P.A.C. No. 507

PUBLIC ACCOUNTS COMMITTEE (1975-76)

(FIFTH LOK SABHA)

TWO HUNDRED AND TENTH REPORT

NAVAL DOCKYARD EXPANSION SCHEME

MINISTRY OF DEFENCE

[Paragraph 11 of the Report of the Comptroller and Auditor General of India for the year 1973-74, Union Government (Defence Services)]

LOK SABHA SECRETARIAT
NEW DELHI

March, 1976/Chaitra, 1898 (S)

Price: Rs. 4.00

LIST OF AUTHORISED AGENTS FOR THE SALE OF LOK SABHA SECRETARIAT PUBLICATIONS

Sl. No.	Name of Agent
	ANDHRA PRADESH
1.	Andhra University General Co-operative Stores Ltd., Waltair (Visakhapatnam).
2.	G.R. Lakshmipaty Chetty and Sons, General Merchants and News Agents, Newpet, Chandragiri, Chittoor District.
	ASSAM
3.	Western Book Depot, Pan Bazar, Gauhati.
	BIHAR
4.	Amar Kitab Ghar, Post Box 78, Diagonal Road, Jamshedpur.
5.	M/s. Crown Book Depot, Upper Bazar, Ranchi.
	GUJARAT
6.	Vijay Stores, Station Road, Anand.
7.	The New Order Book Company, Ellis Bridge, Ahmedabad-6.
	HARYANA
8.	M/s. Prabhu Book Service, Nai Subzi Mandi, Gurgaon.
	MADHYA PRADESH
9.	Modern Book House, Shiv Vilas Palace, Indore City.
	MAHARASHTRA
10.	M/s. Sunderdas Gianchand, 601, Girgaum Road, New Princess Street, Bombay-2.
11.	The International Book House. (Private) Limited, 6, Ash Lane, Mahatma Gandhi Road, Bombay-1.
12.	The International Book Service, Deccan Gymkhana, Poona-4.
13.	Charles Lambert & Company. 10, Mahatma Gandhi Road, Opposite Clock. Tower, Fort, Bombay.
14.	The Current Book House Maruti Lane, Raghunath Dadaji Street. Bombay-1.
15.	Deccan Book Stall, Fergusson College Road, Poona-4.
16.	M.& J. Services, Publishers Representatives, Accounts & Law Book Sellers Bahri Road, Bombay-15.
	MYSORE
17	**People Book House,** Opp. Jaganmohan Palace, Mysore.
	RAJASTHAN
18.	Information Centre, Government of Rajasthan, Tripolia Jaipur City.
19.	M/s. Usha Book Depot, 585/A, Chitra Bazar, Tripolia, Jaipur.
	UTTAR PRADESH
20.	Law Book Company, Sardar Patel Marg, Allahabad-1.

CORRIGENDA TO 210TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (FIFTH LOK SABHA)

...

Page	Para	Line	For	Read
i	Chapter IV	1	Eipansion	Expansion
1	Chapter I	16	public	rubble
128	5.1	23	unstatis-factory	unsatis-factory
134	5.14	4	beeing	being
135	5.16	9	admits	admit
137	5.19	15	Delete the word "the" between the words "to" and "complete"	
140	5.26	1	Committees	Committee
142	4.33	1	4.33	5.33
142	5.33	16	this	the
165	5.37	1	5.37	5.3
166	5.3	6	plants	plans
167	5.4	10	acceptd	accepted
180	5.20	10	Add the word "what" between the words "chose" and "was"	
184	5.25	8	and	end
189	5.33	16	this	the
192	5.38	1	Delete the figure "7"	

CONTENTS

PAGE

PART II

*Not Printed. (One Cyclostyled copy laid on the Table of the House and five copies placed in the Parliament Library).

List of Members of the Public Accounts Committee
(1975-76)

Chairman

Shri H. N. Mukerjee

Members

2. Shri T. Balakrishniah
3. Shri Chandulal Chandrakar
4. Shri Chandrika Prasad
5. Shri Darbara Singh
6. Shri C. C. Gohain
7. Shri Pampan Gowda
8. Shri Raja Kulkarni
9. Shri Shyam Sunder Mohapatra
10. Shri Priya Ranjan Das Munsi
11. Shri Narendra Singh
12. Shri Noorul Huda
13. Shri Shibban Lal Saxena
14. Shri N. K. Sanghi
15. Shri Somchand Solanki
16. Shri Mohammed Usman Arif
17. Shrimati Pratibha Singh
18. Shri V. B. Raju
19. Shri Gulabrao Patil
20. Shri T. K. Srinivasan
21. Dr. K. Mathew Kurian
22. Shri Rabi Ray

Secretariat

Shri Avtar Singh Rikhy—*Additional Secretary.*

Shri H. G. Paranjpe—*Chief Financial Committee Officer.*

Shri N. Sunder Rajan—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Two Hundred and Tenth Report of the Public Accounts Committee on paragraph 11 of the Report of the Comptroller and Auditor General of India for the year 1973-74, Union Government (Defence Services) relating to the Expansion Scheme of the Naval Dockyard at Bombay.

2. The Report of the Comptroller and Auditor General of India for the year 1973-74 Union Government (Defence Services) was laid on the Table of the House on 30th April, 1975. The Committee examined this Audit Paragraph at their sittings held on the 11th and 12th August, 1975. The Committee considered and finalised this Report at their sitting held on 23rd March, 1976. Minutes of the sittings form Part II* of the Report.

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

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

5. The Committee would like to express their thanks to the officers of the Ministry of Defence and the Ministry of Law for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
March 30th, 1976.
Chaitra 10, 1898 (*Saka*).

H. N. MUKERJEE,
Chairman,
Public Accounts Committee.

*Not printed. (One cyclostyled copy laid on the Table of the House and five copies placed in the Parliament Library).

CHAPTER I

PRELIMINARY OBSERVATIONS

Audit paragraph

1.1. A scheme for the expansion of a Naval Dockyard which was initiated in 1949, based on the Project Report drawn up by a foreign firm of consulting engineers, has been in operation since 1952 and is being implemented in two stages. The main items of work included in these Stages were as under:—

Stage I:

(a) Construction of cruiser graving dock and ancillaries.

(b) Construction of frigate wharf and boat wharf and ancillaries.

(c) Modification to the existing breakwater.

(d) Construction of barrack wharves, destroyer wharves, boat pond wall, dredging, reclamation, roads, railways etc. and ancillaries.

(e) Construction of a patent slip-way with an electrical winch and ancillaries.

(f) Extension of a pier and ancillaries.

Stage II:

(a) Construction of public mound (root of south breakwater) and protective retaining bund, south breakwater and deep water wharf and dredging.

(b) Capital dredging and reclamation.

(c) Construction of fitting out wharf and associated rock dredging.

[Paragraph 11 of the Report of the Comptroller & Auditor General of India for the year 1973-74, Union Government (Defence Services)]

A. Historical background

1.2. The history of the Naval Dockyard at Bombay can be traced back to the days of the Maratha Empire of Angre in the early 16th Century when small vessels used to harbour in the creeks of Kalyan and Thana. As the ships increased in size and draught, the port facilities were shifted to the Customs basins in the present Dockyard. In 1670, a Senior Naval Architect had been deputed from the United Kingdom to be associated with a ship-building programme contemplated for the defence of the port. In 1735, the Naval Dockyard was established, followed by a glorious period of ship-building activity in the Dockyard and a simultaneous expansion of its docking and berthing facilities. In a span of about 175 years of its existence, as many as 170 ships were built at the Dockyard, which included such well-known vessels of the Royal Navy as HMS Cornwallis, HMS Wellesley, HMS Amphitrite, HMS Melville, HMS Malabar, HMS Ganges, HMS Madagascar, HMS Asia and HMS Calcutta. The ship building activity of the Dockyard apparently posed a serious competition and threat to ship builders in the United Kingdom and consequently, the tempo of ship-building was slowed down from 1850 and all ship-building activities stopped in 1908. Thereafter till 1930, there was no major development at the Dockyard which was essentially used as a base for the repairs and refit of ships.

1.3. Explaining the development and growth of Dockyard during evidence tendered before the Committee, the Director General, Naval Dockyard Expansion Scheme stated:

> "In 1748 the East India Company undertook the construction of a dry dock at Bombay to meet the requirements of its ships. This dry dock is located at the Naval Dockyard and known as Bombay Dry Dock. This dry dock was so successful that three other dry docks were built at different locations soon afterwards. One of these was the Duncan Dry Dock which was built in 1811 next to the Bombay Dry Dockyard. In 1846, three covered shipways were built for building ships at Bombay. In 1846, a break-water was built to provide sheltered anchorage. This collapsed in 1896 and in 1906 the present break-water was built to replace the old one. In the meantime, in 1890, the West Basin and the Torpedo Dry dock were built. Over the period of years, Duncan Dry dock and Bombay Dry dock were extended to their present size. These, together with the Wet Basin and Torpedo Dry dock and Break-water, continue to give good service to the Indian Navy today.

Whilst India was under the British rule, the responsibility for naval defence of India was vested in the Royal Navy; and it was looked after by the British East Indies Fleet based at Triconamalee, in what was then known as CEYLON. The Commander-in-Chief of the British East Indies Fleet was equated with the Commander-in-Chief, India—who was responsible for operations on land—and these two Commanders-in-Chief had the honorific 'His Excellency' attached to them."

B. Master Plan for expansion

1.4. Tracing the growth of the Dockyard, in the post-Independence years, the witness stated:

"While negotiations for the transfer of power were going on, it was clear that responsibility for the maritime defence of India would have to be taken over by the Indian Navy. In fact, the pre-independent Government had already purchased a British.... and ordered its modernisation in a British Naval yard. She was commissioned as... in...

Three..... were added to the Indian Navy in.... These expanding requirements of the Navy needed logistic support to maintain and repair the ships.

Accordingly, the Government of India had started general discussions soon after independence and in 1949, a British firm of consultants, Sir Alexander Gibb and Partners, who had experience in building of naval bases and dockyards in Scotland, in Singapore and in Sydney in Australia, was engaged; the report of the consultants was received by the Government in June 1950. This report envisaged the expansion of the Naval Dockyard in five stages... This was a master plan."

1.5. According to the information furnished to the Public Accounts Committee (1965-66) [*vide* paragraph 3.16 of the 48th Report (Third Lok Sabha)], the consultants had recommended the expansion of the Dockyard in five stages at a total cost of Rs. 25 crores and envisaged that all the work would be completed by 1960, *i.e.* 9 years after its commencement in 1951. The Public Accounts Committee (1965-66) had also been informed (*vide* paragraph 3.22 *ibid*) that the project was split up into two stages, instead of five.

1.6. As regards the projections made by the consultants for the completion of the project, enquired into by the Committee, the Director General, Naval Dockyard Expansion Scheme stated:

> "Time-projection by the consultants was 9 years. They gave a general idea. They did not give break-up details, but they gave a general idea, that this covered a period of 9 years."

The Defence Secretary stated in this context:

> "The time-projection in the project report is one matter. The time-projection which Government had in view is something else and this will come out in the course of the discussion."

He added:

> "If I may submit this, the Defence Committee of the Cabinet, to whom a Naval Plan paper was submitted in 1948, found that the Plan, which the Navy had prepared, was generally acceptable, but the implementation was to depend upon the availability of resources."

1.7. Dealing with the various components of the Expansion Project and the periodical progress made in execution, the Director General, Naval Dockyard Expansion Scheme informed the Committee as follows:

> "Administrative sanction for works costing Rs. 5½ crores was issued in 1952 which envisaged reclamation of about.... land, building of roads, railway line, jetties, dredging and construction of a dry dock (including minor changes to the existing breakwater). Negotiations were started with the Bombay Port Trust and as soon as the necessary lands were made available by Bombay Port Trust, the first contract of these works was concluded in 1954. This work was abandoned by the contractor in 1956 and the work was taken over departmentally.
>
> The other main civil engineering work of this stage was the building of the Cruiser Graving Dock which was entrusted to a French firm, at a cost of just under Rs. 3 crores.
>
> In the meantime, Government had decided to acquire.... To meet the requirements of these ships certain additional works were added to Stage-I. The works in Stage-I were

substantially completed in 1966 and were finally completed in 1970.

In September 1964, Government issued administrative approval for Stage-II which involved reclamation of about.... of land and construction of a jetty. Extensive tests were required to be carried out at the Central Water and Power Research Station at Khadakvasla to ensure that reclamation of this land and extension of this jetty into the harbour would not upset the stability of the main entrance channel in Bombay. At the same time boreholes data had to be collected along the projected alignment of the breakwater which was finalised sometime in 1963-64."

He stated further:

"It was initially intended that all the civil works of Stage-II should be put out to contract as one contract. But this proved unsuccessful and the work had to be split into three parts: Works 'A' which included the construction of the rubble mound breakwater, protective retaining bund, south breakwater and the minimum dredging and reclamation that was necessary for this work. The second part of the civil engineering works was Work 'B' which involved dredging of soft material in the outer tidal basin and the reclamation of the remaining portion of the land. This work was to be done departmentally through acquisition of a suitable dredging equipment from abroad or by order on the Indian shipbuilding yards. After these works were completed, Work 'C' were to be taken in hand either departmentally or by contract.

Work 'A' were put out to contract in November 1967 and were substantially completed in 1973. These works are a very fascinating civil engineering construction and I would like to dwell for a minute on this particular aspect of the works. For the construction of the rubble mound breakwater, stones upto a size of 4 to 8 tonnes in weight had to be brought from a quarry which belonged to the Navy across the harbour.... The outer layer of the rubble mound breakwater had to be not less than 4 tonnes in weight so that they should not get dislodged during the southwest monsoon.

(The south breakwater consisted of a number of caissons.).... These cement concrete caissons were to be constructed in a dry dock which was specially built on acres of reclaimed land at that time right in the middle of the harbour. Each of these caissons took about forty-five days for construction in the dry dock. They could only be floated out at a particular state of tide and caissons had to be built according to a sequence so that we do not miss the particular stage of tide. Otherwise, the whole operation would have a setback. The caissons were to be founded by preparing the foundations which had to go from the firm sea-bed where the rock or other firm material is found. I may add here that most of Bombay harbour consists of soft mud and silt. One had to dredge down to rock or murram as it was only on their hard materials that the foundations could be laid.

While this work was going on, Naval Headquarters had made attempts to procure the necessary dredging plant but these attempts proved unsuccessful. In 1972, contract was accepted—for works 'B' *i.e.* for the dredging and reclamation. While detailed planning was going on for putting out works 'B' to contract, it became clear, especially, after our experience on works 'A', that a small amount of rock-dredging would have to be included as part of works 'B', which was not originally envisaged. In order to save money, the entire rock dredging element, which was originally included in works 'C', was transferred to works 'B' and this was included as part of the contract. It also saved us money so that the dredged rock could be used in the reclamation of the area under works 'B'. Works 'B' are currently in progress and are expected to be completed by the end of this year.

This leaves us with works 'C' of the original civil engineering works. On these, a technical report has been received from the Consultants in April. This has been examined by Naval Headquarters and my department and it has been accepted by the Navy. I now have to process it with the Ministry of Defence and Finance (Defence).

Whilst the Civil Engineering Works provide the docking and berthing facilities, the most important requirement from

the ships' point of view is the provision of services. These are necessary so that when the ship comes into harbour and ties up alongside, the ships' own machinery, engines and equipment can be shut down, firstly, to give some respite to the operating personnel to enable them to take over the maintenance work; and secondly, to conserve the machinery and equipment for operational use; and, thirdly, to carry out routine Planned Preventive Maintenance so that machinery or equipment vitally required at sea may not let the ship down at the crucial moment.

For this reason, as we proceeded with the project, the services were provided both in Stage I and Stage II and they were constantly brought uptodate to meet the requirements of ships that had been decided to be acquired by the Navy in the meantime. I may add here that as we proceeded we had also taken into consideration the developments of our industry and, to what extent, the requirements of services could be met from our own resources so that, for the replacement of spare parts required for the services, we would not have to constantly depend on foreign resources. In this connection, I may mention that we have recently been successful in getting the Bharat Heavy Electricals to supply frequency converters which until recently we were under the impression that we would have to import at a cost of about Rs. 70 lakhs. This is a new design which Bharat Heavy Electricals are producing at our request. This covers the entire scheme."

1.8. A note subsequently furnished to the Committee in this regard by the Ministry of Defence is reproduced below:

"The Consulting Engineers, Sir AGP submitted their project report in May 1950. This was considered by the Government and in 1952, orders were issued accepting the necessity for the project. A consultancy agreement for the execution of the project was signed with Sir AGP in November 1952 and administrative approval was issued for part of the project known as Stage I Works. These works consisted of construction of several wharves, a graving dock, roads and railway lines and some dredging and reclamation work. The value of the administrative approval for these works was Rs. 5.5 crores.

Preparatory work like collection of site data, preparation of tender documents, negotiations with Bombay Port Trust for acquisition of land etc. was started in November, 1952. Tender for Contract I was advertised on a global basis in 1953 and the consultants' recommendations on the tenders received were submitted to Government in December, 1953. Contract No. I was awarded to M/s. Hind Construction Co. in September, 1954. The land and jetties for the execution of the project were released by the Bombay Port Trust in August, 1954 and works commenced soon thereafter.

