

**Oil and Natural Gas Commission—
Avoidable payment of Rs. 89.06 lakhs
made to a foreign contractor beyond
the terms of the contract**

**(MINISTRY OF PETROLEUM & CHEMICALS
(Department of Petroleum & Natural Gas)**

**COMMITTEE ON
PUBLIC UNDERTAKINGS
1990-91**

NINTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

NINTH REPORT
COMMITTEE
ON PUBLIC UNDERTAKINGS
(1990-91)

(NINTH LOK SABHA)

**OIL AND NATURAL GAS COMMISSION-AVOIDABLE
PAYMENTS OF Rs. 89.06 LAKHS MADE TO A
FOREIGN CONTRACTOR BEYOND THE TERMS OF
THE CONTRACT**

**(MINISTRY OF PETROLEUM AND CHEMICALS-
DEPARTMENT OF PETROLEUM AND NATURAL
GAS)**



Presented to Lok Sabha on 10.1.1991

Laid in Rajya Sabha on 10.1.1991

LOK SABHA SECRETARIAT
NEW DELHI

January, 1991/Pausa, 1912 (Saka)

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CORRIGENDA TO 9TH REPORT OF
C.P.U. ON O.N.G.C.

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COMMITTEE ON PUBLIC UNDERTAKINGS

(1990-91)

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INTRODUCTION

1. the Chairman, Committee on Public Undertakings having been authorised by the Committee to present the Report on their behalf, present this Ninth Report on Oil and Natural Gas Commission—Avoidable payments of Rs. 89.06 lakhs made to a foreign contractor beyond the terms of the contract.

2. The Committee's examination of the subject was mainly based on an audit para XXXVIII (4) in the Report of the Comptroller & Auditor General of India, Union Government (Commercial) 1986, Part VIII.

3. The Committee on Public Undertakings (1988-89) took evidence of the representatives of Oil and Natural Gas Commission in this connection on 29 September and 26 October, 1988. As some of the facts mentioned in part 'C' of the Audit paragraph were contested by the representatives of the Commission, the Committee directed Audit to re-examine the matter on the basis of relevant files and records and to submit a note to the Committee. On receipt of the note from Audit, the Committee on Public Undertakings (1989-90) took further evidence of the representatives of O.N.G.C. on 12 and 31 July, 1989 and also of the representatives of the Ministry of Petroleum and Natural Gas on 4 August, 1989.

4. The Committee considered and adopted the Report based on part 'C' of the audit para at their sitting held on 11 October, 1989. This Report, however, could not be presented to Parliament due to dissolution of Eighth Lok Sabha.

5. The Committee on Public Undertakings (1990-91) at their sitting held on 11.6.1990 decided to call again the representative of the Ministry of Petroleum and Chemicals (Department of Petroleum and Natural Gas) for giving further evidence on the subject. They took evidence of the representatives of Ministry of Petroleum and Chemicals (Department of Petroleum & Natural Gas) on 23.8.1990 and 4.9.1990.

6. The Committee considered and adopted the Report at their sitting held on 2.1.1991.

7. The Committee wish to express their thanks to the Ministry of Petroleum and Chemicals (Department of Petroleum and Chemicals), Oil and Natural Gas Commission for placing before them the material and information they wanted in connection with the examination of the subject. They also wish to thank in particular the representatives of the Ministry of Petroleum and Chemicals (Department of Petroleum and Natural Gas) and O.N.G.C. who appeared for evidence and assisted the Committee by placing their considered views before the Committee.

8. The Committee would also like to express their thanks to the Committee on Public Undertakings (1988-89) and (1989-90) for the useful work done by them in taking evidence and sifting information which forms the basis of this report.

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

NEW DELHI;

January 9, 1991

Pausa 19, 1912 (Saka)

BASUDEB ACHARLA,

Chairman,

Committee on Public Undertakings.

OIL AND NATURAL GAS COMMISSION—AVOIDABLE PAYMENTS OF RS. 89.06 LAKHS MADE TO A FOREIGN CONTRACTOR BEYOND THE TERMS OF CONTRACT

The Audit Report of the Comptroller & Auditor General of India, Union Government (Commercial)—Part VIII, 1986 has brought out a case of avoidable payments of Rs. 89.06 lakhs made by ONGC to a foreign contractor beyond the terms of contract.

2. In December, 1980, the Commission awarded a turnkey contract to M/s. ETPM for installation and commissioning of three well platforms SM, SP and SR at Bombay off-shore at a lump-sum cost of Japanese Yen 9495.354 million plus US Dollars 21.722 million (Rs. 53.27 crores). Subsequently, the work of another platform (SF), which has identical to SM platform was also awarded (February 1981) to the same contractor at the rates applicable to SM at a cost of Japanese Yen 3222.353 million plus US \$ 4.003 million (Rs. 15.44 crores). The agreement covering the 3 platforms (called MPR Agreement) was entered into on 5th March, 1981 and the supplementary agreement for SF platform was signed on 14th June, 1981.

3. According to Audit, the work was completed by the contractor on 18th May, 1983. The total payments made against these contracts amounted to US \$ 73.253 million plus Japanese Yen 3590.352 (Rs. 71.08 crores). As per Audit, scrutiny of these payments made to the contractor revealed that there was avoidable payments aggregating Rs. 89.06 lakhs in foreign exchange which were extra contractual as detailed below:

A. Payment for buoyancy tanks

4. According to the agreement the work covered by the contract comprised preparation of design engineering procurement, fabrication, inspection, testing and pre-commissioning and any other item necessary for final completion of the well platforms. Clause 5.12.5 provided that the contractor should at his own expense supply and provide all constructional plants, material both for temporary and for permanent works, labour, transport to and from the site and in and about the works, and other things of every kind required for design, engineering, procurement, construction, completion, commissioning, start-up and making good of the works etc.

5. The contractor in August, 1981, informed the Commission that because of the increased weight of the jacket after final design, the Lloyd's Register of Shipping had suggested reserve buoyancy of 17 per cent to ensure safe launch of jackets and that the Commission should bear the extra cost involved in fabrication of buoyancy tanks not originally contemplated. Subsequently, ETPM preferred a claim for US \$ 6,43,268 for the buoyancy tanks used by them to facilitate installation of jackets on the platform. The cost of buoyancy tanks was calculated at the unit price (US \$ 6800 per M.T.) applicable to jackets. Since the tanks were subsequently taken back by the contractor, the Commission insisted for suitable rebate and accordingly the claim was reduced by 35 per cent. The net claim amounting to US \$ 4,18,124 was discharged by the Commission in February, 1984.

6. The scrutiny of records by Audit revealed that the use of buoyancy tanks became imperative due to increased weight of the Jackets in the final design, which in turn was due to the use of members of higher thickness by the contractor. The Commission had already incurred an avoidable expenditure of US \$ 7,13,552 being the cost of 113.665 tonnes of extra weight due to use of higher thickness of members.

7. When the Committee enquired about the difference between the thickness of members originally prescribed in the design and actually used by the contractor in the final design of the jacket, the representative of EIL (Engineers India Ltd.) stated during evidence:—

“When we prepared the bid package, we did the basic engineering. We had given the size of each member. At the time of basic engineering we had completed that work by stipulating the buoyancy of 8 per cent; and what happened later was that the certification agency (Lloyds) said that they wanted to make the launching of the Jacket much safer, and so, they stipulated 17 per cent reserve buoyancy; and 9 per cent difference in reserve buoyancy was one of the factors which constituted the need for the buoyancy tank. In the beginning, when we made the basic engineering, the need for buoyancy tank was not stipulated. That is why there was no buoyancy tank at that time.

Immediately after the contractor started the work, contractor indicated the higher thickness of some members. We

apprehended at that time that the extra thickness was not required. But ETPM had not carried out transportation analysis; and it was decided in a management meeting that ETPM would carry out extra computer run free of cost. The thickness were 10 per cent to 20 per cent higher than what we had given....."

8. Asked whether such flexibility in the parametres of the members was allowed to M/s. ETPM in the contract, the representative of EIL stated:—

"When they asked for higher thickness, they said that they did so on the basis of their experience. The transportation analysis was not being done at that time. But their experience was that extra thickness would be needed, and that it was necessary to incorporate it at that time. We also found that members with higher thickness were available with them. If they had to buy the size which we wanted under the contract, there would be a delay of 5 to 6 months. So, in order to meet the project schedule, they used the members available with them."

9. According to audit, in view of the fact that the use of buoyancy tanks was entirely attributable to the use of structural members of thickness higher than that prescribed in the design, and also in view of the provisions of agreement, the payment of US \$ 4,18,124 by the Commission towards buoyancy tanks was neither justifiable nor was it within the terms of agreement.

