the case of those limited requirements, we had run into trouble....The supplies were erratic. We were working on the DGS&D rate contract in both cases but we had trouble."

1.46. In the same context the Chairman, Railway Board stated:

"An evaluation was made for setting up our own plant and, after that, a decision was taken that this would be the best alternative."

1.47. In regard to the evaluation stated to have been made for the installation of gas plant by DLW, the Ministry of Railways have furnished some extracts of notings in the relevant file, which are reproduced below:

"* * * *

CME discussed this case with me on date. He told me that so far as the gases were concerned, it would be cheaper to install our own plant. This assessment was based on his experience at HETL/Bhopal. He said that he would get the particulars from Bhopal and then would work out the financial implications.

Sd/-
FA&CAO
24-12-64

* * * *

I had gone through the papers regarding setting up of Oxygen and Acetylene plant that had been received from Works Manager, HETL/Bhopal. This was as per the discussions CME had with me before proceeding on tour on the subject. To me it appears that it will not be an economic proposition to set up our own oxygen plant because of the following reasons:

1. We cannot do with one unit, although the one unit by itself will be sufficient to meet our requirements of 800,000 cft. of Oxygen gas per month. A stand-by is a necessity in the event of the failure of the plant. Therefore, the cost worked out by Shri Saran for two units has to be taken into account while assessing the financial implications from our angle.

2. On that basis the cost worked out by Shri Saran for about 9 lakhs cubic feet of Oxygen works out to

Rs. 34/- per thousand cft. against Rs. 29 per thousand cft. asked for by the Asiatic Oxygen Co. Of course, the Asiatic Oxygen have asked us to give them an advance of Rs. 4 lakhs for constructing the pipelines.

3. Shri Saran has calculated the cost of the pipelines at only Rs. 37,000. We had invited tenders for the pipelines earlier and the two quotas that had been received indicated the cost at over Rs. 3½ lakhs and unless this point is clarified all the calculations that Shri Saran had made on the basis of Rs. 37,000 as the cost of pipelines shall be topsyturvied for our purpose.

4. Shri Saran has not indicated the cost of the pipeline for the Acetylene. He has only shown Rs. 36,000 as the cost of the Acetylene mains. I do not know whether it means Acetylene pipelines. Even if the cost of the pipelines plus the mains is taken into account it comes only to Rs. 73,000 against over Rs. 3½ lakhs quoted by the tenderers for the pipelines for our purpose and Rs. 4 lakhs asked for by Asiatic Oxygen for this purpose.

The cost of the Acetylene gas worked out by Shri Saran comes to Rs. 191 per thousand cft. while the Asiatic Oxygen Ltd. have quoted Rs. 213. It will be an economic proposition if we can set up the Acetylene plant alone because the major portion of payment shall be on account of acetylene gas.

5. For the two units of oxygen plant, nearly £70.244 is required in foreign exchange. I am doubtful whether we shall be able to get such a huge amount of foreign exchange released particularly when we have got offers from Asiatic Oxygen Ltd. and Indian Air Gases for an indigenous product except for release of about Rs. 30,000 for the flash back arrestors. If, therefore, we want to set up our own plant, the plant for Acetylene gas can be set up where the foreign exchange required is only about £5,500. Further it has been stated that Industrial Gases Ltd. have started manufacturing the Acetylene plant in India.

6. I am further doubtful that if we decide to set up our own plants, it will take at least 12 to 18 months before these plants begin operating. In the meanwhile, we are already experiencing difficulties with the Asiatic

Oxygen Ltd. so far as the supply of gases from Durgapur is concerned.

My view is that we should finalise this case with the tenderers, namely, M/s. Asiatic Oxygen Ltd. and Indian Air Gases. It may be recalled that the validity of their offers stands open only 31-1-65. If CME feels that it will be worth investigating further the data furnished by Shri Saran and that he can do so at his leisure after return, we can approach Asiatic Oxygen & Indian Air Gases to extend their validity.

It has been pointed out to me that the prices indicated by Shri Saran may have since gone up in keeping with the current trend of rising prices. This aspect also requires consideration.

Sd/-
FA&CAO
22-1-65

I agree with the analysis of FA. It is fairly clear that this idea of DLW operating its own oxygen plant has been injected rather late in the day. It will take not less than 3 years from now to get our plant functioning.

What I suggest is that we select the firm on the basis of their functions and also their standing and reputation in the field of industry the firms are at present engaged in. We must get a clear time-table for erection of the plant and supply of the gases with a penalty clause for late supply.

Sd/-
CME
22-1-65

* * * *

I do not agree to setting up our own plant because this would mean getting the F.E. released for ourselves which may be a difficult proposition—even if CME can get over the problem for maintenance of line.

* * * *

Sd/-
15/2

I still maintain that in the long run it will be wiser and safer to generate O2 and Acetylene ourselves. I have not perhaps brought it out clearly in these notes. The fact is that the supplies of these gases govern our output from DLW. It is that important. Today in HETL, DLW and other similar industries where fabrication is of a high magnitude, self-generation of O2, H2, Acetylene is a common feature. So as CME I would advocate this procedure.

Sd/-
CME

* * * *

He further feels that it would be advisable if we could set up our own oxygen and acetylene plant. In view of the heavy foreign exchange expenditure involved therein I am, however, of the view that it would not be advisable to have our own plant at this juncture. In any case, this matter is purely of academic interest at this stage when it has been agreed to award the work to M/s. Indian Air Gases. If, however, it is felt that it would be essential to have our own plant for oxygen and acetylene, then perhaps we could consider the advisability of entering into an agreement with M|s. Indian Air Gases for 3 to 5 years only instead of 10 years as contemplated now. This would give us enough time to make investigations towards setting up our own plant after the end of 3 to 5 years.

* * * *

Sd/-
FA&CAO
15-2-65

I recommend.

* * * *

(c) I will immediately start the ball rolling to set up our own plant.

Sd/-
CME
15/2"

1.48. As per the conditions of contract, payment was to be made by DLW to the firm for the specified minimum quantities of gases

subject to *force majeure,* irrespective of the fact whether such quantities were actually lifted or not. The Committee enquired what was the basis for the monthly minimum off-take of gases specified in the agreement and whether this had been specified by the firm or had been worked out by the Administration with reference to the then anticipated production schedule of locomotives. The Committee also asked how was it ensured that the minimum offtake had been co-related to the actual needs of production. In a note, the Ministry of Railways have explained:

> "The monthly off-take of gases was specified by the Administration and not by the firm. It was co-related to the then anticipated production schedule of locomotives after determining the quantum of gases that would be required for such output. Subsequently when the level of production anticipated in the DLW had to be scaled down on account of various factors brought out in the Audit para, action was taken immediately before the commencement of each year to re-assess the monthly requirements of gases and the firm was advised accordingly."

7.49. According to the Audit Paragraph the Administration had to drastically cut down the production schedule of locomotives and consequently the minimum guaranteed quantities of gases could not be lifted throughout the contract period except in the year 1966. Explaining the reasons for the gap between the actual production of locomotives and the production envisaged at the time of the contract, the Chairman, Railway Board stated in evidence:

> "We came into this unfortunate period. 1967—69, when everything was cut out; instead of doing further with development of diesel locomotives, we were asked to cut down production. Again, the foreign exchange constraint was great. This was American foreign exchange. Immediately after the Pakistan problem, we had hardly any American foreign exchange or free foreign exchange. The loco production was drastically curtailed."

1.50. It is seen from the Audit Paragraph that in November, 1966 itself the Administration had advised the firm that due to restricted availability of foreign exchange for import of components and draw materials for production of locomotives, the Government had to cut down the production schedule drastically with the result that the guaranteed minimum quantities of gases effective from 1st January, 1967 would not be required and

that the supplies should be made at the guaranteed level for the year 1966. Similar advice was sent to the firm every year in November/December intimating the reduced requirements for the succeeding year. However, the firm insisted that it was not concerned with the conditions prevailing at the Diesel Locomotive Works and the actual production of locomotives and that under the contract it was entitled to be paid for the guaranteed minimum quantities irrespective of whether such quantities were lifted by the Administration or not. The firm also informed the Administration regularly from 1967 and onwards that the Administration had not lifted the guaranteed minimum quantities of gases offered to the works and that the unlifted quantities of gases had been emptied into the air on the latter's account. The Committee enquired whether the Diesel Locomotive Works ever verified that the quantities of gases actually produced by the firm from month to month were not less than the minimum guaranteed offtake under the agreement and also that the quantities of gases claimed by the firm to have been discharged into the air on the Administration's account had been actually so discharged. In a note, the Ministry of Railway have stated:—

> "No concurrent verification of the actual production of gases by the firm or the alleged discharge of gases into the air by the firm was undertaken.
>
> It may be stated that in terms of Clause 18 of the Agreement, the firm had full liberty to sell to the public or other Government or civilian consumers, gases and other items produced or stocked by the firm at their factory in DLW site in Varanasi without interference from the DLW Administration provided such transactions did not interfere with the regular requisite supply of gases to the DLW Administration.
>
> Further, the Agreement was governed by the *Force Majeure* clause contained in Clause 20 of the Agreement, which was operated upon. As already stated action was taken immediately before each year to advise the firm of the actual requirements of gases as co-related to the anticipated level of production for each year. Accordingly, the claim of the firm that it had emptied surplus gases into the air and demanding payment therefor is not tenable and has been disputed by the Administration."

1.51. It has been stated above that no concurrent verification of the actual production of gases or the alleged discharge of gases

into the air by the firm was undertaken. The Committee asked what were the reasons for not undertaking such verification when the firm, inspite of being advised of the reduced requirements of gases before the commencement of each year, had been claiming to have offered to the Administration the guaranteed minimum quantities of gases and emptied the unlifted quantities of gases into the air on the latter's account. The Ministry of Railways have, in a note, stated:

> "The reduced requirement of gas as compared to the stipulated minimum off take was indicated to the firm arising out of *force majeure* conditions. Any attempt directed at verification of the actual production of gas or the alleged discharged of gas into the air by the firm would have made DLW liable for payment for such excess quantity of gas not actually lifted by them. As a result the effect of operation of the *force majeure* clause of the agreement would have also been nullified by this course of action. The correctness of the administration's stand in regard to the operation of the *force majeure* clause has been upheld by the umpire in the second arbitration case for the lifting of the gas during the years 1968 and 1969 when the firm's claim for payment for the quantity of gas alleged to have been blown off in the air has been rejected in full. Such claims for the years 1970, 1971, 1972 and 1973 to 1975 covered by 3rd and 5th arbitration cases respectively are *subjudice*, the arbitration cases being still in progress."

1.52. In another note, the Ministry of Railways have stated:

> "....it would not have been feasible to conduct a verification of the actual production of gases where the plants are required to work round the clock nor such a verification would have been desirable in view of the operation of *force majeure* clause."

1.53. It has been stated by the Ministry of Railways that no concurrent verification of the actual production of gases by the firm or alleged discharge of gases into the air by the firm was undertaken. In this context it is to be seen that in September, 1970, when the Diesel Locomotive Works Administration asked the firm to furnish statements of daily production of gases and its disposal during 1966 and 1967, the latter objected to the demand and did not produce any documents for verification. The Committee asked on what

grounds the firm refused production of documents relating to production and disposal of gases as demanded by the Administration. In a note, the Ministry of Railways have stated:

> "The firm did not produce any document of production of gas and alleged blowing off of gas in the air on the ground that the Administration was committed to pay for the minimum off take quantities prescribed in the agreement irrespective of their actual drawal. This is the position in respect of first arbitration case covering 1966 and 1967. In the second arbitration case, the production of such documents became irrelevant as the entire basis of the claim for blowing off surplus gases was presumably not accepted by the Umpire. For the third arbitration covering the years 1970, 1971 and 1972, the firm has produced the relevant documents."

1.54. The Audit para states that the Administration repeatedly disputed the firm's claims for unlifted gases, stating *inter alia*, that it (firm) had not rendered the required assistance for selling the surplus gases to outsiders as provided in the agreement. The Committee enquired whether the Administration ever asked the firm to assist it in selling the excess quantities of gases on its account as per the agreement and if so what were the results of such efforts. In a note, the Ministry of Railways have stated:

> "The DLW administration, operating the *force majeure* clause embodied in clause 20 of the Agreement, had advised the firm of the reduced requirements of gases in time before the commencement of each year. Therefore, the DLW Administration had no liability to take gases beyond the reduced quantities and the question of asking the firm to assist in selling excess quantities did not arise. While disputing the claim of the firm for payment towards unlifted quantities alleged to have been discharged into the air, the firm's attention was drawn to the above position and without prejudice to the above position, the firms attention was also drawn to the stipulation in clause 2 of the agreement requiring the suppliers to assist the buyers in selling such excess quantities."

1.55. The Committee asked, since in spite of advising reduced requirements the firm had been claiming to have offered to the works the minimum guaranteed quantities and emptied the unlifted quantities of gases into the air, was it not incumbent on the Administration to ask for the assistance of the firm in selling the excess

quantities of gases on its account as per the agreement. The Ministry of Railways have, in a note, stated:

"The firm was written to from time to time drawing their attention to DLW's advices at the beginning of each year about their reduced requirement of gases and also drawing their attention to provision of clause 2 of the agreement stipulating the firm assisting DLW in disposing of the surplus quantity of gas. A copy of such advice is reproduced below:

'Sub:—Supply of Oxygen and Acetylene Gasses as per Agreement dated 21-4-1965.

Ref.—Your letters detailed on its enclosure.

Dear Sirs,

As specifically expressed in this administration's letter No. 05/29/1/GASES (Vol. VI) dt. 17-12-1970 the production of locos at DLW is dependent on certain conditions which are beyond the control of the Administration as such, your unilateral decision for producing more gases and letting off the same into air on DLW's account and risk is neither tenable nor acceptable.

Please note that in spite of our repeated advices in clear and unambiguous terms to you from time to time, if you continue to act as per your statement contained in your letters it shall be on your own responsibility for any loss whatsoever caused to your concern.

Without prejudice to the above, it is also mentioned that clause (2) of the Agreement clearly stipulates that 'in case the minimum guaranteed quantities stipuated herein before are found to be in excess of the requirements for the Buyers, the Suppliers shall assist the Buyers in selling the said excess quantities of gases on Buyers' account on receipt of advance information from the Buyers. But if no ready customer is available the supplier shall have the option to empty their cylinders on Buyers' account after advising the Buyers or dispose of otherwise'. In spite of this Administration's informaing you in advance before the beginning of the year about its inability to lift the increase quantities of gases in the ensuing year no assistance at any time has been afforded by your concern for selling the so-called excess quantities of gas, if produced

by you at all. It is your responsibility to locate suitable buyers since DLW has been specifically debarred from selling any gas to any outside agency vide Clause 11 of the Agreement.

It will, therefore, be clear that in view of this clause, no direct arrangement for sale of any alleged excess production of gas can be made by DLW as requested by you.'"

1.56. In regard to the denial by the firm that the Administration had ever sought their assistance for selling the surplus gases to outsiders, the Ministry of Railways have stated:

"Specific request for assistance in disposal of the alleged surplus quantity of gas on DLW's account was not made to the firm since the administration had already invoked the *force majeure* clause of the agreement."

1.57. The Committee desired to know whether the Administration had obtained any legal advice as to its liability to take gases beyond the reduced quantities and also about the desirability or otherwise of asking the firm to assist in selling the excess gases. The Ministry of Railways have, in a note, stated:

" The Administration did obtain legal advice while advising the firm for the first time in November/66 about the reduced monthly requirement of gases from 1-1-1967. Subsequently annual advices were broadly on the same lines."

1.58. Extracts from the reference made by the DLW Administration to the then Law Officer, Eastern Railway and his reply are reproduced below:

"We have entered into an Agreement with M/s. Industrial Gases Ltd. dt. 21-4-65 for supply of Oxygen & Acetylene Gases. The firm have established a Plan for the above purpose on the land leased by us to them.

In accordance with the said Agreement the DLW have agreed to take the following guaranteed quantities of gases from the firm from time to time.

	Oxygen	Acetylene
From 1-1-66 to 31-12-66	7,000 cum	1,000 cum
From 1-1-67 to 31-12-67	14,000 cum	2,000 cum
From 1-1-68 to 31-12-68	18,000 cum	2,500 cum

In accordance with the above, we shall have to get the quantities of Oxygen & Acetylene gases as detailed above from 1-1-67.

There is a further provision in the Agreement that if we do not take the stipulated quantities the supplier shall assist us in selling them on our account giving us the credit therefor, or if he fails to do so, to evaporate the goods at our cost. The relevant extract from the agreement is given below.

'In case the minimum guaranteed quantities stipulated hereinbefore are found to be in excess of the requirements of the Buyers, the suppliers shall assist the Buyers in selling the said excess quantities of gases on Buyers' account on receipt of advance information from the Buyers. But if no ready customer is available the Suppliers shall have the option to empty their cylinders on Buyers' account after advising the Buyers or dispose of otherwise.'

The above quantities were stipulated by us on the assumption that our Production Programme in the Works will follow the Production Schedule under which we were required to produce 108 locos during the current year and 150 locos in 1967-68 and thereafter.

Due to unforeseen circumstances the availability of foreign exchange has become rather erratic with the result that we had to cut down our production schedule drastically under orders of the Railway Board. For the current year *viz.* 1966-67, we are schedule to produce only 60 locos and during the next year about 75 locos which is half of our original production schedule. We are, therefore, not in a position to accept the enhanced quantities of gases beyond what we are taking now w.e.f. 1-1-67. The *force-majeure* clause of the Agreement reads as under:

'20. The agreement will be governed by the following *force-majeure* clause.

Notwithstanding anything herein contained if at, any time during the continuance of this Agreement the performance in whole or in part by either party of any obligations under this Agreement shall be prevented or delayed by reason of anyone or more of the events following, hostilities, acts of public, enemy, civil commotion, sabotage, fire, flood, explosion, epidemic, quarantion, restrictions, strikes, lock-outs, governmental action or inaction or acts of God, failure of water supply and/or electricity,

then neither party shall be reason of such even or events be entitled to have any claim for damage against the other in respect of such non-performance or delay in performance of the obligations under this Agreement.'

I request for your advice whether we can invoke this *force majeure* clause and ask the firm to supply us gases during the next year also at the current rate of supply without inviting any penalties under the Agreement. If you agree that this can be done I shall be grateful if you could kindly draft a letter on behalf of the Administration to be sent to the Supplier."

* * * * *

Reg: Agreement between the Industrial Gases Ltd., Calcutta & the Diesel Locomotive Works, Varanasi.

Ref: Your DO No. 05/29-1/GAs dt. 31-10-66.

I have gone through the copy of the agreement sent by you. Barring clause 20 there appears no other provision in the agreement which may help you in the matter. On the basis of the expression 'Government action' as occurring in Clause 20 of the agreement, you may take action as proposed.

* * * * *

1.59. The Committee enquired why did not the Administration divert the surplus gases to other Railway Workshops/Depots. The Ministry of Railways have, in a note, stated:

"Prior to 1972, no attempt was made to divert gases beyond the reduced requirements of the DLW to other workshops/depots as the DLW administration had no liability to take gases in excess of the reduced quantities. In view of the urgent requirements indicated by some of the Railways, an attempt was made in 1972 to assist the Railways. After 1972, no such attempt was made as the firm had, in the meantime, in January 1973, lodged a claim for liquidated damages of Rs. 1 lakh for breach of contract."

Renewal of Contract

1.60. According to the Audit Paragraph, the DLW Administration after inviting tenders in April, 1975 and taking into account the rates in the rate contract of the Director General, Supplies and Disposals operative from 1st May, 1974 to 30th April, 1976 for supply of these gases, extended the contract of April, 1965 for a further period

of 7 years beyond 31st December, 1975. While extending the contract, the terms and conditions of the existing contract which had led to disputes and arbitration namely, liability for payment of statutory duty on electricity, coal surcharge etc., on power supply, liability for damages caused to the plant and loss of production due to power fluctuations and failures, had not been modified. The Committee therefore asked why at the time of renewal of the contract in May, 1976 the Administration did not modify the terms and conditions which had led to disputes and repeated arbitrations. The Committee also asked whether the supplies of gases from the firm in the extended period had been satisfactory or there have been disputes in this regard. In a note, the Ministry of Railways have stated:

> "In terms of Clause 17 of the agreement entered into with the firm, on the expiry of the initial 10 year period from 1-1-66 to 31-12-75, the agreement may be extended at the option of the buyers for a period not less than 5 years on the same terms and conditions. It was decided before the 31st December, 1975 that in terms of the above provision, the contract should be extended for a further period of 10 years and the firm was notified accordingly. The firm, however, disputed this exteision of the contract and after negotiations with the firm, the contract was extended for a period of 7 years on the existing terms and conditions except for the minimum off-take quantitites of gases being reduced and payment to the firm from July '76 made on an *ad hoc* basis on the basis of the average of monthly payment made from January '76 to June '76 subject to the price of the gas being allowed to be determined by the Chief Cost Accounts Officer of the Ministry of Finance on the basis of which adjustments would be made for the actual quantities of gases lifted. The supplies of gases have not been satisfactory recently and the firm has raised certain disputes which are being processed."

1.61. During evidence when the Committee asked why at the time of renewal of the contract more advantageous terms could not be extracted from the firm, the Member Mechanical stated:

> "We took advantage of the clause in the agreement whereby we could extend the agreement and got it cheaper."

1.62. On being pointed out whether the extension of the contract implied a favour by the firm, the Chairman, Railway Board stated:

> "That is the irony. He was supplying good material at a cheap rate."

1.63. In the same context, the Financial Commissioner, Railway added:

> "It is strange that his supplies are still the cheapest. We fight him because he puts in very much inflated claims which most of the unscrupulous contractors do."

1.64. The Committee have been informed that in the first arbitration case, against a claim of Rs. 9.85 lakhs the firm was awarded a sum of Rs. 1.99 lakhs. In the second aribtration case, the claim of the firm was for Rs. 12.36 lakhs against which the award given was for Rs. 80,666. In the third, fourth and fifth arbitration cases, the claims of the firm are Rs. 11.77 lakhs, Rs. 13.04 lakhs and Rs. 20.08 lakhs respectively.

1.65. The Audit paragraph brings out that while renewing the contract with firm the monthly off-take was reduced to the level as currently estimated and the payment therefor was to be made at the rates to be determined by the Chief Cost Accounts Officer, Ministry of Finance and these were to be applicable from 1st July 1976. The Committee enquired whether the Chief Cost Accounts Officer had finalised the rates at which payment was to be made for supply of gases and if not, the reasons therefor. In a note, the Ministry of Railways have stated:—

> "In May 1976, after discussions with the firm, it was mutually agreed that the rates applicable from 1st July, 1976 will be determined by the C.C.A.O|Ministry of Finance after taking into consideration the current production cost of the firm and allowing reasonable profit applicable to this industry. It was also agreed that the C.C.A.O. would be requested to determine a suitable escalation clause. The matter was then referred to C.C.A.O. It has not been possible, so far, for the C.C.A.O. to finalise the rates at which payment is to be made for supply of the gases for the following reasons:—
>
> In spite of the best efforts made by C.C.A.O., the firm, M|s Industrial Gases Limited, had not furnished their Books of Accounts and other relevant information required by C.C.A.O. for the purpose. The firm have taken the stand that for the work entrusted to C.C.A.O., the only factor requiring consideration is the current production cost and that it is not necessary for him to examine the cost for previous years. The company, has, therefore, not agreed to furnish, at the time of C.C.A.O.'s actual cost study, the comparative past figures to enable

C.C.A.O. to examine the reasonableness of current expenses. The company has also not furnished the C.C.A.O. sectional audited Profit and Loss accounts and balance sheets for 1974 and 1975 along with the overall company's Profit and Loss account and balance sheets for the years ended 31st December 1974 to 31st December, 1975. C.C.A.O. has, therefore, clarified that in any cost inquiry by him, it is essential that he must have the discretion to obtain any information which he feels is relevant and that he cannot be tied-down by any data as may be chosen to be made available to him by the firm. In view of the un-cooperative attitude of the firm to furnish all the basic information as required, C.C.A.O. has advised the Railway Board that he is unable to proceed further in the case. In the meantime, Ministry of Industry were requested to take suitable action against the firm, as issue of licences for manufacture of Industrial Gases is controlled by them.