Contract No. I was abandoned by the contractor in September, 1956 and was taken up for execution by Government departmentally. This involved considerable delay in completion of the works covered by the contract. The works under Contract I, which according to the contract were to be completed within 31 months, were actually completed in December, 1963.

The rest of the works of Stage I were executed through contractors (18 contracts in all) and these works were, except for one item completed according to the contract schedules.

In 1963 Government included three additional items of work in Stage I. These items of work as well as some further additions made in 1967 were all completed in 1970.

The rest of the work of the project was termed Stage II works and considered of:—

(i) Construction of rubble mound breakwater, protective retaining bund and South breakwater. These works were subsequently called Works 'A'.

(ii) Capital dredging and reclamation of.... land. This work was subsequently called Works 'B'.

(iii) Construction of fitting out wharf. This work was subsequently called Works 'C'.

(iv) Provision of services like electricity, water, compressed air etc. for the wharves and jetties.

The necessity for works of Stage II was accepted by the Government in October, 1959. A fresh consultancy agreement for the execution of these works was signed with Sir AGP in 1962. (The intervening period was taken up in negotiating terms of this consultancy agreement).

The technical report on Stage II works was received from the consultants in August, 1963 and Government accorded administrative approval for the works at an estimated cost of Rs. 14.59 crores in September, 1964. Tenders were advertised globally soon thereafter. Only two valid tenders were received from foreign firms. The prices quoted were almost twice the amount allocated for the works and required larger payment in foreign exchange than anticipated. There were also a number of other unacceptable conditions. In October, 1966, Government rejected both these tenders and decided to split the work into three parts. Works 'A' were to be given priority and carried out through contract; Works 'B' to be carried out departmentally and Works 'C' to be undertaken at a later stage either through departmental means or by contract.

For execution of Works 'A' various Indian firms were approached between October, 1966 and April, 1967 but all of them evinced no interest. Tender documents were finally issued to M|s. IVAN MILUTINOVIC—PIM, a Yugoslav firm. This firm showed interest in this work after they were awarded a contract under the Ministry of Defence at Visakhapatnam. The contract for Works 'A' was signed with this firm in November, 1967. Works 'A' were substantially completed in October, 1973 according to the contract.

Works 'B' which consisted of dredging and reclamation works were initially intended to be done departmentally with dredgers to be acquired by the Navy. Difficulties were experienced by the Ministry of Defence in acquiring the necessary dredgers and in 1970 it was decided that this work should also be done through contract. The work was advertised but only one valid tender was received in March, 1971—from M|s. PIM. The Consultant's recommendations on this tender were submitted to Government in August, 1971, further discussions were held with the tenderer in November 1971 and the contract agreement signed in January, 1972.

The works of Stage II still remaining to be done are Works 'C' and provision of services for the wharf structures.

The technical report and revised estimates for Works 'C' were called for from the consultants in 1974. These were received in April, 1975 and are presently under examina-

tion. A decision on these works is expected to be taken shortly.

The provision of services was to be based on the revised requirements of the Navy as projected in 1969. The technical report of the consultants together with the estimates was received in 1970. The preparation of detailed designs was then taken in hand and because of the complexities of these services tenders could be issued only in 1973. Contract agreements for crane and piling work were signed in November-December 1974 and that for civil engineering works in April, 1975.

For electrical services, protracted negotiations had to be carried out and the contract was finally signed in July 1975.

The contracts for services already concluded are expected to be completed by the end of 1978.

The tender for mechanical and pipe work services has to be readvertised and the quotations received are under scrutiny."

C. *Cost of the Project*

1.9. At the instance of the Committee, the Ministry of Defence furnished a note indicating the cost of the project when it was initially conceived and the periodical revision of the cost, which is reproduced below:

"The cost of the project estimated at the time of acceptance of necessity in November, 1952 was Rs. 24 crores. Administrative approval for Stage I works was issued on 22nd November, 1952 for Rs. 5.55 crores. Additional works were subsequently added to Stage I and the Administrative approval for this was revised as follows:

(a) On 1st February, 1963—Rs. 10.72 crores.

(b) On 8th May, 1967—Rs. 11.32 crores.

Administrative approval for Stage II works, covering the balance of items was accorded on 21st September, 1964 for Rs. 14.59 crores. It was revised in December, 1967 to Rs. 24.70 crores to cover escalation in prices, adjustment of quantities and the devaluation of Rupee in 1966.

Because of further escalations since 1967 and increase in scope, particularly of services, to meet the requirements of the latest types of ships acquired by the Navy, the estimate is expected to go up further."

D. Administrative arrangements

1.10. With reference to the arrangements for the administration and supervision of the Expansion Scheme, the Director General, Naval Dockyard Expansion Scheme stated in evidence:

"Initially, when the project was started, the consulting engineers were providing the engineering supervision as we had no expertise in this matter. A Chief Works Officer was appointed as Project Administrator to look after the Government's interests. This organisation functioned under the overall direction of the Naval Dockyard Construction Committee which was set up in the Ministry and at which the Engineer-in-Chief was represented apart from other members of the Government. An Engineer Administrator was appointed, when contract I was taken in hand departmentally. This set-up was replaced in 1958 by the Director General, Naval Dockyard Expansion Scheme functioning directly under the Ministry of Defence. This organisation is continuing till today."

1.11. As regards the administrative arrangements for the Expansion Scheme, the Estimates Committee (1957-58) had been informed that the progress of work on the project was watched by a Construction Committee which dealt with all policy matters concerning the project as a whole. The Committee consisted of the following:

(i) A representative of the Ministry of Defence (not below the rank of Joint Secretary) who will be Chairman of the Committee.

(ii) A representative of the Ministry of Finance (Defence) of appropriate rank.

(iii) Chief of Material (Navy) or his representative.

(iv) Engineer-in-Chief, Army Headquarters or his representative.

(v) The Under Secretary (Navy) in the Ministry of Defence, ex-officio Secretary to the Committee.

The Estimates Committee (*vide* paragraph 35 of their 8th Report —Second Lok Sabha) had expressed regret to note that inspite of the existence since 1953 of such a Committee which was constituted specifically to expedite the execution of this project the progress on the work had not been satisfactory. The Committee had found that out of the 40 meetings held by the Construction Committee during April 1953 to November 1957, only one meeting was held in Bombay. The Committee had, therefore, expressed regret that the Construction Committee had not been effective in its work as it was expected to be.

CHAPTER II

EXECUTION AND PROGRESS OF WORKS UNDER STAGE-I

Audit paragraph

2.1. While Stage-I of the scheme was being implemented, various new works were added which were not included originally in this stage. However, the major items of works under Stage-I were completed by November 1966.

2.2. Mention was made in paragraph 22 of the Audit Report, Defence Services, 1965, about the work on the first contract (value: Rs. 1.82 crores) pertaining to Stage-I which was started by a firm in September 1954 but was abandoned by it in September 1956. This contract was terminated in December 1956. The incomplete portion of the work was taken up departmentally at the risk and cost of the firm. Stage-I of the work was completed in December 1970 at a cost of Rs. 949.46 lakhs. The firm went in for arbitration. The net claim of the Government against the contractor was for Rs. 265 lakhs, while the contractor's counter claim against the Government was for Rs. 84 lakhs.

2.3. The arbitration proceedings commenced in December 1959 when the arbitrator held the first hearing. The arbitrator died in March 1961 before he could proceed with the substantive matters of the dispute. Another arbitrator was appointed in March 1961. The expenditure on the arbitration proceedings upto December 1973 was about Rs. 19 lakhs by way of fees for the arbitrator (Rs. 1.95 lakhs) and the counsels (Rs. 11.20 lakhs), travelling allowances (Rs. 3.59 lakhs) and other miscellaneous expenses (Rs. 2.29 lakhs). The Government had fixed in 1961 a ceiling for the payment of the fees to the arbitrator at Rs. 30,000 which was later increased to Rs. 60,000 in August, 1962, to Rs. 1,00,000 in February, 1964, to Rs. 1,75,000 in May, 1965, to Rs. 2,50,000 in November 1968 and finally to Rs. 3,65,000 in October, 1972.

2.4. The arbitrator gave his award in February, 1974 and the same was filed in the High Court in April, 1974. According to the award Government was to receive Rs. 15.70 lakhs, being the net amount of the sum awarded to the Government by the Arbitrator (Rs. 33.55 lakhs) and that awarded by him to the contractor (Rs. 17.85 lakhs).

[Paragraph 11 of the Report of the Comptroller & Auditor General of India for the year 1973-74, Union Government (Defence Services)]

A. General

2.5. The various components of works programmed under Stage-I of the Project, as enumerated in the Audit paragraph, were as follows:

(a) Construction of cruiser graving dock and ancillaries.

(b) Construction of frigate wharf and boat wharf and ancillaries.

(c) Modification to the existing breakwater.

(d) Construction of barrack wharves, destroyer wharves, boat pond wall, dredging, reclamation, roads, railways, etc. and ancillaries.

(e) Construction of a patent slipway with an electrical winch and ancillaries.

(f) Extension of a pier and ancillaries.

2.6. The Public Accounts Committee (1965-66) has been informed that during the period from September, 1954 to May, 1964, nineteen contracts relating to Stage-I of the project valued at Rs. 7.11 crores had been concluded. The Committee were informed by Audit that the Ministry of Defence had stated (March, 1975) that the major portion of Stage-I of the Project had been completed in 1966, except for a portion of rock blasting and dredging alongside the barrack wharf. The Ministry had also informed Audit (March, 1975) that the booked expenditure on Stage-I works amounted to Rs. 1180.79 lakhs and that the final cost of Stage-I would be known on completion of the rock-blasting which was under execution by the contractor for Stage-II, Works 'B'.

2.7. The Committee desired to know the up-to-date expenditure on Stage-I works and whether the final cost of these works had since been worked out. In a note, the Ministry of Defence informed the Committee that an expenditure of Rs. 1200.7 lakhs had been incurred on Stage-I as on 30th June, 1975 and that the final cost was estimated to be Rs. 1210 lakhs. To another question whether the rock-blasting work under Stage-I had been completed, the Ministry replied in the affirmative and added that the work had been completed on 7th July, 1975.

B. Contract No. 1 of Stage-I Works

(i) *Selection of contractor:*

2.8. The Audit paragraph points out that work on contract No. 1 pertaining to Stage-I, valued at Rs. 1.82 crores, started by a firm in September, 1954, had been abandoned by it in September, 1956 and that after terminating this contract in December, 1956, the incomplete portion of the work was taken up departmentally at the risk and cost of the firm. The Committee desired to know the circumstances in which this work had been entrusted to the firm. In a note the Ministry of Defence stated:

> "It is the normal practice of the Government to entrust works of this nature to contractors. In this particular case, global tenders were invited as there were no Indian contractors with necessary expertise. The contract was awarded to M/s. Hind Construction Company because they were an Indian concern and had an experienced Italian firm M/s. Societa Italiana Per Lavori Maritimi as their partners. This was done on the basis of the recommendations of the consultants, Sir Alexander Gibb & Partners."

2.9. The Committee desired to know whether, before entrusting this work to Hind Construction Ltd., the antecedents of the firm had been gone into. The Defence Secretary stated in evidence:

> "When we entrusted this work to them, we knew they had done, or were engaged in, the Konar dam in DVC. That gave us confidence that they would be able to do this work. Apart from this, they were the lowest tenderers. The consultants had, on the basis of this and their previous work experience up to that time, advised that the contract be given to them. Another factor which weighed with the consultants perhaps was that they had taken as partners an Italian firm called SILM, and based on the assessment at the time and considering the tender, the certainly deserved to be given this particular contract. Subsequently, of course we have our own experience to guide us. I understand—though I cannot vouch for it—that the firm has not fared very well; in fact, at this point of time, I understand the firm is in a state of being wound up."

(ii) *Reasons for abandonment of the work.*

2.10. The Committee enquired into the reasons for the firm abandoning the work. The Defence Secretary replied:

> "The contractor's contention in this was that the contract was frustrated because the work of rock breaking, soft dredging and construction of barrack wharves and destroyer wharves was not capable of execution on technical and financial grounds. He also contended that the rigid and unhelpful attitude of the consultants and Government had the effect of rescinding the contract. These were the pleas which he took in the arbitration."

In a note subsequentl furnished to the Committee, the Ministry of Defence indicated the following reasons given by the contractor for stoppage of work:

"(1) *The work of rock breaking*:

(a) frustration of contract.

(b) breach of contract terms by A.G.P. and therefore by Government.

(2) *The work of soft dredging*:
Frustration of contract.

(3) *The work of Barracks & Destroyer Wharves*:

(a) frustration of contract.

(b) breach and prevention by A.G.P. and therefore by Government.

(4) *Supply of sand and aggregate*:

Prevention by A.G.P. and therefore by Government.

(5) *The work of boat Pond Wall*:

Prevention by A.G.P. and therefore by Government."

The Ministry added:

> "As indicated by the Arbitrator, 'the case of the company is that the company was discharged from carrying out these works as the contract was frustrated and/or AGP and therefore the Government prevented the company from carrying out the contract works and/or AGP and therefore the Government committed breaches of the terms of the contract so as to absolve the company from proceeding with contract works'."

2.11. The Committee asked whether, at the point of time when the firm abandoned the work, Government could not have taken steps to take action against the default or whether the arrangement with the firm was not foolproof enough to enable Government to act. The Defence Secretary replied:

> "If I may submit, it is a unilateral act on the part of the contractor to take up the plea of frustration of the contract and to abandon the work. We cannot use any physical compulsion on the contractor to make him work. What were the reasons that weighed with him, he alone knows. But the reasons which he put forward were that the contract was frustrated because it was incapable of execution. It might be asked why, he, in the first instance, undertook the contract. When he abandoned the contract, there were certain options open to us which we exercised, namely, that we should get the work completed at his risk and cost and all our activity was directed to this effort of completing the work at his risk and cost. In that process, we also assumed control over the project site by invoking the particular articles of the contract. We also assumed control of the equipment which the contractor was using on the site. We, of course, took all the legal precautions following this of noting down the condition of the equipment and so forth. The equipment had been abandoned by the contractor for a long time. This will be evident from what we have pointed out somewhere else that in two years of his functioning, two years out of three years which was roughly the contract period, he has completed only 15 per cent of the work. In this kind of activity or rather inactivity, you can very well imagine the stage in which the equipment was left behind. For lack of the it was being allowed to rust. This equipment had again to be put together into a shape in which we could use it. Therefore, work could be organised only after taking all the precautions. Then, we took all legal steps by invoking the other penal clauses of the contract. We assumed control of the site, we assumed control of the equipment and we also put the equipment into shape. Then, we had to set up our organisation to take up this wrok departmentally. All this, if I may submit does take time."

2.12. In reply to another question whether the contractor had brought to the notice of Government the difficulties and problems faced by him in executing the work, which did not appear to be sim-

ple in its scope and content, and whether any efforts had been made to solve these difficulties so as to enable the contractor to continue the work, the Defence Secretary stated:

> "There are a couple of things which should be kept in mind. The point you are urging is that the contractor was perhaps precluded from completing the work, that it was not possible for him to complete the work and probably we took no notice of his difficulties. In the first place, when the project was conceived, it was conceived as we have submitted already, with the help of a very renowned and reputed consultants who know their job and who had done several other harbour works all over the world, and in addition, the consultants were available to us all through for administration of this very contract. All these difficulties, therefore, were perhaps referred to them. I am also advised that in order to assess the contractor's complaints, the Government constituted a committee which heard the contractor and which also carried out an enquiry. Therefore, it is not that we were oblivious to the difficulties of the contractor. These were all gone into. But, at the same time, we have to see that certain obligations which were undertaken by the contractor were either fulfilled by him directly or we fulfil them under the relevant provisions of the contract at his risk and cost. That was the approach which we had."

2.13. Since it had been stated that a committee had been constituted by Government to assess the contractor's complaints, the Committee enquired into the findings of this committee and whether it had recommended any measures to help the contractor to continue the work. The Defence Secretary replied:

> "As far as I can see, despite our going into all these aspects, perhaps, the contractor was really no longer interested at one point of time in completing the work. From September 1956, there were constant negotiations between the Government and the contractor, directly with the Ministry as well as with the construction committee. After considering all the points of view of the contractor, the demands of the contractor were turned down. Only thereafter this question of taking alternative steps etc. was decided upon."

A note furnished subsequently to the Committee in this regard by the Ministry of Defence is reproduced below:

"The contractor abandoned the work of his own volition. Earlier in October, 1955 separate and independent notices were issued by the Government and the consultants to the contractor to speed up the work and to submit proposals for making up lost time. The contractor's proposals in reply to the notices were considered at site meetings during early December, 1955 and detailed instructions were issued by the consultants to the contractor in this regard. When the contractor stopped work in June, 1956 the Government appointed a committee to go into the contractor's grievances and problems. All these efforts proved of no avail as the contractor was not prepared to execute the work in terms of the contract."