10. The Committee desired to know the opinion of the Ministry in this regard. The Secretary, Department of Petroleum and Natural Gas during evidence stated:—

".....when the original design was prepared by the Engineers India Ltd., the basic design was not anticipated for the use of flotation tanks.....at the time of preparation of detailed design, quite often the parametres can undergo a change. In this particular case, when the detailed design was prepared, apparently, the weight of the structure as was originally envisaged by EIL underwent a change.....this seems to have case about for two or three reasons. One is, according to the contractor, the kind of design which they prepared envisaged use of larger size members than what was originally contemplated. There was a mention of the fact that the con-

tractor took a plea that he had to use higher size member because of the constraint of time. The structure had a higher weight than what was originally contemplated. Therefore, the question came up of the need for buoyancy. Therefore, when a reference was made to the Certification Agency, Lloyds Register, they said, 'This is the revised drawing as duly approved by EIL and ONGC'. According to international practice, a buoyancy of certain percentage would be required on the basis of which buoyancy tanks were considered to be necessary. I am inclined to agree with the audit on one point that if higher sized members were used for any reason whatsoever, whether the responsibility was that of the ONGC at all to make the payment. Prima facie, I find that in terms of the contract, ONGC need not have paid this higher amount. But I would like to urge upon the Committee to go in to certain issues. One is that as compared to total cost of whole structure, the additional amount involved was quite small in terms of the totality. This kind of dispensation could have been agreed to by the ONGC to save time in terms of construction and in terms of delay in commissioning of the project. This could be a worthwhile higher cost to pay for the purpose of getting the work completed on time. But it is a fact that the need for the buoyancy tank arose because of higher tonnage or higher weight. Therefore, one could take the position that in terms of contract it is something which the contractor should have borne."

Elaborating, the witness further stated:—

".....I asked the question 'if, according to the original design of the EIL, a particular structure was envisaged, was this higher weight necessary at all?' to which I found EIL, still maintained that the structure could have been fabricated according to their original design. If that is the position, naturally higher weight could have been paid for by the contractor. But I would plead with the Committee that the ONGC did not at that time have as much experience in terms of contracting provisions and contractual obligations, etc. for off-shore work as they have now....."

11. On the issue of higher size members used by the contractor, the Committee enquired as to why the contractor was permitted

to revise the design, when there was nothing wrong with the original design of the structure. The Secretary, Department of Petroleum and Natural Gas during evidence stated:—

"I would like to clarify that in a large capital intensive project of this kind, certain kind of a trade-off is possible. For example, to get a big work done 5 to 6 months earlier than the schedule, it may be possible that something is given in return. Because, if the investment is large, then we have to calculate the interest that is paid during the construction period. So, to get the work done ahead of schedule something is given in return which is quite possible. These are the kinds of trade-offs which come in the picture where large investment of this size is involved....."

12. Asked whether there was anything on record to show that there was any trade-off to get the project completed ahead of time the witness admitted:—

"On record, I do not see it. From whatever discussion I had, I did not see any specific thing on this.....All along, a decision has been taken that the payment was due. In fact, I am taking a decision that this payment was not due. On the part of ONGC, the decision taken was that this payment was due."

The witness also added:

"Without mincing words, I have clearly stated my views. I accept the point that this is a case of extra payment. This payment not have been made."

13. When the Committee enquired whether the Ministry was prepared to institute an enquiry to ascertain the full facts of the case, the Secretary of the Ministry stated during evidence that "We will, if the Committee so desires". He also assured the Committee that they would share the reports and findings of the enquiry with the Committee.

14. In July, 1985, the Commission informed audit that "Normally the jacket could be launched without buoyancy tank, but, it depends on the total weight of the jacket and an ending analysis based on the requirement of the certification agency and for safe launching of jacket, buoyancy tank became inevitable. In terms of clause 23 of the contract, the requirement of certification agency (Lloyd's

Register of Shipping) shall be deemed to be the requirement of the Commission under the contract and in case the requirements are not expressly and definitely agreed between the parties at the time of the contract, the contractor will be entitled to a changed order."

15. The Committee wanted to know the details of stipulations in Clause 23 regarding the requirement of certification agency (Lloyd's Register of Shipping). The Secretary, Department of Petroleum and Chemicals stated before the Committee as follows:—

"That merely referred to the requirement of the certification agency, that a certification agency has to satisfy itself that the work will be carried out according to international standards and there would be no undue risks involved in putting up the structure. Unless the certification agency's requirement is fully complied with the coverage of insurance would not be available as it would not meet the requirement of the certification agency. The whole question arose because of the fact that a revised design was given by the contractor which envisaged higher weight for the structure and therefore, when the requirement of buoyancy tanks came up, the certification agency said that if the revised design has been approved by ONGC or EIL, then according to international standards, certain buoyancy will be required and; therefore, the use of buoyancy tanks will be necessary."

16. According to Audit, the buoyancy tanks were not the requirement of certification agency, since that agency had by its telex of 25th February, 1985 informed the Commission that it did not make any request to the contractor for buoyancy tanks to be added to the platform. In this connection, the Committee desired to know as to whether the certification agency (Lloyd's Register of Shipping) directly informed the Commission regarding need to increase the reserve buoyancy to 17 per cent as a result of revised design of the platforms. In reply, the Member (Technical), ONGC stated during evidence:—

"The contractor was fabricating this item in France, Lloyds Register of Shipping is in London. ETPM sent a telex message that Lloyds Register of Shipping advised them to increase the buoyance.....First time there was no direct information to us."

17. Elaborating the representative of ONGC informed the Committee that their engineer sent a telex to the Lloyds Register in 1981, but that earlier document was not traceable. There was a correspondence on record only in 1985, which was prompted by a reference made by audit enquiring about correspondence between ONGC and LRS on requirement of reserve buoyancy. On checking their old records, as ONGC could not trace any previous correspondence, they wrote to Lloyds again in 1985.

18. Subsequently, ONGC furnished a copy of the telex message dated 25.2.1985 received by them from LRS, which read as follows:—

- “1. We have made no written request for buoyancy tanks to be added to these platforms.
2. As we recollect, at preliminary meeting with ETPM (3rd July, 1981 in Paris), we informally suggested a reserve buoyancy of 17 per cent on calculated weight.
3. The ETPM formal submission on July 24, 1981, included buoyancy tanks which brought reserve buoyancy upto 15 per cent. This was accepted by LR.”

19. When asked how ONGC allowed the contractor M/s. ETPM to increase the reserved buoyancy and consequential use of buoyancy tanks without any direct communication with the certification agency (LRS), the Secretary, Department of Petroleum and Natural Gas during evidence stated:—

“Originally EIL had prepared the design. They had not contemplated the use of buoyancy tanks. Later on the design was changed. A revised design was submitted by the contractor and it was duly approved both by EIL and ONGC. The contractor approached with that design the Certification Agency to say that how he would like to proceed on this basis. On the basis of this design as approved by those two agencies, the Certification Agency said that the Contractor will require a buoyancy tank. Therefore, the question of Certification Agency not directly getting in touch etc., does not arise because once you have approved a particular design and in that buoyancy tank was necessary, there is nothing irregular about it. The question is whether it will add to the cost both in

terms of additional weight and the need for buoyancy tanks is a factor which should have been taken into account by EIL and ONGC before approving the design..."

20. It has also been brought to the notice of the Committee that the Commission in their telex No. BOP/47 dated 28-2-1981 had clarified to the contractor that any additional tonnage involved due to use of higher thickness than that specified earlier would be at their risk and cost. In view of the Commission's telex message, the Committee enquired why was the contractor's claim of US dollars 7,13,552 admitted by the Commission. The Chairman, ONGC during evidence stated:—

"Claim of US \$ 7 million was based upon many factors and this was one of the main factors..... It was neither accepted nor paid. What was paid was only \$ 1.8 million. This was mainly on account of weight increase. And buoyancy tank was part of that."

21. The Committee pointed out that the contracts for platforms were awarded to M/s. ETPM between March, 1981 and June, 1981 and the contractor made the claim for extra payment on account of fabrication of buoyancy tanks not originally contemplated in August, 1981. The net claim amounting to US dollar 4,18,124 was discharged by the Commission in February, 1984. The Chairman, ONGC Stated during evidence:—

"This particular item was declared a disputed one. Thereafter, the two Members discussed the issue, and finalised the matter with the contractor."

Elaborating, the representative of ONGC added:—

"In such contracts, the contractors do put number of claims. Rarely you will find a contractor who does not make any claim, not falling within what had been put in the contract. As for putting in claims, it is nothing unusual. They put exaggerated claims also. When they do so, we also adopt a strategic approach and say nothing is payable. It does not mean that nothing is payable. In our records and correspondence, you will find that at some stages, we have said that nothing is payable. Then we discuss the subject. It was also discussed by our technical groups, the project team; and later on, with Member (Finance) and Member (Off-shore) also, to see that what exactly was payable."

22. The buoyancy tanks were stated to have been taken back by the contractor and the Commission had settled the claim for US \$ 4,18,124 by reducing it by 35 per cent of the total claim. The Committee desired to know the basis of arriving at the 35 per cent reduction of the claim by the contractor. The Chairman, ONGC during evidence stated:

"There was a meeting of the management in October, 1981 headed by Member (Off-shore) where representatives of EIL and everybody concerned were there."

23. In this connection, the Secretary of the Ministry also stated:—

"This is a matter on which audit itself has pointed out that the payment was made at different rates. That is also an issue which needs to be gone into. There is no fixed rate. This is a question of discussion between the parties for arriving at a decision."

24. The Committee note that ONGC awarded a turnkey contract to M/s. ETPM for installation and commissioning of three well platforms SM, SP and SR at Bombay off-shore in December, 1980. Subsequently, in February, 1981 the work of another platform (SF) was also awarded to the same contractor at the rates applicable to SM platform. The work was completed by the contractor on 18 May, 1983. The total payments made against these contracts amounted to US \$ 73,253 million plus Japanese Yen 3590.352 million (Rs. 71.08 crores). The scrutiny by Audit of these payments made to the contractor revealed that there were avoidable payments aggregating Rs. 89.06 lakhs in foreign exchange, which were extra contractual.