M|s Industrial Gases Ltd., have not only turned down the request made by the Ministry of Industry to furnish the required information to the C.C.A.O., but have even questioned the intervention by the Ministry of Industry and Railway Board and had further threatened by giving a notice that if no agreed prices are settled by 30th November, 1977, they will be compelled to charge rates as per list prices. In order to end the impasse, the matter was taken up with the Ministry of Industry, who have stated that the question raised has been examined in consultation with the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) and that there does not appear to be any provision either in the Companies Act or in the Industries (D&R) Act under which M|s Industrial Gases Ltd., can be directed to furnish the requisite information|data required by C.C.A.O., Ministry of Finance for the examination of cost structure of gases being supplied to D.L.W. It has also been clarified that the present case does not justify investigation under section 235 or 237 of the Companies Act 1956. In view of the above, the Ministry of Industry have suggested that the dispute in question may be resolved by mutual discussions or by filing a civil suit, if necessary.

The matter is being examined by the D.L.W. with a view to deciding the further course of action."

1.66. It is seen from the above that at one stage the firm had threatened that if no agreed prices were settled by 30th November, 1977, they would be compelled to charge rates as per the list prices. The Committee enquired how did the list prices compare with the rate (equivalent to the average of payments from January to June 1976) at which payment was to be made for supply of gases pending determination of the final price by the Chief Cost Accounts Officer. The Committee also desired to know the rates at which payments had actually been made to the firm for supplies after November, 1977. In a note, the Ministry of Railways have stated:—

> "The invoices raised by the firm from March '78 supplies were at the rate of Rs. 350|- per 100 cm. of oxygen gas and Rs. 2300|- per 100 c.m. of DA gas excluding taxes. They also raised supplementary bill at these rates for supplies from July 1976 to February, 1978. The average rate at which payment was made to the firm during the period January 1976 to June 1976 was Rs. 99|- per 100 c.m. of oxygen gas and Rs. 1,579|- per c.m. of DA gas excluding excise duty and Sales Tax. In terms of the agreement of May 1976, the firm was to be paid at the average of monthly payment during the period January 1976 to June 1976 for supply of gas from July 1976 pending determination of prices by CCAO of the Ministry of Finance. Necessary adjustments in such payments were to be made on determination of such prices by the CCAO for the actual quantity of gas lifted from month to month from July 1976. The average of monthly payment for the period from January 1976 to June 76 was Rs. 66,640.34 and the firm had been paid at this rate even after November 1977 upto June 1978. No payment has been made to the firm for supply of gases from July 1978 since when the firm had discontinued supply of gas unilaterally."

1.67. From the information made available to the Committee it is seen that in the absence of any provision either in the Companies Act or in the Industries (Development and Regulation) Act under which the firm could be directed to furnish information/data required by the Chief Cost Accounts Officer and since the case does not justify investigation under the Companies Act, 1956, the Ministry of Industry have suggested to DLW that the dispute in question may be resolved by actual discussions or by filing a civil suit, if necesary. The Committee enquired what course of action had since been decided by the Administration in the matter and what was the pro-

gress in the implementation thereof. In a note, the Ministry of Railways have stated:—

> "The matter was under correspondence and discussion with the Branch Secretariat of the Ministry of Law, Justice and Company Affairs at Calcutta. The firm has unilaterally discontinued supply of gases from July 1978 (from 14th July, 1978 for DA gas and from 30th July, 1978 for oxygen gas). The quantity of gas supplied during July '78 was also very negligible being 5,410.38 c.m. of oxygen and 66.05 c.m. of DA gas against DLW's notified requirement of about 15,326 c.m. of oxygen and 2,331 c.m. of DA gas. Supplies are being arranged from other sources.
>
> The firm also filed a suit and obtained interim injunction from the Varanasi Court restraining DLW administration from discontinuing supply of water, there being already an injunction of the Calcutta High Court restraining DLW from discontinuing supply of electricity. The injunction of Varanasi Court also covers ingress and egress of the firm's goods and products from their factory. DLW has filed an application under Section 34 of the Arbitration Act to stay the proceedings of the suit filed by the firm and to refer the matter to Arbitration. The application is still pending in the Court DLW has also filed an application under Section 20 of the Arbitration Act in the Varanasi Court praying that the firm be directed to resolve the disputes through arbitration in terms of arbitration clause of the agreement. Another application under Section 41 of the Arbitration Act has been filed in the Varanasi Court requesting the Court to direct the firm to continue supply of gases pending settlement of disputes through arbitration and restraining the firm from collecting their dues in respect of contracts placed by other Railways and other Government Departments in view of recurring loss due to purchase from other sources at higher prices. Since legal proceedings have been started Central Government Advocate has advised that no discussion|dialogue should be held with the firm."

1.68. The Audit Paragraph mentions that the firm, not being satisfied with the decision of the Diesel Locomotive Works Administration on several points such as compensation claimed by the firm for not lifting the minimum guaranteed off take of gases, compensation for damages to cylinders, non-supply of power and water in

time, non-provision of approach roads, surface drainage facilities etc., sought arbitration on five occasions for a total claim of Rs. 67.10 lakhs. The agreement entered into with the firm had the following arbitration clause:—

> "Clause 21:—In the event of any question or dispute arising under these conditions or in connection with this contract (except as to any matters the decision or which is specially provided for in these conditions) the matter in dispute shall be referred to the two arbitrators, one to be nominated by the Buyers and one to be nominated by the Suppliers or in the case of the said arbitrators not agreeing then to an Umpire to be appointed by the arbitrators in writing before proceeding on the reference and the decision of the arbitrators in the event of their not agreeing to the said Umpire shall be final and conclusive and the provisions of the Indian Arbitration Act 1940 and the rules thereunder and any statutory modifications thereof shall apply."

1.69. For the first arbitration case, the firm appointed an Arbitrator from its side in March, 1967 and requested the Administration to appoint its arbitrator as per the terms of the agreement. The Administration, however, did not appoint its arbitrator within the stipulated time of 15 days as required under the Arbitration Act. Thereupon, the firm nominated its arbitrator as the sole arbitrator in April, 1967. The Administration challenged this position and appointed its arbitrator in May 1967. But this was not accepted by the firm. The Committee desired to know the considerations on which the Administration did not appoint its arbitrator in the first arbitration case within the stipulated time. In a note, the Ministry of Railways have stated:—

> "The Administration did not appoint an arbitrator in the first arbitration case within the stipulated time as the expectation then was that the matters under dispute would be settled amicably by discussions which were then in progress. During the course of such discussions, the firm issued a notice appointing the firm's nominated arbitrator as the sole arbitrator. The matter was examined in consultation with the Law Officer who expressed the view that the notice issued by the firm, referred to above, was illegal and not in accordance with the provisions of the Arbitration Act."

1.70. Some extracts from the correspondence exchanged between the firm and the Administration in regard to various points of disputes are reproduced below:—

"Letter No. AS|B|32(LG), dated 25-2-67 from DLW to The Industrial Gases Ltd., Calcutta.

"Sub:—Supply of Gas by you to DLW.

Ref:—Your No. BEBARES|2|2833, dated 8-2-67.

As regards applicability of rent on cylinders our understanding in the discusion with your Mr. Garg about the 3 days' limit was that not only the 4th day if it is a holiday or Sunday would be ignored but any intervening holiday or Sunday within the period of 3 days would also be ignored and this would apply from the beginning of the supply under the agreement.

As regards operation of the price variation clause for D.A. gas the average setting price of all the manufacturers in India their Ex. Factory Prices for a definite period say, month to month or quarter to quarter should be adopted for the purpose of working out the price of DA Gas. It will be appreciated that if the purchase of any quantity from any source made by the supplier at hs discretion is taken it would be one sided and work to the disadvantage of the buyer i.e. us."

Registered Letter No. Benaras|115036, dated 10-3-67 from the Industrial Gases Limited to DLW.

Supply of Gas Agreement dated 31st April, 1965 Rental on cylinders etc.

We are writing this with reference to your Accounts Deptts. letter No. AS|B|32(IG), dated 25th February, 1967.

We confirmed the discussions of 24th January 1967 between our Managing Director, Mr. Garg, and your goodself (Ref. letter No. Benaras|1|2833, dated 8th February, 1967) and at the same time clarified some of the points not clearly brought out in the note sent to us. We were hoping that the discussions would pave the way for the smooth payment of our rent bills and also the price of D.A. gas under the D.A. gas price variation formula. Unfortunately, your Accounts Department's letter under reference belies our hope. In their letter they have introduced new conditions for the procedure of payment of rental bills, *i.e.*, not to count Sunday or holiday falling within the period of 3

days, from the beginning of the supply under the above Agreement, which was not discussed at all.

It would appear that your Accounts Department is not interested in settling our bills and as the basis of the discussions referred to above is not acceptable to them, we have no other alternative but to treat the discussions of the 24th January, 1967 as null and void. We are, therefore, asking our Varanasi factory to prepare rental bills on overdue cylinders strictly in terms of the above Agreement, *i.e.*, rental at the specified rates if the cylinders are detained by the Buyers beyond 3 days free period."

Registered letter No. Benaras|1|6440 *dated* 23-3-1967 *from the Industrial Gases Limited to DLW*

"Kindly refer to the Lease Deed and Agreement dated 21st April, 1965 made between us relating to the supply of Oxygen and Acetylene gases. There have been repeated and persistent breaches of the said Lease Deed and Agreement on the part of the Diesel Locomotive Works inspite of repeated protests and letters. As a result thereof we have suffered heavy loss and damage for which the said works are responsible.

We have tried to settle our claims amicably but without any result. In the circumstances disputes having arisen between us, particularly as to the matters mentioned below, we desire to refer such disputes to arbitration in terms of clause 21 of the said Agreement.

In terms of clause 21 of the said Agreement dated 21st April, 1965 we hereby nominate Shri R. N. Dhar, Solicitor of 12, Old Post Office Street, Calcutta-1 to be our Arbitrator and we request you to appoint an Arbitrator within 7 days from the date thereof:

* * * * *

Letter No. AS/B/32 (IG) dated 28-3-67 *from DLW to The Industrial Gases Ltd.*

Sub: Supply of Oxygen and Acetylene Gases to DLW.

"Your Mr. Garg is expected to come here for discussion with us in the first week of April, 1967 regarding finalisation of the points on rent of cylinders and price of dissolved acetylene Gas. You are,

therefore, requested not to send your claim for rent on cylinders till the discussion is over."

D.O. No. 65|192-W|156, dated 30-3-1967, from DLW to The Industrial Gases Ltd.

Ref: Your letter No. Benaras|1|6440 dated 23-3-1967 to General Manager, DLW.

"You may remember that on receipt of your letter No. Benaras|1|5036, dated 10-3-1967, I rang up on 25-3-1967 and requested you to come over to Varanasi so that the outstanding issues could be discussed once again and amicable settlement arrived at.

We have received another letter from your office (No. Benaras|1|6440|dated 23-3-1967) wherein it has been stated that the disputes have to be erferred to arbitration and that your firm has appointed Shri R. N. Dhar, your arbitrator. I am surprised that your firm has deemed it necessary to refer this matter to arbitration, I have no doubt that the points raised in your office letter quoted above could also be discussed during your proposed visit here and that the points settled amicably."

Letter No. Benaras|1|8031, dated 10-4-1967 from The Industrial Gases Ltd. to DLW.

"Kindly refer to your D.O. letter No. 65|102-F|156 of the 30th ultimo.

I have already been to Benaras several times for the purpose of discussion of various claims of the Industrial Gases Ltd., against Diesel Locomotive Works, but unfortunately, nothing came out of such discussions. Very large sums of money are due to the Industrial Gases Ltd. from D.L.W. A tentative agreement arrived at with your General Manager on one of the claims *viz.* Rentals was also not kept by your office. There was no alternative therefore but to refer the matter to arbitration and this was done prior to your kind trunk call to me.

Settlement is always welcome and I would request you to kindly let me have definite proposal on all outstanding claims so that I may discuss the matter with the Board of Directors of the Company. Since the matter is already before the Arbitrators I can make this request, you will kindly appreciate, only without prejudice.

As explained on trunks, I have no immediate programme of going to Benaras but I may do so later after hearing from you. It will be a great pleasure to meet you and I look forward to it."

D.O. No. 65|102|W|156, *dated* 20-4-1976 *from DLW to The Industrial Gases Ltd.*

Ref: Your letter No. Benaras|1|8031, dated 10th April, 1967.

When I spoke to you on phone on 25-3-1967, you gave me an impression what you would in all probability be visiting DLW in the first week of this month and I was accordingly awaiting your visit with interest for discussing the various points of dispute between DLW and your Company.

As, however, you have now asked for definite proposals on all your outstanding claims, I shall furnish shortly a note containing our views on all the items which require settlement according to you. It is, however, not clear to me how you have held that the matter is already before the arbitrators, as we still feel that the matter can be settled by mutual discussion and there is hardly any necessity to appoint an arbitrator at this stage."

Letter No. Benaras/1/9258, *dated* 24-4-1967, *from The Industrial Gases Ltd. to DLW.*

Sub: Arbitration—Lease Deed and Agreement, dated 21-4-1965.

"We could draw your kind attention to our letter No. Benaras|1| 6440, dated 23rd March, 1967 advising you that we had nominated Shri R. N. Dhar, Solicitor, 12, Old Post Office Street, Calcutta-1, to be our Arbitrator and requesting you to appoint an Arbitrator within 7days from 23-3-1967.

Although over 30 days have since elapsed, no Arbitrator has been appointed by you so far. In the circumstances, we have appointed the said Shri R. N. Dhar to be the Sole Arbitrator and have requested him to proceed with the arbitration. A copy of our letter No. Benaras|1|dated 18th April, 1967 addressed to Shri R. N. Dhar, Solicitor, is enclosed herewith for your information."

Letter No. 65|102|W|156, *dated* 1-5-1967 *from DLW to The Industrial Gaves Ltd.*

Ref: Your letter No. Benaras|1|9258, dated 24-4-1967.

In this connection please refer to D.O. No. 65|102-W|156, dated 20-4-1967 from Shri M. B. Jagannath, FA & CAO|DLW, Varanasi to

Shri K. L. Garg, Managing Director of your firm, a copy of which is enclosed for ready reference. The information on all the points referred to in your letter dated 26-3-1967, is being collected and the note containing our views is being sent to you separately."

D.O. No. 65|102-W|156, dated 11-5-1967, from DLW to The Industrial Gases Ltd.

Sub: Claims of the Industrial Gases Ltd., against Diesel Locomotive Works.

"Further to my D.O. letter of even no. dated 20-4-1967, I am furnishing herewith, a note containing our views on all the items which require settlement according to you. Shri A. B Banerjee, our Dy. Controller of Stores has also spoken to you in this matter on 9-5-1967.

I shall be glad to know when it would be convenient for you to visit Varanasi for discussion. You may kindly plan your visit sometimes after the 31st instant and advise me accordingly."

Letter No. Benaras/1/11505 dated 22-5-67 from Industrial Gases Ltd. to DLW.

"I thank you for your letter D. O. No. 65|102-W|156 dated 11th May, 1967.

What I requested you was a definite proposal for settlement. What I have received however are objections sought to be raised by your office based on wrong facts and premises. These objections are one sided and they ignore our points and submission. Some of the points now given were previously discussed with your Senior officers and as I said earlier even agreement on some of the points was not adhered to. Under the circumstances, it is best that the matter be decided by the Arbitrator who is already functioning. Your office may place their view points before him.

A settlement is however always possible and welcome. I have no immediate programme of going to Varanasi but if I do, I shall be pleased to pay my respects to you and see if anything can be done to settle the issues. *This is without any prejudice.*"

Registered Letter No. 65/102-W/156 dated 30-5-67 from DLW to The Industrial Gases Ltd.

Ref:— Your Office letter No. Benaras|1|9258 dated 24-4-67.

"With reference to your letter No. Benaras|1|9258 dated 24.4.67 in the above matter, we have to point out that you have not consi-

dered the correspondence passed between yourselves and ourselves after you wanted arbitration and for the purpose nominated your arbitrator, but all of a sudden you by your aforesaid letter dated 24.4.67 have wrongly, illegally and unjustifiably served notice on the General Manager, Diesel Locomotive Works, Varanasi, U. P. intimating him your nominee Shri R. N. Dhar sole arbitrator. We do not agree to this position. We have to point out that your first notice regarding arbitration No. Benaras|1|6440 dated 23.3.67 and thereby calling us to appoint an Arbitrator within 7 days from the date of the said notice was illegal and not in accordance with the provisions of the Arbitration Act.

As we find that you are adamant to have arbitration instead of settling the matter amicably, we do hereby nominate and appoint Shri K. Raman, Chief Design Engineer, D.L.W. our arbitrator Please note that we do not in any circumstances agree to your nominated arbitrator to be the sole arbitrator.

Please also note that we have claims against you and the same will be referred to the Arbitrator in time for decision."

Letter No. Benaras/1/12316 dated 9-6-67 from the Industrial Gases Ltd. to DLW

"Kindly refer to your letter No. 65|102-W|156 of the 30th ultimo received on the 5th instant.

We do not agree with you that we have not considered any correspondence. If you kindly indicate which particular correspondence we have not considered we shall be prepared to look into the matter.

The correspondence has been going on for a long time but in spite of our repeated requests and representations made verbally and in writing nothing was done to settle our heavy claims. In the circumstances we had no other option but to appoint an arbitrator in terms of the arbitration clause contained in the contract and having done so, we requested you to appoint an arbitrator. As you have failed to appoint an Arbitrator within the time provided by statute and it appeared that you had no intention to settle the dispute we appointed the arbitrator appointed by us to be the sole arbitrator long after the time limit had expired. We are entitled to do so under the clear provision of the Arbitration Act it is strange that you characterise such lawful action on our part as wrong, illegal and unjustified.

Whether you agree to the appointment of Shri R. N. Dhar as the terms of the Arbitrator in terms of the Arbitration Act and he has full-power and authority to arbitrate. We deny that any notice given by us is either illegal or is not in accordance with the provisions of the Arbitration Act.

You have no right to appoint any arbitrator at this stage. Further and in any event it was never intended that you should appoint one of your subordinates as the arbitrator. Such appointment of a subordinate officer at this stage clearly shows that the Department is bent upon having its own way and has clearly no bonafide intention to settle our claims.

It is denied that you have any lawful claims against us and all such claims are hereby rejected."

Registered letter No. 65/102-W/156 dated 17-6-67 from DLW to The Industrial Gases Ltd.

"With reference to your letter dated 9.6.1967, in reply to our letter dated 30.5.1967, we have to point out that we do not agree to any of your contentions made in the said letter of yours. We still maintain and reiterate that your action throughout has been illegal, wrongful and unjustified. We point out that it is not immaterial as you have stated as regards the appointment of your Sri R. N. Dhar, as Sole Arbitrators. We deny that he is Sole Arbitrator under the Arbitration Act in this case. Further, he has neglected to work as arbitrator. We reiterate that notice given by you, has been illegal and not in accordance with the provisions of the Arbitration Act.

We reiterate that we have the right to appoint our Arbitrator at this stage. We also point out to you that you are not the authority to question the personnel of our Arbitrator as to whether he is our subordinate or not. We are free to appoint any person as arbitrator and that we have rightly done. We reiterate that our every claim against you is fully justified and your rejection of the same is illegal and unjustified."

1.71. The reason for Diesel Locomotive Works not appointing its arbitrator in the first arbitration case has been stated to be the expectation that the disputed matters would be settled with the firm amicably by discussions which were then in progress. However the firm appointed an arbitrator from its side in March, 1967 and requested the Administration to appoint its arbitrator as per the terms

of the agreement. The Committee enquired why did the Railway Administration fail to exercise its right to appoint its arbitrator in proper time as this could not have in any way precluded or prejudiced discussion stated to be in progress with the firm at that time. The Ministry of Railways have, in a note, explained:

"Although DLW Administration had a legal right to appoint an arbitrator in terms of the contract in proper time, and this would not have prejudiced discussions which were in progress with the firm at that time, non-appointment of an arbitrator by DLW has to be viewed in the context of the overall circumstances of the case which are briefly indicated hereunder:

The letter of the firm dated 23.3.67 nominating their arbitrator was received by DLW on 28.3.67. Three days prior to the receipt of this letter, a telephonic discussions had taken place between FA and CAO|DLW and the Managing Director of the firm in continuation of the earlier discussions to arrive at an amicable settlement of all the points of dispute. Shri Garg, the Managing Director of the firm, had also agreed to visit Varanasi for the purpose. Accordingly, immediately on getting the letter of 23.3.67 on 28.3.67, the Managing Director of the firm was referred to vide DLW's letter of 30.3.1967 wherein mention was also made of the telephonic discussion of 25.3.1967. The firm on their part also re-affirmed their intention to arrive at an amicable settlement as may be seen from a perusal of their letter No. Benaras|1|8031 dated 10.4.67. Action was in the meanwhile initiated to collect relevant information from the various concerned departments on the issues involved. So that the firm could be approached with definite proposals on an outstanding claims as indicated in their letter of 10.4.1967. Simultaneously, the firm was also advised vide letter of 20.4.67 referring to the telephonic talk of 25.3.67 and advising them that a note containing DLW views on all the items which require settlement according to them would be furnished shortly. Unfortunately, in this case it appears that the Railway Administration's efforts to arrive at an amicable settlement of all disputes without going for arbitration which appeared to have fair expectation

of success at the relevant time, proved to be mis-calculation. The firm kept on giving an impression that they were very keen on an amicable settlement and this turned out to be a camouflage for their real intention of allowing the time for appointment of DLW's arbitrator to lapse."

1.72. Asked whether any legal opinion was obtained for not appointing an arbitrator by the Administration during the pendency of its discussions with the firm for an amicable settlement of the disputes, the Ministry of Railways have, in a note, stated:

"Papers do not show that any legal opinion was obtained for not appointing an abritrator during the pendency of the Administration's discussions with the firm for an amicable settlement of the disputes."

1.73. During evidence the Committee pointed out that the provisions of the Arbitration clause provided for in the agreement were very clear and in consonance with the Arbitration Act and therefore when the Administration was called upon to nominate their arbitrator within the legally specified time, they should have taken appropriate action. Explaining the reasons why the Adminstration did not nominate their arbitrator, the Chairman, Railway Board stated:

."The only plea that we could make it that it is a new factory and man who invests Rs. 25 lakhs, we never thought will be so cussed as all that.....They do not say that they are coming for negotiations and then given arbitration notice. They did not take it on the face value.....We do not feel that it is not correct but they should have simultaneously appointed the arbitrator."

1.74. When the Committee pointed put that since a notice for appointing an arbitrator had been received from the other party, the Administration should have taken action, the Chairman, Railway Board stated:

"That I think is a fault which we should accept...."

He added:

"....there has been negligence or delay in promptly giving or responding to the arbitration."

1.75. In reply to a question whether responsibility had been fixed for this lapse, the Chairman Railway Board stated that it will be done. He however added:—

> "From what we could see, please don't think that there is anything malafide in it. We have been going through the correspondence and discussing this thing immediately. They tried to go to the court."

In the same context the Member Mechnical stated:

> "Generally, our experience is that our contractors want to do long term business with us and they deal with us in a manner in which they will continue to have such long term business relationship with us. A case like this is rather an unusual experience as far as our general experience was concerned."

1.77. One of the grounds on which the Diesel Locomotive Works Administration wrote to the firm that they were nominating the Chief Design Engineer, DLW as their arbitrator and that the appointment of a sole arbitrator by the firm was not acceptable to the Administration. The firm protested against the belated nomination of an arbitrator by the Diesel Locomotive Works and the sole arbitrator appointed by the firm proceeded ahead with his work. The DLW administration field a suit in the court of the Civil Judge, Varanasi on 19 August, 1967 *inter alia* praying:

(a) That the Hon'ble Court be pleased to set aside the apment of opposite party No. 2 as sole Arbitrator; and

(b) To allow the petitioner to nominate and appoint an arbitrator of its own.

1.77. One of the grounds on which the Diesel Locomotive Works Administration based their plea before the Civil Judge was:

> "That opposite party No. 1 even after the notice dated 23-3-67 continued negotiating a settlement with the officers of the petitioners, leading them to believe all the while that the matter was being negotiated for amicable settlement of the dispute and when the requisite period elapsed, flatly denied to make a settlement amicably."