2.14. The Committee desired to know the quantum of work allotted to Hind Construction Ltd., the work actually executed before abandonment and the work left incomplete. In a note the Ministry of Defence stated:

"Statement showing the work allotted to the contractor, the value of work done by him as certified by the consultants and the balance of work left undone is given below:

Section of work with description		Total value as in contract	Value of work done by the contractor as certified by consultants	Value of balance left undone
		Rs.	Rs.	Rs.
I.	Dredging and Reclamation . .	73,70,312	20,33,797	53,36,515
II.	Barracks & Destroyer Wharf . .	48,29,191	2,47,454	45,81,737
III.	Storm Water Culvert	2,88,680	1,76,183	1,12,497
IV.	Ballard Pier 5. T Crane Track .	62,950	Nil	62,950
V.	Forming Hole & Grouting . .	14,250	Nil	14,250
VI.	Provisional Works	22,03,000	6,87,291	21,15,709
VII.	General Items	29,03,050	6,34,148	22,68,902
VIII.	Time Account Works . . .	3,25,000	12,562	3,12,438
IX.	Demurrage charge on Floating Plants	2,45,500	63,513	1,81,887
X.	Adjustment subsequently allowed by Government in respect of work done by contractor . . .	..	22,433	(—)22,433
	TOTAL .	1,82,41,933	32,77,381	1,49,64,552"

2.15. Since the incomplete portion of the work had been taken up for execution departmentally, at the risk and cost of the defaulting firm, the Committee desired to know the expenditure incurred on departmental execution. In a note, the Ministry of Defence stated:

> "The total expenditure incurred on the departmental execution of the incomplete portion of the work is Rs. 278.26 lakhs."

2.16. The final cost of works included in Contract No. 1, therefore, worked out to Rs. 311.03 lakhs as against the original estimate of about Rs. 182.42 lakhs as per details indicated below:

	Rs. in lakhs
(*a*) Value of work executed departmentally	278·26
(*b*) Value of work done by the contractor	32·77
TOTAL	311·03
Total value of work originally estimated	182·42

2.17. In view of the fact that the cost of the works included in Contract No. 1 pertaining to Stage-I had ultimately escalated to a large extent, affecting also the projected time schedule, the Committee desired to know whether it would not have been better to renegotiate the terms with the contractor and allow extension of time for completing the work, thereby safeguarding the financial interests of Government, instead of taking too rigid a view of the contractor's defaults. The Defence Secretary stated in evidence:

> "When the contractor abandoned the work, all the steps which I had detailed earlier to safeguard Government's interest had to be taken. This involved increase in time. The very fact that the contractor failed to execute the work would show that doing it by any alternative method particularly after a lapse of time was bound to cost more and also involve more time."

He added in this context:

> "I believe the contractor's demands were not merely for time. He wanted an increase in the cost mentioned in the contract. He wanted changes in design and also changes in the method of rock breaking. All these would have increased the cost of the project and the time for completing it. So even if we had conceded his demand, it would have cost more and taken a longer time also as the contractor

had not given adequate evidence of doing proportionate work according to the stipulated time."

2.18. The Committee asked whether the opinion of the consultants on the demands of the contractor had been obtained, so as to ascertain the real magnitude of the difficulties pointed out by the contractor and whether the cost escalation was warranted. The witness replied:

"My information is that in the contract itself there were certain built-in clauses for escalation in the prices of essential articles like cement, steel etc. These he claimed and appropriate escalation was given. As regards the other demands, the consultants did not support them and there was nothing in the contract to support his contention."

The Ministry of Defence also furnished to the Committee relevant extracts from the report of the consultants which are reproduced in Appendix I.

C. **Arbitration proceedings**

(i) *Claims before the Arbitrator*

2.19. The Audit Report points out that after abandoning the works under Contract No. 1 relating to Stage-I of the Expansion Scheme, the defaulting firm (Hind Construction Ltd.) went in for arbitration and preferred a claim against the Government for Rs. 85 lakhs. Government, on its part, put forth a net claim of Rs. 265 lakhs against the contractor. According to the award of the arbitrator given in February, 1974, Government was to receive only Rs. 15.70 lakhs being the net amount of the sum awarded to the Government by the arbitrator (Rs. 33.55 lakhs) and that awarded by him to the contractor (Rs. 17.85 lakhs).

2.20. Since, in the Committee's view, the final award of Rs. 23.55 lakhs given to Government by the arbitrator appeared to indicate that the Government's case was found to be rather weak, they desired to know whether there were no clauses in the contract with Hind Construction Ltd., to enable Government to dictate terms and have the whiphand when it was decided to terminate the contract in December, 1956. To the Committee's observation that the outcome of the arbitration appeared to reveal a weakness in the Government's case, the Defence Secretary replied:

"This, to my knowledge, is a very general kind of remark."

He added:

> "There are two aspects, which I would submit. You should consider before you come to the conclusion that the Government's case was weak. It was the contractors themselves who went into arbitration. Since there is always a clause for arbitration in disputes in such contracts, we naturally could not stop them from doing so."

2.21. To another question whether the contract did not provide for a penalty clause which would have enabled Government to obtain some compensation during the interim period, for the losses incurred by the stoppage of very essential works, the witness replied:

> "It was the contractors who took to arbitration. Their case was that they were making a claim against Government for Rs. 84.47 lakhs. Had our case been weak, they would have got the bulk of the claim awarded. But that was not so."

He stated further:

> "The position is that they claimed from us Rs. 84.47 lakhs and the award actually given to them is Rs. 17.85 lakhs, about one-fifth of that claim."

2.22. The Committee pointed out in this context that the arbitrator had only awarded roughly one-eighth of the Government's claim of Rs. 265 lakhs and asked whether the witness would not concede that something was perhaps wrong or carelessly done in so far as the legal contract with the firm was concerned which enabled it to escape its contractual obligations to a large extent. The Defence Secretary replied:

> "The claims that we made consisted of a number of items. One was the estimated extra cost of completion—at that time it was estimated by the Naval HQ at Rs. 1.20 crores, an amount of about Rs. 1.04 lakhs to be paid to CITRA, another amount of about Rs. 4.18 lakhs which was estimated compensation, another amount of Rs. 1.63 lakhs payable to CITRA, another amount of about Rs. 13.82 lakhs being the claim put in by CITRA. We had also assessed the possible estimate of loss that would be incurred by the Navy

due to delay in completion, as about Rs. 1.35 crores. All these were estimates, made at a time when the work had not been completed. These had to be revised in the light of the actuals, at the time when the arbitrator made the award. The estimated loss of Rs. 1,35,00,000 on account of delay was reduced to Rs. 24,15,000. This was due to legal reasons. In the contract there is a clause for liquidated damages and the amount was restricted to a figure based on a rate of Rs. 7,000 per week mentioned in this clause. This amount which worked out to Rs. 24.15 lakhs was according to legal advice, the maximum damage that could be claimed under the contract."

Elaborating further the circumstances in which the Government's initial claim of Rs. 265 lakhs had later been reduced, the witness stated:

"Two major items were there. In our claim before arbitrator we referred to estimates of additional cost for completion of contract this we put at Rs. 1.20 crores. The second major item was the loss that was likely to be incurred by the Navy due to default of the company which is called liquidated damages. These two major figures underwent drastic change. So far as the figure of losses caused to Navy by default of the company was concerned as I stated earlier, we ourselves scaled it down from 1.35 crores to 24.15 lakhs on legal advice as our ceiling on liquidated damages could not exceed that given under the contract. This account for one. The other one was this. This is regarding additional cost of completion of contract. Here what we estimated originally as 1.20 crores had to be brought down to actuals which we incurred which were of the order of 78.64 lakhs. There were consequential losses which we claimed on behalf of another firm whose work depended upon the work of the first contractor. We put in a claim for Rs. 13,82,180 based on an actual claim of that company, CITRA. Later on that company withdrew that one and we had no grounds to proceed against the contractor for that particular claim. This is how the scaling down in an overall way was done."

2.23. At the instance of the Committee, the Ministry of Defence furnished the details of the claim initially preferred by Government against the contractor, the damage estimated by the Naval Headquarters on account of the abandonment of the work by the contractor

and the reduction effected later in the original claim of Government. According to the information furnished by the Ministry, Government's initial claim before the arbitrator comprised of the following:

	Rs.
(1) Additional cost of completion of the contract estimated at .	1,20,00,000
(2) Extra cost paid to CITRA for rock-breaking .	1,04,109
(3) Compensation for delay in handing over site for rock breaking .	4,17,858
(4) Extra cost actually incurred for dredging of additional silt paid to CITRA.	1,62,756
(5) Additional claims made by CITRA but not certified by A.G.P. .	13,82,180
(6) Loss incurred by the Navy due to default of the company .	1,35,00,000
	2,75,66,903

The loss of Rs. 135 lakhs estimated by the Naval Head-quarters on account of the contractor's default represented the extra estimated expenditure incurred or to be incurred by the Navy as a consequence of the non-completion of the works by the contractor by the stipulated date of May, 1957. The details thereof are indicated below:

Item No.	Description	Amount Rs.
(1)	Cost of power (difference between the cost of generating own power and that drawn from shore Mains at bulk rate) .	77,99,960
(2)	Cost of fresh water (difference between afloat and Main price)	9,50,636
(3)	Additional maintenance expenses due to ships not being able to shut-down for periodical repairs inspections and routines .	33,43,154
(4)	Additional cost of transporting men and stores by dockyard craft	9,37,500
(5)	Extra expenditure on account of non-availability of buildings that were to be sited on the reclaimed ground .	4,68,750
	TOTAL .	1,35,00,000

The Ministry also informed the Committee that by an application dated 12 October, 1966, the Government reduced this claim of Rs. 1.35 crores, on legal advice, to Rs. 24.15 lakhs and claimed this amount as liquidated damages. By a further application dated 15 December, 1957, the claim for Rs. 13,82,180, representing the additional claims made by CITRA, was deleted as CITRA had dropped their claim in the meanwhile. The claim for Rs. 120 lakhs, representing the estimated additional cost of completion of the abandoned works, was also reduced to Rs. 78,64,707 on the basis of actuals. The final net claim of Government thus worked out Rs. 1,09,64,430.

2.24. In view of the fact that the initial assessment of the damage of Rs. 135 lakhs made by the Navy had been scaled down to Rs. 24.15 lakhs, on legal advice, the Committee desired to know whether this meant a difference of opinion between the technical advisers and the legal advisers on the question of the damages to be claimed from the contractor. The Defence Secretary stated in evidence:

> "In a sense you may be right that the estimates of our technical advisers and the legal advisers were so. The Navy which did not have any legal experience in this matter estimated on its own way what the loss would amount to in terms of rupees whereas when the matter went up to the arbitrator and was legally examined we found that there was a ceiling on liquidated damages which we could claim. Naturally there was no use proceeding with a claim which we could not legally sustain. Therefore, this was brought down. The only point one may hold against our technical advisers is that they were a little overzealous in presenting the Government's side lest we should per chance lose by understating our claim."

The Committee asked whether the computation made by the technical officers in this regard was not a more practical and patriotic approach which deserved to be complimented than the purely legalistic stand taken by the legal advisers. The witness replied:

> "Perhaps with your legal knowledge and experience you know better; I am at least advised that the clause regarding liquidated damages is very difficult to sustain and it is very rarely indeed that damages do get awarded. As I explained earlier, at the time when we put in our claim we had no idea of the actuals. You were kind enough to give kudos to the Navy. They put in their claim so that the Government interests did not suffer. We found that the actual completion of the work cost about Rs. 78,64,707. We had naturally to scale down because anything else would neither be justifiable nor legally sustainable. Then we accepted another reduction of about Rs. 13.82 lakhs which we had claimed on behalf of another cnotractor because he had no basis to press for that claim and he withdrew that claim. Finally our claim was only Rs. 1.09 crores against the original claim of an estimated Rs. 2.65 crores. The award which had been given in our favour should really be seen in the light of the revised claim which we made for valid reasons, namely, Rs. 1,09,64,430."

A representative of the Ministry of Law stated in this connection:

> "In each contract, we have the provision for liquidated damages; but it all depends upon the extent to which these liquidated damages can be availed of; because under the Contracts Act damages can be only to the extent of damages actually suffered."

When asked whether, in a long-term contract, the potential damage should not also be taken into account, the witness replied:

> "We have got to prove that because of these lapses it resulted in damages. Remote damages are not allowed under law, but still we provide for liquidated damages in the contract. If the contractor fails to do something in the manner or in the time prescribed, we will be asking for liquidated damages."

2.25. The Committee, therefore, desired to know how the Naval authorities could justify the initial claim of Rs. 265 lakhs when the contractor had hardly completed 15 per cent of the work. The Defence Secretary stated:

> "There was an in-built clause in the contract that if he does not complete it, it will be completed at his risk and cost. We calculated the cost and we projected it to the arbitration. We scaled it down when we found that the actuals were less or other consequential expenditure was less. It was our bounden duty to press our claims. Otherwise, even in this forum we could have been legitimately asked, how did we forsake Government's interests?"

When the Committee pointed out in this connection that after having worked out a claim of Rs. 265 lakhs, Government, instead of pursuing the claim appeared to have given up or reduced the claims stage by stage, the witness reacted:

> "If we give it up for valid reasons, can it be held against us? I have tried to explain why we scaled it down in respect of each of the major items."

2.26. As regards the sum of Rs. 17.85 lakhs awarded by the arbitrator to Hind Construction Ltd., the Defence Secretary stated in evidence:

> "In the case of the claim which the contractor got awarded to him, *viz.* Rs. 17.85 lakhs, I would like to mention that we had in any case already conceded that a sum of Rs. 11.04

lakhs was due to the contractor. The contractor has to pay us Rs. 3.28 lakhs for services which the dockyard had rendered to him. So, he really got Rs. 14.57 lakhs; this is only Rs. 3 lakhs over and above the admitted claim. This is the order of success which the contractor had in this particular proceedings."

(ii) *Reasons for prolonged arbitration proceedings*

2.27. The arbitration proceedings commenced in December 1959 and it was only after nearly 15 years had passed that they were finalised and the award was given. The Arbitration Act provides that the award shall be made within four months after entering on the reference or within such extended time as the court may allow. Since the period of 15 years taken for the completion of the arbitration proceedings in this case appeared to be unconscionably long, the Committee desired to know the reasons for the unduly long time taken for their completion. In a note, the Ministry of Defence informed the Committee as follows:

"The reasons for the arbitration from 1959 to 1974 are as under:

(a) The first Arbitrator Shri J. N. Majumdar died in March 1961 before he could enter on the merits of the case. 31 hearings took place till then and these proved infructuous as the proceedings had to start *de nove*.

(b) Before the new Arbitrator, Shri Bishan Narain, proceedings commenced from 15th April, 1961 and concluded on 31st August 1973, in which period a total of 779 hearings took place consisting of 50 on preliminary matters, objections and framing of issues; 532 on recording of oral evidence of 34 witnesses including 9 foreigners; 137 on arguments on company's claims; and 60 on arguments on Government's counter-claims.

(c) The Arbitrator was in Delhi, Government Counsel at Delhi, Company's Counsel and office at Calcutta and Government's project office at Bombay and the Consultants at London. The convenience of all the above parties involved had to be taken into consideration in fixing the hearings by the Arbitrator."

2.28. At the instance of the Committee, the Ministry also fur-

nished the following year-wise details of the number of hearings that took place before the arbitrator:

Year	No. of hearings
(By late Justice Majumdar)	
December 1959 to February 1961	31
(By Justice Bishan Narain)	
1961	19
1962	68
1963	57
1964	82
1965	42
1966	24
1967	55
1968	80
1969	76
1970	76
1971	63
1972	57
1973	80
TOTAL	810

2.29. A copy of the final award of the arbitrator was also furnished to the Committee by the Ministry of Defence. The points in dispute suggested by both the parties and referred to the arbitrator, totalling 108 in all, are indicated in Appendix II.

2.30. In view of the fact that Government had apparently had to periodically reduce their claims before the arbitrator as not sustainable, the Committee desired to know whether this initial overzealousness on the part of the technical advisers had contributed, in any manner, to the long-drawn arbitration proceedings. The Defence Secretary stated in evidence:

> "I don't think that itself led to lengthening of the proceedings. The proceedings have different aspects. About some, you may find some valid ground for criticism. But the people who tried to safeguard Government's interests by projec-

ting adequate figures before the arbitrator and at the same time conceding quickly a revision of those figures on valid grounds, did in fact try to strike a balance of safeguarding Government's interests with speedy conclusion of proceedings."

2.31. The Committee, therefore, desired to know what, according to the witness, were the basic reasons for the arbitration proceedings being prolonged for as long as 15 years. The witness replied:

"The Audit para is before you and this is what I have felt. Of course, it is easy to be wise after the event. But when we went to arbitration, as our documents will show, we relied on a number of things. Firstly, the Arbitration Act itself fixes a period of 4 months for completion of proceedings. That is not unduly long. But that very law provides that if there is a valid ground, further extension of time can be given by the High Court on a proper representation made to it. Here the High Court in its wisdom was pleased to give extensions from time to time on requests made and these added up to over 12 years. Hold it against the law, hold it against our procedures. hold it against individuals who contributed to the lengthening; but I do not think the fact that we made claims of a certain order can be held against us."