25. One of such items of over payment was payment made for buoyancy tanks. Clause 5.12.5 of the agreement, provided that the contractor should at his own expense supply and provide all constructional plants, material both for temporary and for permanent works, labour, transport to and from the site and in and about the works, and other things of every kind required for design, engineering, procurement, construction, completion, commissioning, start-up and making good of the works, etc. The Committee note that in the basic design of the jackets which was prepared by the consultants, Engineers India Limited, there was no provision for buoyancy tanks for launching of jackets. The need for buoyancy tank arose only as a result of excess weight of the jacket which was attributable to the use by the contractor of members of higher thickness than that prescribed in the

original design reportedly because of the constraint of time. Due to use of higher thickness of members, there was avoidable expenditure of US \$ 7,13,552 being the cost of 113.665 tonnes of extra weight. In addition, ONGC accepted a claim of the contractor for US \$ 6,43,268 for the installation of buoyancy tanks as per requirement, of the certification agency (Lloyd's Register of Shipping) who suggested that with the revised design, according to the international practice, a buoyancy of 17 per cent would be needed.

26. The Committee are distressed to note that the claims of the contractor for additional expenditure were admitted by ONGC inspite of the fact that the Commission in their telex dated 28-2-1981 had clarified to the contractor that any additional tonnage involved due to use of higher thickness than that specified earlier would be at their risk and cost. The Secretary of the Ministry admitted in evidence before the Committee that even if higher sized members were used by the contractor for any reason whatsoever, in terms of the contract ONGC need not have paid the higher amount as it was not due.

27. The Committee are also surprised to find that even though buoyancy tanks were taken back by the contractor, the Commission settled the claim of the contractor in this regard by reducing it by 35 per cent of the total claim (US \$ 4,18,124) after discussion in a meeting headed by Member (Off-shore). There were no records to show the basis on which reduction of only 35 per cent of the total claim was arrived at. From the facts placed before them the Committee are of the definite view that the additional payment in foreign exchange to the contractor for the use of structural members of thickness higher than that prescribed in the original design and for the use of buoyancy tanks was unjustified. The Committee, therefore, recommend that the responsibility in the matter should be fixed and action taken against the officers concerned should be reported to them within six months of the presentation of the Report.

B. Payment for launch truss timber

28. As mentioned earlier according to clause 5.12.5 of the agreement with the contractor, the lumpsum cost of the contract covered, cost of all material and labour used for the design, engineering construction required for the satisfactory completion of the work. Turn-key prices for each of the well platform quoted by the contractor also included a sum of 2.2968 million dollars on account of installation aids (Jackets). In February 1984, the Commission however, admitted and paid a separate claim amounting to US \$ 2,21,858

(Rs. 23.96 lakhs) being the cost of 77,854 MT of timber used in the construction of the 4 platforms. This was inspite of the fact that the consultant for this project, Engineers India Ltd. had in January 1982 clarified that the launch truss timber used in each platform was only to provide skid surface during loadout and did not remain permanently with the jacket and its cost should be considered as having been included by ETPM in their lumpsum cost. The timber was used only as an installation aid.

29. Audit have pointed out that as the contract did not contain any provision for making additional payment for the launch truss timber, the payment was made under the clauses of the agreement relating to additional payment for the structural steel when it was used in greater quantity than provided in the estimate. According to the consultants as well as the evaluation report and clarification given in the Tender Committee proceedings, the term structural weight was to be construed to refer to the steel weight only. The Commission, however, interpreted this clause to mean the variation in the entire weight of the materials used. The weight of the timber was included in computing the total weight and the difference was paid even though it was not included in the original estimate of the materials coming under the clause of structural weight variation.

30. While computing the payment for the timber, since no rate was available in the original estimate, the payment was made at the rate laid down for the jacket appurtenances. According to Audit, adoption of this rate was not proper as the timber was not used as part of jacket appurtenances.

31. The Committee enquired as to whether the payment made to the contractor for the use of launch truss timber was within the terms and condition of the contract. In reply, the representative on 14-1-1982, which, *inter-alia* stated:

"As per the contract, the weight of timber is also to be considered for payment. The issue involved is at what rate it should be paid to the firm. Payment for this at the jacket rate was not acceptable to us, because in the jacket rate, rate is same for the steel as well as for timber. We did not accept that. There are some miscellaneous items and those are covered under the jacket appurtenances and that rate is nearly 35 to 40 per cent of the steel rate which ONGC paid for this timber."

32. The Committee drew the attention of the representatives of ONGC to the telex message sent by EIL, their consultants to ONGC on 14-1-1982, which *inter-alia* stated:

"Launch Truss Timber

About 19.0 Tons of this item per platform has been included in jacket tonnage. This item cannot be considered under jacket at this is only to provide skid surface during loadout and launching and does not permanently remain with jacket. This item should be considered as having been included by ETPM in their lumpsum cost."

33. The Comomittee were informed that on 27th August, 1985 another telex was sent by EIL in which they have included the weight of timber in the structural tonnage at jacket appurtenances rate.

34. When enquired as to why the cost of timber to be used by the contractor was not included in the contract, the representative of ONGC stated:—

"For subsequent tenders, we did change our policy and we have made it a specific condition of our tender document."

35. In this connection, the Secretary, Department of Petroleum and Natural Gas during evidence stated:

"This is a point on which I would like to plead with the Committee that benefit of doubt should be given to the ONGC, particularly for the contract as it stood at a particular point of time. This is the timber which remains with the structure. The cost of removal will be very high. Secondly, in the subsequent contracts, some of these things were clarified. Four or five different categories have now been made. The categories under which various items are included are jackets, Jacket appurtenances, aids for fabrication, transportation and installation, pilling and super-structurer. This is to make sure that the contract does not have embiquities. The EIL has proceded on the basis. At that time, it was necessary as aid for installation. So, this was taken as an appurtenance. There are two or three other similar kinds of cotracts entered into like that of Mazegon Dock Ltd. where payment was made for timber on the same basis. So, this was not the only case where payment was made on that basis."

36. The Committee wanted to know as to why the payment was made to the contractor under the clause of variation in structural steel tonnage when the term 'structural weight' was clarified in the Tender Committee proceeding and also in the evaluation report to be construed to mean steel weight only. The representative of ONGC stated:

"It has not been paid at steel rate. It was paid on jacket appurtenance rate which is 35 to 40 percent of the rate of steel.....It is written here that Jacket appurtenances shall include boat landing, barge bumpers, rub strips, Jacket walkway, handrails etc."

37. Asked how would the Ministry justify the payment made to the contractor under the clause of variation in 'structural weight', the Secretary of the Ministry explained in evidence:

"The evaluation was based on structural tonnage and not on structural steel tonnage. For the purpose of Bid evaluation, EIL estimated the structural tonnage of super structure, helideck jacket, piles, appurtenances and anodes. The first category items include superstructures, helideck, jacket and piles which consist of all structural steel and the second category consists of anodes which consist of structural steel and aluminium zinc alloy. A large number of materials are put in the third category which include both structural steel as well as non-steel items. It is not just that only structural steel items go into fabrication but a large number of materials of non-steel nature also go into it. And this was one of them. Thus, the interpretation is correct."

38. When the Committee pointed out that the above items mentioned by the Secretary, Department of Petroleum and Natural Gas were absolutely necessary for the functioning of the equipment but timber was only an aid for transportation and installation, the witness stated:—

".....there is no denying the point that this is an aid for transportation and installation. If this had been clarified in the contract at that given point of time, then this dispute would not have arisen. In the subsequent contracts, the transportation and installation items which are listed also include timber for launch truss. This clearly categorises that in all subsequent contracts, the launch timber was used as an aid."

The witness added:—

“As a hindsight, one could say that this was a launching aid and should not have been paid for. But the contract as it stood at that time for this job, there was no specific mention that this is an aid for installation and therefore, that ambiguity in the contract gave rise to this claim being entertained by ONGC. At that time, ONGC thought that this should be taken as an appurtenance and payment was made on that basis.”

39. When pointed out that as per clause 5.12.5 of the agreement the material used for erection and used as an installation aid was the responsibility of the contractor, the Secretary, Department of Petroleum and Natural Gas stated during evidence:

“In one sense, yes; but it remained with the structure. I am not defending it. The limited point is that the contract as it stood at that time, did not clarify this position that this is a launching aid or the transportation aid. But as it remained there with the structure it distinguishes it from any other transportation aid. If the structure is taken away, you can legitimately call it a launching aid but in this case it remained with the structure..... Therefore, it has to be treated somewhat differently. I would plead that this should be treated a little differently.”

40. When enquired about the level on which the decision was taken to make payment to the contractor under this clause, the representative of ONGC during evidence informed the Committee that it was taken at the level of the Members of the Commission—Member (Finance) and Member (Off-share).