1.78. While commenting on this aspect of the matter the Civil Judge, Varanasi in his order dated 31-10-1968 *inter alia* observed:

"It will be evident that Shri R. N. Dhar was appointed arbitrator on 23-3-1967 and sole arbitrator on 24-4-1967. Between these two dates, one letter was sent on behalf of the opposite-party No. 1 on 10-4-1967 and a telephonic conversation had taken place between Sri Jagannath and Sri Garg on 25-3-1967. It cannot be reasonably inferred from the contents of the letter or conversation that there could be any doubt with regard to the intention of the opposite party No. 1 that the matter in dispute had been referred to arbitration and that the arbitration proceedings could continue inspite of the exploratory talks between the parties for amicable settlement of the dispute. I am inclined to believe the affidavit of Sri Bhat with regard to the telephonic talk on two grounds; firstly Sri Jagannath had not repudiated the facts stated in the affidavit of Shri Bhat, although the affidavit of Sri Jagannath was field in court at a later date, and secondly the facts stated by Sri Bhat are confirmed by the letter dated 10.4. 1967 sent by Sri Garge.

However, even if it is assumed that Sri Jagannath had formed a wrong impression that the opposite party No. 1 wanted to settle the matter amicably instead of proceeding with the arbitration, that impression must have been effaced after receiving the letter dated 24-4-1967. But the petitioner shut their eyes to the appointment of Sri R. N. Dhar as sole arbitrator and kept on talking about end sending proposal for amicable settlement of the dispute. It was only after receiving Sri Garg's letter dated 22-5-67 that the petitioner appointed Sri Raman as an arbitrator. Thus there is no evidence at all to show that the petitioner and its officers were misled by the conduct and representations of the opposite party No. 1 regarding their intention to proceed with the arbitration proceedings at least after receipt of letter dated 24-4-1967."

1.79. It is further seen that while dismissing the revision application filed by the Diesel Locomotive Works Administration against the order of the Civil Judge, Varanasi, the Allahabad High Court in its judgement dated 27-11-1969 *inte alia* mentioned:

"The second contention raised by the learned counsel for the applicant need not detain me long. He mainly relied on the correspondence reproduced above for the purpose of showing that the purchasers were negotiating for an ami-

cable settlement and that the supplies also mentioned in at least two letters that they would also welcome an amicable settlement. According to the learned counsel, this constitates sufficient cause. I do not agree. The fact that the suppliers said that they too would welcome an amicable settlement, did not mean that they had waived the rights conferred on them under the law. They were careful enough to say that the letter was being sent 'without prejudice'. If the officers of the purchasers continued to entertain a forlorn hope that the matter might be settled despite the firm stand taken by the suppliers, the least that can be said is that they acted unwisely by not appointing an arbitrator within the time allowed by law. I do not think that the Court below is wrong in holding that sufficient cause had not been made cut by the applicant."

1.80. It is seen from the Audit Paragraph that the sole arbitrator's award in the first arbitration case (pertaining to the year 1966 and 1967) was made absolute and rule of the court and the Administration had to pay Rs. 2.01 lakhs towards this arbitration award and the cost of the suit. In the second arbitration case (pertaining to the years 1968 and 1969) where the Administration apppointed its arbitrator in time, the decision was different. The awards in the third, fourth and fifth arbitration proceedings were awaited. As to the present position of the remaining three arbitration cases, the Ministry of Railways have stated:

"The remaining three arbitration cases have still not been concluded. The upto-date expenditure incurred in dealing with arbitration cases is being collected and will be furnished in due course."

1.81. The Committee find that four firms—two from Kanpur and two from Calcutta—had responded to the limited tender enquiry issued by the Diesel Locomotives Works Administration in February 1964 for supply of oxygen and acetylene gases. This enquiry stipulated the submission of quotations by not later than 20 March 1964. Out of the four firms to whom the enquiry was addressed only the Indian Air Gases Ltd., Kanpur made a positive offer. Another firm namely Indian Oxygen Ltd., Kanpur in their letter of 13-3-1964 wanted that the matter be kept pending till the next DGS&D rate contract, which was expected to be finalised by the end of the month. The third firm namely Industrial Gases Ltd., Calcutta had vide their letter dated 9.3.1964 asked for certain clarification before they could submit any quotation. On 17-3-1964, the firm had been asked by DLW to submot a quotation before anything cou'd be de-

cided about the points raised by the firm for classification. The fourth firm namely Asiatic Oxygen Ltd., Calcutta had on 2-4-1964 asked for an extension of the due date for submission of the offer and the firm had been informed on 20-5-1964 regarding the extension of time by 15 days. The firm had then submitted their formal offer on 15-6-1969. Thus with the receipt of the offer of Asiatic Oxygear Limited Calcutta through their letter of 15.6.1964 only two offers including the one from Indian Air Gases Limited Kanpur were available to the Administration. Just when the Administration was having detailed be discussion with these two firms for finalising the deal, Industroal Gases Limited, Calcutta, which had not submitted a tender, through a letter dated 24-2-1966 offered to transfer their surplus oxygen and acetylene plants to DLW, Varanasi, if terms could be agreed upon. Discussions were then held with the representatives of this firm on 11-3-1965 and ultimatedy on 5.4.1965 the firm's formal offer was received. In the meantime Asiatic Oxygen Ltd., Calcutta in a telegram of 31-3-1965 indocated their unwillingness to set up a plant at Varanasi. Thereafter only two firms namely Indian Air Gases Ltd., Kanpur and Industrial Gases Ltd., Calcutta were left in the field.

1.82. Explaining the reasons for taking into consideration a belated offer of Industrial Gases Ltd., Calcutta, the Ministry of Railways have stated that the offer of the firm had to be viewed in the context of the guaranteed requirement of considerable quantity of these essential gases and inadequate response received from the limited sources available in the country for such gases. What intrigues the Committee is the discriminatoon shown in dealing with different tenderers and the total disregard of one of the most well established supplier of the country. namely Indian Oxygen Ltd., Kanpur. Indian Oxygen Ltd. had in fact by their letter of 13-3-1964 requested the Administratoon to keep the matter pending till the end of the month. But the Administration did not respond to the request of the firm(even though with other firms correspondence had been exchanged in regard to the offer for supply of gases much beyond the date originally stipulated for submission of quotations. It is significant to note that no tender was receoved within the stipulated date from the Industrial Gases Ltd., Calcutta. The explanation given or not keeping the matter pending for some time, as requesteed by Indian Oxygen Ltd., Kanpur, is that with the large quantity of gases required continuously and without let-up or diesel loco production in DLW, it was essential to have a guaranteed supply arrangement and this firm gave no such assurance of guaranteed supplies. It was presumptous and unwaranted on the part of the Railway Board to have assumed that Indian Oxygen Ltd., which was possibly the best known firm in this field, would not guarantee supplies even before they had spelt out their offer. If a belated offer from the Industrial

known firm in this field, would not guarantee supplies even before they had spelt out their offer. If a belatedoffer from the Industrial Gases Ltd., Calcutta, a much smaller organisation, received after about a year of the last date for submissoon of quotations could be entertained by the Administration, there could be no justification whatsoever in overlooking a far better established firm. It only goes to show that either the Administration was keen to bring in the Industrial Gases Ltd. or it was unjustifiably prejudiced against the Indian Oxygen Ltd.

1.83. The Committee further note that out of the two offers available to the Administration, the offer of the Industrial Gases Ltd., Calcutta was considered better than the offer of the Indian Air Gases Ltd., Kanpur simply because the former firm had quoted low rates per se as compared with the rates quoted by the latter firm. No comparative evaluation of the relative terms and conditions of the two offers appears to have been made. This is clear from the fact that the terms and conditions stipulated by these two firms were quite different and had different implications and prima facie the terms and conditions stipulated by the Industrial Gases Ltd. were more stringent. For example, the Indian Air Gases Ltd. was prepared to enter into an agreement for five years whereas the Industrial Gases Ltd. insisted that the agreement should be for 10 years. Again the Indian Air Gases Ltd. did not insist on any minimum guaranteed offtake but the Industrial Gases Ltd. made the minimum guaranteed offtake a pre-condition of the agreement. Further the Industrial Gases Ltd. wanted a number of facilities such as a plot of land, power connection, assured supply of water and other facilities available in the Township for the employees of the firm. The other firm, namely, Indian Air Gases Ltd. did not ask for any such facility. Without making a proper evaluation of the two offers, if is not clear how the Railway Administration could adjudge the relative superiority of a particular offer tender. Again in fairness to the different firms, their rates for supply should have been ascertained if the same facilities had been extended to them as asked for by Industrial Gases Ltd., namely a plot of land, power connection and assured supply of water etc. It would, therefore, appear that the rate differential was not the only consideration which weighed in favour of the Industrial Gases Ltd Either the Administration took a very narrow view of the financial implications of the offer of the Industrial Gases Ltd. or they were influenced by some extraneous considerations so as to agree to all sorts of conditions imposed by the firm.

1.84. Another consequence of the acceptance of the offer of the Industrial Gases Ltd. had been that the Administration's proposal

to go in for their own gas plants was prematurely buried. It is seen that when the question regarding supplies of gases was under consideration, the then Chief Mechanical Engineer mooted a proposal for installation of Administration's own plants for these gases. The Chief Mechancical Engineer was of the view that since the supplies of these gases governed the output of the DLW it was necessay to have captive gas plants as was the case in other public undertakings like HEIL, Bhopal. However, the foreign exchange difficulties proved to be the stumbling block. But even then on February 1965, it was decided that it would be advisable to enter into an agreement with the Indian Air Gases Ltd. for 3 to 5 years only as that would give the Administration enough time to make investigations for setting up of administration's own plant after the end of 3 to 5 years. Thereafter with the appearance of the Industrial Gases Ltd. on the scene on 24-2-1965 with the offer of a surplus gas plant and after the deal with the firm covering a period of 10 years having been clinched, the proposal regarding installation of a gas plant came to be shelved automatically.

1.85. In terms of the agreement entered into with the Industrial Gases Ltd. a number of facilities were agreed to be given to the firm for setting up the plant for production of oxygen and acetylene gases. These included leasing of a 2.5 acre of land, providing surface drainage, giving connections for supply of water and electric energy at the supplier's factory. The lease was for a period of 30 years although the initial supply contract was only for 10 years. For the facilities so provided the Administration was to get a rental of Rs. 400|- per month. Some other facilities provided to the firm either free of cost or on rental basis included the use of DLW main roads, approach roads, hospital, club and six quarters for the staff of the firm. Besides, the Administration also undertook to assist the firm in obtaining quotas permits or import licences for their requirements of building material, iron and steel raw materials etc. and any such other facilities which were required for regular manufacture and supply of gases to the Diesel Locomotive Works. The overall advantage which the Diesel Locomotive Works Administration sought to secure by this arrangement was an assured source of supply of oxygen and acetylene gases which are vital consumable items required for day to day production and maintenance activities in Diesel Locomotive Works.

1.86. The Committee find that while agreeing to provide these facilities the DLW Administration did not take care to safeguard their own interest. Although the initial supply contract was for a period of 10 years with an option reserving the right of the Adminis-

tration to extend its currency for a period of not less than 5 years, the facilities were to be made available to the firm for a period of 30 years irrespective of whether DLW continued to buy gases from the firm after the expiry of the contracted period of 10 years or not. The justification given for this arrangement is that no entrepreneur worth his name would make an investment in a place like Varanasi unless some concessions were offered by the Railways. Unfortunately the implications of such an arrangement had not been properly analysed because if this had been done the Administration would not have virtually mortgaged a sizeable piece of land with all attendant facilities for a mere sum of Rs. 400/-, of which land rent component was only Rs. 70/-, per month and for a period of 30 years. Whereas the firm had secured their interest by insisting on provisions regarding minimum offtake and increases in the prices payable due to escalation in costs, the DLW Administration did not even consider to have an escalation clause which could take care of the future increase in the rentals.

1.87. Another serious drawback in the arrangement entered into with the firm was the provision regarding guaranteed minimum offtake of gases by the Diesel Locomotive Works Administration. In terms of the agreement Diesel Locomotive Works was required to take minimum guaranteed quantities of oxygen and acetylene gases and in case the minimum stipulated quantities were found to be in excess of the requirements of DLW, the Administration was to seek the assistance of the firm for selling the excess gases and if no ready customer was available the firm would have the option to discharge the unlifted quantities of gases into the air on DLW's account. As opposed to this, the firm had been given full freedom to dispose of the gases produced at the cost of facilities provided by the Administration in excess of the requirements of DLW to any outside buyer without any interference by the Administration. Why this one-sided arrangement to the advantage of the firm was agreed to is suspicious and needs to be investigated. The Committee are also unable to appreciate the justification of the provision allowing the firm to let off the excess gases into the air on the Administration's account in preference to the same being diverted to other Railway Users.

1.88. It is distressing to note that even though the minimum guaranteed quantities of gases could not be lifted throughout the 10 years period of the contract except in 1966, the Administration never asked for assistance of the firm for the disposal of the alleged surplus gases as per the agreement. Further inspite of the firm

repeatedly claiming to have offered to DLW the guaranteed minimum offtake and emptied the unlifted quantities of gases into the air on the latter's account, the Administration did not undertake any verification of the actual production of gases and the discharge of the gases into the air by the firm.

1.89. The Committee feel that the arrangement entered into with the firm was one-sided and clearly biased in favour of the firm. No wonder the firm made the maximum use of the provisions of the agreement to extract maximum benefits which involved DLW in prolonged legal battle. Over a period of 10 years for which the original agreement was valid the firm has dragged the Administration to arbitration on no less than five times.

1.90. The Committee find that after inviting tenders and taking into account the rates in the rate contract of DGS&D for supply of these gases the Administration in May 1976 extended the contract with the firm for a further period of 7 years on the same terms and conditions except slight reduction in the quantity of minimum offtake of gases and the payment therefor was to be made at the rates to be determined by the Chief Cost Accounts Officer, Ministry of Finance. The firm, however, refused to furnish the basic information required by the Chief Cost Accounts Officer for fixation of rates. Consequently the rates for supply of these gases could not be finalised so far. It is significant to note that the firm had at one stage threatened the Administration that if no agreed prices were settled by 30 November 1977, they would be compelled to charge as per their list prices. Ultimately the firm unilaterally discontinued supply of the gases from July 1978, compelling the Administration not only to obtain its requirements of the gases from other sources at higher prices but also to seek legal remedy in the matter. Thus the apparent cheaper rates offered by the firm on consideration of which the contract was extended have proved illusory. The Administration does not appear to have learnt any lesson from its experience with this firm for more than 10 years. This is deplorable to say the least.

1.91. The foregoing paragraphs make an unsavoury reading and give rise to suspicion about the bona fides of the whole arrangement. The Committee would, therefore, recommend that the whole case may be investigated so as to identify the persons who were responsible for showing undue favour to this firm.

1.92. Apart from the drawbacks in the agreement entered into with the Industrial Gases Ltd., which have come to light, the Audit

paragraph also highlights a serious case of negligence in the matter of appointment of an arbitrator by the Administration in the first arbitration case. It is noted from the Audit paragraph that the firm, not being satisfied with the decisions of the Diesel Locomotive Works Administration on several points such as compensation claimed by the firm for not lifting the minimum guaranteed offtake of gases, compensation for damages to cylinders, non-supply of power and water in time, non-provision of approach roads, surface drainage facilities etc. sought arbitration on five occasions for a total claim of Rs. 67.10 lakhs. The first arbitration case pertaining to the year 1966 and 1967 in which the Administration failed to appoint an arbitrator in time as a result of which it was made absolute and the Administration had to pay Rs. 2.01 lakhs towards the arbitration award and the cost of the suit. In the second arbitration case pertaining to the year 1968 and 1969 where the Administration appointed its arbitrator in time, the decision was favourable to the Administration. The awards in the third, fourth and fifth arbitration proceedings are still awaited.

1.93. From the information made available to the Committee it is seen that for the first arbitration case, the firm appointed its arbitrator in March 1967 and requested the Administration to appoint their arbitrator as per the terms of the agreement. The Administration, however, in utter neglect of its duty failed to appoint its arbitrator within the stipulated period of 15 days as required under the Arbitration Act. Thereupon, the firm nominated its own arbitrator as the sole arbitrator in April, 1967. The Administration challenged this position and appointed its arbitrator in May, 1967. But this was not accepted by the firm. The firm protested against the belated nomination of an arbitrator by the Diesel Locomotive Works Administration and the sole arbitrator appointed by the firm proceeded ahead with the arbitration and made an award against the Administration. Ultimately the court gave judgement on that award. In between, in a futile attempt to cover up its earlier latches of failing to appoint an arbitrator in time, the Administration had sought legal remedy by filing a suit first in the court of the Civil Judge, Varanasi and had then gone in appeal to the Allahabad High Court. The Administration's case could not be sustained in any of the two courts as the Administration had "acted unwisely by not appointing an arbitrator within the time allowed by law."

1.94. Explaining the reasons for not appointing the arbitrator within the stipulated time, the Ministry of Railways have stated that the expectation then was that the matters under dispute would be

settled amicably by discussions which were then in progress. Prima facie this is not a satisfactory explanation because the nomination of an arbitrator could not have in any way precluded or prejudiced the discussions with tne firm which were stated to be in progress at that time. The Committee are of the view that the Administration had miserably failed to exercise its right to appoint its arbitrator in proper time. The Chairman, Railway Board during the course of his evidence before the Committee conceded that there has been negligence in this case. The Committee desire that responsibility for this serious and costly lapse, including wasteful legal expenditure, should be fixed.

1.95. The Committee would also like to be apprised of the progress made in the other three arbitration cases now pending.

CHAPTER II

New Delhi—Mughalsarai Microwave communication system
Audit Paragraph

2.1. Since 1964-65, the Zonal Railways have been implementing a number of schemes for microwave communication links to provide reliable means of communication to meet their needs. Under this system, messages are converted into microwave signals which are relayed from antenna erected on one tower to antenna erected on another series of towers being located about 25 miles|40 kilometres apart. Provision of such networks of communication system on the Southern, South Eastern, Central, North Eastern and Northern Railways for a total length of 8 thousand route kilometres was programmed and sanctioned by Railway Board between 1964-65 and 1967-68.

Provision of Standby equipment

2.2. As early as 1965 the Railway Board circulated to all the Railways the "norms for microwave systems." According to these norms, standby for radio equipment (receiver, transmitter, etc.) was to be provided at all stations when the system loading reached 24 channels or above.

2.3. In November, 1967, the Railway Board sanctioned an abstract estimate for Rs. 83.68 lakhs (with a foreign exchange content of Rs. 35.94 lakhs) for the work of provision of 24 channel microwave link between New Delhi and Mughalsarai.

2.4. The global tenders invited by the Northern Railway Administration in January, 1968 on a turn-key basis for multi-channel microwave system envisaged provision of 22 repeater stations between two terminals i.e., New Delhi and Mughalsarai and involved 23 hops between the two terminals. The invitation to tenders indicated that the radio equipment was required for an ultimate capacity of 120 channels. It also envisaged provision of standby equipment at the terminals as well as at the repeater stations to obtain a high degree of reliability.

2.5. The lowest tender was that of a firm in Belgium which provided for complete standby arrangements (using frequency diver-

sity to cope with failure of outages of radio equipment as well as to overcome fading through diversity reception) at the 23 hops on the New Delhi—Mughalsarai microwave link. Taking into account the lowest tendered rates, the cost of work was estimated as Rs. 88.87 lakhs with a foreign exchange content of Rs. 53.50 lakhs.

2.6. In July, 1968 when the tenders were under consideration, the Railway Board decided to link various Railways' 'Microwave Communication System' to form an all Railway communication system. The New Delhi—Mughalsarai microwave link formed part of this integrated network. Accordingly, on 30th July, 1968 the Railway Board issued certain guidelines to the Research, Designs and Standards Organisation and the Railways for the future planning of the systems. These guidelines contemplated, *inter alia*, provision of basic standbys with automatic change-over facilities to meet equipment outages (failures) with a view to reaching a reliability figure of 99 per cent. These also envisaged provision of frequency diversity arrangements to overcome severe fading of the main equipment for hops over 55 kilometres. However, while according its approval in December 1968, to the placement of the order on the lowest tenderer (firm in Belgium), the Railway Board fixed the total value of the contract at Rs. 47.15 lakhs—c.i.f., and Rs. 80.91 lakhs—f.o.r., with a view to ensuring that there was no further revision of the estimate. The provision of standby radio channel was restricted to stations separated by hops of distance of 55 kilometres or over. In other words, only 10 hops as against 23 hops were to be provided with standby arrangements over and above the working channels. The remaining 13 hops were to be provided with working channels only; standby arrangements were not to be provided at these hops.

2.7. The advance letter of acceptance was issued by the Northern Railway Administration in December, 1968. The contract was executed in February, 1970. The prices stipulated in the contract were also to apply to any additional equipment/materials ordered by 8th April, 1970; orders placed after this date were subject to escalation.

2.8. In 1972, the Northern Railway Administration felt that to obtain the maximum benefit of the reliability for which New Delhi—Mughalsarai microwave system had been planned, standby equipment would have to be provided in the remaining 13 hops situated between 30 kilometres and 55 kilometres which had been deliberately left out in the contract concluded in February, 1970. This was approved by the Railway Board in July—October, 1972. Since the original equipment for this microwave system had been supplied

by the firm Belgium, the additional equipment had also to be procured from the same firm on grounds of technical and physical compatibility. Accordingly, in November 1973, a supplementary agreement was executed with the firm in Belgium for the supply of additional standby equipment at a cost of Rs. 23.42 lakhs. The procurement of additional standby equipment and accessories entailed an additional expenditure of Rs. 10.28 lakhs because of the escalation in prices since the execution of the principal agreement in February 1970.

2.9. The Railway Board maintained in March 1976 that the norms prescribed by it in 1965 were rough guidelines and only in February 1972 the specifications for a microwave system were finalised by the Research Designs and Standards Organisation. It also maintained that the foreign exchange position was difficult in 1968 when the order was placed and necessitated the value of imported equipment being kept at the barest minimum.

2.10. It may, however, be mentioned that the specifications incorporated in other global tenders floated by the Railway Board in January 1969 for radio equipment and accessories for seven microwave links on Western, Northern, North Eastern, South Central and South Eastern Railways stipulated provision of basic standby at all station i.e., terminals as well as repeater stations and orders were placed on a Japanese firm in December 1969 on this basis. Similarly, another contract was placed in December 1970 with another Japanese firm for supply of radio equipment for five microwave links on Central, South Central and North Eastern Railways in which also provision was made for a basic standby at every hop in each of the five links. It is also worth mentioning that the "specification" of February 1972 did not specify anything on the provision of standby.

2.11. As regards difficult foreign exchange position there is no indication that in December 1968 or at any time before April 1970 the Railway Board ascertained from the Ministry of Finance the possibility of release of additional foreign exchange for import of additional standby equipment. On the other hand, in October 1969 at the request of the Railway Board, the Ministry of Finance authorised an additional allocation of Rs. 5 lakhs in foreign exchange out of Belgium Credit for purchase of additional channelling equipment on this system from Moradabad to Bareilly but the same was surrendered in March 1970 as the extension of the microwave link from Moradabad to Bareilly was given up for the time being.

Collapse of microwave towers

2.12. The agreement included provision of 24 microwave towers by the firm. The contractor was at liberty to engage sub-contractors. The firm in Belgium was entirely responsible for the satisfactory performance of the entire system as well as of the erformance of the towers. It had indemnified the Railways gainst defective materials or workmanship for work done by its ub-contractors or manufacturer of towers. The agreement further tipulated that the firm was responsible to supply, free of cost, all eplacements for materials which were found to be defective either ue to the design or workmanship or faulty installation or anything vhatever attributable to the contractor or the sub-contractor or the nanufacturer of the towers during the warranty period of 12 months ommencing from the date of satisfactory commissioning of the enire installation.

2.13. The agreement laid down the following specifications for he fabrication and erection of towers:—

(i) towers twist not to exceed ½° at the antenna for a mean minute wind velocity of 53 miles per hour corresponding to a maximum expected wind velocity of 80 miles per hour;

(ii) lateral deflection not to exceed 1/3°; and

(iii) tower must withstand a wind loading of 200 kilometres per hour.

2.14. The contractor was fully responsible for tower design and ystem performance. The agreement further povided that since the ntire responsibility for the design and guarantee of the performance of the towers rested with the contractor, there should be no eed for the Railways to approve the contractor's designs. The etailed designs of the towers were to be submitted to Northern tailway only for information and record. Again as per the contract, towers were to be inspected at the manufacturer's works by he Railway's representative, who in this case was the Director eneral, Supplies and Disposals. The towers in their completely ssembled form at site were to be subjected to inspection by the tailway's Engineers.