2.32. With reference to the observation of the witness that it was easy to be wise after the event, the Committee pointed out that they necessarily came on the scene to examine what had happened only after the event was over. The witness replied:

"I have nothing to hold back and I am as much concerned about it as hon. members are. It is somewhat different from the normal. Normally questions are asked by hon. members and we answer. Since you have asked me to give my mind back to the time when we went to arbitration, we did not go into this arbitration. It was the contractor who made a request to the Law Secretary who was the person under the contract to appoint an arbitrator should there be need for one. We have on record a

letter from the Law Secretary to the contractor asking him to concur in only those issues being referred to arbitration which arose out of the contract. On the contractor agreeing to this, only then did the Law Secretary appoint an arbitrator. He also passed an order fixing a ceiling of Rs. 30,000 for the fee. So, he applied his mind to the point that the proceedings should not become inordinately long. He did not visualise then that the proceedings would drag on for 12 years. By putting a ceiling it was his intention to restrict the proceedings in expense and in time. Then, the arbitrator died after holding 30 or so hearings. Arbitration cannot be given up on that account. A new arbitrator was appointed. He started the proceedings *de novo*. The entire period of 1½ years spent before the first arbitrator became infructuous. When the new arbitrator was appointed, again a ceiling was put with the idea of restricting the time and expenditure. The proceedings were going on and the arbitrator said, 'I will restrict my fee if you restrict the number of hearings. My fee will have to be related to the amount of time I spend'. Then, he asks for an extension and naturally there is the question of fees to be paid to the advocate. These are accepted in the case of the contractor by his Counsel. But in the case of our Counsel, he makes a report to Government, he gives an estimate of the number of hearings that will be necessary and on that basis and on the recognised norm, fees are determined. Unfortunately, this process has been going on and I do not know who is to be blamed for this. Once you have embarked on this venture, then it is not merely the question of saving the money but you have to see that there is no default on the part of the Government and the Government case has to be defended. At every stage, a fresh estimate had to be given. Ultimately, a stage has come when the Law Secretary has said that that is the last time he was going to revise the ceiling on fees. For further hearings that took place Government did not issue further revised sanction."

2.33. The Committee desired to know the number of occasions on which it became necessary to extend the arbitration proceedings, the grounds on which such extensions were sought and the authority

who had allowed the extension. In a note furnished to the Committee in this regard, the Ministry of Defence stated:

> "The details of the applications made to the High Court, including the reasons for extensions, names of the officers allowing the extensions are given below:

Sl. No. and date of applications to the Bombay High Court	Period of extension sought and granted	Reasons given for extensions	Name of Offic granting extension anddae of order.
1. April 28, 1960	Upto December 31, 1960	Late Justice Majumdar could not start the Arbitration within 4 months.	Justice S. M. Shah, May 12, 1960.
2. December 17, 1960.	Upto June 30, 1961.	Late Justice Majumdar was still hearing preliminary matters, necessitating further extensions.	Justice H. N. Mody, December 19, 1960.
3. August 28, 1961.	Upto January 31, 1962.	Death of the first arbitrator, appointment of a new arbitrator, and as the proceedings were to be started *de novo* before Justice Bishan Narain, the new arbitrator.	Justice K. K. Desai, September 22, 1961.
4. April 26, 1962.	Upto December 31, 1962.	The matter was intricate; the amount of claims and counter-claims aggregated to about Rs. 8·50 crores. As the Arbitrator held only 20 hearings and as voluminous evidence were to be produced by the parties, the Arbitrator required further time.	Justice R. M. Kantawala, April 27. 1962.
5. Decemeber 19, 1962.	April 30, 1963	Same as item 4	Justice R. M. Kantawala, December 20, 1962.
6. November 29, 1963.	Upto December 31, 1964.	No award could be given by the Arbitrator as the evidence had not been completed.	Justice K. K. Desai. December, 6 1963.
7. December 9, 1965.	Upto June 30, 1966.	Same as above.	Justice R. M. Kantawala. December 10, 1965.
8. January 21, 1974.	Upto March 31, 1974.	Proceedings concluded on 31st August, 1973 and Arbitrator required time to publish award upto 31-3-74. Approval of High Court sought accordingly.	Justice J. R. Vimadalal, January 25, 1974.

2.34. At the instance of the Committee, the Ministry of Defence also furnished a statement indicating the occasions when the ad-

journment of the arbitration proceedings were agreed to and granted along with the reasons therefor, which is reproduced below:

Sl. No.	Date of adjournment	Nature and reasons for adjournment
1.	7-7-1961	Hearing fixed for this date postponed on 12-8-1961 at the request of the Government Counsel as he was bedridden following an accident.
2.	22-12-1961	Hearing fixed for this date was postponed to 9-1-1962 at the request of the Government Counsel as Government required more time to consult the Attorney General on Arbitrator's orders dated 22-11-1961 on Government's preliminary objections.
3.	18-7-1962.	Hearing fixed for this date postponed to 21-8-1962 at the request of the Company as foreign exchange to bring foreign expert had not been received.
4.	21-8-1962	Hearing fixed for this date postponed to 11-9-1962 as Arbitrator had to conduct an enquiry in Dumraon Railway disaster in the meanwhile.
5.	31-12-1962	Hearing fixed at Calcutta for this date cancelled as Company could not arrange presence of their foreign witnesses and the next hearing was fixed for 14-1-1963.
6.	14-2-1963	Hearing fixed for this date postponed to 22-2-1963 on account of marriage of Government Counsel's daughter.
7.	22-2-1963	Company appeared at hearing fixed for this date but requested adjournment to 15-3-1963 as their witness had suddenly taken ill.
8.	15-7-1963	Hearing fixed for this date onwards postponed to 27-7-1963 to accommodate Government Counsel's request on personal grounds. Again postponed to 16-8-1963 as Company's senior Counsel was indisposed.
9.	31-10-1965	Company requested postponement of the hearing fixed for this date till 28-11-1965 to enable them to proceed with inspection of Government accounts for works already in progress.
10.	21-2-1966	The Company requested adjournment as their Senior Counsel was indisposed and could not come to Delhi. This was opposed by the Government Counsel. The Arbitrator allowed the request as it was on personal medical grounds and the next hearing was fixed on 26-3-1966.
11.	14-11-1966	Hearings fixed for this date infructuous as important Government witness not available. Adjourned to 14-12-1966.
12.	14-12-1966	Company requested postponement on the ground of difficulties in completing inspection of Government Accounts. Next hearing was fixed on 31-12-1966.
13.	12-10-1968	Hearing fixed for this date postponed to 29-10-1968 at the request of both the parties.

Sl. No.	Date of adjournment	Nature and reasons for adjournment
14.	18-9-1970	Hearing fixed for this date postponed to 20-10-1970 due to illness of the Instructing Solicitor of the Company.
15.	1-3-1971	Hearing fixed for this date postponed to 23-3-1971 at the request of the Company which was opposed by the Government Counsel.
16.	23-3-1971	Hearing scheduled for this date postponed by the Arbitrator to 15th December, 1971 as Government had not decided and communicated enhancement of the ceiling on fees.
17.	24-12-1971	At the close of the hearing on this day the Arbitrator adjourned *sine die* till he heard from Government about ceiling on fees.
18.	12-4-1972	Hearing adjourned till 1st June at the request of the Government counsel.
19.	1-6-1972	Hearing fixed for this date postponed to 25th June, 1972 due to serious illness of Arbitrator's wife.
20.	12-8-1972	Hearing fixed for this date postponed to 26th August, 1972 due to miscarriage of Government's records despatched by Rail and time spent in locating them.
21.	11-11-1972	Hearing in progress from 28th October, 1972 adjourned at the request of the Company to 27th December, 1972 although the Government counsel was prepared to continue.
22.	17-3-1973	Hearing fixed for this date postponed to 28th March, 1973 owing to the death of the Arbitrator's wife.
23.	3-7-1973	Hearing in progress from 21st June adjourned at the request of the Company and the next hearing was fixed on 11-8-1973."

2.35. The Committee desired to know the rationale behind conducting the arbitration at Delhi even though the project was being executed at Bombay, the contracting firm was from Calcutta and the consultants were based in London. The Defence Secretary replied:

> "So far as fixing of the venue is concerned, this is the responsibility of the Law Secretary. What weighed with him, I cannot say. But irrespective of whether it was Bombay or any other station, there would have been lot of cross country and cross continent journeys. The contractor is at Calcutta; the Government is here; the Law Secretary is here. Perhaps, in this particular case, the judge who was appointed was here and he did not want to move

out of this particular place. The project was in Bombay and the consultants were in London. Whether you fix the venue in Bombay or Delhi, there would have been lot of cross-country journeys."

2.36. When asked whether the venue for the arbitration had been chosen as Delhi to accommodate the Government Counsel who had a busy practice in Delhi and would not have, therefore, found the time to attend to the arbitration if it had been held at Bombay, the witness replied:

"Perhaps, there would have been a marginal saving if the hearings were in Bombay. Hearings were held in Bombay as well as in Calcutta particularly to examine accounts of both the parties. Otherwise, everything was done here. You may be right in assuming that those people who were engaged in the arbitration—arbitrator or counsel—preferred to have it in Delhi. That could be one of the reasons but I have no evidence to say one way or the other."

Subsequently, the Ministry of Defence informed the Committee, in a note, that all the 31 hearings held before late Shri Majumdar were held at Calcutta, which was the arbitrator's residence and that of the 779 hearings held before Shri Bishan Narain, 608 hearings were held at Delhi, 87 at Calcutta and 84 at Bombay. The details of the various hearings held at these places were also furnished to the Committee by the Ministry and are indicated in Appendix III. The reasons indicated by the Ministry for holding the hearings at different venues were as follows:

"(a) The majority of the hearings were held at Delhi as this was the residence of the Arbitrator.

(b) Hearings were held in Bombay for purpose of site inspections, demonstration, examination of accounts and other site documents by the arbitrator and witnesses.

(c) Hearings were held in Calcutta to examine the accounts and other documents of the Company which was based in calcutta."

2.37. Since as many as 108 issues had been framed for reference to the arbitrator which, from a purely commonsense point of view, were not likely to be examined within the period of four months stipulated in the Arbitration Act, the Committee desired to know

whether the Defence Ministry or the Law Ministry had seriously examined this aspect, taking into account the issues involved, and judged wheher it was worthwhile to go in for a long-drawn and expensive arbitration or whether it would be better to arrive at a negotiated settlement with the contractor. The Defence Secretary replied:

> "I think Mr...would be in a better position to say because I have no experience as to how many days one point of issue would take."

The representative of the Ministry of Law stated in this connection:

> "It is very difficult to estimate that because it depends on the number of issues involved, the kind of evidence adduced on each issue, the arguments put forward and so on."

The Committee asked, in this context, whether Government could not have argued before the arbitrator for the deletion of a number of issues so as to concentrate on the more essential points of dispute or whether there were other interests at play which wanted the prolongation of the proceedings. The witness replied:

> "As it appears from the award, after these discussions, certain number of issues were fixed and these were the inevitable issues. On this, the arbitrator went on. There must have been various other issues which had been given up or abandoned."

2.38. To another question whether the arbitration proceedings could not have been expedited by the Government counsel, the witness replied:

> "These hearings were not held unnecessarily. Men of eminence, retired judges and senior counsel were all there. It appears that the number of hearings—810—could have been reduced to some extent. I am not in a position to pass any judgement. But my respectful submission is that it all depends on the nature of the evidence adduced and so on. The engineering aspects may not have been properly intelligible to the lawyers."

The Committee desired to know whether the witness would at least concede that Government might have arranged its claims more

carefully and meticulously prior to placing them before the arbitrator and thereby saved expensive sittings. The witness stated:

> "It was expected that that was done because people of the eminence of the Senior Counsel should have taken that into consideration."

2.39. The Committee asked whether the initiative for extending the proceedings always came from the Government counsel. The Defence Secretary replied:

> "I believe the position has been that the Arbitrator himself raised this point in the proceedings before him, *viz.* that time was running out and that the fees will not cover the estimated period; he then makes a proposition that the period will have to be extended. On behalf of the contractor, I believe his counsel is always able to agree, on the spot, to the extension. So far as we are concerned, the Senior Counsel who is prosecuting the case on our behalf, transmits to the Government the request of the Arbitrator giving his own estimate, according to his judgement, of the period that will be required; and on that basis, when the proposal comes to the Ministry of Defence, we get in touch with the Law Ministry who are concerned in ways more than one; because firstly, the Arbitrators are appointed by them; and extensions of time mean something similar. They know something about the legal side and the charges payable. That is why we go to them. Once they agree, we take the concurrence of the Finance side; and with that, a sanction is issued authorising further incurring of expenditure to the extent agreed to."

To another question whether the objective or purpose of providing for an arbitration clause in the contracts was not to avoid the long delays that occur in courts of law, the witness replied:

> "So I believe, Sir."

2.40. Since the intention of Parliament in framing the Arbitration Act was to ensure that disputes of this nature are quickly resolved without having to go through the time-consuming, normal processes of law and in view of the fact that the manner in which the arbitration proceedings in the present case had prolonged for 15 years appeared to have subverted the purpose for which the Act had

been conceived, the Committee desired to know what further steps should be taken to prevent the recurrence of such a situation. The Defence Secretary replied:

> "If I may submit, although my answer may not be satisfactory to you, I am not expert either of law or of the administration of the Arbitration Act....the administration of this Act is not a charge on the Ministry of Defence, in which case we might have more knowledge on the subject. It is really the Law Ministry which can indicate as to how this kind of almost misuse of this particular legislation should be got over because, as you have very rightly stated, it has completely subverted the purpose of the law. It is meant to cut the delay in normal legal proceedings, but it has perhaps taken more than what a suit of this kind might have taken in a court of law. This, I think is a matter on which only the Law Ministry can give any advice. We have a representative of the Law Ministry here who will deal with this. I am afraid, I do not feel myself competent to express an opinion."

In this connection, the representative of the Ministry of Law stated:

> "I do not think the Law Ministry is the administrative Ministry in respect of the Arbitration Act. If you look at the Act itself, the First Schedule, para 3 says:
>
> 'The arbitrators shall make their award within four months after entering on the reference or, after having been called upon to act by notice in writing from any party to the arbitration against or within such extended time as the court may allow'.
>
> So, the responsibility has been put on the court. It is expected that the court, after looking into the grounds for extension, would or would not extend the time. If the court does not extend the time, then the arbitration comes to an end....Every Act or instrument is as effective as you make use of it."

2.41. When the Committee pointed out that though the extensions had been agreed to by both the parties and granted in terms of the law, the prolongation of the proceedings before the second arbitrator, appointed after the first arbitrator has expired, from four months to 12 years appeared to be, *prima facie*, unconscionable, the representative of the Ministry of Law replied:

"*Prima facie,* it looks like that. But....the total number of hearings was 810. It all depends on each case—how many witnesses are examined, what amount of documents and pleadings and other things are gone into, arguments are advanced and so on. But, *prima facie*, it looks an extraordinarily long time but, having regard to the details given, it would have taken more time in a court. If you see the number of sittings, it was 82 in 1964 and another 82 in 1968 and so on. Unless we go into the entire evidence, pleadings and arguments, it is very difficult to pass a comment on this."

He stated further:

"This arbitration was not being conducted by the Ministry of Law. The Ministry of Defence were conducting all that. We engaged the arbitrator and the counsel."

When asked whether the witness was blaming the Defence Ministry for the delays that had taken place, he replied:

"There is no question of apportioning blame. What I meant was that the Decence Ministry would be in a better position to explain how so much time was taken, whether each hearing was useful or a waste of time."

2.42. The Committee, therefore, desired to know whether the Defence Ministry had been reconciled to the delay in this case. The Defence Secretary replied:

"So far as the Defence Ministry is concerned, its main concern is getting on with the job, particularly in the context of the defence of the country. In this particular case, having been landed with arbitration and legal matters in which we have the least experience, we could do no better than be guided by our legal counsel and by the arbitrator and whenever occasions came for reviewing the matter, when the arbitration period was over or was running out, there was consultation between the Ministry of Defence and the Ministry of Law to review this question as to how the work was proceeding. I see from our files the remarks of the Ministries of Defence, Finance and Law that people were unhappy with the sort of extensions going on but, at the same time, they felt they could not get out of it and having gone so far, the

feeling was 'let us go a little more and finish the proceedings'. I am myself unhappy at this point of time that we landed ourselves in the process, which has neither been profitable nor creditable to us in any way. While I do not wish to avoid any blame which may legitimately attach to us, I think the prosecution of this case by whoever was watching the Defence interests was not adequate. I would be the first to admit it. If the interested party does not take adequate interest in a case, it would be not just enough to blame the legal people and others, but we were inexperienced in this matter and had to be guided initially by the Law Ministry and then by the Legal Adviser appointed in consultation with them. Obviously there were people who wanted to misuse this. Even when the Arbitrator made a suggestion at one stage to cut short the proceedings by saying that the examination-in-chief of the witnesses might be done by affidavits filed by the parties and thereafter the witnesses could be examined by the opposite party, the counsel for the contractor did not agree to such a suggestion. So, all possible legal methods seem to have been used to prolong the proceedings. Here the contractor's motivation comes out. There may be other people who may have had their own reasons for prolonging it, but one way or the other we have been victims of various types of attitudes which have landed us into this situation."

2.43. The Committee asked whether any probe had been made into this matter, when it came to the notice of the Defence Secretary that, *prima facie*, there was something wrong. The witness replied:

"My association with this case is a few days old. I took charge as Secretary of this Ministry a little over two months ago and whatever observation I have made is on the basis of the study which I have made, more particularly in order to make submissions to this august body. The stage for me to apply my mind to any other administrative consequences would arise only hereafter."