41. The Committee find that according to clause 5.12.5 of the agreement with the contractor, the lumpsum cost of the contract covered cost of all material and labour used for the design, engineering construction required for the satisfactory completion of the work. According to Audit the total turnkey prices for each of the well platform quoted by the contractor also included a sum of 2.2968 million dollars an account of installation aids (Jackets). ONGC in February, 1984 however, admitted and paid a separate claim amounting to US \$3,21,858 (Rs. 23.96 lakhs) being the cost of 77.845 MT of timber used in the construction of the 4 platforms. This was stated to be in spite of the fact that the consultant for this project, Engineers India Ltd. had in January, 1982 clarified that the launch truss timber used in each platform was only to provide skid surface during loadout and

did not remain permanently with the jacket and its cost should be considered as having been included by ETPM in their lumpsum cost. The timber was used as an installation aid. As the contract did not contain any provision for making additional payment for the launch truss timber, the payment was made under the clauses of the agreement relating to additional payment for the structural steel, when it was used in greater quantity than provided in the estimates. According to the consultants as well as the evaluation report and clarification given in the Tender Committee proceeding, the term structural weight was to be construed to refer to the steel weight only. The ONGC however, interpreted this clause to mean the variation in the entire weight of the materials used. The Secretary, Department of Petroleum and Natural Gas admitted during his evidence before the Committee that launch truss timber was an aid for transportation and installation. As a hindsight one could say that as this was a launching aid it should not have been paid for. He, however, sought to justify the payment on the ground that the contract as it stood at that time for this job did not specifically mention that this was an aid for installation and therefore that ambiguity gave rise to this claim being entertained by ONGC. As the timber remained there with the structure it distinguished it from any other transportation aid. At that time ONGC thought that this should be taken as an appurtenance and payment was made on that basis. In the subsequent contracts the transportation and installation items which are listed also included timber for launch truss.

42. The Committee are not convinced with the reasons advanced by the Ministry for the payment amounting to US dollar 2,21,858 (Rs. 23.96 lakhs) for launch truss timber. From the facts placed before them it is evident that this was an aid for transportation and installation and should have been treated as such as has been done in subsequent contracts. The Committee see no justification for the ONGC going out of the way for entertaining the claim of the contractor in this regard on the ground that the contract did not specifically mention that this was an aid for installation. The Committee, therefore, recommend that the responsibility for over-payment should be fixed and the action taken against the officers concerned reported to them.

C. Payment for 21.81 tonnes of steel wastage not forming part of the installed weight

43. The agreement with the contractor provided estimated structural tonnage for various items of platform (superstructure, Jacket and Jacket appurtenances) which formed the contractual tonnage for the purpose of plus/minus adjustment in the lumpsum price at the unit rates provided in the price schedule of the Agreement. Clause 12.13 of the Agreement regulating the procedures for measurement of work done provided that work shall be measured net of all loss and wastage of materials unless specifically prescribed in the contract. However according to audit in the case of deck superstructure a payment of US dollar 183204 was made to the contractor towards the cost of 21.81 MTs being the weight of cut pieces of deck legs which did not form part of the installed weight of the platform. As per Audit, the payment was not admissible in terms of clause 12.13 of the agreement.

44. In this connection, the Ministry intimated the Audit in April 1986 that "there was an error in measurement of water depth that was quoted in the bid package. This came to the notice of ONGC quite late after the award of the contract when a second measurement was taken by M/s. Furgo, Holland. Since ONGC was not prepared to risk a change in the height of the deck they allowed the contractor to proceed according to original design criteria. Eventually, on account of the water depth, the deck legs (transition pieces weighing about 22 tonnes) had to be cut-off at the time of installation, Ultimately, however, in fairness to the contractor, this 22 tonnes had to be paid for."

45. The Committee enquired as to why a payment of US dollars 183204 (cost of 21.81 MT of cut pieces of deck legs) was made to the contractor in contravention of clause 12.1.3 of the agreement which provided that work shall be measured net of all loss and wastage of materials. The Members (Finance), ONGC during evidences stated:
 ".....we have not made any payment for these 22 tonnes. So the question does not arise. It may be only a proposal."

46. When pointed out that the fact of above payment has been brought out in the audit para only after the confirmation by ONGC as well as the Ministry, the witness during evidence elaborated:

".....the main issue involved in the examination was whether ONGC had made payments for cut pieces. We confirmed last time that no payments against cut pieces

were made.....how this had happened was that while the Audit was examining us, somewhere there was an error from our side in stating that some payments had been made and we are really sorry to say that we should not have stated that. We want to rectify the position that no payment has been made on account of cut pieces."

47. In this connection, the Chairman, ONGC during evidence added:

".....the Audit had asked about the difference between 'as fabricated' and 'as installed'. At that time an error had crept in while giving the reply to the Audit that this weightage of the cut pieces had been paid. But subsequently when we checked up after we appeared before you we found that payment had not actually been made for those cut pieces."

48. As regards the contract, the Committee desired to know whether due to any flaw in the contract, there were any disputes with the contractor M/s. ETPM. The Chairman, ONGC during evidence stated:—

".....in the earlier contract, the experience of the organisation was limited. They were going on the basis of traditions and practices abroad from where EIL had drafted those instructions and there was certain amount of confusion. All these discrepancies which came about were later on discussed with contractors with the help of EIL. I agree a number of postures were taken initially by officials, at the initial stages. But finally when Member (Off-shore)—who is not with us today, he left the organisation—came, he along with senior people and EIL representatives discussed this matter. We would not say it as a package deal, but as a one-time settlement. Pieces and cuts were not paid but certain other payments which were in dispute were paid. By and large, it looked to be a fair settlement with the contractors. But this was certainly not brought up to the level of Steering Committee or Chairman. Therefore, we rectified this situation later on. All these changed orders and settlement have to come up now before the Steering Committee and the Chairman."

49. Since the position explained by the ONGC during the evidence recorded in the meeting held on 29th September and 26th

October, 1988 was in direct contradiction to what they had earlier informed Audit as well as the revelations made in the Audit Para, the Committee after certain deliberations directed Audit to re-examine the matter on the basis of relevant files and documents to be made available by ONGC with a view to submitting a report to the Committee.

50. The report was submitted to the Committee by Audit after scrutinising again files and records made available to them by ONGC. The following were the issues which were again verified by Audit in their re-examination:—

- (a) Whether the payment for the amount stated in the audit paragraph was, in fact, made to the contractor or not
- (b) If not, then the circumstances in which the earlier reply was furnished by the Commission.
- (c) Whether the reply given by the Commission earlier was based on facts and records or whether the present reply sought to be given by them is based on facts/records.

51. According to Audit, the contract was based on lumpsum payment and the dispute with the contractor was in respect of additional items which were not within the purview of the agreement. These claims were discussed by the management with the firm during the negotiations held in four sessions on 20th and 21st October, 1983 and 28th January, 1984. It was recorded in the record of proceedings of the meeting held on 20-11-1983 "that it was emphasized on several occasions that only 'as installed' weight is payable. ONGC also argued that 'as installed' or 'as built' weight are synonymous and based on the similar contract both upward and downward revision in weight should be considered by ETPM and weight adjusted accordingly and no payment for upward revision only". Keeping in view this criteria it was offered by ONGC at the end of the first round of meeting on 21st October, 1983 that only a sum of US\$ 426,853.05 can be allowed towards weight adjustment built on 'installed weight' only.

52. The Negotiations were further continued in a meeting on 28-1-1984. As a result of this meeting, the Management agreed to pay US \$ 610,057.05 for weight adjustment inclusive of the weight adjustments of US\$ 426,853.05 arrived at in the earlier meeting of 21-10-1983. It has been recorded in the record of proceedings of 28-1-1984 that based on the further discussion held between ONGC & ETPM management it was agreed that a lumpsum amount of US\$ 1.80 million would be authorised against all their outstanding claims

on MPRF as on date excluding any contractual payment due to them. Earlier the amount towards weight adjustment on the basis of 'installed' weight was only coming to US \$ 426,853.05. Therefore, the Audit have concluded that, it is clear from this record of proceedings that the Management in the course of negotiations agreed to pay an additional amount of US \$ 1,83,204 for the steel which was not a part of the installed weight. Applying the unit rate of US \$ 8400/MT for steel, the amount paid for is for 21.81 MT. This fact of payment which related to excess over the 'installed weight' was the subject matter of comment in the Audit Report and it has not been refuted by the Management even in their revised reply dated 9th Decmbr, 1988.

53. As regards the revised reply of ONGC dated 9-12-1988, the Audit have stated that no document has been produced by them to show that no such payment was made. The reply has been based on the documents which were available with them even in 1985 when the first reply was given. The present reply only seeks to build up a fresh logic to justify the payment which has already been made. The major arguments advanced by ONGC have been summarised as follows:—

- (a) The contractor was entitled to receive payment on the basis of 'fabricated' weight.
- (b) The strategy of negotiation was to make the contractor agree for the downward adjustment of weight.
- (c) The difference of 21.81 MT represents a part of the negotiated weight and cannot be linked to any specific component.
- (d) The payment for US \$ 183,204 for 21.81 MT inadvertently got linked up to the changes in water depth and transition pieces. No payments for 21.81 MT was made for transition pieces cut off.

54. It has been stated by ONGC in their above reply to Audit that:

- (i) The Contractor (ETPM) had from the outset given his claims on all items for structural tonnage adjustment on 'as fabricated' basis and their total claim was US \$ 5.897 million. As per agreement, they were entitled to payment on 'as fabricated' basis and ETPM did not agree for downward adjustment and as a strategy for making them

agree for downward adjustment, a stand was taken by ONGC to reject some of the claims and make counter claims as a measure of precaution.