2.15. In July 1969, the Research, Designs and Standards Organiation had also evolved designs for such microwave towers. It appeared that the design of the towers as submitted by the firm in elgium for the microwave link from New Delhi to Mughalsarai vas lighter than what had been designed by the Research. Designs nd Standards Organisation. However, in the meeting held in eptember, 1969 between the officers of Northern Railway and the epresentatives of the firm, the latter stated that the design of towers

had been made taking into account all the factors of the standard engineering practices and the conditions envisaged in the contract. Considerating that the design of the towers was the entire responsibility of the firm in Belgium and the performance of the entire microwave system was guaranteed by it, the Northern Railway Administration felt that "there should not be any need to check the correctness of the design by the Railway."

2.16. The 24 towers on the entire route between New Delhi and Mughalsarai were fabricated and erected during 1971 and 1972 and accepted by the Northern Railway Administration, which issued the necessary certificate of completion of all the works to the contractors on 25th September 1973 showing the date of completion as 15th February 1973. The New Delhi—Mughalsarai microwave installation was commissioned on 1st February 1973. The warranty period expired on 1st February 1974.

2.17. On 20th May 1976 one of the working towers (90 metre high) at Khurja City collapsed owing to heavy wind disrupting the microwave communication between New Delhi and stations on Allahabad and Lucknow Divisions. The Northern Railway Administration requested the contractor to take necessary remedial measures including provision of a new tower at Khurja city to a modified design and to arrange for re-inforcements to other towers of the system. The contractor informed the Northern Railway Administration on 26th May 1976 that it would assist the Railway in the assessment of the situation resulting from the collapse of the tower at Khurja but disowned responsibility for the collapse of the tower, etc., which, it maintained, would have to be determined after a thorough investigation of all facts and that the cost of its assistance would have to be reimbursed in case the collapse/damage was beyond its control.

2.18. A quick check of the other 23 towers on the link by the Northern Railway Administration revealed signs of distress in three other towers at Mughalsarai, Gajraula and Hapur. In July and August 1976, conditions of distress and deformations were noticed in the towers at Mirzapur, Meja Road, Allahabad, Shujatpur, Tundla, Kaurara, Hatras, Aligarh, Moradabad and New Delhi. The joints in the main leg members were lapping instead of butting causing eccentricity at the joints. To reduce stress on the members of the distressed towers, the dishes and reflectors were removed from some of the towers.

2.19. Meanwhile, in June 1976, the Railway Administration, in consultation with the Railway Board, referred the contractor's design and drawings for 90 metre and 85 metre towers to the structural

Engineering Research Centre, Roorkee, for checking up the adequacy of the design of the towers and suggesting modifications required for strengthening the towers if the design was found to be inadequate.

2.20. The Research Centre made the following observations (in July, 1976) amongst others:

(i) In the design wind loading on reflectors had been taken at 180 kilometres per hour instead of at 200 kilometres per hour.

(ii) Fifty per cent increase in permissible stresses allowed only for buildings had wrongly been used for the design for the tower.

(iii) The normal practice of not using angles smaller than 45 mm 45 mm 5 mm and bolts less than 16 mm diameter, had not been followed in the design.

(iv) The tower was not well braced in plan at levels 10, 20, 30, 90 or 95 metres.

(v) Joints in the legs of the existing towers were lap joints "which are not normally used in towers."

2.21. The Northern Railway Administration, in consultation with the Research, Designs and Standards Organisation and the Railway Board initiated action in August 1976 for replacement or strengthening of the towers, advising the firm that as a result of the scrutiny of the firm's design made by the Structural Engineering Research Centre, Roorkee, it had been established that the design of the towers supplied and erected by it was weak and did not conform to the specification to which the towers were to be designed as stipulated in the contract. It was requested to take all necessary remedial measures free of cost without further loss of time to restore the microwave system and to meet all the requirement of the contract.

2.22. In September 1976 the firm was advised that if it failed to take remedial measures acceptable to the Railway to strengthen/replace the towers, the Railway would deem itself free to take such action, as was considered necessary to do the needful at the firm's risk and cost. It was further mentioned that this cost would also include all the expenditure incurred in providing the necessary interim communication requirements referred to above. According to an assessment made by the Northern Railway Administration and reported to the Railway Board in September 1976, a sum of Rs. 13.10 lakhs would be required for erecting new towers in replacement at four stations and a further sum of Rs. 31.10 lakhs would be required

for ratification, repairs and other miscellaneous expenditure, etc., on other towers making a total of Rs. 44.20 lakhs.

2.23. In November, 1976, the firm declined the claim of the Railway on the plea that all contractual terms as stipulated in the contract agreement dated 5th February 1970, had been fulfilled and that, in particular, with respect to the towers, all clauses regarding inspection at the manufacturer's works and inspection at the site after erection had been duly carried out by the Northern Railway Administration to its satisfaction. The firm further stated that in the inspection of the towers by the inspectors of the Director General, Supplies and Disposals and the Railway only minor defects in fabrication and erection were pointed out and that the warranty period of 12 months commencing from the date of completion of the installation, namely, 15th January, 1973 expired on 15th February 1974 and that during this warranty period no further defects or any nonconformity with specifications or claims had been raised whatsoever in relation to the towers.

2.24. The Northern Railway Administration incurred an expenditure of about Rs. 73 thousand in restoring the communication system temporarily. The Railway had also to hire additional speech and teleprinter channels from the Posts and Telegraphs department at an annual rental of Rs. 4 lakhs. This provided only 40 per cent of the circuits lost due to disruption of microwave communication.

2.25. The Railway Board sanctioned (upto March 1977) rectification works costing Rs. 14.09 lakhs and directed the Northern Railway Administration that the question of recovery of this cost from the contractor should be processed.

2.26. Meanwhile, the question of recovery of the losses from the firm's dues had been under consideration of the Northern Railway Administration and the Railway Board since August 1976. At the end of July 1977, Rs. 45.67 lakhs were to be paid to the firm under the terms of the contract and security deposit of Rs. 2.87 lakhs in the form of bank guarantee was held by the Railways.

2.27. The Northern Railway worked out a claim of Rs. 1.65 crores against the firm on account of the expenditure already incurred and still to be incurred for rectification of towers and restoration of the performance of the microwave system to normal.

[Paragraph 7 of the Report of the Comptroller and Auditor General of India for the year 1976-77—Union Government (Railways)]

2.28. It is noted from the Audit paragraph that as early as 1965 the Railway Board had circulated to all the Railways the "norms for microwave systems". According to these norms, standby for radio equipment (receiver, transmitter, etc.) was to be provided at all stations when the system loading reached 24 channels or above.

2.29. It is further seen from the Audit paragraph that on 30 July, 1968 the Railway Board had issued certain guidelines to the Research, Designs and Standards Organisation and the Zonal Railways for the future planning of the system. These guidelines were the technical recommendations made by the Microwave Engineers after their discussions held in the Railway Board on 5 July 1968. These *inter alia* provided:

> "9. *Reliability*: It was agreed that a reliability figure of 99 per cent is adequate. There are two main causes—(i) severe fading and (ii) outages of equipment etc. Out of these, No. (1) is parctically unavoidable. As far as No. (2) is concerned it was agreed that basic standby will be provided with the automatic changeover facilities.
>
> 10. The following figures have been generally accepted for adoption in future planning:
>
> (a) Capacity—120 channels.
>
> (b) K: It was agreed that the calculations will be based on K-1, when 0.66 of the first fresnal zone will be kept clear and K-4/3 with fully first fresnal zone clear.
>
> (c) Hop length—50 kms. 20 per cent.
>
> (d) The figures given in the guidelines paper circulated for loss due to reflection are adequate.
>
> (e) Diversity—It was agreed that for hops over 55 kms. and depending on the terrain, diversity may be considered."

2.30. It is also seen that while circulating the guidelines evolved in the discussions of Microwave Engineers held on 5 July, 1968, the Railway Board had specifically directed the RDSO to issue system specifications based on the guidelines indicated in the discussions. In pursuance of this directive the RDSO furnished in October/November, 1968 the draft specifications. Apart from other aspects clause 12 of these specifications provided that 50 per cent standby Radio equipment should be provided at all repeater/intermediate stations and 100 per cent at the terminal/end stations.

Clause 12 of the specification reads as under:

> "In order to have an adequate cushion, the system design shall cater for cent percent standby of radio equipment at the end stations of the route and 50 per cent standby

at intermediate stations and this cushion is irrespective of mean time between failures of the equipment mentioned in clause 9.21."

2.31. The Committee enquired what were the essential prerequisites for achieving 99 per cent reliability and how did the standby help in reaching the prescribed level of reliability. In a note, the Ministry of Railways have stated:

"The essential pre-requisite for achieving 99 per cent reliability is to have a minimum fade margin of 20DB, for hops over normal terrain and of normal length of 45 to 55 kms. since propagation statistics have proved that fading will not exceed this limit for 99 per cent of the time.

Standby is one of the steps required in incerasing the level of reliability from 99 to 99.9 per cent so that outages of equipment do not contribute to outages of the link."

2.32. From the proceedings of the Tender Committee considering the tenders received for the multi-channel Microwave system between Delhi and Moghalsarai on the Northern Railway, it is seen that some of the salient features of the Tender were:

"The tender called for the design, survey and supply of equipment for the provision of Multi-channel Microwave link between Delhi and Moghalsarai.

The radio equipment was required for an ultimate capacity of 120 telephone channels and the Multiplex equipment for 60 channels initially equipped according to the channel allocation plan. VFT equipment capable of 24 telegraph channels on each voice channel was to be provided with initial equipment only to the extent shown in the telegraph channel allocation plan. The main objective of end to end signal to noise ratio of 42 DB for 99.9 per cent of time was specified as mandatory."

"*Provision of standby radio equipment*: The tender called for the provision of standby radio equipment at the terminal as well as repeater stations. This was stipulated so as to obtain a high degree of reliability, which is essential in a long distance communication. The mean time-between-failures (MTBF) is straightaway doubled by the provision of standby radio equipment. In fact the quotations of all the other tenderers include this stand-

by equipment. Therefore, 'Alternative 3' becomes the automatic choice, as it combines the benefits of a standby for the weakest chain in the link *viz.*, the Radio equipment and the alternative routing suggested by M/s. Bell Telephones. On this alterantive, the suggestion of a more advantageous routing given by M/s. Siemens is also to be superimposed."

2.33. Relevant extracts from Annexure III of tender conditions for *minimum Performance* attached to the global tender floated by General Manager, Northern Railway in January 1968 are reproduced below:

"*MINIMUM PERFORMANCE*:

A complete set of detailed recommended performance figures are given below. The tenderer must attach to his tender a tabular statement showing the corresponding performance figures of his equipment. He should furnish clear reasons based on technical or financial grounds for providing a higher or lower performance figures.

RECOMMENDED PERFORMANCE OF OVERALL SYSTEM:

* * * *

1. Continuous operation for 24 hours daily.

* * * *

8. Overall system reliability—99.9 per cent

(This is compulsory).

* * * *

12. Standby: 100 per cent Radio equipment to be provided as standby and worked continuously on frequency diversity basis."

2.34. The Audit paragraph states that in response to the global tenders the lowest offer was that of a firm in Belgium which provided for complete standby arrangements (using frequency diversity to cope both with failure or outages of radio equipment as well as to overcome fading through diversity reception) at the 23 hops on the new Delhi-Moghalsarai microwave link. Taking into account the lowest tendered rates, the cost of work was estimated at Rs. 88.87 lakhs with a foreign exchange content of Rs. 53.50 lakhs. The abstract estimate for this project as sanctioned by the Railway

Board in November, 1967 was for Rs. 83.68 lakhs with a foreign exchange content of Rs. 35.94 lakhs. The Tender Committee which considered the various offers concluded that the offer of the Belgium firm (M/s. Bell Telephones) at a total cost of Rs. 88.87 lakhs with a foreign exchange content of Rs. 53.50 lakhs was the cheapest from the point of view of both overall rupee value and the foreign exchange content and also because it fulfilled the technical requirements of the Railway's tender.

2.35. The Northern Railway approached the Railway Board on 3 May, 1968 for the approval of the Tender Committee's recommendations for awarding the contract to the lowest tenderer, namely, the Belgium firm. While according its approval in December, 1968 to the placement of the order on the lowest tenderer, the Railway Board fixed the total value of the contract at Rs. 47.15 lakhs (CIF) and Rs. 80.91 lakhs (FOR) with a view to ensuring that there was no further revision of the estimate. The provision of standby radio channel was restricted to stations separated by hops of distance of 55 kilometres or over. In other words, only 10 hops as against 23 hops were to be provided with standby arrangements over and above the working channels. The remaining 13 hops were to be provided with working channel only; standby arrangements were not to be provided at these hops.

2.36. Extracts from the notings in the files of the Railway Board which culminated in the provision of the standby arrangements only at 10 instead of 23 hops are reproduced below:

Extracts of para 19 *of notes dated* 27.9.68 *at page* 10/*N of File No.* 65/W3/WW|8-Pt (*Tender*)

"19. *Frequency-Diversity-Standby System*:—The practice hitherto adopted on the Railway is to use baseband repeating equipment and in the interest of frequency conservation a set standby system is used in which a changeover is made to standby transmitter and receiver of the same radio frequency upon the occurrance of failures of the main equipment. Such systems are adopted for purely reasons of economy and have generally been adopted in Japan for the operational circuits as distinct from the public telecommunication circuits. The practice so far adopted is to install only one standby set at a repeater station for both East and West directions thereby providing 50 per cent back-up. But the proposal that has been

made by the Northern Railway is to use a route standby system using frequency diversity to achieve two objectives, namely, to provide standby as well as an improvement to overcome fading through diversity reception. In the system proposed the radio equipment is duplicated without duplicating the antenna dishes, reflectors, masts etc. In both the cases, *i.e.*, the route standby system and the set standby system common antennas, reflectors and masts are used. Certain technical recommendations have been advised by the Board *vide* para 10(e) of letter 66/W3/WW|5 (Norms) dated 30.7.68, wherein it has been decided that for hops over 55 kms. depending upon the terrain, diversity may be considered. Due consideration has to be given to the path topography while considering the fading and it has been established that the topography of paddy fields, surface water etc. are more conductive to fading than apath topography consisting of fields, cities, forests, mountains etc. The topographical and soil conditions of the route from Mughalsarai to New Delhi chiefly cover paddy fields and large tracks of lands which are likely to be water-logged for considerable parts of the year. Taking this into account and also that Delhi-Mughalsarai section will, at a later date, form a part of the inter-railway links, the frequency diversity for hops over 55 kms. could be technically advantageous. With this in view an exercise has been carried out and it is found that with this yardstick only 8 hops should be provided with frequency diversity and the other hops need not have this arrangement. This exercise has resulted in the cost of the radio equipment to be brought down."

Sd/- J. D. (Telecom).

Extracts of para 2 of notes dated 8.10.68 at page 18/N of file No. 65/W3/WW|8-Pt (Tender).

"As the interest charges under the deferred payment system offered by the firm will be payable over a period longer than what has been assumed in the financial implications worked out for this project, it will be necessary for Northern Railway to work out fresh financial implicataions. Incidentally, it is understood that the Railway has come up with a revised estimate involving an excess of about Rs. 16 lakhs over the sanctioned estimates and the Rail-

way has been asked to reduce the estimate to the extent possible by effecting economies. As the FOR value of the tender of M/s. Bell Telephones, recommended for acceptance, works out to about Rs. 80.91 lakhs it is likely that the Railway may substantially exceed the original estimate unless they re-examine the need for spare equipments to keep down the cost and effect economies in other ancillary works."

Sd/- J. D. FX.

Extract of para 2 of notes dated 11.10.68 at page 19/N of file No. 65/W3/WW/8-Pt (Tender).

"Northern Railway have already been asked to recast their revised estimate to bring it in line with the norms laid down by the Board in their letter No. 65/W3/WW/8 dated 26.9.68. As indicated by JDFX the Railway will now be asked further to review the estimate—

(a) so as to keep the cost as low as possible without having to resort to radical revision of the original estimate, and

(b) negotiate with the firm for obtaining a further reduction in prices in the event of Belgium credit materialising.

Board may, therefore, approve of the recommendation."

Sd/- D.S.T.

Extract of ME's note dated 23-10-68 at page 20/N of File No. 65/W3/WW/8-Pt (Tender).

"Northern Railway has been advised to restrict the requirements within the sanctioned estimate. The tender documents, therefore, need not await the revised estimate from the Northern Railway. The total cost of the contract is Rs. 80,90,820 and according to the present delegation of powers, the approval of tenders is within Board's powers. The matter was informally discussed with MR some time ago and he had directed that this tender be first considered by the full Board and then put up to him before acceptance. The lowest tender submitted by M/s. Bell Telephones may be accepted. In case a bilateral credit is proposed by the Ministry of Finance, Northern

Railway will be asked to negotiate with M/s. Bell Telephones to see if they would be prepared to reduce their price."

Sd/- CRB

The approval of the Railway Board to the recommendations y the Tender Committee was conveyed to the Northern Rail-de letter No. 65|W3|WW|8-Pt. (Tender) dated 2-12-1968. xtracts from this letter are reproduced below:

'he Board have approved of the recommendations made by the Tender Committee under para 6.1(i) of the Tender Committee Recommendations forwarded under your above quoted letter, subject to the following conditions:

(i) As a follow-up of the confirmation which has been given by M/s. Bell Telephone Manufacturing Company and sent under your letter No. 171-Sig|6|Pt. II dated 26-9-68, it has to be confirmed in writing from them that they would be fully responsible for the design and performance of the mast|tower fabricated and erected by M|s. SAAS Towers Pvt. Ltd.

(ii) Board desire that the Railway should immediately conduct negotiations with the firm for reduction in price, particularly of the imported equipment and components so that it should be definitely possible for the Railway strictly to restrict the requirements within the sanctioned estimate. On no account should the acceptance of the contract at the CIF/FOR value to be arrived at after negotiations lead to a revision of the estimate. In this connection reference is drawn to Railway Board's letter No. 65|W3|WW|8 dated 26-9-68.

(iii) The broad break-up of the ceiling of CIF/FOR cost of the equipment under the heading Radio, Multiplexing (excluding radio patch signalling equipment to be arranged indigenously), Test Instruments, Survey and Supervision, Antenna Towers and accessories, Battery Chargers to be ordered for Delhi Mughalsarai Microwave System is given in the statement....The cost has been arrived at on the system configuration to fit in Board's letter No. 68|W3|WW|5 (Norms) dated 30-7-68 and provision of equipment for one working and one standby radio channel has been restricted at stations separated for hops of distance of 55 kms. and over."

2.38. During evidence the Committee were informed that although the Tender Committee had recommended the purchase of equipment etc. worth Rs. 88.87 lakhs from the Belgium firm, the Railway Board had finally given their approval to the purchase of equipment etc. worth Rs. 80 91 lakhs. As to the reasons for the reduction in the total outlay recommended by the Railway Board, the Member Engineering stated:

> "At that time we had instructions from the Ministry of Finance to economic on expenditure. Initially, the instructions were to reduce expenditure by 5 per cent; later it was increased to 10 per cent."

2.39. In reply to a question the Member Engineering stated that the only consideration which induced the Railway Board to reduce the items to be procured, was the question of funds. When asked whether the Railway Board would have gone in for the entire equipment worth Rs. 88.87 lakhs if the funds were available, the witness stated:

> "We might have. It is subject to need. I cannot say what would have happened at that time."

In the same context the Chairman, Railway Board added:

> "I presume they would have."

2.40. The Member Engineering stated that the attempt at that time was to cut expenditure as much as possible. In this connection the Railway Board drew attention to para 2 of the Finance Ministry's circular No. (1) 1-Feb(1)67 dated 29-3-1967 repeated in their circulars No. 1(1)-Feb(1)68 dated 10-3-1968, 10-3-1969 and 13-2-1970. Para 2 of the circular reads as under:

> "As you are already aware, pressure on the country's foreign exchange resources is continuing. It is, therefore, extremely essential that the demands for fresh commitments are restricted to only those items which are essential and inescapable."

2.41. The Committee pointed out that the total difference between what was proposed by the Northern Railway and the figure accepted by the Railway Board was only about Rs. 8 lakhs with a foreign exchange component of about Rs. 6 lakhs. When asked whether the standbys were not considered essential so as to be included in the list of items to be procured, the Member Engineering stated that they considered them as less essential as they were sure that they could get 99 per cent efficiency with the soild state equipment that they were going to acquire. In reply to a question the Member

Mechanical stated:

> "It was a deliberate, considered and thought out decision and it was taken on the basis of 99 per cent efficiency guarantee."

2.42. On being pointed out that what was considered to be non-essential in 1969-70 was considered to be very essential in 1972, the Chairman, Railway Board stated:

> "The phasing is always done of the things that we cannot do at one stage."

2.43. When asked why additional funds were not asked for from the Ministry of Finance, the Member Engineering stated:

> "The idea was not to ask in that atmosphere."

The Chairman, Railway Board added:

> "Then, we had to keep within the budget estimate. Whatever was unavoidable was ordered. This is what we could find out in the files now."

2.44. In a written note furnished at the instance of the Committee, the Ministry of Railways have stated:

> "In this Circular No. (1) 1-Feb(1)68 all Ministries were enjoined to exercise great care in reducing the requirement of foreign exchange to absolute minimum. This, coupled with the fact that Railways had launched a number of microwave schemes at that time, for which foreign exchange was required, made it necessary to conserve foreign exchange wherever possible and to the maximum extent possible. It was not the intention of the Railway Board at that time to provide a high quality microwave system on one Railway at the cost of the very provision of such a system in other Railways. Moreover, the configuration of the inter-Railway microwave net work was also not available at that time. On these considerations, it was decided that we could wait for some more time for providing standby on this system to achieve a higher degree of reliability."

2.45. Commenting on this information Audit have pointed out:

> "There was nothing on record at that point of time to substantiate the Board's information now stated. On the other hand this New Delhi-Mughal Sarai is a vital link connecting various Zonal Railway Administrations and formed part of the all Railway integrated Microwave

net work planned in 1968 itself and as such required standby arrangements at all stations for a high degree of reliability."

2.46. From the information made available to the Committee it is seen that in August, 1969 the Railway Board directed the Northern Railway that immediate arrangements to provide the additional channelling equipment on the Delhi-Mughalsarai system to cater for direct channels between Delhi and stations on the Eastern. North Eastern and North East Frontier Railways should be made. The Northern Railway then proposed that on the system then under installation additional channels might be provided and that the additional equipment might be obtained from the same firm which was supplying the main equipment. Orders were solicited for placing the order for the additional equipment on the Belgium firm at a cost of Rs. 7.25 lakhs with a foreign exchange component of Rs. 5 lakhs. This was suggested with a view to take full advantage of the unit rates quoted by the firm in 1968, as has been provided for in the contract. The Railway Board in June, 1970 communicated their sanction for the release of additional foreign exchange *vide* their letter No. 68/F(CN)13/1 dated June, 1970. This letter reads as under:

"Ref: Your letter No. 171-Sig/17 (Const.) dt. 9-3-70

In the circumstances the Ministry of Finance (DEA) have released vide their DO No. F6/14/EII/68 dt. 10-6-70 foreign exchange of Rs. 7.2 lakhs (Rupees seven lakhs and twenty thousands only) under the Belgian Suppliers' credit for the import of equipment from Belgium for communication channels to be provided on Delhi-Moghalsarai microwave. The release is subject to the same terms and conditions as the release of Rs. 47.15 lakhs against which Northern Railway have placed contract on M/s Bell Telephone Mfg. Co. of Belgium for provision of multichannel microwave radio communication on Delhi-Moghalsarai section. The order for the equipment for additional channels against the present release of Rs. 7.2 lakhs may be placed on the Belgian Suppliers as an amendment to the contract for the main equipment and seven signed copies furnished to the Board for transmission to the Ministry of Finance (DEA) for obtaining and approval of the Belgian authorities."

2.47. Referring to the financial climate obtaining in 1968-69, the Financial Commissioner stated in evidence:

> "In 1966-67, 1967-68 and 1968-69 the position about the availability of foreign exchange was very difficult, *i.e.*, during the 3 intervening years after the Third Plan—the 3 Annual Plan periods. I was then working as Joint Secretary in the Finance Ministry. We got repeated instructions that the scrutiny about expenditure of foreign exchange should be very strict. We should see the figures in that background. the quotation was for Rs. 88.87 lakhs, involving a foreign exchange content of Rs. 53.50 lakhs. All the Ministries were asked to scrutinise their proposals as strictly as they could. As a result the Railway Board at that time considered that the objective they were looking for could be achieved by reducing some expenditure; it came 8091. Included in those 8 lakhs reduction was the foreign exchange content of Rs. 6.35 lakhs which was not insignificant. At that stage if we could save even 50,000 or even two lakhs it was considered good because of the very difficult position at that time."