2.44. As pointed out in the Audit paragraph, mention had also been made of the work on Contract No. 1 relating to Stage-I of the Expansion Scheme in paragraph 22 of the Audit Report, Defence Services, 1965. This had been examined by the Public Accounts

Committee (1965-66) in their 48th Report (Third Lok Sabha) a decade ago. The Committee had then enquired about the latest position relating to this arbitration and had been informed by Government that the arbitrator had till then held 240 sittings and that the proceedings were expected to be over in another 180 sittings by about March 1966. The Committee drew attention to this commitment and desired to know why the arbitration had been prolonged for another eight years. The Defence Secretary replied:

> "That does not amount to a commitment, it is an indication of the period estimated to be taken at that time. As you would see, we have been going on from one estimate to another because of the circumstances known to you.
>
> The interpretation of this law in a certain manner is with the Courts or the Arbitrators who are themselves Judges or have been Judges of Courts. In this particular case this gentleman was a retired judge of a High Court who officiated also as a Chief Justice. How are we answerable for the interpretation which they make? All these extensions are sought by the Arbitrator, a retired High Court Judge, or the extensions are actually granted by the High Court which is administering this particular case. So, there are many parties which would have to be in some way or other connected or held responsible for the results which you and we find so unfortunate."

Subsequently, the Ministry of Defence furnished to the Committee a note explaining the circumstances in which the period for the completion of the arbitration proceedings indicated to the Public Accounts Committee (1965-66) could not be adhered to, which is reproduced below:

> "The Arbitrator entered on the reference on 15-4-1961. During the course of 4 years, there were 240 sittings before the Arbitrator and overall evidence of the contractor's witnesses had almost been completed. It was therefore estimated in 1965 that another 170 to 180 sittings would take place and it was expected that the proceedings would be over by March 1967. (There appears to be some error in the indication of March 1966 in the PAC Report 1965-66). Actually, after March, 1967 as many as 474 sittings took place to enable the Arbitrator to complete his examination of the various witnesses, documents, records and other related matters and hear

arguments. The period indicated to the PAC in 1965 could not therefore be adhered to."

2.45. The Committee found from the arbitrator's award on the first reference entered on 30th March, 1961 that the arbitrator, in paragraph 24 of the award had, *inter alia*, observed as follows:

> "Apparently, the parties at the initial stages were not taken to expedite the proceedings as Government was in the course of completing the contract works. Possibly, the company felt that Government's experience would prove their case, while the Government thought that this experience would demolish the company's case and also that their claims based on estimated expenses would then become based on actual expenses."

When the Committee drew attention to the above observation of the arbitrator the Defence Secretary stated:

> "I cannot really understand fully as to what the Arbitrator has meant by saying that 'the parties, at the initial stages were not keen to expedite the proceedings as Government was in the course of completing the contract works. It is a charge against both the parties."

2.46. The Committee thereupon pointed out that Government themselves apparently wanted to prolong the proceedings since they were not clear about the extra cost incurred in the departmental execution of the abandoned work which was taking a long time to complete and, therefore, to cover their own default, they, perhaps, wanted the case to drag on. The Defence Secretary stated:

> "Thank you for your guidance on this. On the basis of my going into the case, I have taken another view, which in effect comes to the same thing; but perhaps in the matter of holding the Government responsible, our positions may be somewhat different. Normally, a case for arbitration should have arisen only after it was known as to what was the extra cost incurred by the Government. Then there is a definite basis on which the Arbitrator can come to a decision; and the Government also would not have to answer the kind of points that were raised by the hon. Member, *viz.* why did we reduce the amount at one stage; and at another, acted differen-

tly. To me, the whole sequence at that time appears to be wrong. We should have invoked the clauses of the contract, assumed charge of the work, and have completed the work. After the bill was paid; we should have proceeded against the contractor. Here—for what reason, I cannot make out—even before we had started the work, or about that time, the contractor goes in for arbitration, the Law Secretary appoints the arbitrator, and we, in order to safeguard our interests, make a rough estimate and put in our counter claim. Now, the Arbitrator may have taken the view that he can come to a decision only on the basis of actuals. If that is so, then it is not only the Government which was waiting, but the other party also; even the Arbitrator might have been waiting, because he has not allowed anything more than the actuals. In this case, because of the wrong sequence, the delay was perhaps natural."

2.47. The Committee asked whether a clause in the contract should not have been provided for levying liquidated damages. The witness replied:

"There should be some clause in the contract. In this contract, there is a clause. We put a counter-claim on that basis; it was scaled down later. I am submitting that the sequence was responsible to some extent for the delay."

2.48. The observations of the arbitrator contained in paragraph 26 of his award on the reference dated 30th March, 1961 were as follows:

"Then the stage arose for examination of oral evidence of the Government. Government's witnesses barring engineering experts were mainly those who had been engaged in completing the contract works and therefore their witnesses could be examined only after the Government account books had been inspected by the company according to the procedure agreed upon by the parties."

2.49. In paragraph 27 of this award, the arbitrator had, *inter alia*, observed:

"The company started inspecting the Government's account books in October, 1965 but could not complete the inspection till after 31st March, 1969 in spite of their best efforts.

This delay was due to the fact that the Government's account books could not be made available in their entirety to the company for reasons that will be discussed later.... Very little progress was made in the case between 1965 and 1969."

The reasons for the delay of about four years for the completion of the inspection of the Government accounts by the company have been dealt with by the arbitrator in paragraphs 17 to 19 and 21 to 25 of his award on the reference dated 8th January 1962, which are reproduced below for facility of ready reference:

"17. The Government has produced copies of accounts in 4 volumes showing the amounts spent by the Government, in completing the contract works. These accounts are in the form of so to say monthly journals giving the amounts spent on items stated therein and the months of payments/ adjustments of these amounts. These copies show that the account books were not kept B/Q item-wise nor work-wise. In the beginning, the Government totalled the amounts in these four volumes as Rs. 2,15,40,935/- and the Company totalled the same at about Rs. 194.74 lakhs. After some arguments, both parties agreed to recheck the totals and have now informed me jointly that the total comes to Rs. 2,12.74,158/-. I hold that according to these four volumes the Government claims to have spent Rs. 2,12.74,158/- in completing the contract works."

"18. The learned Counsel for the Government has brought to my notice during arguments that adjustments in the accounts after 31st March, 1969 show that the Government had spent another Rs. 6 68,859/- for these works, and has requested me to take into consideration this amount when adjudicating on Government's claims."

"19. The circumstances leading to this situation are these. The Government, as already stated, exercised the option of invoking clause 63 of the contract and took over the possession of the site on 28th December, 1956. The Company on 26th December, 1956 sent a notice to the Union of India under Section 80 of the Code of Civil Procedure making claims now subject matter of the first reference. The Company therein claimed certain amounts B/Q item-wise

according to contract rates and additional amounts workwise on the basis of actual expenses incurred. The Government consulted AGP who informed the Government that cost of completion of contract works will far exceed the amounts contemplated in the contract. The Government in February 1957 decided to complete these works departmentally. Under Clause 63, the Government had a right to recover the extra amounts so spent from the Company. Therefore, the Government before starting these works knew that on the completion of these works the Government would have to satisfy the Company that the expenses so incurred were reasonable and whether extra expenditure was incurred or not. As the litigation was probable and almost certain, the Government knew that it would have to satisfy not only the Company but also the courts of law and the Arbitrator that the expenses incurred by the Government were reasonable. In these circumstances, I would have expected that ordinary prudence would lead the Government to keep these expense accounts B/Q item-wise or workwise but for some reason, the Government did not adopt this course but continued keeping the accounts, I am told, according to the old practice. This method of keeping accounts in the instant case was wholly unsuitable for the purposes of clause 63 and this has led to considerable complications in adjudicating upon Government's claims."

"21. The Company closed its evidence on 31st August, 1965. Thereafter, on the same day, it was stated on behalf of the Government that the charts upto 31st March, 1964 would be supplied to the Company by 10th September, 1965 and the charts for the remaining period will be supplied by the end of September 1965. The Company then fixed 3rd October, 1965 for inspection of Government books at Bombay."

"22. The Company during October 1965 inspection wrote to me with copy to the Government and their Counsel and complained 'the statements of accounts disclosed by the Government are mere index of different items of expenses and do not indicate total amount spent on particular items of work. In the absence of detailed charts, it has fallen upon us to prepare detailed charts ourselves with a view to

shortening the proceedings' and then on 4th December, 1965 the Company complained that the statements of accounts given by the Government contained only index of several items of expenses and do not contain material and relevant particulars either on the basis of the claims or subject-wise, and that these accounts have not yet been completed nor fully adjusted. The Company also stated in this letter that quite a large number of vouchers and documents were not available in the office at Bombay and the Company has been asked to inspect them at Poona. The Company on 16th March, 1966 wrote to say that the inspection will continue for an indefinite period unless the Government is directed to complete adjustments of their accounts and supply the same to the Company. In this state of affairs, I had to pass the order that it was not possible to have further hearings before inspection is completed and called upon the parties that the inspection should be resumed from 1st June, 1966 and to report to me every fortnight as to how the inspection was progressing. This order did not help matters at all. The Company by letter dated 13th December, 1966 informed me that they had taken inspection for 128 days and yet the Government has not completed the adjustments in their accounts."

"23. On 31st December, 1966, the learned Counsel for the Government made a statement reading—

'As regadrs the inspection of accounts, there has unfortunately been great difficulty in completing the adjustments for reasons beyond the Government's control. However, inspection of all accounts material available with the Government has been given to the Company. It will still take some months to make final adjustments and even adjustments regarding disposal of assets will remain incomplete. The Government will complete all adjustments of accounts by 30th June, 1967 except that adjustments connected with disposal of assets may still remain to be incomplete to some extent'.

On this I passed an order that if the Government does not complete the adjustments of accounts other than those relating to disposal of assets by 31st March, 1967, then the Government will not be allowed to make any further adjustments and must take the consequence thereof."

"24. All adjustments of accounts were not completed by 30th June, 1967. The learned Counsel for the Government, two years later on 1st December, 1968 made another statement reading:—

'The Government regrets that it has not been possible to complete adjustments in the accounts in terms of the order of the learned Arbitrator dated 31st December, 1966. This was so mainly due to the fact that hearings have been going on from time to time. It kept the senior staff busy. Inspection of acconuts by the opposite party was also going on periodically when the relevant accounts staff of Government had to attend to the representatives of M/s. Hind Construction. Again the adjustments had to be approved by the Government Auditors which takes considerable time. However, I do not in any way justify the delay. I assure the learned Arbitrator and the opposite party that all adjustments of accounts will be completed by 31st March, 1969 though efforts will be made to complete these even two weeks earlier. A copy of the adjustments will be furnished to the opposite party so that they can start inspection of the accounts for the period from 1st April, 1969'.

The time therefore was extended till 31st March, 1969 for making all adjustments."

"25. During all this period I was pressing the Government to expedite adjustments of accounts and to finalise inspection of their accounts but without any success. I may state here that during arguments I once suggested orally that these accounts may be written out B/Q item-wise or work-wise but I was informed that this could not be done within reasonable time, if at all. In the meanwhile, hearings of the case could take place only occasionally between October, 1965 and 1969 because the Company naturally was reluctant to cross-examine Government witnesses till they knew the exact position of Government's claims. This problem of adjustments in Government accounts and thereafter inspection by the Company prolonged these proceedings by considerable time."

2.50. Since, according to the arbitrator, the problem of adjustments in Government accounts had prolonged the proceedings considerably, the Committee asked how this delay of about four years in finalising

the Government accounts was justified. The Defence Secretary replied:

> "If I may again draw your attention to the statement I made earlier, unfortunately the sequence of events seems to have been different from what one would normally expect. Here the contractor went for arbitration; the work was not complete. Hence for the works which were under way the accounts would not be complete. Secondly, accounts of a party like a contractor are quite different from the kind of accounts which we maintain and are expected to maintain under the procedures approved by the Comptroller and Auditor General. The processes involved do take time.
>
> I should say here that I am a little pleasantly or unpleasantly surprised that our own counsel has not quite put our case in the way our counsel would be expected to; he has pointed out the weaknesses of our side instead of really arguing the other way round."

2.51. Dealing with the procedure adopted for bringing oral and documentary evidence on record, the arbitrator, in paragraph 28 of the award on the reference dated 30th March, 1971, had observed:

> "...at no stage did any party object to the procedure adopted by me for bringing oral and documentary evidence of the parties on the record and also never objected to the procedure adopted by me for hearing their respective arguments. These procedures were adopted with the previous consent of the learned Counsel for both parties."

The Committee, therefore, desired to know the reasons for the Government Counsel agreeing to such an elaborate procedure which in turn contributed to the lengthening of the arbitration proceedings and whether the issues were really so complicated as to require a long time to be unravelled. The Defence Secretary replied:

> "I would only submit this. When we hire a counsel, after consulting the best legal advice, it is just like entrusting ourselves to a physician. You entrust yourself to the physician completely. If you start doubting motives of counsel it is better to change the counsel. This is a legal matter. We hired a counsel and we believed in his best judgement in the matter. That is all there is to it."

2.52. When asked, in this context, whether it was the judgement of the Navy and of the Ministry of Defence that urgency was not of the essence of the matter when the case was entrusted to the Counsel for being presented before the arbitrator, the witness replied:

> "Here I would like to submit what I submitted earlier namely that there was a certain urgency in completing this particular proceedings as it had its own importance. But, the Navy is more concerned with completion of the works. The Navy and the Ministry of Defence are not experts in legal proceedings. They have gone to the Ministry of Law; they have taken their advice. And, on their advice, a Counsel has been hired; an arbitrator has been appointed by the Law Secretary. All that we were expected to do was this. We had to feed the Counsel with all the information he wanted so that he could proceed with the case. At that point of time it was considered that he would look after our interests. If he had not done it, then we are before you and you can indicate to us what we should have done."

2.53. As regards the expenses claimed by Government before the arbitrator as having been incurred in the completion of the works abandoned by Hind Construction Ltd., the Committee found from the arbitration award that the company had contended that Government had unreasonably delayed commencement and completion of the contract works and thereby unreasonably increased expenses. Dealing with this contention, the arbitrator had, in paragraph 50 of his award on the reference dated 8th January, 1962, observed:

> "Now it is the case of both parties before me that the Company is liable to pay to the Government only such amounts as have been reasonably incurred in completing these works. The Government had to complete these works at the cost of the Company and therefore had to carry out the works with reasonable efficiency avoiding all unnecessary expenses as experienced, reasonable and prudent 'Contractors'. Moreover, the Government must be taken to have been particularly conscious of the fact that the Navy required the project to be completed as soon as possible.

Contrary to the suggestion made on behalf of the Government, I am of the opinion that the Government was in a

position to appoint experienced administrators and experienced engineers familiar with maritime works for this important project that in fact did appoint such officers and engineers who succeeded in completing the works. It is in evidence that costs of carrying out these works was constantly increasing at about 4 to 5 per cent every year and therefore the Government should have made special efforts to avoid all unnecessary delays and should have completed the works as soon as possible.

I am really amazed at the slow progress and tardiness of the Government in completing this project so urgently required. I am satisfied that the Government could have easily completed this work much earlier within the framework of the Contract terms. Possibly, the project lost its priority in the meanwhile."

2.54. When the Committee drew attention to these observations of the arbitrator and desired to know the Government's reactions thereto, the Defence Secretary stated:

"If I may submit here I do not know what the hon. arbitrator means by saying that 'the Government could have easily completed the work much earlier within the framework of the contract'. The contract having been already frustrated, we do not know, what he meant by the framework of the contract."

He added:

"Factually, as far as I can see, this work which was to be completed in three years by the contractor who is a specialist in doing this kind of work could not be completed by him even if a certain amount of extra time was given to him. For the Government to undertake the work departmentally, it was not in their normal line of business and that explains to some extent the delay. I also find that whereas the contractor completed 15 per cent of the work in two years, Government subsequently completed the remaining 85 per cent in six years. We can draw one comparison as to the relative delay."

2.55. Subsequently, in a note furnished to the Committee in this regard, the Ministry of Defence stated:

"These remarks, which are in the nature of OBITER DICTA

are not germane to the issues before the Arbitrator. In any case, these remarks obviously refer to the works included in Contract I of Stage I of the NDES which was the subject matter of this arbitration.

When a contractor fails and alternative arrangements have to be made to execute the work, delay is unavoidable. Since the decision was to execute the work departmentally, Government had to set up the required organisation and also organise the work. It may be noted that Government had no previous experience in undertaking this kind of work. Time was also taken in preparing inventories etc. of the plants and machinery left by the contractor and also in reactivising the contractor's plants which were left in a deplorable condition.

As regards the remarks of the arbitrator on the question of priority, it may be stated that the project never lost the priority accorded to it by the Government. The delay that unfortunately occurred was due to reasons entirely beyond the control of Government."