- (ii) As per the agreement with M/s ETPM, the estimated structural weight of the Superstructure (decks) was 1041.50 MT for all the four platforms. Since M/s. ETPM did not furnish the BOM for decks & Helidecks EIL were asked by ONGC to prepare an estimate of the fabricated weight, which was furnished by EIL in April 1982.
- (iii) During the discussions carried out with M/s. ETPM from July 1982 to January 1984 from time to time; the Contractor proposed reduction in the superstructure tonnage for the purpose of payment from 1022 MT to 996.0 MT and eventually in the final negotiations agreed for 925.45 MT. Accordingly an amount of US \$ 974,820 was worked out in the case of the Superstructure (deck) (cost of 1041.50 MT—925.45 MT=116.05 MT @ US \$ 8400 per MT).
- (iv) While reviewing the subject in June-July, 1988 it emerged that the fabricated structural weight of the decks computed by taking into account the "as installed" structural weight as per EIL's letter dated 5 April, 1982 and the permissible items as per SHI's (M/s. Sumitomo Heavy Industries, Japan) letter dated 30th August, 1982 worked out to 1018.13 MT.

55. In this connection it was pointed out by ONGC that SP deck was fabricated by M/s. Hitachi Zosen, Japan while SM, SR & SF decks were fabricated by M/s. Sumitomo Heavy Industries, Japan, who were the sub-contractors to M/s. ETPM for this part of the work. M/s. Hitachi Zosen did not separately comment. M/s. EIL's calculated structural tonnage of SP deck. Since the drawings of all the decks were identical, the additional permissible items for SP has been taken as that of SM deck.

56. Against the "as fabricated" weight of 1018.13 MT payable as per the contract only 925.45 MT was agreed to for decks while arriving at the final settlement figure of US \$ 1.80 million. ONGC have pointed out that neither in the notings leading to the approval for the settlement during January, 1984 nor in ETPM's letter dated 30th January, 1984 (giving the break-up of US \$ 1.8 million) there was any mention of payment towards transition pieces cut off, even though other items were mentioned. The actual payments made to

ETPM from time to time have since been reviewed and this has also been confirmed that no specific payment had been made for transition pieces cut-off.

57. ONGC have further stated in their revised reply to Audit that the "as fabricated" weight for superstructure (925.45 MT) finally negotiated for payment included different items. The difference of 21.81 MT between the negotiated weight and assumed as installed weight cannot be linked to any particular component as it is part of negotiated settlement.

58. Besides loss and wastage referred to in Clause 12.1.3 of the contract is the loss of wastage incurred during fabrication of the works at the fabrication yard and not of fabricated structure. At the time of actual installation of the platform components, structure member may either be added or cut off according to a predetermined plan on the basis of the drawings which is not referred to anywhere in the contract as loss or wastage. Further Clause 12.13 should be read with Clause 12.1.4, 12.1.5 and 12.1.6 in AISC referred to in Addendum, II which read as follows:

Section 12.1.3

Works shall be measured net of all loss and wastage of materials for the purpose of contractual payment, notwithstanding any general or local custom, unless otherwise specifically prescribed in the Contract.

Section 12.1.4

The weight calculations of the structural members shall be based on provisions made in AISC, "Specification for the design, fabrication and creation of structural steel for buildings, latest addition."

Section 12.1.5

The Contractor shall submit a detailed structural bill of material bill of materials for each structural drawing to the Company's representative at the fabrication yard.

Section 12.1.6

The payments to the contractor shall be based on the above measurements from the approved bill of materials.

59. On the basis of re-examination and consideration of available evidence, the Audit concluded the following:

- (i) Though the Commission during the proceedings of the COPU initially gave the impression that no such payment referred to had been made and hence there was little to discuss further, later in their reply to the Audit, they had shifted the stand to the effect that whatever payment was made was what the contractor was entitled to as 'fabricated weight' in terms of the contract and the theory of cut pieces or any calculations thereupon had inadvertently been presented into the picture earlier. In other words, what the Commission has stated now is what the contractor was entitled to as per the contract had been paid and nothing beyond the contract.
- (ii) However, it has to be mentioned first, whether called the difference between the 'fabricated weight' and the 'installed weight' or weight of cut pieces/ transition pieces (as referred to by the consultants—EIL) the dispute centres round the quantity 21.81 MTs. The words "transition pieces' as well as cut pieces whether had been used or not in the earlier documents or negotiations with the contractor, they appear in the advice given by the consultants to the Commission and also in the reply which ONGC gave to audit and also Ministry earlier and it is not a phraseology introduced by Audit in building the paragraph in early stages. Besides, their reply was based on the reply received by them right from the project authorities. It is also noticed from the records that the reply to the audit observations was framed by project authorities after checking the facts with reference to the original document.
- (iii) A reading of the record of proceedings of the negotiations spreadover three days would give the picture to a reader that the basic dispute between the Commission and the contractor had been whether in working out the payments, there should be a reduction or not wherever the installed weight was less than the contract weight and the contractor cannot claim that he was entitled to benefit flowing from upward revision only of installed weight over contract weight and that he was not liable for downward revision.

The management until the last day (28-1-1984) has been arguing that if the contractor was entitled to the upward revision the commission was also entitled to the downward revision, and finally the contractor had come round to adjustments towards both upward and downward revision on installed weight basis. However, he has asked that since the fabrication of superstructure has been done by another sub-contractor, ONGC should consider making payment as 'fabricated weight' and not 'installed weight' and on this ground only the Management had agreed to pay him as per the fabricated weight and increase the weight adjustment calculations. According to Audit, 21.81 MTs is the precise difference between installed weight and fabricated weight.

60. Thus, the trend and core the negotiations have been completely on a different footing. According to Audit the Commission cannot say that the contractor was entitled to the payment of fabricated weight as per terms of the contract. If that was so, then this item should not have figured at all along with other items in the negotiations as had been mentioned earlier.

61. Further, when the dispute in the calculations on weight adjustments related to 5 aspects, Jacket, Jacket appurtenance, Deck (Superstructure) Helideck, Piles, it is not clear how for 4 items the payment finally agreed to could be on installed basis and only for one item (superstructure) this could be on different footing, i.e. with reference to the fabricated weight. It would also be of interest to note that in the case of Helideck there is a 'minus' adjustment with reference to the tonnage as on installed basis. Therefore, the core of the nara is that for the Deck (Superstructure) weight adjustment and calculations for payment should have been only on installed basis.

62. According to Audit it is clear the facts narrated above and the summary of the evidence and findings arrived at that the payment for 21.81 MT of steel had in fact been made by the Commission. All the available evidence supports the view that this payment was for the excess over installed weight, the difference being described in whatsoever manner earlier or now.

63. It is seen from the record of proceedings of the meetings held on 20-10-83, 21-10-1983 and 28-1-1984 among the representatives of ONGC, EIL and ETPM that the issue pertaining to outstanding payment due to ETPM on MPRF platform was discussed a number of times and it was finally decided in the Meeting which was held on 28-1-1984 that a lump-sum amount of \$1.80 million which included a payment of US \$ 610,057.05 for weight adjustment would be

authorised against all their outstanding claims excluding any contractual payment due to them, if any. The Committee enquired whether it was a fact that in addition to the original contract price, the contractor was paid a sum of US \$ 1.80 million on various disputes/claims as a result of negotiations and whether this payment included a component of US \$ 610,05.05 also towards weight adjustments. The Member (Finance), ONGC during evidence stated:

".....these are turn-key contracts and in turn-key contracts, we fix the price on certain assumptions made while entering into the contract. But during the execution of the contract, always some changes do take place. As a result of this, the price variation is made and this amount of 1.80 million dollars is as a result of that which includes \$ 610,057.05 for weight adjustment.'

64. The Committee pointed out that as per the agreement with ETPM both upward and downward adjustment on installed weight basis was permissible in case of Jacket, Jacket appurtenances, Helideck and Piles but only exception was made for *super-structure* where only upward adjustment was allowed by the contractor. In this connection, the Committee enquired at what level the contract was finalised with ETPM. The Chairman, ONGC during evidence stated:

"The decision was taken at the level of Member (Off-shore). Unfortunately, he is not in the organisation now, who was not competent to take a decision. It had come to our notice just now, after the enquiry. The second question was about upward and downward trend. The Member (Off-shore) had conducted negotiations with the ETPM and it was accepted at that level that downward revision will also be adjusted and that, for super-structure, it will be on the basis of fabricated weight and for the other four, it will be on the basis of installed weight. They paid according to that."