2.48. The Committee pointed out that at the time of inviting tenders it had been stipulated that the efficiency desired was 99.9 per cent. This figure was brought down to 99% at the time of acceptance but within two years this was considered insufficient. Explaining the reasons for this, the Chairman, Railway Board stated:

> "What we tender is on a general basis and at the time of tendering we have to take everything into consideration. Now when we put 99.9, the tender value came up rather high. So, some prunning was necessary. At that time, it was considered by the technical people that we could live with 99 per cent efficiency."

2.49. The Committee asked whether there was anything in the records to show that because of reduction in the items of equipment, the efficiency had been brought down from 99.9 per cent to 99 per cent. The Chairman, Railway Board stated:

> "May be it was not spelt out that we will come down from 99.9 per cent to 99 per cent, but the reason for discarding it seems to have been that because of the cost, excepting that which was essential, other things should be cut out.

So they decided that, while keeping it at ten places, they should cut it out at other places."

2.50. The Committee enquired what had been provided for in the contract entered into with the Belgium firm whether it was 99 per cent or 99.9 per cent. A representative of the Railway Board explained:

"We actually left at 99.9 per cent in the tender and in the agreement. It was a mistake. It was unfair on our part to put it in the contract when we had reduced the frequency diversity. the contractor did not see it. He left at that without raising any objection. It was a sort of bamboozling the contractor to keep it at 99.9 per cent."

2.51. Subsequently in a note furnished to the Committee the Ministry of Railways have stated:

"The figure of 99.9 per cent stipulated in the contract agreement is obviously a mistake since the question of the firm giving a reliability of 99.9 percent without full standby never arose."

2.52. The Committee have been informed by Audit, as under:—

"The tender conditions clearly laid down the requirements of reliability as 99.9 per cent. This global tender stipulation, specification, and other conditions were all cleared by the Railway Board before he same was issued in January, 1968.

It is also stated that when tenders were under consideration during May-September 1968 the Railway Board was also seized of the matter of drawing up the draft specifications for Railway Microwave Schemes in all future planning on a policy basis. The record note circulated on 30-7-1968 covered also the essential pre-requisites of reliability—i.e. basic standby to take care of outages of equipment and in addition frequency diversity for hope over 55 kms. This guideline of July 1968 stressed the need for the above pre-requisites of basic standby and frequency diversity even for 90 per cent reliability. In so far as New Delhi-Moghalsarai Microwave Project is concerned, the percentage of reliability of radio equipments tendered for is 99.9. This was not relaxed whether at the time of deliberations of

tender or at the time of placement of order..... The Board or the Railway have not been able to furnish any contemporary documentary evidence to establish that the equipments were procured with the aim of getting only 99 per cent efficiency at that point of time (i.e. 1968)."

2.53. It has been stated that standby equipment at terminals and repeater stations on the New Delhi-Mughalsarai microwave system was provided for in the global tender to achieve a reliability of 99.9 per cent. The Committee asked why did the Northern Railway ask for a reliability of 99.9 per cent instead of 99 per cent in the global tender. The Ministry of Railway have in a note, stated:

"Northern Railways' specification in the global tender had been made much before the Railway Board was seized of the subject on a policy basis. The Railway wanted to have a highly reliable system of communication on this important route and hence specified a reliability of 99.9 per cent."

2.54. It is observed that the guideines of July 1968 contemplated provision of basic standby to overcome equipment failures at every repeater and end terminal station and in addition frequency diversity arrangements in long hops over 55 kms. In the circumstances, the Committee enquired, how was it that provision of even basic standby was not considered in 13 hops of this link. The Ministry of Railways, have, in a note, explained:

"The decision taken in 1968 in respect of this link was for providing "Frequency Diversity" in certain hops longer than 55 kms. and not for providing standby.".

2.55. In another note, the Ministry of Railways have stated:

"When the tender of Northern Railway was approved in December, 1968, the accent was on providing frequency diversity for 10 hops where it was expected that fading would constitute a major problem. The provision of equipment for frequency diversity, incidentally served the purpose of stand-by although provision of standby was not the intention as such. Since this was the first time that fully solid state equipment was being purchased (as against the semi solid state equipment installed earlier) it was considered desirable to reduce the level of investment by relying on the fact that the frequency of failure

of solid state equipment is likely to be much lower than the semi-solid state equipment i.e. MTBF of solid state equipment is very high. Moreover, at that time no firm decision had been taken regarding the configuration of the inter-railway net work and even the detailed specifications had not been drawn up by RDSO, although some guidelines had been indicated. It was also considered desirable to go in for more microwave links for intra-railway purposes rather than spend money on a particular link to cater for inter-railway working."

2.56. The Committee enquired whether the Ministry of Railways expected 99 per cent reliability even after the matrial modification in the system under which the standby came to be restricted only on 10 out or 23 hops on which frequency diversity arrangements had been provided. In a note, the Ministry of Railways have stated:

"It is once again emphasised that the decision taken by the Board in 1968 in respect of this contract was to provide "Frequency Diversity" and not "Standby" for hops longer than 55 Kms. in order to achieve 99 per cent propagation reliability on these hops. The equipment provided for frequency diversity incidentally served the purpose of standby as well. It was concluded at that time that 99 per cent propagation reliability would be achieved by providing frequency diversity only on such hops as were longer than 55 kms. On other hops, frequency diversity was not considered necessary for achieving this degree of propagation reliability. No standby either was required since the MTBF (Mean Time Failures between the Equipment) was soon that the outages of equipment would be less than the outage in the link due to fading with 99 per cent propagation reliability."

2.57. Commenting on the above information given by the Ministry of Railways, the Audit has pointed out that:

"It is observed that the deliberations—held on 5th July 1968 (which formed the basis to the guidelines of 30th July 1968) stressed amongst other things [*vide* para. 10(K) of the guideline] that it is technically desirable to have a fully transistorised (solid state) equipment. This would

clearly establish that even if radio equipment is fully transistorised/solid type, basic standby (50 per cent) was considered essential under conditions of 99 per cent reliability by the Board|RDSO in July 1968.

It is further stated that in the Board's subsequent global tender which was floated in January 1969 only provision of solid state equipment was contemplated and later contracted for in December 1969 and in accordance with the principles laid down in the above guideline 50 per cent basic standby at all the hops was provided. Even granting that a decision could not be taken on the aspect of provision of standby at all the hops at the time of placement of orders in December 1968, the Board could have decided on further amendment to add standby equipments to the contracts before April 1970 i.e. the date upto which the prices of imported equipments were kept firm under the contract."

2.58. From the information made available to the Committee, it is seen that the Railway Board's approval to the Northern Railway about the acceptance of the Tender with modifications regarding number of hops to be provided with frequency diversity was given in November, 1968. In December, 1968, the Northern Railway issued advance letter of acceptance to the firm. The final contract was signed in February, 1970 after the firm had completed survey of all hops. The system was actually commissioned on 15-1-1973.

2.59. The Audit Paragraph brings out that in 1972, the Northern Railway Administration felt that to obtain the maximum benefit of the reliability for which New Delhi—Mughalsarai microwave system had been planned standby equipment would have to be provided in the remaning 13 hops situated between 30 kms. and 55 kms. which had been deliberately left out in the contract concluded in February, 1970. The Committee enquired whether it was a fact that maximum benefit of reliability was not achieved on account of restricted provision of frequency diversity arrangements to overcome severe fading for hops of over 55 kms. The Committee also desired to know on what basis did the Northern Railway propose for the additional standby equipments at all the hops in 1972. In a note, the Ministry of Railways have stated:

"In 1972 we had come to a conclusion regarding the configuration of the All Railway Microwave net work, routing plan etc. and New Delhi—Mughalsarai was more or less the

back-bone of communication between Delhi and all the other Railways. It was in this context that it was felt that the remaining 13 hope which had not been provided withstand-by equipment earlier (the remaining having got stand-by facilities incidentally) should also be provided in stand-by equipment as a higher degree of insurance against failure of equipment was necessary if the Northern Railway's link was to form part of the all Railway Microwave net work."

2.60. According to the Member Engineering the justification given by the Northern Railway for providing standbys in the remaining 13 hops was as under:

"On the Delhi-Mughalsarai micro-wave scheme, 13 hops has not been provided with a standby radio equipment under the initial scheme. Since the necessity of standby equipment for shorter hops was then under examination in the RDSO office, it was taken that hops beyond 55 kms in length only need be provided with standby equipment. However, subsequent studies in the RDSO have shown that hop-lengths ranging between 30 and 55 kms. also require standby equipment to maintain the same degree of system reliability which would be available to the other hops. If the system reliability is allowed to deteriorate, then the viability of the speech channel and the integrity of the teleprinter network which are worked on the microwave system will be very seriously affected. It has, therefore, become necessary to provide standby equipment for the remaining 13 hops of the Delhi-mughalsarai microfave scheme to obtain the maximum benefit out of the reliability for which the system has been planned. It is, therefore, proposed to include the work providing stand by equipment for 13 hops on Delhi-Mughalsarai Microwave Scheme in the Works Programme 1973-74."

2.61. Extracts from Northern Railway letter No. 171. Sig|18|Const dated 27 December, 1972 which are relevant to the subject matter are reproduced below:

"Under Railway Boards' letter No. 65 W3|WW|8|Pt. (Tenders) dated 2-12-68 the contract for the New Delhi-Mughalsarai scheme was approved by the Railway Board with a foreign exchange content as Rs. 47.15 lakhs. The scheme at that

time had stand by for only 10 out of the 23 hops provided in the 100 per cent standby equipment with diversity arrangements.

Subsequent studies in the RDSO as well as the experience gained by this Railway in the portion commissioned so far have indicated that standby is very essential on the balance hops. The plain territory in question also makes frequancy diversity essential. The Board have, therefore, approved of the provision of complete standby with frequency diversity on all the balance hops on the New Delhi Mughalsarai Microwave scheme in 1973-74 works Programme."

2.62. It is seen from the above that the main justification given in 1972 for the provision of additional standby was that the RDSO had after detailed studies approved the specifications for the microwave systems and these provided for a standby at all hops. Moreover after the experience gained by the Northern Railway in the portion then commissioned, the Railway concluded that the standbys were essential in all hops. The Committee enquired whether the specifications of RDSO finalised in 1972 suggested any modifications or changes in those prescribed in 1965 and 1968 so far as provision of standbys and diversity frequency arrangements were concerned. In a note, the Ministry of Railways have stated:

"The specifications vide Clause No. 12 called for the provision of stand-by as a compulsory device for all micro wave links. The question of modifications does not arise since what were issued in 1965 and 1968 were more or less guide lines on the basis of which detailed technical specifications were to be drawn."

2.63. The Ministry of Railways have in another note stated:

"In 1972, when the configuration of all-India microwave net work had been finalised alongwith the specifications required therefor, it was decided to go in for standby for all hops on this link."

2.64. Commenting on this, the Audit have pointed out.

"As already brought out in the audit paragraph, draft specifications stipulating for provision of stand-by at all stations [i.e. minimum of one or one for two Radio equipments (50 per cent) at repeater stations] were finalised by the RDSO in 1968 itself and these specifications did not

undergo any change in 1972. Thus considering the Railways' and Board's awareness of the need for standby at all hops, and the nature of radio equipment of the supplier M|s. BTM, the availability of adequate time to take a decision in the matter, (i.e. between December 1968 and April 1970) there does not appear to be any valid ground for the delay in taking decision on standby till 1972."

Collapse of microwave towers

2.65. It is seen from the Audit Paragraph that the agreemen entered into with the Belgium firm (M|s BELL TELEPHONES) provided for erection of 24 microwave towers by the firm. The firm was entirely responsible for the satisfactory performance of the entire system as well as of the performance of the towers. Giving details of the parameters of the design for the microwave towers included in the tender, the Member Engineering stated in evidence:

"Actually, when we floated the tender, we had no standard specification of the ISI; we had no standard drawings for towers; nor was there any detailed standard specification available. In the absence of such detailed drawings and specifications, in the tender we included only these parameters."

2.66. The Member Engineering added that these parameters had been derived on the basis of their earlier experience of such towers, which had been supplied by the Japanese firms Toshiba and Nippon. Asked whether the approved design of the Belgium firm was exactly similar to those used earlier by Japanese firms, the witness stated:

"No, they were not...It was found that it was lighter. We asked them to give a guarantee that these were o.k."

2.67. The Committee were informed that the designs were not given to the Railway by the Belgium firm and only these drawings were provided to the Railways at a later stage. The Chairman, Railway Board stated:

"Various calulations as well as details of calculations were not there. In this case it was not necessary for them to get the drawings approved by us earlier because it is a full turn-key job."

2.68. A representative of the Railway Board informed the Committee that at no stage did the Railway insisted on the drawings

of the design being furnished to them. However, when the firm had been told that the design was lighter and they should supply the details of calulations for chcking, the firm in a meeting held on 30-9-69 confirmed 'their earlier stand that the design was their responsibility there was no need to chek as its performance was fully guaranteed. However, the firm agreed to supply the details of their calculations for record of the Railways."

2.69. In reply to a question whether before entering into the contract any effort had been made to find out that the design of the Belgium firm was the same or different from the ones used earlier, the Member Engineering stated that since the firm had been repeatedly assuring and guaranteeing the performance, there was no occasion to make any effort in this regard.

2.70. The Committee were informed that for ensuring a satisfactory performance of the entire system a stipulation had been made in the contract under which the contractor was required to guarantee satisfactory performance of the system including the towers. This was in addition to the normal warranty clause under which the firm was responsible to supply free of cost, all replacements for materials which were found to be defective during a period of 12 months commencing from the date of satisfactory commissioning of the entire installation. In regard to the advisability of including such clause in a contract, the Chairman, Railway Board stated:

> "It is done in many cases. It is not that for every case the designs are checked by us. It is not at all the case because where we do feel that designs should be pre-submitted for checking. We do check that if it is a never development or design. They do the designs themselves. We take the warranty to cover that design."

2.71. Another representative of the Railway Board stated:

> "This caluse was advisable to be put in. We had taken the designs in the past from Toshiba and the weight of these towers was much higher than the weight given by BMT for this project. That created a doubt whether this design was alright. So, they were asked to confirm whether the design provides for wind velocity etc."

He further added:

> "We had no alternative. The whole work was on turn-key basis." .. .. ..

2.72. Subsequently in a note furnished at the instance of the Committee, the Ministry of Railways have stated:—

> "The paragraph (clause re: performance of towers) was incorporated in view of the fact that the Northern Railway had no experience in design of microwave towers as such and that a European firm was for the first time entering the field and was backing an Indian design."

2.73. It is seen from the Audit Paragraph that as per the contract, towers were to be inspected at the manufacturer's works by the Railways' representative, who in this case was the Director General, Supplies and Disposals. Besides, the towers in their completely assembled form at site were to be subjected to inspection by the Railways' engineers. The Committee enquired what were the checks required to be carried out during inspection by DGS&D and at site by the Railway Engineers. In a note, the Ministry of Railways have stated:

> "The inspection to be carried out by D.G.S.&D. Inspector is a normal inspection carried out by the D.G.S.&D. inspection staff for any purchase order, namely, conformity to drawings and verification of the correct quality of raw materials, by checking the source of procurement of raw materials alongwith test certificate therefor, etc.
>
> The site inspection is normally confined to the check of the use of the correct members as per drawing at the correct locations and verticality of the tower at the various stages of installation. The site inspection also ensured that no member has got damaged in transit. It was also ensured that no structural changes were made in the members while erecting the Tower.
>
> Each tower is accepted after it is checked with reference to the drawing furnished by the contractor for each tower."

2.74. Explaining the procedure for stage inspection followed by the Railways, a representative of the Railway Board stated:

> "We carry out stage inspection on the basis of the drawings given by the firm. Even for the tower, the stage inspection is done to check up that the members fabricated are according to the drgs. and the raw materials is in accordance with the specifications. In this case, we did this for the tower and the equipment. We check up all the para-

meters which they have indicated. We check up in the laboratory as also in the field and only then, we give completion certificate."

2.75. The Committee asked whether it was not necessary that the contract agreement should have laid down list of checks to be exercised by the Railway Inspectors to ensure that towers as fabricated and erected were not only in conformity with drawings but were also according to the specifications laid down in the agreement. In a note, the Ministry of Railways have stated:

"The responsibility for ensuring conformity to drawings and specifications of raw materials lies with the Inspector who checks the fabricated items before they are despatched to the Railways. The responsibility of the Railways was limited to the question of ensuring that the towers are erected as per the drawings furnished by the firm. Detailed check lists are never incorporated in any agreement."

2.76. The Committee enquired whether any periodical inspection of the towers was conducted by the Railway maintenance engineers during the warranty period between February 1973 and February 1974 and how did the Railway Administration satisfy themselves regarding the fulfilment of specifications specified before issuing the completion certificate. The Ministry of Railways have, in a note, stated:

"The periodical inspection of the towers mainly consisted in ensuring that the bolts and nuts are properly tightened and in visual inspection of any such portion that might have become distorted for any reason. The points mentioned in para 7.1.3 are all to be taken care of in the design of towers, i.e., the size of the members and the configuration of the various frames. Since the contractor had given a guarantee that these specifications had been taken care of in the design of towers, the question of the Railways satisfying themselves of the fulfilment of the design specifications never arose."

2.77. The Audit para brings out that in July 1969, the RDSO had also evolved designs for such microwave towers and it appeared that the design of the towers as submitted by the Belgium firm was lighter than what had been designed by the RDSO. The Committee asked when the firm's design was found to be lighter why was

not RDSO or the P&T Department consulted regarding suitability or otherwise of the design. In a note, the Ministry of Railways have stated:

> "It was the intention of the administration that the responsibility of the design of towers should be entrusted to the contractor and that the guarantee in this regard should be furnished by the contractor. As such, the question of consulting the RDSO or P&T Department in this regard never arose."

2.78. It is mentioned in the Audit Para that a quick check of the other towers in July and August, 1976 disclosed that in 14 of the 24 towers' conditions of distress and deformations were noticed. The Committee enquired how did the Railway Administration fail to take notice of these defects earlier. In a note, the Ministry of Railways have stated:

> "It is not possible for checking such minor deformities by normal visual inspection. Since towers were covered under the standard guarantee by the contrators. the maintenance of towers consisted in ensuring that the bolts and nuts are periodically tightened and in checking for palpably visible signs of deformity. The deformities after the collapse of Khurja tower were observed by men specifically looking for such deformities and by special means of measuring the distortions in the various members."

2.79. It is learnt from Audit that the Railways' claim had been referred to arbitration and that each party had nominated the arbitrators. As to the details of the claim as well as further developments in the case, the Ministry of Railways have, in a note stated:

> "The latest position regarding arbitration is that the Umpire and arbitrators have been appointed. The claim of the Railway amounts to Rs. 1,65,80,639."

2.80. The Committee find that in November 1967, the Railway Board sanctioned an abstract estimate for Rs. 83.68 lakhs (with a foreign exchange content of Rs. 35.94 lakhs) for the work of provision of 24 channel microwave link between New Delhi and Mughalsarai. The global tenders invited by the Northern Railway Administration in January 1968 on a turn-key basis for multi-channel microwave system envisaged provision of standby equipment at the terminals as well as at all the repeater stations with a view to obtain a reliability figure of 99.9 per cent. The lowest tender was that of

a firm in Belgium (M/s. Bell Telephones) which provided for complete standby arrangements at the 23 hops on the New Delhi-Mughalsarai microwave link. Taking into account the lowest tendered rates, the Tender Committee recommended the award of the work to the Belgium firm at an estimated cost of Rs. 88.87 lakhs with a foreign exchange content of Rs. 53.50 lakhs. However, while according its approval in December 1968 to the placement of order on the lowest tenderer namely the Belgium firm, the Railway Board fixed the total value of the contract at Rs. 80.91 lakhs with a foreign exchange component of Rs. 47.15 lakhs, with a view to ensuring that there was no further revision of the estimate.

2.81. The Committee find that the reduction of the order of Rs. 7.96 lakhs (foreign exchange content being Rs. 6.35 lakhs) made by the Railway Board in the estimates forwarded by the Northern Railway, became possible by restricting the provision of standbys at 10 out of the 23 hops envisaged on the system. However, in 1972 even before the New Delhi-Mughalsarai microwave system had been commissioned, the Northern Railway Administration felt that to obtain the maximum benefit of the reliability for which this system had been planned, standby equipment would have to be provided in all the remaining 13 hops also, which had been deliberately left out in the contract concluded in February 1970. This was approved by the Railway Board in July-October 1972 and the additional standby equipment was obtained at a cost of Rs. 23.43 lakhs. The procurement of standby equipment then entailed an additional expenditure of Rs. 10.28 lakhs because of the escalation of prices since the execution of the principal agreement with the Belgium firm in February 1970. The Committee consider that the decision of the Railway Board to restrict the standbys to 10 hops was technically unsound and indefensible and in disregard of the degree of reliability to be achieved, i.e., 99.9 per cent.

2.82. In justification of the Railway Board's decision to restrict the provision of standbys at only 10 out of the 23 hops, the following two reasons have been given:

(1) The reduction in the number of standbys was a deliberate, considered and thought out decision and it was taken on the basis that achievement of 99 per cent efficiency instead of the 99.9 per cent efficiency tendered for would be adequate for the system; and

(2) The foreign exchange position was so tight that the fresh commitments had to be restricted to only those items

which were essential and inescapable and hence the number of standbys were reduced so as not to exceed the sanctioned estimates.

The Committee regret to observe that none of the above two grounds can be sustained on the basis of the contemporary record made available to them. The reasons therefor are discussed in the succeeding paragraphs.

2.83. It is seen that as early as 1965 the Railway Board had circulated to all the Railways the 'norms for microwave systems' and according to these norms, standby for radio equipment was to be provided at all stations when the system loading reached 24 channels or above. In the case of New Delhi-Mughalsarai microwave system it was clear even at the tendering stage that utilisation would be of over 24 channels even at the initial stage itself and therefore the provision of standbys was inescapable. Further, the Railway Board had issued certain guidelines on 30 July 1968 to all the Zonal Railways for the future planning of the systems and these guidelines envisaged provision of basic standby with the automatic change-over facilities even if the reliability to be achieved was 99 per cent. In the tenders for the New Delhi-Mughalsarai microwave system the reliability sought to be achieved was not only 99 per cent but 99.9 per cent, thereby making the provision of standby all the more essential. It is also seen that at the time of issuing the guidelines in July 1968, the Railway Board had specifically directed the RDSO to issue system specifications based on the guidelines. In pursuance of this directive the RDSO furnished in October/November 1968 the draft specifications, which called for the provision of standby as a compulsory device for all miscrowave links. It is thus to be seen that the provision of standbys was absolutely essential irrespective of the fact whether the reliability to be achieved was 99 per cent or 99.9 per cent and the Northern Railway and the Railway Board became aware of this right in 1968 itself.

2.84. It has been argued by the representatives of the Railway Board that with a view to cut down expenditure on equipment, the efficieny figure was reduced from 99.9 per cent to 99 per cent and this resulted in reducing the number of standbys. This contention of the Railway Board is not tenable firstly because the figure of efficiency aimed to be achieved as indicated in the tender documents was 99.9 per cent and in the concluded agreement also this figure remained unchanged, even after the number of hops at which standby was provided was reduced from 23 to 10. Secondly, no contemporary record has been produced to testify the fact that a delibe-

rate decision had been taken to aim at 99 per cent instead of 99.9 per cent efficiency. As a matter of fact what the records reveal is a different story altogether. The Committee find that the Northern Railway approached the Railway Board on 3 May 1968 for the approval of the Tender Committee's recommendations for awarding the contract to the lowest tenderer, namely, the Belgium firm. The offer of the lowest tenderer provided for complete standby arrangements (using frequency diversity to cope both with failure or outages of radio equipment as well as to overcome fading through frequency diversity reception) at all the 23 hops on the New Delhi-Mughalsarai link and the total estimated cost of the work worked out to Rs. 88.87 lakhs with a foreign exchange content of Rs. 53.50 lakhs. There is no evidence to show that the Signals Directorate was willing to reduce the provision of standbys on technical considerations or it was overruled due to scarcity of funds. In fact the Signals Directorate never pointed out that there would be loss in reliability if the standby equipment was not provided at all the hops. Thus the reduction in the number of standbys is not a result of any deliberate well thought out decision under which efficiency of the system had been reduced from 99.9 per cent to 99 per cent.