2.56. The Committee were informed by Audit that the Ministry of Defence had intimated (August 1973) that the Senior Government Counsel had stated that the delay that had occurred in this case was beyond his control and that the lacunae in the existing Arbitration Act made the Arbitrator's position in speeding up the matter difficult. The Committee, therefore, enquired into the details of the lacunae referred to by the Government Counsel, when this had come to notice and the action taken periodically in this regard to remove the lacunae. In a note furnished to the Committee, the Ministry of Defence stated as follows:

"In response to a letter of the Director of Audit, Defence Services 18/19th July 1973, in which he had asked 'whether the matter was also discussed with the Senior Government Counsel at the highest level, and, if so, when and with what result?'; the Joint Secretary, Ministry of Defence, had informed as follows:

'Discussions with the Senior Government counsel had taken place more or less periodically since 6th September, 1971. The Secretary, Ministry of Law had discussion with Senior Government Counsel on 6th September, 1971. On

2nd December, 1971, my predecessor had discussions. Additional Secretary, Ministry of Defence, had discussions with the Senior Government Counsel on 24th April, 1972 and again on 10th November, 1972. The Senior Government Counsel had repeatedly stated that the delay that had occurred in this case was beyond his control. He also mentioned the lacunae in the existing Arbitration Act, which made the Arbitrators position in speeding up the matter difficult.'

In response to the DADS query, the Ministry had merely transmitted a statement of the Senior Government Counsel. It had no knowledge as to whether there was a lacuna and, if so, of what kind. The Arbitration Act is a general Act of long standing and as advised by the Law Ministry, *prima facie*, there appears no lacuna therein. In any event it was not for the Ministry of Defence to move for removal of such a lacuna, should there have been one."

2.57. Since it had been stated in the Ministry's note that it was not for the Ministry of Defence to move for the removal of such a lacuna in the Act, should there have been one, the Committee asked whether it was not incumbent on the part of the Ministry to point out to the legal authorities concerned the hurdles encountered by them in executing projects of strategic importance and move for the removal of legal impediments, if any. The Defence Secretary replied:

"I do not know whether you consider our answer happily or unhappily worded. All that it seeks to convey is that we have been in touch with the Ministry of Law on the question whether there is any substance behind the plea of our counsel that there is a lacuna in this particular legislation; and we have been given the advice that there is no apparent lacuna in this law. This is about point one; *viz.* whether we did go into this matter or not. The second point you had pointed out is whether it is not the duty of the Defence Ministry to take steps for the removal of lacunae. I am sure you are aware that Government consist of several limbs; and those limbs do different functions on behalf of the same Government. We have, in our organisation, administrative Ministries which are concerned with the administration of particular laws. We are also having, in our administration, the Ministry of Law which is the prime branch of government which examines legal matters, advises and even initiates legis-

lation—whether original or for amending, for the removal of lacunae. Here, we find that we are not the Ministry administering this particular law. We do have certain laws on the Defence side which we administer and for which we have a direct responsibility; wherein, if we discover a lacuna, we will take necessary steps. I think in the recent session also, there was a legislation sponsored by the Ministry of Defence. So, we are not the administrative machinery; we are also not the legal branch of the government on whom the responsibility rests for proposing legislation. We come across all kinds of plea being taken. I am talking purely as a layman and an administrator. With my little experience, I would be able to see that if a law had some serious lacuna, it would have come to the notice of the administrative Ministry or of the Law Ministry. This is not the only case, the question of arbitration comes up several times. These questions must have been gone into during those discussions. To the extent that we thought we should take up the matter, we have consulted the Law Ministry. Even though we are neither the administrative nor the legal branch, we did consult the Law Ministry. If there is a lacuna, either the administrative Ministry or the Law Ministry would be the appropriate authority to take the necessary further steps."

2.58. To another question whether the Law Ministry had been approached in this regard, the witness replied:

"To my knowledge, the legal adviser has not spelt out—at least I have seen nothing where he has spelt out—as to what is the lacuna. Secondly, to the extent the lacuna has been mentioned, I have been in touch with the Law Ministry; and I have conveyed the advice that they have given, viz. that there is no lacuna, *prima facie*."

2.59. On this question, the Law Secretary added:

"With regard to your question regarding lacuna in the Addition Act, just like the Civil Procedure Code, personally I do not think there is anything wrong if it is properly followed and the proceedings can be disposed of expeditiously. It is more a question of how in practice certain people take advantage of some provisions for taking adjournments etc. In the Arbitration Act, there is a time-limit laid down that arbitration proceedings should be com-

pleted within 4 months. After the period of four months, the Act itself provides for extension of time within which the Arbitrator should make the award. This time is extended by the court. In many cases, it happens that after the initial four months' period is over, either of the parties approaches the court for extension giving sufficient cause for that and if the court orders, the time is extended. Even if the application for extension is opposed, in case the court is satisfied that sufficient cause has been made out, it will grant extension. An appeal can lie if the court refuses to grant extension of time, but if the court grants extension, there is no appeal."

2.60. When asked whether the Law Ministry were of the view that there was, *prima facie,* no necessity to amend Arbitration Act, the witness replied:

"If I am asked whether in Arbitration Act further improvements can be made, I would say 'yes'. But the delays that are occurring, I do not think that these are because something is lacking in the Arbitration Act."

2.61. Referring to the statement of the Law Secretary that there was apparently nothing wrong in the Act itself if it was property followed, the Committee desired to know how it could be ensured that the Act was implemented properly. The Law Secretary stated:

"Such instances are very few which have come to our notice. Ordinarily in Government contracts, there is a provision for sole arbitration. The delay cannot be attributed to anything wrong in arbitration Act but the awards that are made are non-speaking awards. It is difficult to challenge them on a particular ground because the arbitrator is not bound to give any reasons. So far as expediting matters is concerned, I do not think that there is anything lacking in the provisions of the Arbitration Act."

2.62. The Committee enquired whether Government proposed to take any remedial steps on the basis of the experience gained in this particular case. In a note, the Ministry of Defence informed the Committee as follows:

"This question was referred to the Ministry of Law who have stated as under:—

'The Arbitration Act is a general Act of long standing and *prima facie* there appears no lacuna therein. However, in view of the observations of the Chairman of the Public Accounts Committee, the matter would be considered whether any amendment to the Arbitration Act is necessary'."

(iii) *Expenses on Arbitration.*

(a) *Arbitrator's fees*

2.63. The Audit paragraph points out that upto December 1973, an expenditure of about Rs. 19 lakhs had been incurred on the arbitration proceedings by way of fees for the arbitrator and the counsels, travelling allowances and other miscellaneous expenses. According to the information furnished to Audit subsequently (March 1975) by the Ministry of Defence, the expenditure on this account upto the end of September 1974 amounted to Rs. 19.55 lakhs.

2.64. The following statement furnished by the Ministry of Defence, at the instance of the Committee, indicates the break-up of the total expenditure incurred on the arbitration as on 1 July 1975:

		Total (Rupees)
1.	Salaries of Site Staff of Arbitrator including rent reimbursement 50% of monthly expenditure	67,377·88
2	Sitting fees of Arbitrators (50% of both Shri J. N. Majumdar and Shri Bishan Narain)	1,94,771·19
3	Senior Counsel's fees	9,03,652·42
4	Junior Counsel's fees	2,48,707·25
5	Proportionate pay and allowances of DCE	27,633·09
6	TA/DA claims of DCE	1,07,778·10
7	Other expenses in connection With Arbitration (TA/DA claims of staff deputed on Arbitration duty)	57,225·99
8	Travelling expenses of consultants and their representatives	1,58,802·64
9	Fees and travelling expenses of Expert Witnesses	1,63,120.52
10	Fees paid to Solicitor Shri Sen of Calcutta in 1960/61	4,930.00
		19,73,999·08

2.65. Drawing attention to the periodical increase in the ceiling fixed for the payment of fees to the arbitrator, from Rs. 30,000 in 1961 to Rs. 3.65 lakhs in October, 1972 pointed out in the Audit paragraph, the Committee desired to know the basis on which the original ceiling was fixed and the specific reasons for the periodical increases. In a note, the Ministry of Defence stated:

"The initial sanction for payment of fees to the Arbitrator was based on sitting fees rates as follows:

	Rs.
(*i*) For a sitting of one hour or less	170
(*ii*) For a sitting for more than one hour and less than two hours .	340
(*iii*) For a sitting of more than two hours	510

The fees as above were subject to a ceiling of Rs. 30,000/- for the whole case to be shared equally between Government and M/s. Hind Construction Ltd. Subsequently, however, when the number of hearings were tending to go beyond the expected number of hearings on which the original ceiling was based, the Arbitrator brought this to the notice of the parties with a view to securing an enhancement of the ceiling. The ceiling was enhanced by Government from time to time on the request of the Arbitrator conveyed through Government Counsel and his recommendations were based on his assessment of the duration of the remainder of the proceedings from time to time. These recommendations, after examination in the Ministry of Defence, were referred to the Secretary, Ministry of Law, (the authority who appointed the Arbitrator and fixed his fees initially) and on the advice of the Secretary, Ministry of Law, the ceiling was raised from time to time as follows:—

24th June 1962 . . .	Ceiling raised to Rs. 60 000
4th February 1964 .	Ceiling raised to Rs. 1 lakh.
7th May 1965 . . .	Ceiling raised to Rs. 1·75 lakhs
20th November 1968 .	Ceiling raised to Rs. 2·50 lakhs
19th October 1972 . . .	Ceiling finally raised to Rs. 3·65 lakhs

It appears from records that the Arbitrator took the stand that he had objected to the original ceiling but that he had been given to understand by the Law Secretary that the matter would be reviewed from time to time and the ceiling suitablity revised in consonance with the time

taken for completion of the hearing. In actual consideration of requests for enhancement of ceilings also, it appears that the Law Secretary had such a factor in mind. In addition, there seems to have been a feeling that by refusing to revise the ceiling the Government's case might even get prejudiced.

On the last occasion, however, the Law Secretary agreed to increase the ceiling of the Arbitrator's fees finally upto further 100 hearings as recommended by the Senior Counsel. In actual fact, though the hearings have exceeded the 100 postulated, the ceiling has not been further enhanced."

2.66. Since it had been stated by the Ministry that in deciding to enhance the ceiling of fees payable to the arbitrator, there seemed to have been a feeling that 'by refusing to revise the ceiling, the Government's case might even get prejudiced', the Committee asked whether the Government should have agreed to the revision of the fees on this ground, which was a reflection on the arbitrator's judicial frame of mind. The Defence Secretary replied in evidence:

"The arbitrator, at one stage, suspended the proceedings until the parties made up their mind to revise the ceiling."

2.67. When the Committee pointed out that the statement about the likelihood of Government's case getting prejudiced was a serious allegation, the witness replied:

"I have not just made this remark off the cuff. There is a record to the effect that we were advised that the ceiling should be raised. In making recommendation, it was taken into account that if we insisted on adhering to the ceiling which would, in fact, mean that the arbitrator would have to forgo fee for almost the same number of hearings, our case might be prejudiced. This was the consideration. I have made a factual statement. This is an internal record of the Government from which I have quoted."

2.68. The Committee desired to know the views of the Law Ministry in this regard since that Ministry had apparently decided to enhance the ceiling periodically on a ground that appeared to indicate the kind of psychology which was at work at that time. A representative of the Law Ministry stated:

"This is a factual statement made in this Report.... I do not know what was working in their mind. I was not there."

When asked whether the Law Ministry functioned in an indifferent

fashion when the arbitration proceedings were prolonged at considerable expense to the public exchequer, the witness replied:

> "What I meant was that nothing was sought to be kept away from this Committee. But what I mean is that the Law Ministry might have thought that if this extension was not given the Government's case might even get prejudiced in the sense that some other arbitrator might come in and a new set of proceedings might start."

The Defence Secretary stated in this connection:

> "If I may make a submission, although I am not a legal expert, perhaps one aspect of the matter could be that the arbitrator would have to bring the proceedings to a close."

The Committee, therefore, asked how the arbitrator could bring the proceedings to a close merely because the ceiling of fees was not raised. The witness replied:

> "I have made my submission. I have expressed my own unhappiness. I have also conceded that to me it appears that the law has not been used the way it is meant to be used. For the rest, after seeing all the circumstances, it will be your privilege to give your opinion, to indicate as to what you feel went wrong and what we should do to rectify the situation and to improve things. We will be bound by your advice."

2.69. Since it has been conceded that in the present case things had happened in an unsatisfactory manner, the Committee desired to know the steps taken by the Defence Ministry to rectify the situation. The Defence Secretary stated:

> "I have made a submission earlier that this matter will be gone into. I have already said that my association with this Ministry is very recent; and as soon as possible, may be after these hearings are over, we will have to take a view on this, so far as the responsibility of the Ministry of Defence in the conduct of the enquiry into this affair is concerned."

2.70. In regard to the grounds on which the fees payable to the arbitrator had been periodically enhanced by the Law Ministry, the Law Secretary, who had been specifically invited by the Committee

to assist them in their examination of this rather unsatisfactory case, deposed during evidence:

> "I can only think of what might have weighed with the Law Secretary at that time. The question was whether otherwise we would have been faced with a situation whereby we would have to pay much more where the arbitration proceedings would have become more prolonged. So, in view of that, perhaps, Law Secretary might have felt that this matter had proceeded to such an extent and if by giving a little more the matter could be concluded, then it would be better. That might have been the sort of thinking that might have weighed with the Law Secretary."

2.71. When the Committee again pointed out that the feeling in the Law Ministry that Government's case might get prejudiced if the fees were not enhanced was a serious allegation to make against the arbitrator and desired to know whether the ceiling had been revised after careful consideration, the Law Secretary replied:

> "I can only go by the record; there were various things to be taken into account like the view of the counsel arguing the case, the sort of progress of the case etc. These things are taken into consideration."

2.72. Since the Defence Secretary had stated during evidence earlier that, at one stage, the arbitrator had suspended the proceedings until the parties made up their minds to enhance the ceiling of fees, the Committee enquired from the Law Secretary whether it was open to the arbitrator to suspend the proceedings in this manner merely because his fees had not been enhanced. The Law Secretary replied:

> "He cannot. But it would have meant stopping the further proceedings and appointing another arbitrator and starting the proceedings *de novo*. The question was, having regard to the work done upto that stage, whether it would be more prudent to agree to such increase and go ahead with the proceedings or to take the position. 'We would not agree to anything; let the law take its own course'."

2.73. When asked whether there were no legal provisions or conventions which could enable the aggrieved parties in an arbitra-

tion to prevent the arbitrary increase of fees payable to an arbitrator, the witness replied:

> "An arbitrator can never withhold or refuse to make an award on that ground. But he will ultimately go to the court and plead 'Please determine what is the reasonable fee that I should have'."

2.74. To another question whether eminent persons of the stature of Chief Justice of High Courts would behave in this blatant fashion in the middle of the arbitration proceedings, the witness replied:

> "That is precisely the reason why we now feel that it is not prudent to go in for retired High Court Judges."

2.75. According to the information furnished to the Committee by the Ministry of Defence, the initial sanction for payment of fees to the arbitrator was fixed on a per sitting basis as follows:

	Rs.
For a sitting of one hour or less	170
For a sitting of more than one hour and less than two hours .	340
For a sitting of more than two hours	510

The Committee, therefore, desired to know whether the rate of Rs. 510 fixed for a sitting of more than two hours duration was the normal amount paid to arbitrators of high distinction. The representative of the Law Ministry stated:

> "Rs. 510/- is 30 gold mohors for two hours or more, not less than two hours and this is usually given."

When asked whether the same rate was applicable even if the proceedings dragged on for a number of years, the witness replied:

> "When the appointments were made, it was not expected that it will drag on for so many years and certainly, these things would have been taken into account."

2.76. The Committee asked whether the Law Ministry had taken any remedial steps when it came to their notice that the proceedings in the present case were dragging on almost endlessly. The witness replied:

> "At the last extension of the hearings, it was at my instance that a ceiling was fixed and apart from this ceiling, it was stated that if it goes on further, there would be no fees to the arbitrator and to the counsel."

The witness added that his views in this regard had been expressed in 1972. When the Committee observed, in this context, that this was a long time after the proceedings had started, the witness stated:

> "This was for the first time that it came to my notice and I had arranged to meeting between the Defence Secretary and the Law Secretary."

Elaborating on this point further, he added:

> "At that iime, I was dealing with what are called judicial matters. It came to my notice and I brought it to the notice of the Law Secretary and I arranged for a meeting."

2.77. The Committee desired to know whether the prolonged arbitration proceedings and the mounting expenditure thereon had not disturbed the Law Ministry prior to 1972. The witness stated:

> "It disturbed me because at that time it had gone on for quite some time. Previously, perhaps, they were thinking that it would be completed in the next few months or during this extension."

When asked whether the witness would concede that the arbitration proceedings had taken an unconscionably long time, he replied in the affirmative. The Defence Secretary stated in this context:

> "If I may submit....it is quite possible that even on earlier occasions, some similar view was taken. That will have to be checked up. Every time when there was this feeling, the extension was sanctioned with the idea that the case would not go beyond it."

2.78. To another question whether the fees payable to the arbitrator could not have been fixed on a lump sum basis instead of a 'per sitting' basis, the Law Secretary replied:

> "It is difficult to visualise even in court cases how long it will take and all that, when it will come to an end, etc. The only practical yardstick to apply would be to go by duration of hearing."

He added:

> "In many cases it so happens, at a particular stage of proceedings, one is in a dilemma whether to withdraw from

> the proceedings or to file certain things or do something so that the matter may come to a fruition and by a little extension if the matter could be completed, that would be better."

The Committee asked whether it was not possible to assess how much time the arbitrator was likely to take and fix his fees accordingly. The witness replied:

> "I agree."