65. When asked about the basis on which the fact of payment of US \$ 183204 for 21.81 MTs of steel wastage not forming part of the installed weight was denied by ONGC, the Chairman, ONGC during evidence stated:—

"After we presented ourselves before your Committee last time, I had ordered an inquiry within the Commission to find out the facts in greater details..... There have been a number of inquiries in this case. The first inquiry was headed by Member (Technical) to find out the facts

further in this matter. The report is being presented to the Commission. The second inquiry which was ordered was about the issue of 22 tonnes and it pertained to whether payment had been made or not because earlier we had made a statement on the basis of certain facts. The C&AG had brought out that payment was made. We had also accepted that payment was made. But as a result of a new evidence, he could come to know that there was a letter from M/s. Sumitomo, addressed to M/s. ETPM. Sumitomo was the sub-contractors of ETPM. Of course, that letter is not a formal letter addressed or copied to us. But when we were investigating the matter, we found it in one of the files and on the basis of that, it was concluded that 'as installed weight' what was derived at was more than the weight for which the payment was made to the contractor. So, on the basis of that, in the last presentation before this August Committee we had mentioned that no payment was made for the transition pieces cut off. As a result of further inquiry, we made a reference to M/L, our consultants, to re-verify the whole situation and they also recalculated the weight and came out with a figure of 334 tonnes against the figure of 925 tonnes for which payment was made. That also made us to believe that the payment which was made did not take into account the cut off pieces. So, this is what has come out as a result of this inquiry. This inquiry was made at the level of our Group General Manager, who is presently Regional Director, Bombay. Further, it is also a fact that when these negotiations were completed by Member (Operations) or Member (Off-shore) at that point of time these things were not submitted to the competent authority. That is what has come out now as a result of this inquiry."

66. Asked whether any action was being taken against the officer responsible in this regard, the witness stated that "we would be reporting it to the Ministry."

67. The Committee wanted to know as to what was the interpretation of ONGC of the above clause 12.1.3 of the contract. In reply, the Chairman, ONGC during evidence stated:—

"We have examined this aspect. There was a dispute and the contractor insisted that his interpretation of the contract was that the payment was based on 'as fabricated weight'. Since the claims looked to be very inflated, the Member

(Off-shore) at that point of time held meetings, with these people and for the purpose of negotiations, took the diametrically opposite stand that weights were to be 'as installed'. As a result of the negotiations, they were able to get the contractor to two things: firstly to accept the downward clause because in the case of decks, the weight as constructed or as fabricated was less than the contract weight. So they agreed to give a deduction to the ONGC. As a result of further negotiations, we were able to make them agree to calculate for all the items on 'as installed' basis except in the case of deck and super-structure....."

Elaborating about the Section 12.1.3 of the contract, the witness added:

"There is a clause in the contract. Then there are one or two clarifications in the addendums attached to the contract. When you look at the whole thing together you will find that there is a possibility of different interpretations—the interpretation taken by us was 'as installed' and the interpretation taken by ETPM was 'as fabricated.'"

68. When pointed that there was some defect in the agreement in this regard, the witness admitted that, "Yes, here is a certain amount of ambiguity."

69. In this connection, the Secretary of the Ministry of Petroleum and Natural Gas conceded during evidence:

".....this contract left a great deal to be desired. There is no denying the point that the terms of contract were provided in a manner which can be interpreted in more ways than one. When I talked to ONGC I asked them 'what steps have you taken to tighten up the provisions of the contract?' Audit also asked questions about upward revision vs downward revision. While the contract clearly says that the contractor will be eligible for any larger amount of work done. It did not mention that if lesser quantity of work was done, payment would be less. About launching aids, there was some dispute, e.g. floatation tank and timber. A number of things gave rise to disputes."

70. The Committee enquired as to why the calculation of the contractors M/s. ETPM was accepted and payment made to them despite an ambiguity in the Section 12.1.3 of the contract in this regard. The Chairman, ONGC during evidence stated:

"Earlier the whole thing was based on the fact that we had consulted our consultants, M/s. EIL and they had given certain weights, which were finally accepted by the Negotiating Team. That was figure of 903 tonnes which was finally accepted by ETPM as 925 tonnes. It was an estimate made by the EIL. But when this new letter came into our hands just before we presented ourselves before you last time, we took that into account, we also took the EIL's earlier calculations and then came to the conclusion that the total weight would be approximately 1018 tonnes. When the presentation was made before the Committee, the whole thing was that it was not paid because the 'as installed' weight was less than 1018 tonnes. After the meeting we again asked the EIL to recalculate the whole thing and the final calculations given by the EIL show 934 tonnes as 'installed weight' and the payment which has already been made is for 925 tonnes."

71. When enquired as to how the figure of 903 MT 'as installed weight' was arrived at by EIL earlier, the representative of EIL during evidence stated:

"The weight of 903 MTs calculated at that time was based on the drawing of S.P. platform as they were the only drawings available. S.P. was fabricated by one contractor and 3 other platforms were constructed by another sub-contractor. Normally along with the 'as Built' drawings we used to have shop drawings, cutting plans and B.O.M. In this case, we did not have these things."

72. Asked whether the figure of 903 MTs was not the final figure, the witness stated that, "It is not the final figure." He further added that they had indicated in a letter to ONGC that these weights had to be re-confirmed based on the shop drawings BOM and cutting plans of SP platform and the drawings of other three platforms also.

73. When asked about the basis of calculation of 934 tonnes as installed weight done by EIL now instead of 925.45 tonnes reported earlier, the witness stated:

"925 tonnes have been paid for; butlated calculations of EIL on the basis of the latest drawings show the weight as 934 tonnes. After we met you last time we ordered the inquiry and asked EIL to recalculate the weights."

74. In this connection, the representative of the EIL during evidence also stated:

"When we made the calculation earlier in 1982 it was based on one of the platforms SP which was made by Hitachi. Normally these calculated weights are given by the contractor, and EIL, based on the 'as built' drawings and BOM check it. In this case the weight of the superstructure was less than the contract weight and they did not give the weights to us. When the ONGC asked us to recalculate initially, we calculated based on the AFC drawings available with us at that time and we arrived at a figure 903 tonnes. It was only an estimate that we made at that time in the absence of BOM, shops drawings and cutting plans. Now when in 1989 ONGC again requested us to recalculate, we asked them the basis on which recalculation was to be made, which was indicated to us as latest 'As Built' drawings. We found from EIL stores that we have got the 'as built' drawings of of SF deck fabricated by SHI wherein three decks were fabricated and all that. Based on these drawings we again made the calculations and arrived at the figure 934 tonnes. This figure is arrived at after the completion of the work."

75. In this connection, a representative of Ministry of Petroleum and Natural Gas added:

"I would submit that earlier the estimate of 903 MT was based on the normal procedure of calculations on the basis of available drawings. The drawings were not 'as built' drawings. The measurement of 934 MT is based on 'as built' drawings."

76. Asked when were the new drawings made available to EIL, the representative of EIL stated:

"The new drawings came to us probably in 1984-85. We did not calculate at that time. We could use them only after we were again requested by the ONGC for a recalculation."

To another query about the reasons for not calculating the correct weights for making payment to the contractors at the time new drawings were made available to them, the witness stated during evidence:

"The calculated weights are given by the contractor and we only check it."

77. The Committee enquired from the Ministry as to how they had also earlier in their letter dated 23rd April, 1986 supported the contention of ONGC that payment has been made. The Joint Secretary, Ministry of Petroleum and Natural Gas during evidence stated:

"The Ministry had called for the comments of the ONGC on the draft audit para sent by the Member, Audit Board. On the basis of the information furnished by the ONGC and after discussion with the ONGC officers, the reply to the audit para was sent."

78. Asked whether the Ministry had satisfied themselves in giving reply to Audit in April, 1986 about the justification of payment made by ONGC for the 22 tonnes of transition pieces cut-off, the witness stated:

"The details of the report furnished by the ONGC were examined in the Ministry. Discussions were held by our officers with the officers of the ONGC. They verified the veracity of the report and then the report was sent to the Audit."

79. When enquired whether there was no mechanism in the Ministry to verify the facts given by ONGC in this regard, the witness during evidence stated:

"The Ministry in this case had no reason to disbelieve the report of the ONGC, particularly when it was sent at the highest level from the ONGC."

80. As regards the observations made by the Audit in their Report, the Committee enquired about the action taken by the Ministry on these observations during different performance review meetings. The Joint Secretary of the Ministry during evidence stated:

"....One of the points that came out of the Audit Report was that the contract was not specific and precise. This is not a general issue. When the contract was found to be not very specific on its structure, the defect was rectified by ONGC in subsequent contracts."

81. The Committee drew attention of the Ministry to the arguments advanced by the ONGC regarding non-payment for 21.81 tonnes of cut pieces of decks in their revised reply to Audit dated 9-12-1988 and desired to know the comments of the Ministry in this regard. In reply, the Joint Secretary, Ministry of Petroleum and Natural Gas stated during evidence:

"On the basis of earlier information it appears that some excess payment was made over and above the installed weights. This was justifiable in view of the change in the design parameters which ONGC had indicated to the contractor at a later stage. Since the contract was not specific and there was large variation in the amount being demanded by the contractor and what was acceptable to ONGC the strategy of negotiation for downward revision of weight appears to have been the best in the circumstances. This was also borne out by the facts that have emerged subsequently."

82. Subsequently, on 28-8-1990 during further evidence of the representatives of Department of Petroleum and Natural Gas, the Committee desired to know the findings of the reported enquiry conducted by ONGC. The Secretary, Department of Petroleum and Natural Gas during evidence stated:

"There were three enquiries which were conducted in this case from time to time. They were ordered in June, 1987, May, 1988 and October, 1988. All these three Committee came to the conclusion that there was no excess payment. Particularly, the second Committee went into this matter at some depth and also came to the same conclusion that neither there was any malafide nor anybody may be held responsible for any lapse and that the payment was not outside the contractual obligations and was within the parameters of the contractual obligations."