2.85. Similarly, the other argument thaht due to the tight foreign exchange position the quantity of radio equipments to be procured was deliberately reduced is not borne out by contemporary record. It cannot be denied that the foreign exchange position was tight and the Ministry of Finance had been impressing on the Ministries/ Departments of Government of India to reduce their foreign exchange requirements to the minimum. Yet the Committee have not been furnished any correspondence having been exchanged between the Northern Railway and the Railway Board suggesting that the requirements of standbys had to be cut down to conserve foreign exchange notwithstanding the loss in speech reliability that it would entail.

2.86. That the omission of standbys at the remaining 13 hops was a mistake is clearly borne out by the fact that in 1972 the Northern Railway on the basis of their experience in the sector already commissioned felt that the basic standby at all hops were inescapable. Here again the argument given is that the need for additional standbys was felt in the context of the studies completed by RDSO in 1972. But the correct position is that in 1968 itself the RDSO had formulated the specifications which provided for standbys as a compulsory device. The configurations decided upon in 1972 by RDSO had nothing to do with the provision of standbys. This is further supported by the fact that the specifications incorporated in other

global tenders floated by the Railway Board in January 1969 for seven microwave links stipulated provision of basic standbys at all terminals as well as repeater stations. Similarly another contract entered into in December 1970 for supply of radio equipment for five microwave links envisaged provision of basic standbys in all the hops. From the above the Committee cannot but conclude that there has been a serious failure in not making a provision for standbys at all the hops ab initio and that the Railway Board had enough time to rectify this defect before April 1970 and take advantage of the low rates quoted by the firm but unfortunately they failed to do so. This has cost the exchequer an avoidable infructuous expenditure of more than 10 lakhs.

2.87. Another important matter raised in the Audit paragraph relates to the collapse of microwave towers, whose satisfactory performance had been guaranteed by the Belgium firm. In terms of the contract entered into in February 1970, the Belgium firm was entirely responsible for the satisfactory performance of the entire system as well as for the performance of the towers. The agreement further provided that since the entire responsibility for the design and guarantee of the performance of the towers rested with the contractor, there should be no need to approve the contractors' design. The detailed designs of towers were to be submitted to Northern Railway only for information and record. The Committee find that on 20 May 1976 one of the working towers collapsed owing to heavy wind disrupting the microwave communication. A quick check of the other 23 towers on the link also revealed signs of distress and deformation on 13 towers. In August 1976, the Railway Board initiated action for replacement or strengthening of the towers and the firm was requested to take all necessary remedial measures free of cost. The firm repudiated their responsibility on the ground that the warranty period of 12 months commencing from the date of completion of the installation, namely 15 January 1973 expired on 15 January 1974 and that during this warranty period no defects or any non-compliance with specifications or claim had been raised whatsoever in relation to the towers. The case was ultimately referred to the arbitration. The claim of the Railway amounts to Rs. 1.65.50,649. Since the Railway Board has claimed that the satisfactory performance of the system as well as of the towers was the responsibility of the firm, which had in fact been guaranteed by them, the Committee trust that the Railway Administration would find it easy to be successful in arbitration. The Committee would therefore like to be apprised of the progress made in the arbitration proceedings.

CHAPTER III

NORTHEAST FRONTIER RAILWAY—PURCHASE OF COUPLING HOOKS

Audit paragraph

3.1. The Director General, Supplies and Disposals placed an order on 7th May, 1970 on firm 'A' for supply of 408 numbers of coupling hooks (Metre Gauge) complete with bush to the Assistant Controller of Stores, Northeast Frontier Railway, New Bongaigaon at the rate of Rs. 74 per piece. The delivery was to be completed within 4 to 6 weeks.

3.2. The stores put up for inspection by firm 'A' were rejected by the Director of Inspection, Bombay on 9th June, 1970 on the ground that they were rusty. The stores offered for reinspection on the 29th June, 1970 after cleaning the rust were again rejected by the Director of Inspection on 9th July 1970 on the ground that they did not conform to the drawing.

3.3. On 12th December 1973, that is, after the lapse of a period of over three years from the stipulated period of completion of the supply, the Controller of Stores enquired of the firm and the Director General, Supplies and Disposals the position of supply. The firm stated that though it had offered the stores for reinspection on 29th June 1970, there was no response from the Director of Inspection and it had, therefore, scrapped the stores. In fact the stores offered for reinspection on 29th June 1970 had been rejected as stated earlier.

3.4. With reference to the enquiry made by the Controller of Stores in December 1973, the Director General, Supplies and Disposals served a notice-cum-extension letter on the firm on 20th March, 1974 for completion of the supplies by 15th May 1974 even though the contract had expired in 1970 and had not been kept alive by extension thereafter. As firm 'A' did not supply the stores the contract was cancelled on 20th June, 1974 at its risk and cost.

3.5. After inviting fresh tenders, the Director General, Supplies and Disposals placed an order on the 19th October 1974 on firm 'B'

at the rate of Rs. 260 per piece resulting in an extra expenditure of Rs. 75,888. The stores were supplied by firm 'B' on 23rd January 1975.

3.6. The extra expenditure of Rs. 75,888 could not recovered from firm 'A' as the risk purchase was not effected within six months from the date of breach of contract, namely, 20th June 1970. The general damages were not claimed from firm 'A'.

3.7. It may be mentioned that firm 'B' on which orders were placed in October 1974 was formerly known by the name of firm 'A'.

[Paragraph 21 of the Report of the Comptroller and Auditor General of India for the year 1976-77—Union Government (Railways)].

3.8. According to the Audit paragraph the order for supply of coupling hooks was placed on the firm (M|s. Wyman Gorden India Limited) by the Director General, Supplies and Disposals on 7th May, 1970 and the period of delivery was 4 to 6 weeks. Thus the date of completion of the supply was 20th June, 1970. The stores put up for inspection by the firm were rejected by the Director of Inspection, Bombay on 9th June, 1970 on the ground that they were rusty. Thereafter the firm offered the stores for reinspection on the 29th June, 1970 after clearing the rust but they were again rejected by the Director of Inspection on the 9th July, 1970 on the ground that they did not conform to the drawing. The supply of coupling hooks had thus not been completed by the stipulated date. The Committee enquired whether the failure on the part of the firm to supply the coupling hooks within the stipulated period of delivery was brought to the notice of the Controller of Stores by the Assistant Controller of Stores, Northeast Frontier Railway and in turn by the Controller of Stores to the Director General, Supplies and Disposals and if not, why. In a note, the Ministry of Railways have explained:—

"Director General, Supplies and Disposals had informed Controller of Stores/Northeast Frontier Railway *vide* his letter No. SR4|305|24|060, dated 1st May, 1970 that M|s Wyman Gardon/Bombay had offered 408 Nos. Coupling hooks from their stock and the contract for this quantity had accordingly been placed on this firm. (Incidentally this letter was sent by the Director General, Supplies and Disposals to seek NF Railway's confirmation whether out of the indented quantity of 480 Nos. coupling Hooks, balance quantity of 72 Nos. which could not be ordered, may be cancelled). ACOS/NF Railway did not on

his own bring to the notice of COS regarding the firm's failure to supply the coupling hooks within the stipulated period of delivery. COS|NF Railway enquired telegraphically on 26|30th May, 1972 from ACOS|New Bongaigaon whether the supplies had been received by him in full so that case could be closed. The telegram was sent on the presumption (based on Director General, Supplies and Disposal's letter of 1-5-70) that since the firm had offered to make supplies from their stock, the contract would have already been completed. It was at this stage that ACOS/New Bongaigaon informed COS *vide* his letter dated 12th June, 1972 that the firm had not supplied the material and he also endorsed this letter to the firm and Director General, Supplies and Disposals. Since COS|NF Railway had apparently an impression that the supplies would have been completed by the firm within the stipulated delivery period in view of ex-stock offer made by the firm, no follow up action was apparently considered necessary by him."

3.9. It is seen that the stores were offered for reinspection by the firm on 29th June, 1970 *i.e.* 9 days after the stipulated date of completion. The Committee asked when the stores were rejected by the Director of Inspection for the second time on 9 July, 1970, why was the contract not concelled at the risk and cost of the firm or the contract was extended suitably with reservation of the right to claim liquidated damages for the delay in supplies. In this connection, the Department of Supply have, in a note, stated:—

"In terms of clause 10 of Acceptance of Tender (A/T) the delivery of the stores was to be made ex-stock within 4—6 weeks (no firm date of delivery has been stipulated in the A|T). Entire quantity of 408 Nos. was offered for inspection on 16th May, 1970 but rejected due to "old stock with bushes too much rusted". The stores offered for reinspection by the firm on 29th June, 1970 were again rejected due to various technical defects on 9th July, 1970.

After the rejection of the store on 9th July, 1970 till 12th December, 1973 no correspondence was exchanged between the indentor|consignee and the Director General, Supplies and Disposals. Even consignee did not intimate about non-receipt of the store and also the firm did not come up for D.P. extension. It was for those reasons that the contract could not be cancelled or the DP extended suitably with reservation of right to claim liquidated

damages and no other action was taken against the firms at that time."

3.10. In the same context, the Ministry of Railways have stated:—

"The Director General, Supplies and Disposals have their own Progress Cell for watching performance of contracts and taking suitable action against the defaulting firm in time. This function is entirely the responsibility of the Director General, Supplies and Disposals. DGS&D do not have, therefore, to depend upon the information from the consignee for cancellation of a contract in case of a supply."

3.11. The Audit para states that on 12th December, 1973, that is, after the lapse of a period of over three years from the stipulated period of completion of the supply, the Controller of Stores enquired of the firm and the Director General, Supplies & Disposals the position of supply. The Committee desired to know what was the occasion and purpose of the Controller of Stores to enquire about the position of supply from the firm and the Director General, Supplies and Disposals after the lapse of more than 3 years. In a note, the Ministry of Railways have stated:

"Dy. Chief Mechanical Engineer (G), NF Railway informed COS|NF Railway on 21-9-1973 that he was experiencing short of MG Hooks. At this stage, the dues position of coupling hooks was reviewed by the COS|NF Railway and he also took up the matter *vide* his letter dated 12-12-1973 with M|s. Wyman Gordon and Director General, Supplies and Disposals for expediting the supply against the DGS&D's A|T of 7-5-1970."

3.12. The Committee desired to know the procedure followed in the Railways to keep a watch on the due dates of delivery for items procured through the Director General, Supplies and Disposals. The Committee also asked whether the Indenting Department had not taken up with the Controller of Stores the non-receipt of hooks from the firm and how in the present case the non-supply of stores came to the notice of the Controller of Stores only in December, 1973, while the stipulated period of delivery was upto 20th June, 1970. In a note, the Ministry of Railways have explained as under:—

"The COS/NF Railway had an impression that the firm would have completed the supply within the stipulated delivery period, because the firm had made an ex-stock offer. However, in June 1972, when COS enquired from ACOS| New Bongaigaon about the completion of the contract, ACOS|New Bongaigaon endorsed his reply to the firm

and DGS & D. Since the intimation of non-supply had been given by ACOS|New Bongaigaon in June 1972 to the DGS & D, it was expected that further follow up action will be taken by the Director General, Supply and Disposals to expedite the supply. However, when the mechanical Department complained about the short supply of this item, the matter was taken up with the firm in December, 1973. It may be mentioned here that Director General, Supply and Disposals have their own Progressing Cell for watching performance of contracts and taking suitable action against the defaulting firm in time. Director General, Supplies and Disposals Inspection Wing maintains regular liaison with supplying firms and reports to the purchase office (DGS & D) about the progress of supply including rejections, quantity put up for inspection etc. This information is provided to the purchase office (DGS & D) for taking suitable action.

As per delivery terms stipulated in the contracts placed by DGS & D, records are maintained to follow up for supply, but in this case no chasing appears to have been done earlier. Also till September 1973 when Dy. Chief Mechanical Engineer complained for the shortage of this item to COS, no complaint was received earlier from the Indenting Department. However, when the complaint was received, the complete dues position was reviewed and further follow up action was taken. As a remedial measure, COS|NF Railway has issued Office Order in August, 1978, to streamline|create machinery for chasing up of supplies ordered by the various purchase agencies."

3.13. In the context of the Dy. Chief Mechanical Engineer (C) Northeast Frontier Railway's note of 21-9-1973 regarding short supply of MG hooks, the Committee enquired how did Northeast Frontier Railway meet its requirements for this item during the 3 years, *i.e.*, between May, 1970 when the order was placed on the firm and September, 1973 when the matter was taken up with the Controller of Stores, Northeast Frontier Railway. The Committee also asked whether the mobility of wagon had been affected during this period for want of this item of store. The Ministry of Railways have, in a note, explained:

"In June, 1970, the ACOS|New Bongaigaon had a stock of 893 hooks. On the basis of average monthly consumption of 50 coupling hooks in the preceding months, this represented a stock of about 18 months. However, the issues in 1971 and 1972 declined to 399 Nos. and 253 Nos. respectively even

though adequate stocks were available during these years. It was only in the later half of 1973 that the stock position deteriorated. Even at this stage, there were outstanding orders for this item on various firms besides 408 Nos. outstanding on M|s. Wyman Gordon against the DGS&D's contract. Action was taken at this stage, therefore, to follow up for supplies against the various orders. It may be mentioned that during June, 1970 to December, 1973, ACOS|New Bongaigaon received 173 Nos. serviceable coupling hooks from Railway workshops|Sheds, in addition to 100 Nos. of new hooks against the Railway's direct order on M|s. Indian Standard Wagon Co., Howrah. The stock of 893 Nos. in June 1973 combined with these supplies enabled the Railway to meet the requirements during the 3 years *viz.*, 1970 to 1973.

Since adequate stocks of Coupling Hooks were available with the Railway for the major part of the period 1970—73 and also the consumption had reflected a downward trend as brought out above, the question of mobility of wagons having been affected for want of Hooks during this period did not arise."

3.14. The Committee have however been informed by Audit that due to non-availability of these hooks, a number of wagons on North-east Frontier Railway were rendered ineffective. Further the Railway Administration had procured an additional 350 numbers of the same stores from the firm 'B' directly without the intervention of Director General, Supplies and Disposals at the rate of Rs. 292.33 per piece in February, 1974, as against the rate of Rs. 74.00 per piece stipulated in Director General, Supplies and Disposal's contract. This purchase of 350 numbers was in addition to the purchase of 408 numbers through the Director General, Supplies and Disposals from the same firm in January, 1975.

3.15. It is seen from the Audit paragraph that after the Controller of Stores had made the inquiry in December, 1973 regarding supply of hooks ordered in May, 1970, the Director General, Supplies and Disposals served a notice-*cum*-extension letter on the firm on 20th March, 1974 for completion of the supplies by 15th May, 1974 even though the contract had expired in 1970 and had not been kept alive by extension thereafter. The Committee enquired whether the Director General, Supplies and Disposals was justified to serve a notice-*cum*-extension letter on the firm on 20-3-1974 for completion of the supplies by 15-5-1974 without ascertaining from the Railways whether the hooks were still needed as the original delivery date

was long over and without renewing the agreement with the firm which had expired on 20-6-1970. The Department of Supply have, in a note, stated:

> "The Controller of Stores, NF Railway, in their letter dated 12-12-1973 addressed to the firm requested them to intimate the present supply position as the supplies were outstanding for more than 3 years. In the endorsement to this office, he expressed urgency of the requirement and requested that urgent action may be taken with the firm to expedite supplies. This letter makes it abundantly clear that supplies were still required by NF Railway. This belief is further strengthened when reference is made to COS, NF Railway, letter dated 5-3-1974 and D.O. letter dated 6-3-1974 wherefrom it is clear that these coupling hooks were still required and desired to know the further action this office proposed to take in this matter. Immediately, when it became clear that supplies have not been completed, Ministry of Law was consulted and it was advised by them on 5-3-1974 that consignee's letter dated 12-12-1973 has kept the contract alive and therefore, before considering the question of cancellation, a notice-*cum*-performance letter will have to be issued calling upon them to complete supplies within a reasonable period of time. It was with this opinion in view that a notice-*cum*-extension letter was served on the firm on 20-3-1974 calling upon them to complete supplies by 15-5-1974. No agreement from the firm is required for serving notice-*cum*-extension."

3.16. In response to the notice-*cum*-extension letter of 20th March, 1974, the firm did not supply the stores and therefore the contract was cancelled by Director General, Supplies and Disposals on 20th June, 1974 at the risk and cost of the firm. The Committee desired to know how could the Director General, Supplies and Disposals cancel the contract on 20-6-1974 at the risk and cost of the firm when there was no legal subsisting contract at that date. The Department of Supply have, in a note, stated:

> "The firm having failed to acknowledge or act on this notice-*cum*-extension, they were deemed to have committed breach of contract and, therefore, DGS & D was within its right to cancel the contract at the risk and expense of the firm. The cancellation of contract was resorted to after consulting Ministry of Law who *vide* their opinion on 22-5-1974 confirmed that the contract could be cancel-

led at the risk and expense of the firm, treating 20-6-1970 as the date of breach if the same had not been kept alive any any manner after 15-5-1974 the last extended D.P. The contract was accordingly cancelled *vide* amendment letter dated 28-6-1974 after verifying from our records that the contract had not been kept alive after the last extended D.P. uto 15-5-1974. It may not be correct to presume that there was no legally subsisting contract between the parties on that date."

3.17. In another note, the Department of Supply have stated:

"Director General, Supplies and Disposals is aware that a valid risk purchase can be made only within 6 months of the breach of contract and while cancelling the contract, it was clearly understood that a valid risk purchase could not be made and only repurchase was to be arranged. Even in such cases, where the valid risk purchase cannot be made, general damages can always be claimed, depending upon the market rate prevailing on or around the date of breach. At the time of cancellation, it was also mentioned that general damages would be recovered if we were able to establish the market rate on or around the date of breach. Market rates prevailing at or about the time of breach of the Contract *viz.*, 20-6-1970 were established and were found lower than the contract rates. As such it was decided in consultation with the Ministry of Law, to close the case. Therefore, it was not the case of risk purchase; rather it was a case of repurchase of the required stores."

3.18. The Audit paragraph brings out that after inviting fresh tenders, the Director General, Supplies and Disposals placed an order on the 19th October, 1974 on firm 'B' at the rate of Rs. 260 per piece resulting in an extra expenditure of Rs. 75,888. The extra expenditure of Rs. 75,888 could not be recovered from firm 'A' as the risk purchase was not effected within six months from the date of breach of contract, namely 20th June, 1970 and general damages were not claimed from the firm 'A'. The Audit Paragraph further states that the firm 'B' on which orders were placed in October, 1974 was formerly known by the name of firm 'A'. The Committee enquired whether it was known to the Director General, Supplies and Disposals at the time fresh tenders were considered that firm 'B' on whom order for supply was being placed, was formerly known by

the name of firm 'A' and if so whether it was not considered to be a disqualification. The Department of Supply have, in a note, stated:

> "It was known to the Director General, Supplies and Disposals at the time of fresh tenders that the firm 'B' on whom the order for supply was being considered was formerly known as firm 'A' who was the defaulter earlier in making supplies against this contract. The default in itself does not disqualify the firm from award of fresh contract. The firm had clearly explained the reasons for non-supply against this contract which was that their offer against the defaulted contract was for the quantity available ex-stock and since this quantity was not found acceptable, they disposed it of as scrap. The firm having been recommended as also registered for this item, there was no reason to doubt their capacity|capability of manufacturing the stores which was reconfirmed by Dir. of Inspection *vide* letter dated 5-9-1974. The contract was, therefore, placed on them after imposing a security deposit of 10 per cent of the value of contract which was taken from the defaulter as per the rules. It may, however, be added here that the offer of firm was lowest and even lower than the prices at which the firm had made supplies against a direct order from Railways. Had their tender been ignored, the next higher offer available was from M|s. Burn & Co. at Rs. 350 which the firm in the Negotiations Meeting agreed to reduce to Rs. 324 and extra expenditure of Rs. 64 per piece + taxes would have been involved (Rs. 324—Rs. 260)."

3.19. The Department of Supply have further informed:

> "The addresses as well factory premises, both in AT dated 7-5-1970 and 19-10-1974, of M|s. Vyman Gordon and M|s. W. G. Forge & Allied Industries respectively being the same, the Inspection in 1974-75 was done at the same premises as in 1970."

3.20. The Committee note that on 7 May 1970, the Director General, Supplies & Disposals placed an order on a firm (M/s. Wyman Gordan India Ltd.) for supply of 408 numbers of coupling hooks to the Assistant Controller of Stores, Northeast Frontier Railway, New Bongaigaon. The delivery was to be completed within 4 to 6 weeks from the date of placement of order. The firm offered the stores for inspection and these were rejected by the

Director of Inspection, Bombay on 9 June 1970 on the ground that they were rusty. The stores offered by the firm for reinspection on 29 June 1970 were again rejected by the Director of Inspection on 9 July 1970. Thereafter neither the firm offered any fresh stores for inspection nor did the indentor, namely, Assistant Controller of Stores, Northeast Frontier Railway, or the Director General, Supplies and Disposals take up the matter with the firm. It was only on the 12 December 1973, that is, after the lapse of a period of over three years from the stipulated period of completion of the supply, that the Controller of Stores, Northeast Frontier Railway enquired of the firm and the Director General, Supplies and Disposals the position of supply. The Director General, Supplies and Disposals then initiated action in March 1974 and after issuing a notice-cum-extension letter to the firm cancelled the old contract on 20 June 1974 at its risk and cost. Fresh tenders were then invited and the stores were purchased from the same firm, which had in the meantime changed its name from Wyman Gorden India Ltd. to W. G. Forge and Allied Industries, at the rate of Rs. 260 per piece against Rs. 74 per piece contracted for earlier. This resulted in an extra expenditure of Rs. 75,888. There was no question of extension of contract which had expired long back. The unilateral action without the consent of the supplier could only make any purchase at its risk and cost invalid. The Committee cannot but suspect the bona fides of the deal.

3.21. In the explanation now offered for this lapse both the Railway Administration and the Director General, Supplies and Disposals have attempted to apportion the blame on each other. Whereas the Director General, Supplies and Disposals has pleaded that the indentor did not give any intimation about the non-receipt of the stores, the Railway Administration have taken the stand that the Director General, Supplies and Disposals has its own progress cell for watching performance of contracts and taking action against the defaulting firm in time and, therefore, they should have taken action on their own. The Committee feel that there is no force in any of the two arguments being adduced for non-action. Obviously, there has been a serious lapse for which the responsibility should be fixed both in the office of the Assistant Controller of Stores and in the Directorate of Supplies and Disposals.

3.22. Another point that has incidentally come to notice is that the Controller of Stores, Northeast Frontier Railway had enquired telegraphically on 26/30-5-1972 from the Assistant Controller of Stores, New Bongaigaon whether the supplies had been received by him in full so that the case could be closed. It was at this stage that

the Assistant Controller of Stores, New Bongaigaon informed the Controller of Stores on 12-6-1972 that the firm had not supplied the material. Why the Controller of Stores did not initiate any action at that stage is not clear to the Committee. It was only in December 1973 that the Controller of Stores took up the matter with the firm, after the Mechanical Department had complained about the short supply of this particular item of store. There has been a failure at this stage also for which the responsibility needs to be fixed. The Committee would like to be apprised of the action taken in the matter.

NEW DELHI;
April 27, 1979.
Vaisakha 7, 1901 (*S*).

P. V. NARASIMHA RAO,
Chairman,
Public Accounts Committee.

APPENDIX I

(See paragraph 1·7)

Itemwis details of the claims made by the Industrial Gases. Ltd.