Since the Law Secretary was in agreement with the Committee's views, they asked if they could expect some positive action in this regard at least for the future. The witness replied in the affirmative.

2.79. It had also been stated by the Ministry of Defence, in the note furnished to the Committee indicating the reasons for the periodical increase in the arbitrator's fees, that the arbitrator had objected to the original ceiling of Rs. 30,000 and that he had then been given to understand by the Law Secretary that the matter would be reviewed from time to time and the ceiling suitably revised in consonance with the time taken for the completion of the hearing. Since this appeared to indicate that the Law Secretary was, perhaps, sympathetic towards the extensions, the Committee desired to know the reasons which had prompted the Law Secretary to give such an assurance even before the arbitration proceedings commenced. The Law Secretary stated in evidence:

> "I have not seen any Arbitration which is finished within the four months prescribed. I can only find out what must have weighed with the Law Secretary because I have no personal knowledge about the matter. If in a case of this magnitude, having regard to the volume, the nature of the contract and the claim involved, the Arbitrator feels that it is likely to take a long time and that the fees are not what he could expect, then he would naturally say in the beginning that he would accept it but that if the case was prolonged, certainly an increase in the scale of his fees must be considered."

2.80. When asked why this assumption had been made even before the commencement of the proceedings, instead of making an attempt to complete the arbitration within the period of four months prescribed in the Arbitration Act, the witness replied:

> "Although four months' time is mentioned in the Act, it is very rarely that it is completed in four months. It is well

nigh impossible to complete the proceedings unless there are summary powers."

2.81. With reference to the particular case commented upon by Audit, the Committee desired to know who had actually exercised control over and monitored the progress of the arbitration proceedings and whether the counsels appointed by Government had consulted the Law Secretary whenever an enhancement of the fees of the arbitrator or an extension was sough for. The Law Secretary stated in evidence:

"No. Counsels must have consulted the Department."

The Committee, therefore, enquired whether the Defence Secretary had been consulted by the Counsel in this regard. The Defence Secretary replied:

"So far as the extension of the term of the arbitrator and escalation in fee etc. are concerned, the proposal emanates originally from the arbitrator. He would take the view that the indication earlier given about the period is not adequate, this is likely to go on and therefore, the parties concerned should pay further enhanced fees to cover the requisite number of hearings. On this, the contractor's counsel would agree on behalf of the contractor and the government counsel would refer to the Ministry through local officer. The Ministry would then come to the Law Ministry for their agreeing to this particular expenditure. On that basis, further sanction would issue authorising increased payment as the arbitrator's fee."

2.82. When asked why the proposal should emanate from the arbitrator, the witness replied:

"As we are all going through this, it seems we are not able to fathom who was the motivating force in this whole thing. I am advised by the officers who were there that this originated with the arbitrator. He would take the view—'Look, time is running out; with reference to the earlier scale of fees fixed, that was for so many hearings. We have reached the end of it. Unless we extend the time, we cannot proceed'. The contractor's counsel would agree on the spot; probably he was authorised or it was in the contractor's interest to prolong the proceeding. So far as the government side was concerned, Government go by a particular sanction. That sanction was obtained on the

basis first of the estimate by our counsel submitted through the Defence Ministry to the Law Ministry that so much more time is required or more hearings are required."

2.83. The Committee thereupon observed that it appeared that the entire exercise had been carried out jointly by the Defence and Law Ministries. The Defence Secretary replied:

"The Law Ministry accept it after taking into consideration the relevant factors. Then we move the Finance Ministry to get financial concurrence and then sanction is issued.

In a sense, as I said.... here we are in the hands of legal experts who we think are conducting our case in the best manner possible and we go by the advice of the Law Ministry. The Government Counsel's sole purpose of being there is to defend our interests. He is advising us that you increase this."

Explaining further the procedure followed, the witness stated:

"Our Counsel would never agree to the fees on the spot. It was always referred back....There was no question of Government agreeing to anything against the counsel's wishes. All I am saying is that the government counsel did not exercise any authority, nor did he have any authority to commit Government to enhancement of fees or the spot. When the issue was raised by the arbitrator, he referred it back to Government with his own recommendation that this is the order of hearings that would be necessary and which he recommended should be accepted and consequently enhancement of fees was also accepted... It is a chain. After that, when it is referred back to Government in the Ministry of Defence, we do not take a unilateral decision because this is a matter involving both assessment on the legal side as well as on the financial side, because it has a financial implication. So we get in touch first with the Law Ministry to see whether they would agree to this enhancement. After they have agreed, we refer to Finance saying that this is the recommendation of our counsel and we have consulted the Law Ministry who have agreed to the enhancement—would you kindly agree in this extra money being accepted as a liability?"

2.84. Since Government depended on the Counsel for the efficient conduct of the arbitration proceedings, the Committee asked whether the counsel had advised in favour of enhancing the ceiling of fees. The Defence Secretary replied:

"He did. It is only on that we acted."

He added:

"Before he makes a reference to us, he must have applied his mind and come to a conclusion that in the interest of prosecution of the government case, this enhancement be done."

2.85. To another question whether the Defence Secretary had been convinced by the counsel's advice that the extensions and enhancements would be advantageous to Government, the witness replied:

"Let me check up because I was not there. I am not certain whether reference were made to Secretary, Defence at all. This is a matter to be checked whether the counsel agreed on behalf of Government that an extension may be sought or whether he obtained prior government approval before giving his consent seeking extension. This is a matter to be checked."

2.86. The Committee desired to know whether all the relevant Ministries and authorities involved had endorsed the views of the counsel after due consideration. The Defence Secretary stated:

"They are all concurring in the enhancement no doubt, but there is an indication of everyone's unhappiness at what has been going on and they seem to feel that there is a point of no return, having gone thus far with the arbitration and you have to complete it. That seems to be the feeling, because I have seen remarks on the Finance side and also on our side the Defence Secretary saying something in the same vein as what the arbitrator has said 'It is amazing that this case has gone on so long' and he goes out of his way to meet the Law Secretary to go into the problem of finding a way to bring this thing to a close. This sort of evidence is there. If our counsel says: It is in your interest, you agree to this; as laymen in the Ministry of Defence we feel that it was going on too long, then we take it to the Law Ministry feeling that they

should have a better appreciation of this and also because they appointed the man any extension should also be with their consent. Again in a legal matter Finance has got very little choice especially if they are confronted with this kind of recommendation, though they have expressed their unhappiness also. The whole case was rightly exercising the minds of the people in the Government."

2.87. The Committee asked whether the Defence Secretary would not concede that a thorough probe was necessary into the conduct of the entire arbitration proceedings by the counsel recruited for the purpose. The Defence Secretary replied:

"Certainly this case brings out the need for this."

(b) *Counsels' Fees.*

2.88. According to the information furnished to the Committee by the Ministry of Defence, a sum of Rs. 11.52 lakhs had been paid, as on 1 July, 1975, to the Senior and Junior Counsels appointed to conduct Government's case before the arbitrator. The Committee were also informed by Audit that the Ministry had stated (August 1973) that no ceiling had been fixed in regard to fees for counsels.

2.89. The Committee desired to know the rate at which the counsels handling the case had been remunerated. The representative of the Law Ministry stated:

"So far as I remember it was at a higher rate to start with and thereafter it was decreased."

The Defence Secretary added in this connection:

"In this particular case the fees payable to the senior counsel—I am told—were Rs. 1600 per hearing for the first 30 hearings and Rs. 1100 per hearing thereafter."

As regards the remuneration paid to the junior counsels, the witness state:

"There were two junior counsels in this case—the first junior counsel was to be paid at Rs. 400/- per hearing while the second counsel was to be paid at Rs. 200/- per hearing.

Actually there was one at a time who was paid Rs. 400/- per hearing. But, later on, the second junior counsel was appointed and he was paid at Rs. 200/- per hearing."

2.90. When asked whether the payment of Rs. 1600 per day to a counsel was not too lavish and generous and a heavy obligation on the public exchequer, the representative of the Law Ministry replied:

"Rs. 1600 is less than 100 gold mohur in Calcutta. In Delhi a senior counsel is worth Rs. 1600 or 100 gold mohur. This is of course subject to negotiations."

2.91. To another question whether the Revenue authorities had realised Income tax on the payments made to the senior counsel, the Defence Secretary replied:

"That was the point I was also discussing with my colleagues. I think he has paid his income tax on this. I am told that he had been saying that he had been paying 14 annas in a rupee. The senior counsel has been the same throughout. The junior counsel did change in between."

2.92. Since an advocate practising in the Supreme Court had been engaged, at a considerable cost, to conduct Government's case before the arbitrator, and in view of the fact that the conduct of a case in the Supreme Court was different from a case considered in a High Court or before an arbitrator, the Committee desired to know whether it would not have been better for the Law Ministry to have engaged a High Court lawyer instead of a Supreme Court lawyer. The Secretary stated:

"You are perfectly right that so far as arbitration proceedings are concerned, they are in the nature of original suits. Counsels who are well versed with such suits are more suitable for our purpose. In Delhi, many of the advocates practise in the Supreme Court, as well as in the High Court. To my knowledge, Mr. Ved Vyas had much practice in the High Court too."

2.93. To another question whether it would not have been advisable to select senior advocates, with intelligence, practising in the lower court, to conduct the arbitration proceedings, which were not

legal proceedings of the type dealt with in the Supreme Court, so that the costs could be minimised, the witness replied:

> "It all depend on the Stakes involved; particularly if the administrative Ministry requests us that a particular Senior Counsel is required, then we consider as to who would be better fitted, among the senior counsels available."

2.94. When asked whether there was any relation between the nature and the quantum of the original claims preferred by Government before the arbitrator—which were fairly high and were later reduced—and the status of the arbitrator, the status of the Government's counsel and the quantum of fees paid, the Law Secretary replied:

> "The first consideration while nominating a counsel is: what is the claim involved. And we have to see, not what the claim was, which was ultimately admitted; but what was the original claim made by the contractor—which, I am told, in this case was in the neighbourhood of more than Rs. 80 lakhs. Now, the costs to be incurred have got a relation with the original claim, as it is made out. Ultimately, what the Arbitrator will grant, is a different matter. Secondly, among the senior counsels, if the request is that some particular senior counsel should be provided, we have to see whether that particular counsel has experience in these matters and whether he has appeared in original proceedings if we had a panel as such in these States; and where there was no High Court panel as such with the Law Ministry, attempts were made, having regard to the particular nature and circumstances of the case. Nowadays, particularly in Bombay and Calcutta, the Law Ministry has got its own branches where we have departmental solicitors. So, these difficulties do not arise because we would be in charge directly in respect of the conduct of those proceedings."

2.95. The Committee, therefore, desired to know whether Government had decided to engage a Supreme Court counsel, who charged an exhorbitant fee, exhorbitant from the commonsense and common man's points of view, in view of the fact that Government's claim

in this case was as much as Rs. 2.65 crores. The Defence Secretary stated in evidence:

> "I am told that when the arbitration was entered upon at the instance of the contractor and a counsel was engaged, the only information on which the lawyer proper was engaged, was the quantum of the contractor's claim. The Government's claims were not, simultaneously, placed before the arbitrator; these were filed later. In that contest, I submit, it would, perhaps, not be relevant to think that the size of our claims necessarily inffuenced the decision. The claims of the contractor were the basis. The contractor's claim was large enough and that could, perhaps have been the relevant factor at that time."

When asked whether this statement implied that had the Law Ministry known of the magnitude of Government's claim, the expenditure on the arbitration would have been higher, the witness replied.

> "I am making no such suggestion. I am only saying that our counter claims were put in later. Perhaps, to the view that, apart from the stakes being high in the shape of contractor's claims. the fact that we also had counter claims would make it important that we should have adequate representation, I would agree."

2.96. The Committee desired to know from the Law Secretary whether he would not agree that arbitration proceedings like the one under examination could be and should be conducted with an arbitrator who was honest, judicially inclined and competent enough but not too expensive and with counsels who could be drawn from the echelons of the legal profession which are not very expensive. The Law Secretary replied:

> "I entirely agree with you in principle: Wherever possible, we handle the cases ourselves. But in cases where we have no machinery and we have to rely on choosing some good advocates, one of the factors that we take into account while nominating the lawyer is the claim involved, and in arbitration proceedings it is not only the claim of the Government but also the claim of the contractor which has to be taken into consideration. It was also considered that an advocate who had more practice in law of contract and arbitration and who was very familiar with these laws

should be appointed. That was one of the factors which I find from the record, was taken into account while nominating Mr. Ved Vyas as counsel for the Government."

2.97. To another question whether the Law Ministry maintained a panel of lawyers, who charge lesser fees, but capable of handling a case competently, for the conduct of arbitration proceedings, the Law Secretary replied:

> "For lawyers we have different categories; the senior counsels like retired High Court judges or Supreme Court judges; another category for less important matters where people of sufficient standing would be there; another panel of junior counsels for cases where the claims are very small. Choosing from a particular panel will depend on the claims involved and on their importance."

2.98. Since the Law Ministry also had standing counsels, who would have been appointed presumably on the basis of certain standards, the Committee enquired into the necessity for engaging a lawyer from outside, thereby ignoring the standing counsels. The Law Secretary replied:

> "We have got a panel of standing counsels for all cases in Bombay and Calcutta where we are departmentally incharge of the litigation. We will not normally go outside our panel. But suppose a client comes to us and says that he wants to engage a person who is known to him. Well, I will say that in view of the importance of the matter, if he wants to engage a senior counsel, I will find out whether he is available and then fix up the fee and so on. Otherwise, it is not possible for me to say. Normally, I would go by the panel of standing counsels."

He stated further:

> "As I said, our advice was sought in this particular arbitration and a competent lawyer was engaged. We do not presume that the contractor's claim has been made with some motivation. If there is any claim, I have got to bear in mind that here is a claim made against the Government, a very large claim, and I would process that claim and defend it with all the facts with a suitable counsel for the purpose. As I said, at that time, if we had a standing counsel to do justice, I would have had no hesitation in

saying that such a name would have been recommended. But the Secretary must have considered at that time who was the advocate who was more competent to deal with cases of such a magnitude and where the question of contract act was involved."

2.99. In view of the fact that while a ceiling, which was, however, periodically revised, had been fixed in respect of the fees payable to the arbitrator, no such ceiling had been prescribed in regard to the counsels' fees, the Committee asked whether a reasonable ceiling should not be fixed in respect of the counsels also. The representative of the Law Ministry replied:

"I submit that that should be done."

He stated further:

"In the case of arbitrators' fees, a ceiling was fixed. It is not so as far as lawyers' fees are concerned because they are not employees in the sense that we have always got the right to change the lawyers if we think that they are not useful.....As far as counsels are concerned, they have to work in conformity with the instructions. If we fix the ceiling for the counsel, then we have to give some sort of an assurance that he will be with us upto the end of the hearing whether he is found satisfactory or not."

The witness added:

"Really, we have to depend upon the counsel whom we appoint. A senior counsel was appearing in this case. I entirely agree with you that some procedure has to be thought of by which this can be checked."

The Law Secretary, however, stated in this connection:

"It is advantageous to fix the fee per hour so that we do not have to pay such as we do not know how the case develops. We will pay only for that much of time for which counsel appears, not exceeding a particular amount."

2.100. When the Committee pointed out that in the present case, Government had had to pay to the counsels nearly as much as what was awarded by the arbitrator, the representative of the Law Ministry replied:

"The senior counsel was expected to see that the proceedings came to an end."

When asked whether this was not a mater to be perturbed about, requiring some serious rethinking, the witness replied in the affirmative and added:

> "Factually, these figures speak for themselves....I will convey to the Law Secretary the results which we have reached in this particular case and I would request the Law Secretary to see that such kinds of things do not happen."

2.101. The Committee, thereupon, enquired from the Law Secretary at a subsequent sitting whether the Law Ministry had drawn any conclusions from the experience of this particular arbitration to make a lump-sum payment to the counsels rather than regulate the fees with reference to the number of sittings. The Law Secretary replied:

> "Lately we have evolved some formula. But the difficulty is this. If the Department or Government wants a particular counsel to be engaged, a counsel of a particular status or standing, then it is not possible for us to dictate terms to him. We can only ensure that the fees that he claims are normal fees and he does not charge any special fees."

(iv) *Additional payments to Consultants.*

2.102. In view of the fact that the completion of the Naval Dockyard project had been delayed for a number of years and the arbitration proceedings had also been prolonged, the Committee asked whether any additional payments had been made to the consultants, Sir Alexander Gibb and Partners, on this account. The Defence Secretary replied in evidence:

> "At least in the case of the consultants there was a fixed ceiling. I am told the delay did not lead to any extra cost by way of payment to consultants."

2.103. The Committee desired to know whether the views of the consultants had been obtained when the contractor, Hind Construction Ltd., repudiated the contract and went in for arbitration, and attempts made by them to reach a negotiated settlement with the contractor. The Defence Secretary stated:

> "The consultant is not really an arbitrator. In fact, there is a clause which says that the engineer on behalf of the employer will endeavour to reach agreement on the points in

dispute and failing such agreement, the aggrieved party may refer the dispute to an arbitrator to be appointed by the Secretary of the Ministry of Law. I am told these efforts were made by the consultants."