83. Asked about the basis of arriving at this conclusion that no extra payment was made, the witness stated that the third Committee was appointed in October, 1988, and its findings were:

1. The Project Group in its eagerness to satisfy the Audit, initially attributed the difference between the weights of 925.25 MT (weight for which payment was made) and 903.64 MT (the weight which was calculated by EIL) i.e. 21.81 MT to the weight of the cut off transition pieces. The weight of cut off length comes to 42.5 MT and it appears that since the figure 21.81 MT has to be adjusted in some way, the Project Group found it expedient to adjust it against cut off pieces. There was no linkage of this 21.81 MT towards cut off transition pieces.
2. Documentary proof for figure of 925.45 MT (quantity for which payment was made) and/or the basis on which this figure was worked out on as fabricated basis could not be found or explained by the Project Group. The Project Group got the computed weight of 903.64 MT from EIL and considered it to be the weight on "as installed" basis. The Committee was of the view that since "as built drawings" were now available. EIL should be asked to compute the "as installed" weight of all the 4 platforms.
3. The Committee has made an exercise to arrive at the figures of "as installed" basis from the figure furnished by M/s. SHI (sub-contractor of M/s. ETPM) in their letter dated August, 1982, since the Committee had no means to verify authenticity as detailed drawings are not available with data sheet, a presumption was made that information by M/s. SHI for the weights of different elements of the super-structure is correct. As per the exercise of the Committee, total computed weight for 4 platforms (super-structure) was as under:

1. SR Platform	242.627 MT
2. SP Platform	234.191 MT
3. SM Platform	235.321 MT
4. SF Platform	225.10 MT
4. Since computed weight comes to 937.239 MT and since the payment actually made was for 925.45 MT the weight less than this 937.239 MT), it was concluded by the Committee that the payment of transition cut off pieces was not made.

5. The Committee enquired that as a check up, the Project Group should immediately get the weights computed on "as installed" basis from EIL since as built drawings are now available with them."

Elaborating about the findings of the above Committees, the Secretary of the Ministry stated:—

"The matter has been looked into by group of people and not necessarily the same group. Different sets of people seem to have applied their mind to this problem over a period of time. I would like to clarify one or two points. The whole discussion is arising out of the two or three different rates which have come in the discussion from time to time. There are certain mix ups in the figures, I must admit it very clearly before the Committee. The confusion did arise because at one stage the ONGC said that a payment had been made for this section which was cut off. If you see the details of these Committee's Report two or three things became clear."

84. In this connection, the Secretary of the Ministry further stated:—

"The last Committee i.e. the Mahajan's Committee figure is 937.239 MT. As compared to that, actual payment made was only for 925.450 MT. So the point is that, no excess payment was made because actually the deck as it stands today, according to the calculations done by the Committee as also by Engineers India Limited, its installed weight is 934 MT which is within the figure for which the payment was made."

85. The Committee enquired about the reasons for negotiations between ONGC, M/s. ETPM etc. and the issues discussed in it. The Secretary of the Ministry during evidence stated:

"There were half a dozen reasons. The contractor demanded 7 million dollars; but ONGC as a matter of strategy, decided to raise its own demands, so that during negotiation, this could be bargained for. During negotiation a package settlement was arrived at. The settlement arrived at for this figure of 925.45 MT, was part of the package."

86. Asked when the figure of 925.45 MT was only a negotiated figure, how could it be concluded that there was no excess payment made to the contractor, the witnesses stated:

"I believe there was no excess payment. When I asked a question on what basis that figure was arrived at, I asked it in the context of the negotiations. I said, at the time of negotiations you had some basis on which you had arrived at that figure; you must have got some basis for that I did not get a satisfactory reply from them with regard to this. Leave aside the controversy, whether it was on a fabricated basis or installed basis, in any way, between the two, the installed basis is the most relevant thing. The payment which was due to the contractor was on the basis of installed weight. As the two technical opinions are available to us today one can go into that; if the Committee so desires we can do that: One opinion is of ONGC and another is of the Engineers India Limited. Both of them say that the actual installed weight is higher than the fabricated weight. *Prime facie*, I do not find that any extra payment was made.

87. When the Committee pointed out that it appeared that due to fortuitous circumstances the payment made by ONGC for the weight of deck superstructure turned out to be less than the actual weight, the witness admitted:

"Sir I must entirely agree that this fortuitous circumstances and that the payment for weight which was made turned out to be lower than the actual weight. That is absolutely clear. That is why, I went into this question, on what basis this figure was arrived at....."

88. As regards dispute between ONGC and the contractor about the weight of deck superstructure to be computed on the basis of as fabricated basis or as installed 'basis', the witness added:

"The second question is in regard to installed weight vs. fabricated weight. This is a term of the contract. The contractor interpreted that it is only fabricated weight for which payment has to be made. He also gave a legal opinion to ONGC at that time by Shri Nariman, Advocate, which said that under the provisions of the contract, the documents, and the understanding arrived at between the contractor and ONGC the payment has to be necessarily

made on the fabricated basis. But ONGC have a different position. Therefore, ONGC during their discussions continued to negotiate this point to make the contractor to agree to the payment being made on installed basis for everything else. Finally the contractor agreed for all other items.....But for the deck he was adamant and said that he had a sub-contractor for this job. As it appears from the records, ONGC was in a position even then to get a marginal reduction. In one case the reduction was in respect of 8 MT and for decks the reduction was 116 MT. There were six or seven points during the discussion with the contractor. Finally the settlement was arrived at for about 1.8 million dollars....from that point of view, we have advised the ONGC that in order to avoid recurrence of such a thing in future, they should record the reasons in writing for arriving at some kind of package settlement so that in future it will be possible for audit or any Committee to decide whether the settlement was reasonable or otherwise".

89. The Committee note that according to Audit in the case of deck super structure payment of US dollar 1,83,204 was made to the Contractor M/s. ETPM towards the cost of 21.81 M.T. being the weight of cut pieces of deck legs which did not form part of the installed weight of the platform. Clause 12.1.3 of the agreement regulating the procedures for measurement of work done provided that work shall be measured net of all loss and wastage of materials unless specifically prescribed in the contract, and since there was nothing specifically prescribed to the contrary, the payment was not admissible in terms of this clause. While replying to Audit in April, 1986 the Ministry conceded that this payment had been made. However, during the evidence before the Committee the representatives of both ONGC and Ministry denied that any payment for 21.81 M.T. being the weight of cut pieces of deck legs had been made. They admitted that while Audit was examining them somewhere there was an error on the part of ONGC in stating that payments had been made in this regard and felt sorry for having made such a statement. However, on further examination of the matter by Audit, at the instance of the Committee, it came out that payment for additional 21.81 M.T. of steel over the 'installed weight' as estimated at that time by the Consultants was infact made after negotiations with the Contractor, although it could not be linked to any specific component. The Committee are extremely unhappy over the manner in which the whole case was dealt with. There was

not only failure on the part of the Commission and the Ministry to present correct facts to Audit while replying to Audit paragraph, the full facts were not placed even before the Committee initially and the Commission during the proceedings of the Committee earlier gave the impression that no such payment for excess weight was made to the Contractor. They hope that in future greater care would be exercised while replying to Audit Comments and in presenting the facts to the Committee.

90. As regards the reasons for making payment for additional weight over and above the estimated installed weight, the Committee were informed that according to the Contractor the interpretation of the agreement was that the payment was to be made on the basis of 'as fabricated' weight. On the other hand, the stand taken by ONGC was that the weights were to be on 'as installed' basis. As a result of negotiations the contractor agreed to the calculation for all items on 'as installed' basis except in the case of deck super-structure. Since the fabrication of super-structure had been done by another sub-contractor, the contractor wanted the ONGC to make payment on 'as fabricated' weight and not 'as installed weight basis and the management accordingly agreed to payment for additional weight. The Committee see no justification for the Commission agreeing to payment for super-structure on 'as fabricated' basis whereas for all other items the payment was made on 'as installed' basis.

91. During evidence, the Chairman, ONGC as well as Secretary, Department of Petroleum and Natural Gas stated that there was an ambiguity in the agreement and it was worded in such a way that it could be interpreted in either manner. The defect was, however, rectified by ONGC in subsequent contracts. The Committee regret to note that instead of safeguarding the interests of the Commission, the ambiguity in the agreement was made use of to give undue benefit to the Contractor.

92. The Committee were informed that initially 'as installed' structural weight as per assessment made by the EIL in 1982 was 903.64 M.T. This assessment was made by the consultants on the basis of drawings of only one platform i.e. S.P. which was accepted by the negotiating team. Later on, in 1988 when a further reference was made to E.I.L. in this regard they, on the basis of 'as built' drawings of all platforms made available to them, recalculated the weight on 'as installed' basis as 934.29 M.T. whereas the payment to the contractor had been made for 925.45 M.T. only. As such according to the Secretary of the Ministry there was no overpayment to the Contractor. The Committee are surprised that the payment to

the contractor was not based on correct assessment of the weight of the super-structure. It is a matter of only fortuitous circumstance that the weight for which the payment was made has turned out to be lower than the actual weight. The fact, however, remains that as a result of negotiations payment for additional weight was made to the contractor as compared to the installed weight estimated at that time. The Committee were informed that the decision to make the final payment was taken at the level of the Member (Off-shore) who was not competent to take a decision in this regard and the matter was not brought to the notice of the Chairman, ONGC. The position had, however, been rectified and all the settlements arrived at were now required to be brought up before the Steering Committee and the Chairman. The Committee were also informed that the Member (Off-shore) had resigned from ONGC in the year 1985.