(Figures in rupees)

Sl. No.	Particulars of claim	First arbitration	Second arbitration	Third arbitration	Fourth arbitration	Fifth arbitration
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Minimum guarantee .	102230·55 (awarded)	319598·78 (rejected)	486659·42*		683472·96*
2.	Price variation for lifted and unlifted quantities .	36173·62 (awarded)	83274·81 (awarded 34900)	421508·19		@482703·22 @ 56058·98
3.	Rental for cylinders . . .	22482·00 (awarded)	42123·00 (awarded)	18557·84		
4.	Damages to cylinders	386·25 (awarded)	2183·50 (awarded 800·00)			
5.	Shortage of acetene .	527·56 (awarded 234·35)	1610·18 (awarded 400·00)			
6.	Sales tax . . .	10057·54 (awarded)	27940·71 (awarded 2443·00)			
7.	Refund of electric charges	27604·48 (awarded)	42105·68 (rejected)		456320·91	

8. For failure to render assistance in procurement of material and other facilities.	50000·00 (rejected)			
9. For non-supply of power and water in time	100000·00 (rejected)			
10. For not providing surface drainage facilities	24000·00 (rejected)	4800·00 (not pressed)		
11. For not providing approach road and other facilities.	50000·00 (not pressed)	50000·00 (not pressed)		
12. For non-supply of power round the clock and at agreed voltage.	100000·00 100000·00 (not pressed)	100000·00 100000·00 (not pressed)		
13. For first-aid box, hospital and other facilities	12000·00 (rejected)	12000·00 (not pressed)		
14. For failure to provide facilities of light on main road and in obtaining quota permits, etc.	200000·00 (rejected)	200000·00 (not pressed)		
15. For breach of provisions of clauses 15 and 16 .			150000·00	150000·00
16. For breach of undertaking not to construct any structure within 20 metres of boundary and not removing the same.	100000·00 (not pressed)	100000·00 (not pressed)		
17. For non-supply of pure water . .	50000·00 (rejected)	50000·00 (not pressed)		
18. For purchase of Burshane gas by Diesel Locomotive Works.	100000·00 (rejected)	100000·00 (not pressed)		
19. For breach of clause 11 of the agreement			100000·00	
20. For demolition of structures . . .		100000·00 (not pressed)		

(1)	(2)	(3)	(4)	(5)	(6)	(7)
21.	Damages to plant due to power Fluctuations				848155·39	
22.	Damages other than interest					150000·00
23.	Compensation for loss and damage suffered on account of financial stringency caused by blocking of capital.					485608 9[illegible]
	TOTAL . . .	985462·02	1235636·66	1176125·45	1304476·30	2007844·14

Remarks : *ad hoc payment of Rs. 3·5 lakhs already made to the firm.
%for lifted quantity.
@for unlifted quantity.
*excludes element of price variation which is included in serial number 2.

APPENDIX II

(*See* para 1.32)

Extract of notings from the relevant file leading to award of contract to M/s. Industrial Gases Ltd.

Quotation from Industrial Gases Ltd.

i. A plot of high level land measuring 1½ acres adjoining our works on the main metalled road with drainage, sewage and Railway siding facility should be given to them at an annual rental of Rs. 250/- to Rs. 300/- per acre for setting up the plant.

ii. A connected power load of 150 KW at 440 V, 3 phase 50 cycles should be given to them and charged for at bulk rates laid down by the UP State Electricity Board.

iii. Supply of 10,000 gallons of soft, clean potable water at 15 paise per 1000 gallons daily, is to be ensured.

iv. Quarters for essential staff at rentals fixed for Railway employees are to be given to the firm.

v. Other facilities available in the Township, such as medical, canteen, club and transport facilities as obtainable for the Railway employees are to be given to the firm.

vi. The work of design, supply and erection and the maintenance of the pipeline is eventually to be entrusted to the firm. On that assurance they are prepared to provide adequate number of cylinders in the interregnum to ensure that a buffer stock of atleast three days requirement for us is available with us.

vii. The minimum guarantee as follows is to be given to them:

1st year	
Oxygen	7000 cubic meters
Acetylene	3000 ,,
2nd year	
Oxygen	14000 ,,
Acetylene	6000 ,,
3rd year and after	
Oxygen	21000 ,,
Acetylene	9000 ,,

viii. *Rates of the above.*

Oxygen gas for industrial use Rs. 86/- per 100 cubic meters Acetylene gas for industrial use Rs. 625/- per 100"

The rates are ex-factory, Varanasi

The above rates are based on:

a. Current bulk power rates;

b. Manufacturers ex-factory Calcium carbide rates of Rs. 86/- per 100 klg.

The rates given above are exclusive of Sales Tax and other taxes.

ix. The agreement will be for 10 years.

Quotation from Indian Air Gases:

i. The rates of Indian Air Gases inclusive of the reduction offered recently come to for consumption of
Oxygen beyond 5 lakhs cft. Rs. 32.68 per 1000 cft.
Oxygen beyond 5 lakhs cft. Rs. 32.68 10 1000 cft.
Acetylene Rs. 202.75 per 1000 cft.

ii. The firm is prepared to enter into an agreement for five years.

iii. The firm does not want any minimum guarantee.

iv. The firm has not asked for any quarters.

v. The firm wants calculation clause to cover statutory increase in regard to wages and power. The escalation clause also should order increase in the cost of the calcium carbide and Acetylene.

vi. The firm also guarantees that in the event of failure of their plant a week's supply shall be reserved by the firm for our use.

Both the firms have insisted that they should be permitted to sell the quantities available beyond our requirements to outsiders. Both the firms have also insisted that they shall only be maintaining the pipeline at their expense if the work of construction of the pipeline is entrusted to them.

The Indian Air Gases had indicated earlier that they would be able to commence supply from December, 1965 onwards but since the final decision in this matter has been considerably delayed, the

supplies cannot be expected to commence before Feb./March, 1966. The Industrial Gases, on the other hand have a plant available at Kanpur and it will perhaps not take them more than 6 to 8 months to commence supply of gases.

The rates of Industrial Gases work out to Rs. 24.35 per thousand cft. for oxygen and about Rs. 177 per thousand cft. for Acetylene. These rates are far lower than the rates quoted by Indian Air Gases. Itis, therefore, prima facie reasonable that we shall clinch the deal with Industrial Gases provided:

i. CME certifies that the minimum guarantee stipulated by the firm are acceptable to him and that the minimum quantities indicated by the firm shall be less than the actual requirements of the shops so that we are not called upon at any time to pay against non-use of gas;

ii. the firm's stipulation that the agreement should be for 10 years is acceptable. There should be no apprehension that a firm of standing like that of Industrial Gases will not be able to supply us gas a vital requirement for the production of shops, as indicated by CME. Alternatively we could negotiate with the firm to reduce the period of agreement to a period of five years.

iii. the Industrial Gases agree that they shall pay for the land as well as for the water and electricity at the rates prevailing from time to time.

iv. The Industrial Gases agree that they shall pay rent for the quarters at the rates applicable to outsiders. Also they should clearly indicate the number of quarters required.

v. It should also be made clear to the Industrial Gases that their employees would be entitled to medical, canteen, Institute, and Transport facilities as are permissible to outsiders and not to Railway employees.

vi. CME may also further certify that the work of construction of pipeline shall be given to Industrial Gases. It is only in that event that they are prepared to maintain the pipeline.

Since from financial angle the offer of Industrial Gases is very attractive and the other stipulations are not of such importance which cannot be settled across the table, if GM agrees we could im-

mediately ask the Industrial Gases to have discussions with us to thrash out the outstanding issues. Thereafter a draft agreement could be drawn up and the matter finalised. In the meanwhile the Indian Air Gases could be told also to keep their offer open upto 31-5-65.

It is understood that CME has sent his two officers to Bhopal to get the drawings of the pipeline from there and that it would be possible for him to finalise the drawings of the pipeline within the next week or so.

Sd./-
FA&CAO
7-4-65.

GM may see the phas. at this stage and return the file to me. I have to finalise the points referred to in another 10/14 days. Two of my officers have been sent to Bhopal and they are likely to come back by the end of this week.

Sd./-
C.M.E.
8/4/65.

G.M. has seen

Sd./-
C.M. 8/4

M/s. Chiranjiv Singh and Shukla have returned from Bhopal on Saturday, the 10th instant. They have brought with them considerable amount of data. Firstly, it is estimated that the cost of the pipeline if the oxygen plant is located to the West of F Shop will amount to above Rs. 2.5 to 3 lakhs. I have now been able to compare the number of points that the Alco had recommended for the DLW, Factory, then what my predecessor had suggested. We have now been able to gain experience from other localities and we have now been able to design a lay out which will give eminently satisfactory service. Alco had recommended 74 points. We are now proposing to put down 87 points. The detailed design of the pipeline would be completed in the next 10 days and we might then collaborate with the selected firm to install the plant as per our design and as modified by the knowledge of the firm. We would also be able to cross check the data if the firm agrees to even buy the material and install pipeline for us.

The minimum guarantees that we could furnish for the consumption of oxygen and Acetylene gases will be as follows:—

a. *Oxygen*:

1st year	7000 Cubic meters
2nd year	14000 Cubic meters
3rd year	21000 Cublic meters

b. *Acetylene*:

In the case of Acetylene, some errors had crept in our previous calculation. The rate of consumption of Acetylene to oxygen is not 1 : 2 out it should be 1 : 7 at least. Therefore, the minimum guarantee in take we can give is:—

1st year	1000 cubic meters
2nd year	2000 cubic meters
3rd year and onward	3000 cubic meters

I am not at all certain whether the firms would be attracted by this consumption. If they are not interested we can then install our own plant for acetylene.

The question of the maintenance of the pipeline has also been gone into. It is not a very difficult matter to maintain this pipeline, once the design in the first instance is good and proper quality equipment is fitted. Therefore, for purpose of negotiations we can utilise the argument in our favour if it comes to that DLW will also maintain the pipeline if by so doing DLW can secure a price advantage in the supply of the costs.

As suggested by FA & CAO we could have a short session amongst ourselves so that FA & CAO can be completely briefed to enable him to negotiate with the firm.

Sd|- C.M.E.
1-4-1965.

GM last saw this case presumably on 5-4-1965. This was in reference to my note dated 7-4-1965 on pages 58 to 68 ante.

The Managing Director of Industrial Gases Ltd., came for discussions on 14-4-1965. The discussions have been concluded on date. The draft agreement brought by the firm for discussions was chang-

ed substantially by me. The final draft emerging from the discussions is placed below. It will be seen from the draft that the industrial gases have withdrawn their stiplation regarding giving the said firm a land along with drainage, sewage and Railway siding facilities at an annual rental of Rs. 250 to Rs. 300. They have also withdrawn their stipulation regarding a connection being given for supply of electricity at Administration's cost. They have also agreed to payment for supply of water at the rates obtaining today. They have also withdrawn their stipulation regarding quarters being given to their staff a rents applicable to Railway employees. They have also agreed to withdraw their stipulation regarding medical, canteen, club and transport facilities at par with Railway employees being given to them.

As GM will recall, I had, even when recording my note of 7-4-1965 referred to earlier, a feeling that these were very minor points and that these would not inhibit agreement being finalised with the firm. The main inhibiting factors according to me were:—

(a) Firm's stipulation that agreement should be for 10 years;

(b) The land should be leased for a period of 25 years (since increased to 30 years during discussions);

(c) The firm's hesitation to agree to the minimum guarantee intake particularly in respect of Acetylene which the CME had drastically reduced *vide* his note dated 12-4-1965 at pp.-62 and 63.

It will be seen from the draft agreement that the firm have insisted on the agreement being operative for a period of 10 years. As I had said in my note of 7-4-1965 referred to, this should be acceptable because no firm worth its name should make substantial investment in the matter of erection of plant unless it is assured of continuous return for a reasonable period.

The firm during discussions insisted that the lease of the land and other facilities should be given to them for 30 years irrespective of the fact whether the Agreement for supply of gases is renewed with them after the expiry of the initial period of 10 years or not. This, to my way of thinking shall have to be accepted also because otherwise the firm is reluctant to come and set up a plant here.

As the minimum quantities were reduced drastically by the CME as mentioned here before, the firm immediately insisted on the rates

for acetylene being increased. There was no option and that has been done as shall be seen from the draft agreement.

However during discussions it was brought home to the party that in the event of the pipelines being ready, the party shall save substantially in investment on cylinders and therefore should give us adequate rebate for this purpose. This has been accepted by the party and significant reduction in rates have been secured accordingly.

Similar, for delivery at DLW works site, I have been able to extract a concessional rate of Rs. 14 per hundred cubic meters against the DGS& D's rate of Re. 1 per cylinder, which would include transport of filled cylinders and collection of empty cylinders. The rates as now finally agreed work out as follows:—

For Oxygen :

(*a*) Rs. 86/- per hundred cubic meters ex. supplier's factory. or about Rs. 24·35 per thousand cubic feet.

(*b*) Rs. 100/- per hundred cubic meters delivered at our Works. or about Rs. 28·32 per thousand cubic feet.

(*c*) In the event of pipelines being available, the rate becomes Rs. 85/- per hundred cubic meters which works out to about Rs. 24·07 per thousand cubic feet.

For Acetylene

(*a*) In supplier's cylinders ex. supplier's factory : Rs. 675/- per hundred cubic meters. or about Rs. 191·14 per thousand cubic feet.

(*b*) In cylinders delivered at our Works Rs. 689/- per hundred cu. meters. or about Rs. 195·10 per thousand cft.

(*c*) Through pipelines—Rs. 650/- per hundred cubic meters. or about Rs. 184·06 per thousand cft.

These rates are far cheaper than the rates quoted by the Indian Gases Ltd. the only other tenderer whose quotation is under consideration. In the circumstances, it is recommended that the agreement may be finalised with the Industrial Gases Ltd. for a period of 10 years as provided in the draft agreement.

The legal issue whether the Industrial Gases can assign the lease rights to State Financial Corporation shall be resolved in consultation with Shri Guha, the Law Officer of the Eastern Railway during CME and my forthcoming visit to Calcutta.

If G.M. approves of this we would issue a letter to the firm saying that their quotation has been accepted and that the draft agreement is enclosed for their comments so that they could consult their

Solicitors in the matter. Once this issue of assigning leasing rights to Financial Corporation is resolved satisfactorily, CME could sign the agreement on behalf of G.M. and the agreement could be finalised accordingly.

Sd/-
FA & CAO
16-4-1965

C.M.|E.

The consumption figures of 02 and Acetylene are the best that could be given at this stage. In view of the fact that the firm is wanting to charge a higher rate for acetylene because of the alleged low consumption, a point arises whether the firm will be agreed to allow a discount or rebate if during each year of actual operation the buyer after serving 3 months notice specified in the Agreement takes an additional quantity of acetylene gas during the entire year. For *e.g.*, if during 1966, the buyer offer due notice consumes 1500 cubic meters instead of 1000 will the firm allow a lower price. Similarly, for the second and subsequent years. FA had sent separately a draft copy of the draft agreement for comments. Action is being taken separately on this.

Sd|-
C.M.E. 16|4

The firm is not agreeable to change rates unless the minimum guarantee to be given equals maximum requirements as indicated in the agreement.

Sd|-
FA & CAO 16|4

I agree with the note of 16-4-1965 recorded by the FA&CAO and also to his suggestion of consulting Mr. Guha, Law Officer, E. Railway and obtaining his views on the draft agreement.

Sd|-
G.M. 17-4-1965

This is in continuation of my note of 16-4-1965 on pps. 64—66 and G.M.'s endorsement thereon dated 17-4-1965.

2. The points raised by CME in his note of 16-4-1965 on pp. 66 had already been discussed by me with the Managing Director of the Industrial Gases Ltd. and he was not willing to make reduction on

this account. He was prepared to have a sliding scale of rates which on the Whole would not favour us because he was not prepared to go at any stage below the DGS&D rates. That would have meant paying much higher rates during the period when our maximum demand was not reached.

3. G.M. had separately seen the draft agreement and the suggestions he had made have been incorporated in the final draft.

C.M.E. has raised also certain issues with reference to the draft agreement in his marginal comments which are dealt with below serially:—

1. The presumption of CME that the clause referred to legislates that the supplier will supply excess over the minimum for aforesaid periods and that such excesses will not become new minimum is confirmed since nowhere it is laid in the draft clauses that the enhanced demand shall bemoce the new minimum.

As a matter of fact, the Managing Director of Industrial Gases Ltd. wanted that the new demand should become the minimum demand for future but I resisted this. Our requirements may fluctuate and therefore, we cannot bind ourselves to the maximum becoming the minimum.

All that has been legislated in these clauses is that if we want additional quantities over and above the minimum laid down we should give three month's notice to the firm for this purpose. This would require proper planning on the part of the Mechanical Department so that their demands for the next quarter are known in the beginning of the preceding quarter and notice given to the firm accordingly.

In the final agreement as suggested by GM it has been included that the suppliers shall instal plant at Diesel Locomotive Works, Varanasi, which will be able to supply the agreed maximum monthly quantities. The monthly quantities have also been specified in detail as suggested by GM.

The necessity for the schedule does not arise now because of my having added that the land so leased shall only be used by the suppliers for the specific purpose of production of Oxygen and Acetylene gases before the words 'their by-products' and then connected with the words use and|or supply of gases after the word 'Accessories'.

••

4. I have already suggested in my note that legal opinion shall be obtained on this point.

5 and 6. The meters for measuring water and electricity shall be installed at our cost so as to obviate any objections from us in regard to measurements if the meters are supplied and installed at supplier's cost. I have accepted this modification after discussion.

7. The rental has been fixed in accordance with the rules which will be detailed in the subsequent paragraphs of this note.

8. When we enter into an agreement for a period of ten years we cannot afford so precisely legislate for the eventualities which CME has indicated. Nevertheless these were raised by the firm but we were not prepared to consider these. As the rates quoted by the firm are more reasonable and competitive than those quoted by the other firms we need not insist on these things.

In this connection it will also be recalled that the original proposal was that certain facilities will have to be provided by us. These have not been agreed to during discussions.

However, during discussions they wanted an enhancement in their rates because of our refusal to give them facilities free of cost to which I did not agree. Ultimately they did agree not to enhance their rates.

In this context, their letter dated 16th April, 1965 is placed below for perusal.

The firm have advised us *vide* their letter at SN/245 that there would be no difficulty in their installing the plants at Varanasi since they are not governed by the Industries (Development and Regulations) Act.

They have also agreed to accommodate our requirements of oxygen gas in the hospital free of cost as a gesture of good-will.

Since the land will be leased for a period of 30 yaers I have proposed that we shall enter into a separate agreement for leasing the land. A draft for that is also placed below. This has been accepted by the firm's representatives. I shall, however, consult Mr. Guha before finalising the lease agreement. The legal opinion which has been obtained from our local advocate in this connection is at SN|247-248.

If now G.M. approves we could issue the letter of intent to the firm as follows:—

"Reference your quotations No. Indus.|25|4629, dated 27th March, 1965 and telegram No. Indus|25|5243, dated 5th April, 1965 and discussions with our representatives here from 14th to 17th April, 1965, the Administration have decided to accept the quotation for the supply of Oxygen and Acestylene gases. The draft agreement has also been finalised during discussions and is enclosed herewith for your comments. If any.

The agreement shall be finalised after hearing from you and after legal opinion has been obtained by us particularly on the issue whether it would be in order on the part of the administration to agree to your stipulation to the leasing rights being assigned to State Financial Corporation by you, for obtaining Industrial loan".

Sd.|-
FA & CAO
17-4-1965

I endorse the principles followed by FA and also the agreement.

Sd.|-
CME
17|4

Sd/-
G.M.
17/4.

The two draft agreements with M|s Industrial Gases Limited, were shown to the Law Officer, Eastern Railway (Shri S. K. Guha) He went through these agreements and also discussed certain items with me. He suggested certain verbal changes in the drafts which were incorporated then and there. The main point on which his advice was sought was in connection with the assignee' portion of the lessee's rights. He has drafted a clause therefor which may be seen at slip SN|293. During discussion with Shri Garg of Industrial Gases Ltd. slight charges were made in this clause and these were also advised to the Law Officer and his approval obtained. The final drafts were then got typed by Shri Garg on stamped paper and were handed over to me for signature of the General Manager.

During discussions with Industrial Gases I was also successful in introducing a clause giving the Administration an option to continue with the agreement for supply of Oxygen and Acetylene gases for another period of five years. G.M. will recall that he had made this suggestion before I left for Calcutta.

The other highlights of the changes made in the draft agreement, which had already seen by the G.M. are:—

(i) Agreement for supply of Oxygen and Acetylene gases clause 3(a)—Matter portion.

The clause now reads as under:—

'.....except that the Suppliers may assign the lease dated 21st April, 1965 and it rights to the U.P. Government State Financial Corporation only with prior intimation and approval of the Buyors, which approved shall not be withheld, subject to assignees observing and performing all the obligations of the Suppliers under this Agreement as well as the terms and conditions of the lease agreement aforesaid."

Clause 4 Letter portion

Prevailing prices of calcium Carbide.

Size	Rate per 100 Mg. ex Works Carbide Manufactures	
	50 Kg. packing	100 Kg. packing
	Rs.	Rs.
4/80 mm . .	31·00	80·50
25/70 mm and 50/80 mm	95·00	93·50
15/25 mm .	81·00	79·50
5/15 mm, 1/55 mm mm . .	75·00	73·50

The above is based on the figures given in the Economic Times of 19th April, 1965 which Shri Garg said were the real operating prices in the market. The prices were also checked up with Asiatic Oxygen informally and it was found that what had been stated by Shri Garg was correct.

II. *Agreement for lease of land*

'Assignee' portion.

(a) Clause 2(ii) has been substituted as under:—

"That the leasee shall not be entitled to transfer or assign this lease or any part thereof provided however, the leassee may assign the premises hereby demised to the U.P. Government State Financial Corporation for obtain-

ing industrial loan with express condition that the assignee will also observe and perform the terms and conditions and covenants of this lease as well as the obligation of the lease as per agreement dated 21st April, 1965 separately executed between the lesser and the leassee with prior intimation and approval of the lessor which approval will not be withheld."

(b) Provision has also been made that the leassee shall remove all his plant and machinery, sheds, structures etc. on the termination of the lease within a period of three months. (The Law Officer had suggested a fortnight which was not acceptable to Shri Garg).

G.M. may now kindly go through these two agreements and than send for me, if necessary. If he approves, he could sign these agreements so that one copy of each could be returned to the Industrial Gases Limited.

It is also suggested that one copy of each of these agreements may be sent to the Law Officer for his record.

Sd|-
FA & CAO 22-4-65.

I have gone through the agreements.

I would like CME also to see these agreements before I sign them.

Sd.|-
G.M. 22-4-65 Sd.|- 22-4-65

One copy of agreement is with Secy: CME

Sd.|- 22|4

'A' One copy each of the two agreements may be sent to the Law Officer alongwith the D.O. placed below.

Sd.|- 26-4-65
FA & CAO

O|S See S. No. 298

Sd.|-

APPENDIX III

CONCLUSIONS AND RECOMMENDATIONS

S. No.	Para No.	Ministry concerned	Recommendations
1	2	3	4
1.	1.81	Railways	The Committee find that four firms—two from Kanpur and two from Calcutta—had responded to the limited tender enquiry issued by the Diesel Locomotives Works Administration in February 1964 for supply of oxygen and acetylene gases. This enquiry stipulated the submission of quotations by not later than 20 March 1964. Out of the four firms to whom the enquiry was addressed only the Indian Air Gases Limited, Kanpur made a positive offer. Another firm namely Indian Oxygen Limited, Kanpur in their letter of 13th March, 1964 wanted that the matter be kept pending till the next DGS&D rate contract, which was expected to be finalised by the end of the month. The third firm namely Industrial Gases Limited. Calcutta had *vide* their letter dated 9th March, 1964 asked for certain clarification before they could submit any quotation. On 17th March, 1964, the firm had been asked by DLW to submit a quotation before anything could be decided about the points raised by the firm for clarification. The fourth firm namely Asiatic Oxygen Ltd., Calcutta had on 2nd April, 1964 asked for an extension of the due date for submission of the offer and the firm had been informed on

20th May, 1964 regarding the extension of time by 15 days. The firm had then submitted their formal offer on 15th June, 1964. Thus with the receipt of the offer of Asiatic Oxygen Limited, Calcutta through their letter of 15th June, 1964 only two offers including the one from Indian Air Gases Ltd., Kanpur were available to the DLW Administration. Just when the Administration was having detailed discussions with these two firms for finalising the deal, Industrial Gases Limited, Calcutta, which had not submitted a tender, through a letter dated 24th February, 1965 offered to transfer their surplus oxygen and acetylene plants to DLW, Varanasi, if terms could be agreed upon. Discussions were then held with the representatives of this firm on 11th March, 1965 and ultimately on 5th April, 1965 the firm's formal offer was received. In the meantime Asiatic Oxygen Limited, Calcutta in a telegram of 31st March, 1965 indicated their unwillingness to set up a plant at Varanasi. Thereafter only two firms namely Indian Air Gases Ltd., Kanpur and Industrial Gases Limited, Calcutta were left in the field.