93. The Committee are constrained to find that the Member (Off-shore), had transgressed his authority and did not inform even the competent authority of the final result of the negotiations carried out by him with the Contractor. He was allowed to resign and the ONGC was not even aware of the regularities committee by him. In the Committee's view this is a sad reflection on the working of ONGC and Government. The Committee, therefore, recommend that the responsibility for accepting the resignation of the Member (Off-shore) without taking any action against him for the irregularities committed by him, should be fixed and the Committee apprised of the outcome.

BASUDEB ACHARIA

Chairman,

Committee on Public Undertakings.

NEW DELHI;

January 9, 1991.

Pausa 19, 1912 (Saka)

APPENDIX

STATEMENT OF CONCLUSIONS/RECOMMENDATIONS OF THE COMMITTEE ON PUBLIC UNDERTAKINGS CONTAINED IN THE REPORT

Reference to Paragraph		
Sl. No.	No. in the Report	Conclusions/Recommendations.
1	2	3
1	24	The Committee note that ONGC awarded a turnkey contract to M/s. ETPM for installation and commissioning of three well platforms SM, SP and SR at Bombay off-shore in December, 1980. Subsequently, in February, 1981 the work of another platform (SF) was also awarded to the same contractor at the rates applicable to SM platform. The work was completed by the contractor on 18 May, 1983. The total payments made against these contracts amounted to U.S. \$ 73.253 million plus Japanese Yen 3590.352 million (Rs. 71.08 crores). The scrutiny by Audit of these payments made to the contractor revealed that there were avoidable payments aggregating Rs. 89.06 lakhs in foreign exchange, which were extra contractual.
2	25 to 27	One of such items of over payment was payment made for buoyancy tanks. Clause 5.12.5 of the agreement, provided that the contractor should at his own expense supply and provide all constructional plants, material both for temporary and for permanent works, labour, transport to and from the site and in and about the work, and other things of every kind required for design, engineering, procurement, construction, completion, commissioning, start-up and making good of the works, etc. The

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Committee note that in the basic design of the jackets which was prepared by the consultants, Engineers India Limited, there was no provision for buoyancy tanks for launching of jackets. The need for buoyancy tank arose only as a result of excess weight of the jacket which was attributable to the use by the contractor of members of higher thickness than that prescribed in the original design reportedly because of the constraint of time. Due to use of higher thickness of members there was avoidable expenditure of US \$ 7,13,552 being the cost of 113.665 tonnes of extra weight. In addition, ONGC accepted a claim of the contractor for US \$ 6,43,268 for the installation of buoyancy tanks as per requirement of the certification agency (Lyod's Register of Shipping) who suggested that with the revised design, according to the international practice, a buoyancy of 17 percent. would be needed.

The Committee are distressed to note that the claims of the contractor for additional expenditure were admitted by ONGC inspite of the fact that the Commission in their telex dated 28-2-1981 had clarified to the contractor that any additional tonnage involved due to use of higher thickness than that specified earlier would be at their risk and cost. The Secretary of the Ministry admitted in evidence before the Committee that even if higher sized members were used by the contractor for any reason whatsoever, in terms of the contract ONGC need not have paid the higher amount as it was not due.

The Committee are also surprised to find that even though buoyancy tanks were taken back by the contractor, the Commission settled the claim of the contractor in this regard by reducing it by 35 per cent. of the total claim (US \$ 4,18,124) after discussion in a meeting headed

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by Member (Off-shore). There were no records to show the basis on which reduction of only 35 per cent. of the total claim was arrived at. From the facts placed before them the Committee are of the definite view that the additional payment in foreign exchange to the contractor for the use of structural members of thickness higher than that prescribed in the original design and for the use of buoyancy tanks was unjustified. The Committee, therefore, recommend that the responsibility in the matter should be fixed and action taken against the officers concerned should be reported to them within six months of the presentation of the Report.

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The Committee find that according to clause 5.12.5 of the agreement with the contractor, the lumpsum cost of the contract covered cost of all material and labour used for the design, engineering construction required for the satisfactory completion of the work. According to Audit the total turnkey prices for each of the well platform quoted by the contractor also included a sum of 2.2968 million dollars on account of installation aids (Jackets). ONGC in February, 1984 however, admitted and paid a separate claim amounting to US \$ 2,21,858 (Rs. 23.96 lakhs) being the cost of 77.845 MT of timber used in the construction of the 4 platforms. This was stated to be inspite of the fact that the consultant for this project, Engineers India Ltd. had in January, 1982 clarified that the launch truss timber used in each platform was only to provide skid surface during loadout and did not remain permanently with the jacket and its cost should be considered as having been included by ETPM in their lumpsum cost. The timber was used as an installation aid. As the contract did not contain any

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provision for making additional payment for the launch truss timber, the payment was made under the clauses of the agreement relating to additional payment for the structural steel, when it was used in greater quantity than provided in the estimates. According to the consultants as well as the evaluation report and clarification given in the Tender Committee proceeding, the term structural weight was to be construed to refer to the steel weight only. The ONGC however, interpreted this clause to mean the variation in the entire weight of the materials used. The Secretary, Department of Petroleum and Natural Gas admitted during his evidence before the Committee that launch truss timber was an aid for transportation and installation. As a hindsight one could say that as this was a launching aid it should not have been paid for. He, however, sought to justify the payment on the ground that the contract as it stood at that time for this job did not specifically mention that this was an aid for installation and therefore that ambiguity gave rise to this claim being entertained by ONGC. As the timber remained there with the structure it distinguished it from any other transportation aid. At that time ONGC thought that this should be taken as an appurtenance and payment was made on that basis. In the subsequent contracts the transportation and installation items which are listed also included timber for launch truss.

The Committee are not convinced with the reasons advanced by the Ministry for the payment amounting to US \$ 2,21,858 (Rs. 23.96 lakhs) for launch truss timber. From the facts placed before them it is evident that this was an aid for transportation and installation and should have been treated as such as has been done in

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subsequent contracts. The Committee see no justification for the ONGC going out of the way for entertaining the claim of the contractor in this regard on the ground that the contract did not specifically mention that this was an aid for installation. The Committee, therefore, recommend that the responsibility for over-payment should be fixed and the action taken against the officers concerned reported to them.

The Committee note that according to Audit in the case of deck super structure payment of US \$ 1,83,204 was made to the Contractor M/s. ETPM towards the cost of 21.81 M.T. being the weight of cut pieces of deck legs which did not form part of the installed weight of the platform. Clause 12.1.3 of the agreement regulating the procedures for measurement of work done provided that work shall be measured net of all loss and wastage of materials unless specifically prescribed in the contract, and since there was nothing specifically prescribed to the contrary, the payment was not admissible in terms of this clause. While replying to Audit in April, 1986 the Ministry conceded that this payment had been made. However, during the evidence before the Committee the representatives of both ONGC and Ministry denied that any payment for 21.81 M.T. being the weight of cut pieces of deck legs had been made. They admitted that while Audit was examining them somewhere there was an error on the part of ONGC in stating that payments had been made in this regard and felt sorry for having made such a statement. However, on further examination of the matter by Audit, at the instance of the Committee, it came out that payment for additional 21.81 M.T. of steel over the 'installed weight' as estimated at that time by the Consultants was in fact made after negotiations with

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the Contractor, although it could not be linked to any specific component. The Committee are extremely unhappy over the manner in which the whole case was dealt with. There was not only failure on the part of the Commission and the Ministry to present correct facts to Audit while replying to Audit paragraph, the full facts were not placed even before the Committee initially and the Commission during the proceedings of the Committee earlier gave the impression that no such payment for excess weight was made to the Contractor. They hope that in future greater care would be exercised while replying to Audit Comments and in presenting the facts to the Committee.

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As regards the reasons for making payment for additional weight over and above the estimated installed weight, the Committee were informed that according to the Contractor the interpretation of the agreement was that the payment was to be made on the basis of 'as fabricated' weight. On the other hand, the stand taken by ONGC was that the weights were to be on 'as installed' basis. As a result of negotiations the contractor agreed to the calculation for all items on 'as installed' basis except in the case of deck super-structure. Since the fabrication of super-structure had been done by another sub-contractor, the contractor wanted the ONGC to make payment on 'as fabricated' weight and not 'as installed' weight basis and the management accordingly agreed to payment for additional weight. The Committee see no justification for the Commission agreeing to payment for super-structure on 'as fabricated' basis whereas for all other items the payment was made on 'as installed' basis.

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The position had, however, been rectified and all the settlements arrived at were now required to be brought up before the Steering Committee and the Chairman. The Committee were also informed that the Member (Off-shore) had resigned from ONGC in the year 1985.

The Committee are constrained to find that the Member (Off-shore), had transgressed his authority and did not inform even the competent authority of the final results of the negotiations carried out by him with the Contractor. He was allowed to resign and the ONGC was not even aware of the irregularities committed by him. In the Committee's view this is a sad reflection on the working of ONGC and Government. The Committee, therefore, recommend that the responsibility for accepting the resignation of the Member (Off-shore) without taking any action against him for the irregularities committed by him, should be fixed and the Committee apprised of the outcome.