2	1.82	-do-	Explaining the reasons for taking into consideration a belated offer of Industrial Gases Limited, Calcutta, the Ministry of Railways have stated that the offer of the firm had to be viewed in the context of the guaranteed requirement of considerable quantity of these essential gases and inadequate response received from the limited sources available in the country for such gases. What intrigues the Committee is the discrimination shown in dealing with different tenderers and the total disregard of one of the most well established

supplier of the country, namely Indian Oxygen Limited, Kanpur. Indian Oxygen Limited had in fact by their letter of 13th March, 1964 requested the Administration to keep the matter pending till the end of the month. But the Administration did not respond to the request of the firm, even though with other firms correspondence had been exchanged in regard to the offer for supply of gases much beyond the date originally stipulated for submission of quotations. It is significant to note that no tender was received within the stipulated date from the Industrial Gases Limited, Calcutta. The explanation given for not keeping the matter pending for some time, as requested by Indian Oxygen Limited, Kanpur, is that with the large quantity of gases required continuously and without let-up for diesel loco production in DLW, it was essential to have a guaranteed supply arrangement and this firm gave no such assurance of guaranteed supplies. It was presumptuous and unwarranted on the part of the Railway Board to have assumed that Indian Oxygen Limited, which was possibly the best known firm in this field, would not guarantee supplies even before they had spelt out their offer. If a belated offer from the Industrial Gases Limited, Calcutta, a much smaller organisation, received after about a year of the last date for submission of quotations could be entertained by the Administration, there could be no justification whatsoever in overlooking a far better established firm. It only goes to show that either the

			Administration was keen to bring in the Industrial Gases Limited or it was unjustifiably prejudiced against the Indian Oxygen Limited.
3	1.83	Railways	The Committee further note that out of the two offers available to the Administration, the offer of the Industrial Gases Limited, Calcutta was considered better than the offer of the Indian Air Gases Limited, Kanpur simply because the former firm had quoted low rates *per se* as compared with the rates quoted by the latter firm. No comparative evaluation of the relative terms and conditions of the two offers appears to have been made. This is clear from the fact that the terms and conditions stipulated by these two firms were quite different and had different implications and *prima facie* the terms and conditions stipulated by the Industrial Gases Limited were more stringent. For example, the Indian Air Gases Limited was prepared to enter into an agreement for five years whereas the Industrial Gases Ltd., insisted that the agreement should be for 10 years. Again the Indian Air Gases Limited did not insist on any minimum guaranteed off take but the Industrial Gases Limited made the minimum guaranteed offtake a pre-condition of the agreement. Further the Industrial Gases Limited wanted a number of facilities such as a plot of land, power connection, assured supply of water and other facilities available in the Township for the employees of the firm. The other firm, namely, Indian Air Gases Limited did not ask for any such facility. Without making a proper evaluation of the two offers, it is not clear how the Railway Administration could adjudge the relative superiority of a particular

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			offer/tender. Again in fairness to the different firms, their rates for supply should have been ascertained if the same facilities had been extended to them as asked for by Industrial Gases Limited, namely a plot of land, power connection and assured supply of water etc. It would, therefore, appear that the rate differential was not the only consideration which weighed in favour of the Industrial Gases Limited. Either the Administration took a very narrow view of the financial implications of the offer of the Industrial Gases Limited or they were influenced by some extraneous considerations so as to agree to all sorts of conditions imposed by the firm.
4.	1.84	Railways	Another consequence of the acceptance of the offer of the Industrial Gases Limited had been that the Administration's proposal to go in for their own gas plants was prematurely buried. It is seen that when the question regarding supplies of gases was under consideration, the then Chief Mechanical Engineer mooted a proposal for installation of Administration's own plants for these gases. The Chief Mechanical Engineer was of the view that since the supplies of these gases governed the output of the DLW, it was necessary to have captive gas plants as was the case in other public undertakings like HEIL, Bhopal. However, the foreign exchange difficulties proved to be the stumbling block. But even then on February 1965, it was decided that it would be advisable to enter into an agreement with the Indian Air Gases Limited for 3 to 5 years only as that

would give the Administration enough time to make investigations for setting up of administration's own plant after the end of 3 to 5 years. Thereafter with the appearance of the Industrial Gases Limited on the scene on 24th February, 1965 with the offer of a surplus gas plant and after the deal with the firm covering a period of 10 years having been clinched, the proposal regarding installation of a gas plant came to be shelved automatically.

5. 1.85 -do- In terms of the agreement entered into with the Industrial Gases Limited a number of facilities were agreed to be given to the firm for setting up the plant for production of oxygen and acetylene gases. These included leasing of a 2.5 acre plot of land, providing surface drainage, giving connections for supply of water and electric energy at the supplier's factory. The lease was for a period of 30 years although the initial supply contract was only for 10 years. For the facilities so provided the Administration was to get a rental of Rs. 400|- per month. Some other facilities provided to the firm either free of cost or on rental basis included the use of DLW main roads, approach roads, hospital, club and six quarters for the staff of the firm. Besides, the Administration also undertook to assist the firm in obtaining quotas, permits or import licences for their requirements of building material, iron and steel raw materials etc. and any such other facilities which were required for regular manufacture and supply of gases to the Diesel Locomotive Works. The overall advantage which the Diesel Locomotive Works Administration sought to secure by this arrangement was an assured source of supply of oxygen and acetylene gases which are vital consumable items required for day-to-day production and maintenance activities

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			in Diesel Locomotive Works.
6.	1.86	Railways	The Committee find that while agreeing to provide these facilities the DLW Administration did not take care to safeguard their own interest. Although the initial supply contract was for a period of 10 years with an option reserving the right of the Administration to extend its currency for a period of not less than 5 years, the facilities were to be made available to the firm for a period of 30 years irrespective of whether DLW continued to buy gases from the firm after the expiry of the contracted period of 10 years or not. The justification given for this arrangement is that no entrepreneur worth his name would make an investment in a place like Varanasi unless some concessions were offered by the Railways. Unfortunately the implications of such an arrangement had not been properly analysed because if this had been done the Administration would not have virtually mortgaged a sizeable piece of land with all attendant facilities for a mere sum of Rs. 400/-, of which land rent component was only Rs. 70/-, per month and for a period of 30 years. Whereas the firm had secured their interest by insisting on provisions regarding minimum offtake and increases in the prices payable due to escalation in costs, the DLW Administration did not even consider to have an escalation clause which could take care of the future increase in the rentals.

7.	1.87	-do-	Another serious drawback in the arrangement entered into with the firm was the provision regarding guaranteed minimum offtake of gases by the Diesel Locomotive Works Administration. In terms of the agreement Diesel Locomotive Works was required to take minimum guaranteed quantities of oxygen and acetylene gases and in case the minimum stipulated quantities were found to be in excess of the requirements of DLW, the Administration was to seek the assistance of the firm for selling the excess gases and if no ready customer was available the firm would have the option to discharge the unlifted quantities of gases into the air on DLW's account. As opposed to this, the firm had been given full freedom to dispose of the gases produced at the cost of facilities provided by the Administration in excess of the requirements of DLW to any outside buyer without any interference by the Administration. Why this one-sided arrangement to the advantage of the firm was agreed to is suspicious and needs to be investigated. The Committee are also unable to appreciate the justification of the provision allowing the firm to let off the excess gases into the air on the Administration's account in preference to the same being diverted to other Railway Users.
8.	1.88	-do-	It is distressing to note that even though the minimum guaranteed quantities of gases could not be lifted throughout the 10 year period of the contract except in 1966, the Administration never asked for assistance of the firm for the disposal of the alleged surplus gases as per the agreement. Further inspite of the firm repeatedly claiming to have offered to DLW the guaranteed minimum offtake and emptied the unlifted quantities of gases into the air on the latter's

			account, the Administration did not undertake any verification of the actual production of gases and the discharge of the gases into the air by the firm.
9	1.89	Railways	The Committee feel that the arrangement entered into with the firm was one-sided and clearly biased in favour of the firm. No wonder the firm made the maximum use of the provisions of the agreement to extract maximum benefits which involved DLW in prolonged legal battle. Over a period of 10 years for which the original agreement was valid the firm has dragged the Administration to arbitration on no less than five times.
10	1.90	-do-	The Committee find that after inviting tenders and taking into account the rates in the rate contract of DGS&D for supply of these gases the Administration in May 1976 extended the contract with the firm for a further period of 7 years on the same terms and conditions except slight reduction in the quantity of minimum offtake of gases and the payment therefor was to be made at the rates to be determined by the Chief Cost Accounts Officer, Ministry of Finance. The firm, however, refused to furnish the basic information required by the Chief Cost Accounts Officer for fixation of rates. Consequently the rates for supply of these gases could not be finalised so far. It is significant to note that the firm had at one stage threatened the Administration that if no agreed prices were settled by 30 November 1977, they would be compelled to charge as per their list

prices. Ultimately the firm unilaterall discontinued supply of the gases from July 1978, compelling the Administration not only to obtain its requirements of the gases from other sources at higher prices but also to seek legal remedy in the matter. Thus the apparent cheaper rates offered by the firm on consideration of which the contract was extended have proved illusory. The Administration does not appear to have learnt any lesson from its experience with this firm for more than 10 years. This is deplorable to say the least.

11	1.91	-do-	The foregoing paragraphs make an unsavoury reading and give rise to suspicion about the *bona fides* of the whole arrangement. The Committee would, therefore, recommend that the whole case may be investigated so as to identify the persons who were responsible for showing undue favour to this firm.
12	1.92	-do-	Apart from the drawbacks in the agreement entered into with the Industrial Gases Ltd., which have come to light, the Audit paragraph also highlights a serious case of negligence in the matter of appointment of an arbitrator by the Administration in the first arbitration case. It is noted from the Audit paragraph that the firm, not being satisfied with the decisions of the Diesel Locomotive Works Administration on several points such as compensation claimed by the firm for not lifting the minimum guaranteed offtake of gases, compensation for damages to cylinders, non-supply of power and water in time, non-provision of approach roads, surface drainage facilities etc. sought arbitration on five occasions for a total claim of Rs. 67.10 lakhs. The first arbitration case pertained to the year

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			1966 and 1967 in which the Administration failed to appoint an arbitrator in time as a result of which it was made absolute and the Administration had to pay Rs. 2.01 lakhs towards the arbitration award and the cost of the suit. In the second, arbitration case pertaining to the year 1968 and 1969 where the Administration appointed its arbitrator in time, the decision was favourable to the Administration. The awards in the third, fourth and fifth arbitration proceedings are still awaited.
13	1.93	Railways	From the information made available to the Committee it is seen that for the first arbitration case, the firm appointed its arbitrator in March 1967 and requested the Administration to appoint their arbitrator as per the terms of the agreement. The Administration, however, in utter neglect of its duty failed to appoint its arbitrator within the stipulated period of 15 days as required under the Arbitration Act. Thereupon, the firm nominated its own arbitrator as the sole arbitrator in April 1967. The Administration challenged this position and appointed its arbitrator in May 1967. But this was not accepted by the firm. The firm protested against the belated nomination of an arbitrator by the Diesel Locomotive Works Administration and the sole arbitrator appointed by the firm proceeded ahead with the arbitration and made an award against the Administration. Ultimately the court gave judgement on that award. In between, in a futile attempt to cover up its earlier latches of failing

			to appoint an arbitrator in time, the Administration had sought legal remedy by filing a suit first in the court of the Civil Judge, Varanasi and had then gone in appeal to the Allahabad High Court. The Administration's case could not be sustained in any of the two courts as the Administration had "acted unwisely by not appointing an arbitrator within the time allowed by law."
14	1.94	-do-	Explaining the reasons for not appointing the arbitrator within the stipulated time, the Ministry of Railways have stated that the expectation then was that the matters under dispute would be settled amicably by discussions which were then in progress. *Prima facie* this is not a satisfactory explanation because the nomination of an arbitrator could not have in any way precluded or prejudiced the discussions with the firm which were stated to be in progress at that time. The Committee are of the view that the Administration had miserably failed to exercise its right to appoint its arbitrator in proper time. The Chairman, Railway Board during the course of his evidence before the Committee conceded that there has been negligence in this case. The Committee desire that responsibility for this serious and costly lapse, including wasteful legal expenditure, should be fixed.
15	1.95	-do-	The Committee would also like to be apprised of the progress made in the other three arbitration cases now pending.
16	1.96	-do-	The Committee find that in November 1967, the Railway Board sanctioned an abstract estimate for Rs. 88.68 lakhs (with a foreign exchange content of Rs. 35.94 lakhs) for the work of provision of 24

channel microwave link between New Delhi and Mughalsarai. The global tenders invited by the Northern Railway Administration in January 1968 on a turn-key basis for multi-channel microwave system envisaged provision of standby equipment at the terminals as well as at all the repeater stations with a view to obtain a reliability figure of 99.9 per cent. The lowest tender was that of a firm in Belgium (M/s. Bell Telephones) which provided for complete standby arrangements at the 23 hops on the New Delhi-Mughalsarai microwave link. Taking into account the lowest tendered rates, the Tender Committee recommended the award of the work to the Belgium firm at an estimated cost of Rs. 88.87 lakhs with a foreign exchange content of Rs. 53.50 lakhs. However, while according its approval in December 1968 to the placement of order on the lowest tenderer namely the Belgium firm, the Railway Board fixed the total value of the contract at Rs. 80.91 lakhs with a foreign exchange component of Rs. 47.15 lakhs, with a view to ensuring that there was no further revision of the estimate.

17	2.81	Railways	The Committee find that the reduction of the order of Rs. 7.96 lakhs (foreign exchange content being Rs. 6.35 lakhs) made by the Railway Board in the estimates forwarded by the Northern Railway, became possible by restricting the provision of standbys at 10 out of the 23 hops envisaged on the system. However, in 1972 even before the New Delhi-Mughalsarai microwave system had been commis-

			sioned, the Northern Railway Administration felt that to obtain the maximum benefit of the reliability for which this system had been planned, standby equipment would have to be provided in all the remaining 13 hops also, which had been deliberately left out in the contract concluded in February 1970. This was approved by the Railway Board in July—October 1972 and the additional standby equipment was obtained at a cost of Rs. 23.43 lakhs. The procurement of standby equipment then entailed an additional expenditure of Rs. 10.28 lakhs because of the escalation of prices since the execution of the principal agreement with the Belgium firm in February 1970. The Committee consider that the decision of the Railway Board to restrict the standbys to 10 hops was technically unsound and indefensible and in disregard of the degree of reliability to be achieved i.e. 99.9 per cent.
19.	2.82	-Do-	In justification of the Railway Board's decision to restrict the provision of standbys at only 10 out of the 23 hops, the following two reasons have been given: (1) The reduction in the number of standbys was a deliberate, considered and thought out decision and it was taken on the basis that achievement of 90 per cent efficiency instead of the 99 per cent efficiency tendered for would be adequate for the system; and (2) The foreign exchange position was so tight that the fresh commitments had to be restricted to only those items

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			which were essential and inescapable and hence the number of standbys were reduced so as not to exceed the sanctioned estimates. The Committee regret to observe that none of the above two grounds can be sustained on the basis of the contemporary record made available to them. The reasons therefor are discussed in the succeeding paragraphs.
19	2.83	Railways	It is seen that as early as 1965 the Railway Board had circulated to all the Railways the 'norms for microwave systems' and according to these norms, standby for radio equipment was to be provided at all stations when the system loading reached 24 channels or above. In the case of New Delhi-Mughalsarai microwave system it was clear even at the tendering stage that utilisation would be of over 24 channels even at the initial stage itself and therefore the provision of standbys was inescapable. Further, the Railway Board had issued certain guidelines on 30 July, 1962 to all the Zonal Railways for the future planning of the systems and these guidelines envisaged provision of basic standby with the automatic change-over facilities even if the reliability to be achieved was 99 per cent. In the tenders for the New Delhi-Mughalsarai microwave system the reliability sought to be achieved was not only 99 per cent but 99.9 per cent, thereby making the provision of standby all the

more essential. It is also seen that at the time of issuing the guidelines in July, 1968, the Railway Board had specifically directed the RDSO to issue system specifications based on the guidelines. In pursuance of this directive the RDSO furnished on October/November 1968 the draft specifications, which called for the provision of standby as a compulsory device for all microwave links. It is thus to be seen that the provision of standbys was absolutely essential irrespective of the fact whether the reliability to be achieved was 99 per cent or 99.9 per cent and the Northern Railway and the Railway Board became aware of this right in 1968 itself.

20	2.84	-Do-	It has been argued by the representatives of the Railway Board that with a view to cut down expenditure on equipment, the efficiency figure was reduced from 99.9 per cent to 99 per cent and this resulted in reducing the number of standbys. This contention of the Railway Board is not tenable firstly because the figure of efficiency aimed to be achieved as indicated in the tender documents was 99.9 per cent and in the concluded agreement also this figure remained unchanged, even after the number of hops at which standby was provided was reduced from 23 to 10. Secondly, no contemporary record has been produced to testify the fact that a deliberate decision had been taken to aim at 99 per cent instead of 99.9 per cent efficiency. As a matter of fact what the records reveal is a different story altogether. The Committee find that the Northern Railway approached the Railway Board on 3 May, 1968 for the approval of the Tender Committee's recommendations for awarding the

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			contract to the lowest tenderer, namely, the Belgium firm. The offer of the lowest tenderer provided for complete standby arrangements (using frequency diversity to cope both with failure or outages of radio equipment as well as to overcome fading through frequency diversity reception) at all the 23 hops on the New Delhi-Mughalsarai link and the total estimated cost of the work worked out to Rs. 88.87 lakhs with a foreign exchange content of Rs. 53.50 lakhs. There is no evidence to show that the Signals Directorate was willing to reduce the provision of standbys on technical considerations or it was overruled due to scarcity of funds. In fact the Signals Directorate never pointed out that there would be loss in reliability if the standby equipment was not provided at all the hops. Thus the reduction in the number of standbys is not a result of any deliberate well thought out decision under which efficiency of the system had been reduced from 99.9 per cent to 99 per cent.
21.	2.85	Railways	Similarly, the other argument that due to the tight foreign exchange position the quantity of radio equipments to be procured was deliberately reduced is not borne out by contemporary record. It cannot be denied that the foreign exchange position was tight and the Ministry of Finance had been impressing on the Ministries/ Departments of Government of India to reduce their foreign exchange requirements to the minimum. Yet the Committee have not

been furnished any correspondence having been exchanged between the Northern Railway and the Railway Board suggesting that the requirements of standbys had to be cut down to conserve foreign exchange notwithstanding the loss in speech reliability that it would entail.

22 2.86 -do- That the omission of standbys at the remaining 13 hops was a mistake is clearly borne out by the fact that in 1972 the Northern Railway on the basis of their experience in the sector already commissioned felt that the basic standbys at all hops were inescapable. Here again the argument given is that the need for additional standbys was felt in the context of the studies completed by RDSO in 1972. But the correct position is that in 1968 itself the RDSO had formulated that specifications which provided for standbys as a compulsory device. The configurations decided upon in 1972 by RDSO had nothing to do with the provision of standbys. This is further supported by the fact that the specifications incorporated in other global tenders floated by the Railway Board in January, 1969 for seven microwave links stipulated provision of basic standbys at all terminals as well as repeater stations. Similarly another contract entered into in December, 1970 for supply of radio equipment for five microwave links envisaged provision of basic standbys in all the hops. From the above the Committee cannot but conclude that there has been a serious failure in not making a provision for standbys at all the hops *ab initio* and that the Railway Board had enough time to rectify this defect before April, 1970 and take advant-

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			age of the low rates quoted by the firm but unfortunately they failed to do so. This has cost the exchequer an avoidable infructuous expenditure of more than 10 lakhs.
23	2.87	Railways	Another important matter raised in the Audit paragraph relates to the collapse of microwave towers, whose satisfactory performance had been guaranteed by the Belgium firm. In terms of the contract entered into in February 1970, the Belgium firm was entirely responsible for the satisfactory performance of the entire system as well as for the performance of the towers. The agreement further provided that since the entire responsibility for the design and guarantee of the performance of the towers rested with the contractor, there should be no need to approve the contractors' design. The detailed designs of towers were to be submitted to Northern Railway only for information and record. The Committee find that on 20 May 1976 one of the working towers collapsed owing to heavy wind disrupting the microwave communication. A quick check of the other 23 towers on the link also revealed signs of distress and deformation on 13 towers. In August 1976, the Railway Board initiated action for replacement or strengthening of the towers and the firm was requested to take all necessary remedial measures free of cost. The firm repudiated their responsibility on the ground that the warranty period of 12 months commencing from the date of com-

pletion of the installation, namely 15 January 1973 expired on 15 January 1974 and that during this warranty period no defects or any non-compliance with specifications or claims had been raised whatsoever in relation to the towers. The case was ultimately referred to the arbitration. The claim of the Railway amounts to Rs. 1,65,50,649. Since the Railway Board has claimed that the satisfactory performance of the system as well as of the towers was the responsibility of the firm, which had in fact been guaranteed by them, the Committee trust that the Railways Administration would find it easy to be successful in arbitration. The Committee would therefore like to be apprised of the progress made in the arbitration proceedings.

2·4	3.20	Railways Supply	The Committee note that on 7 May 1970, the Director General, Supplies & Disposals placed an order on a firm (M|s. Wyman Gorden India Ltd.) for supply of 408 number of coupling hooks to the Assistant Controller of Stores, Northeast Frontier Railway, New Bongaigaon. The delivery was to be completed within 4 to 6 weeks from the date of placement of order. The firm offered the stores for inspection and these were rejected by the Director of Inspection, Bombay on 9 June 1970 on the ground that they were rusty. The stores offered by the firm for reinspection on 29 June 1970 were again rejected by the Director of Inspection on 9 July 1970. Thereafter neither the firm offered any fresh stores for inspection nor did the indentor, namely, Assistant Controller of Stores, Northeast Frontier Railway, or the Director General, Supplies and Disposals take up the matter with the firm. It was only

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			on the 12 December 1973, that is, after the lapse of a period of over three years from the stipulated period of completion of the supply, that the Controller of Stores, Northeast Frontier Railway enquired of the firm and the Director General, Supplies and Disposals the position of supply. The Director General, Supplies and Disposals then initiated action in March 1974 and after issuing a notice-*cum*-extension letter to the firm cancelled the old contract on 20 June 1974 at its risk and cost. Fresh tenders were then invited and the stores were purchased from the same firm, which had in the meantime changed its name from Wyman Gorden India Ltd. to W. G. Forge and Allied Industries, at the rate of Rs. 260 per piece against Rs. 74 per piece contracted for earlier. This resulted in an extra expenditure of Rs 75,888. There was no question of extension of contract which had expired long back. The unilateral action without the consent of the supplier could only make any purchase at its risk and cost invalid. The Commitee cannot but suspect the bonafides of the deal.
2·5	3.21	Railways (Supply)	In the explanation now offered for this lapse both the Railway Administration and the Director General, Supplies and Disposals have attempted to apportion the blame on each other. Whereas the Director General, Supplies and Disposals has pleaded that the indentor did not give any intimation about the non-receipt of the stores, the Railway Administration have taken the stand that the Director

			General, Supplies and Disposals has its own progress cell for watching performance of contracts and taking action against the defaulting firm in time and, therefore, they should have taken action on their own. The Committee feel that there is no force in any of the two arguments being adduced for non-action. Obviously, there has been a serious lapse for which the responsibility should be fixed both in the office of the Assistant Controller of Stores and in the Directorate of Supplies and Disposals.
26	3.22	Railways	Another point that has incidently come to notice is that the Controller of Stores, Northeast Frontier Railway had enquired telegraphically on 26 30-5-1972 from the Assistant Controller of Stores, New Bongaigaon whether the supplies had been received by him in full so that the case could be closed. It was at this stage that the Assistant Controller of Stores, New Bongaigaon informed the Controller of Stores on 12-6-1972 that the firm had not supplied the material. Why the Controller of States did not initiate any caution at that stage is not clear to the Committee? It was only in December 1973 that the Controller of Stores took up the matter with the firm, after the Mechanical Department had complained about the short supply of this particular item of store. There has been a failure at this stage also for which the responsibility needs to be fixed. The Committee would like to be apprised of the action taken in the matter.

GMGIPMRND—LSII—784 L.S.—14-7-79—1,200.