2.104. To another question whether the consultants had given any report about the performance of the contractor, to strengthen Government's case before the arbitrator, the witness replied:

"The consultants gave, as required, a certificate that the contractor had abandoned the work. They also gave a certificate about the actual work done by the contractor up to that time. They fulfilled their responsibilities.... We have got a certificate about what is payable to the contractor for work done. We do not need anything more. We know what he has not done. We know also what damage has occurred to us."

He added:

"When we know what work he has done, we know by implication what part he has not done because the overall work is there. So far as damage to Government is concerned, that is in the nature of delay and the damage caused to the navy thereby. I think Naval Headquarters have estimated that. The consultants were not brought into the picture. Only the navy could know how much damage was done to them."

(v) *Summing up.*

2.105. The arbitration proceedings in this case, which commenced in December 1959, had been completed only in 1974, nearly 15 years later, as against the period of four months prescribed in the Arbitration Act for the completion of arbitration proceedings. A number of adjournments and extensions had also been allowed during this period. As against an expenditure of Rs. 19.74 lakhs incurred by Government on this case, the net amount awarded to the Government was only Rs. 15.70 lakhs. In his award, the arbitrator had also pointed out certain shortcomings on the part of Government. Since as this appeared to indicate that the conduct of the case by Government was perhaps slipshod and far from satisfactory, the Committee desired to know the reactions of the Law Secretary in this regard. The Law Secretary stated during evidence:

"Normally, it is true that the four months' period is totally inadequate. The parties will file their statement of claim and written statement, and at the most, the issues will be framed. Then the question arises, at what time the parties are ready with their witnesses, documents and evidence. Normally, my experience has been that these cases are not heard day-to-day and during office hours. My experience particularly in Bombay and Calcutta has been that the arbitrators fix their timings in the evenings after court hours and the proceedings will go on for an hour or two only and that is how these things are prolonged. If you want to engage a very senior counsel, naturally he will not be able to attend before the arbitrator during court hours. He will naturally request that sittings be held after the court hours."

2.106. When asked whether the witness would agree that the present case represented a rather melancholy state of affairs, he replied in the affirmative.

2.107. The Committee desired to know how this case could have been mismanaged to the detriment of Government's interests and the nature of the supervision exercised by the Law Ministry over the progress of the proceedings, to ensure that Government's interests were adequately safeguarded. The Law Secretary stated:

"I am not incharge of the arbitration proceedings. If I am incharge, then I can watch the progress and expenses."

The Committee, therefore, asked whether the Law Ministry had considered it necessary to keep a watch over th progress of the case. The witness replied:

"So far as arbitrations are concerned, we suggest the names of the counsel only."

He added:

"Everytime they (the Defence Ministry) came on a specific issue—whether fee should be enhanced, ceiling should be enhanced. There has been no general supervision by us over the arbitration. We have been advising them on these particular issues."

2.108. Since the arbitration was conducted by a nominee of the Law Ministry, the Committee expressed surprise that the Ministry

had not kept itself a breast of what was happening in regard to the progress of the arbitration. The witness replied:

"We simply suggest the name of the person."

He stated further:

"There is no question of my control over that. We nominate the counsel. They (Ministries) instruct him/them. If instructions are given through us, then only we have complete supervision."

2.109. When asked, in this context, whether the Defence Ministry had instructed the counsel entirely on their own without reference to the Law Ministry, the Law Secretary replied:

"Unless they come to us on a particular legal point saying what is the position, what would you advise, could you advise us to take a particular stand etc."

2.110. The Committee, therefore, desired to know whether the Law Ministry should not monitor the progress of arbitration proceedings involving the Government and keep a check on their conduct. The Law Secretary replied:

"We will take note of this."

2.111. In regard to this particular arbitration, the Committee asked whether the Law Secretary had kept a watch over the proceedings and satisfied himself of the necessity of extending the proceedings or enhancing the arbitrator's fees. The Law Secretary replied:

"I can only presume that he had taken all these factors into consideration. No Law Secretary will give extension merely as a matter of routine. He would consider the position of the arbitration proceedings, the stage of the arbitration proceedings and he would also consider whether by giving the extension, more harm is likely to be caused. All these factors will be taken into account."

2.112. When asked whether the Law Ministry had any research cell to examine the large number of contracts and agreements entered into by the Government of India and to ensure uniformity, the witness replied:

"In many of the Ministries, we have standard forms of contracts. DGS & D and CPWD contracts are covered by

the standard forms of contracts. Only when a particular contract requires a special provision for a particular clause, we will draft it accordingly."

2.113. In reply to another question whether the Ministry took steps, on the basis of the experience gained by the execution of various contracts and agreements, to remove the difficulties which may arise from time to time and to advise the concerned Ministries, the witness stated:

"That we do. We have an experienced solicitor in charge of this drafting of agreements and in the light of the experience that he gains, he knows what special provisions are required in a particular contract and particularly in new contracts, he tries to see that all kinds of difficulties are removed."

2.114. The Committee desired to know whether, in the arbitration relating to the Naval Dockyard, the Law Ministry had monitored the progress of the case and maintained a watch over the performance of the counsel and whether the counsel had consulted the Law Ministry whenever the proceedings were sought to be extended for some reason or the other. The witness replied:

"No. Counsel must have consulted the Department."

When the Committee pointed out in this context that since the arbitrator was appointed by the Law Ministry, that Ministry ought to have exercised some control over the proceedings, the Law Secretary replied:

"Once the Law Secretary appoints the arbitrator, his function is over."

2.115. The Committee desired to know whether at least after the arbitration proceedings had been completed, Government had conducted a detailed probe into the causes for the prolonged arbitration proceedings and, if so, their findings in this regard. In a note furnished to the Committee the Ministry of Defence stated:

"We have consulted the Ministry of Law. No detailed probe into the prolonged arbitration proceedings has so far been carried out. The Bombay High Court to whom applications for extensions were made considered the causes and passed orders granting extensions from time to time. Ministry of Law will examine with reference to this as well as

similar cases, if any, whether it is possible to ensure that the arbitration proceedings would be completed within a specified time."

2.116. Since the arbitration proceedings in this particular case had dragged on for nearly 15 years, involving an expenditure of nearly Rs. 20 lakhs, the Committee enquired whether Government had made any study of similar or parallel cases and of the expenditure involved thereon so as to take necessary remedial measures and to ensure that such proceedings are completed expeditiously. The Committee also desired to know whether there was any proposal to enforce a ceiling on the fees of the arbitrators and counsels engaged by Government. In a note, the Ministry of Defence stated:

"As the Ministry of Defence would have knowledge only of the cases concerning it and not cases relating to other Ministries these questions were referred to the Ministry of Law who have stated as follows:

'Except in arbitrations which are held in Bombay and Calcutta through our Branch Secretaries, the arbitration proceedings are not conducted by this Ministry, but are conducted by the administrative Ministry concerned. At the request of the administrative Ministry, we only recommend the name of the Advocate to appear on behalf of the Union of India and in some cases, names of Arbitrators and the fees to be paid to them.

We have written to all Ministries/Departments to inform us of instances of similar or parallel cases, but we have so far received no intimation of any similar or parallel cases. If such similar or parallel cases come to our notice, steps would be taken by way of fixing absolute ceilings on the fees of the Arbitrator(s) are Advocate(s) so that such proceedings are completed expeditiously.

The matter will now be examined to ensure whether it is possible to enforce the ceiling on payment of fees to arbitrators and counsel engage by the Government and/or whether it is possible to ensure that the arbitration proceedings would be completed within a specified time'."

2.117. The Committee asked whether the award of the arbitrator had been recovered from the contractor. The Defence Secretary replied:

"I understand that no payment has been made by the contractor because he is contesting the award in the court. According to the law, I understand that the award has to be filed in a court for decree and at that stage the party has a right to object. The contractor has chosen to object. Until this matter is decided, the decree will not issue."

The Ministry of Defence also informed the Committee that the award had not been contested by the Government.

2.118. Since the arbitration proceedings and other difficulties experienced by Government related only to Contract No. 1 of works under Stage I, the Committee desired to know the experience of Government in regard to the other portions of Stage I works and whether these had been completed without any difficulty. The Defence Secretary replied:

"If there was a story, I am sure the Audit para would have brought it out and it might have become even more interesting than the missing link you referred. I think the presumption is that there is no trouble there."

When asked whether Government's experience with the other contractors had been a happy one, the witness replied:

"No unhappy experience has been reported to us about them."

2.119. The Committee, therefore, desired to know why there should have been so much trouble with Hind Construction Ltd. The witness stated:

"No two men are alike."

D. Non-utilisation of Railway Line.

Audit paragraph

2.120. Out of the total length of 1136 metres of railway line laid (between January 1967 and December 1970) under Stage I at a cost of Rs. 7.81 lakhs, 690 metres (laid at a cost of Rs. 2.74 lakhs between February 1970 and December 1970) has not been put to use so far (September 1974).

2.121. The Commodore Superintendent (now Admiral Superintendent), Naval Dockyard, had apprehended as early as June 1966 that the volume of traffic anticipated would not justify the provision of a

railway line or very wide roads in certain places inside the Naval Dockyard. The Naval Headquarters however, issued instructions in July 1970 that, in order to avoid payment of compensation due to contractual obligations, the laying of the railway track inside the Naval Dockyard might be completed as per the contract and that no further work on the laying of railway tracks inside the naval Dockyard be undertaken.

2.122. The Ministry of Defence stated (September 1974) that the railway line inside the dockyard was mainly for movement of heavy articles such as bulk steel, wood etc. and the full utilisation of the line would arise when the dockyard expansion scheme was completed and the new workshops in the area were in operation.

[Paragraph 11 of the Report of the Comptroller & Auditor General of India for the year 1973-74, Union Government (Defence Services)].

2.123. In this connection, the Committee were informed by Audit that Headquarters, Western Naval Command Bombay, had stated as follows, in April 1974:

> "The Railway tracks at Barracks and Destroyer Wharf along with a switch has also been laid on the reclaimed ground but has not been connected to the 40 ft. road because of obstruction caused by Base Maintenance Unit location and future proposed construction of submarine batteries shop Rail tracks have also been laid at the cruiser graving dock but it is not linked to the termination at the patent slip way. This linking up has been reconsidered by Naval Headquarters as it would involve demolition of a number of important buildings and other structures along the Dockyard perimeter wall. This aspect is further linked up with the future 40 ft. road between reclaimed area of Stage I and Stage II and this proposal is under consideration with the NIDC under Master Plan of Naval Dockyards. The Office is, therefore, unable to comment on this subject. Naval Headquarters have further intimated *vide* their letter No. DY|4583 dated 5th June 1972 that the railway line is not required to be laid inside Naval Dockyard."

2.124. The Committee desired to know when the contract for the laying of the railway lines had been concluded. In a note, the Ministry of Defence stated that the contract for laying 690 metres of the railway line was concluded in February 1970.

2.125. Since it had been stated by the Western Naval Command that there were certain difficulties like the demolition of a number of buildings and other structures along the Dockyard perimeter wall, in using the railway lines, the Committee asked whether these difficulties had been overcome and enquired into the stage at which matters stood. The Defence Secretary replied in evidence:

> "The Hon. Member made a reference to some barracks which have come up and which preclude the use of railway line. These barracks are a direct result of the Navy wanting to put up some *ad hoc* facility to meet their immediate requirements. That has certainly come in the way of railway line, but it is not something over which we should be perturbed in the overall context because we have to keep the Navy operational."

2.126. The Committee asked whether any final decision had been taken to link the railway lines or whether it had been decided to abandon these lines. The Defence Secretary replied:

> "In this perspective plan, which was prepared by Sir Alexander Gibbs, we have given some indications that the various stages when they get completed, the various workshops and other facilities when they get constructed will create a transportation requirement in the context of which the consultants provided for railway lines in various sections of this project. Now we cannot take up the railway lines project by itself separately, for this reason that we have taken up geographical areas of this overall project for completion stage by stage. Wherever we have taken up this work and where it is physically possible to put in the railway line, railway lines, have by and large been laid. The reason for laying them now irrespective of whether we can immediately use them or not, is that these lines have to be embedded in concrete roads and pavements, and if a railway line is to go through it, it is most convenient to put it in at the same time so that we do not break up our roads and pavements later on. I think eventually this will also prove to be a cheaper method because otherwise it becomes a major project and later on if you want to do it, price escalation as well as other factors overtake us. We have, in fact, been using the railway lines on the Ballard pier extension side. There is a regular rail approach to the Port Trust which we have extended that to our Ballard pier extension side. All

the materials which have to be transported by rail to the dockyard comes there, and are unloaded there. It does happen for the reason I have indicated to you that it is very cramped for space. If you go into the dockyard, we are creating space at the rate of Rs. 5000 per sq. metre in this reclaimed area. You can just imagine how cramped we are where all the old workshops and facilities we cannot knock down until we have replaced them. For instance, some of the facilities in the Caisson area are there and we have to continue them. Meanwhile, with the acquisition of ships and other new sophisticated items some *ad hoc* facilities had to be created. Anyhow we could not entirely depend on the old thing. It is in that context that those structures you are referring to were put up. That is about the only thing which is of its kind, but it has served its use and will continue to serve us until we are ready to transfer that activity to where it ultimately belongs. Once other structures in the middle get knocked off, space would be created.

In this connection, I would also like to urge that the total outlay on the railway line is rather modest compared to the size of any individual work we have taken up and it has also cost us just nothing in maintenance. We have embedded them in concrete and it requires no maintenance. We do not need sleepers and so on. The reason also for not-using the lines which technically we may be able to use is that unless the workload justifies it that we do not want to invest in shunting engines and their maintenance, upkeep and so on. So for the time being we are using only the Ballard pier rail where there is enough workload; for the others, some of them are not connected; some of them do not have enough workload until the whole project comes through. So we are not using them."

2.127. The Committee, thereupon, drew the attention of the Defence Secretary to the view expressed by the then Commodore Superintendent (now Admiral Superintendent) of the Dockyard, as early as June 1966, that the volume of traffic anticipated would not justify the provision of a railway line or very wide roads in certain places inside the Dockyard as well as the views of the Naval Headquarters, conveyed in their letter dated 5 June 1972, that the railway line was not required to be laid inside the Dockyard and enquired

into the reasons for providing the railway line. The witness replied:

> "It is a fact that a naval officer called Admiral Superintendent of Dockyard made such a reference as the one you mentioned. I would like to point out that the Admiral Superintendent of the Dockyard is a person who is not concerned with the construction of the dockyard expansion. His is a permanent organisation which has to maintain the ships when they come into the harbour. He is not originally involved in the conception of this project as a whole. He does not get involved in the actual day-to-day construction activity. I am mentioning this only to show that he is not aware of the full picture or the considerations."

When the Committee pointed out that the Commodore Superintendent had ultimately proved wiser, the witness replied:

> "I am afraid not."

2.128. To another question whether the anticipated volume of traffic had not been taken into consideration initially before the contract for the railway lines was concluded, the Ministry of Defence replied in a note:

> "It was part of the Master Plan for the whole Dockyard and the consultants also recommended the provision of the railway lines which were designed to feed the existing workshops to be modernised and the new ones to be established on the reclaimed land."

2.129. According to the Audit paragraph, the Naval Headquarters had issued instructions in July 1970 that, in order to avoid payment of compensation due to contractual obligations, the laying of the railway track inside the Dockyard might be completed as per the contract and that no further work in this regard be undertaken. The Committee desired to know what would have been the amount of compensation payable to the contractor if the work relating to the laying of 690 metres of the railway line, which had not been put to use had been cancelled when it was known that the line was not required. In a note the Ministry of Defence stated:

> "Although the question is hypothetical, the overall work being of the order of Rs. 2.74 lakhs, the compensation could only have been a part of this sum proportionate to the commitments made by the contractor upto the time of cancellation."

2.130. A note furnished by the Ministry of Defence subsequently on the views of the then Commodore Superintendent and with reference to the communication dated 5 June 1972 from the Naval Headquarters that the railway line was not required, is reproduced below:

"Sir AGP's report had recommended the laying of railway lines within the Naval Dockyard and this recommendation had been accepted by the Government.

In June 1966 CSD anticipated certain practical problems in having a railway line inside the Naval Dockyard, Bombay. These were mainly related to paucity of land and demolition of various buildings involved in laying the line. He also stated that the volume of traffic anticipated by him at that time did not justify the railway lines except upto the Barrack wharf.

These aspects were discussed at the Command level and at Naval Headquarters and the following decisions were taken:

(a) In the first instance the railway line should be laid only over the area to be reclaimed under Stage I.

(b) Further extension of the railway line to be considered later.

The laying of the railway line over the area reclaimed under Stage I was completed in 1970.

In November 1969, M|s. National Industrial Development Corporation were appointed by Government as consultants for the preparation of a Plan for construction of workshops in the Naval Dockyard, Bombay. Their initial report showed a configuration and alignment of roads different from that recommended by Sir AGP and incompetible with the laying of further railway lines. This matter was considered and in order to avoid possible infructuous expenditure. Naval Headquarters issued their letter dated 5th June 1972 saying that further railway lines should not be laid. Subsequently a series of discussions were held between Naval Headquarters, NIDC and CSD to finalise the detailed layout of workshops and roads proposed by NIDC in their Plan of 1972. As a result of these discussions, road alignment plan was revised in 1974 by NIDC

so as to permit linking of the railway lines from the area reclaimed under Stage I to that being reclaimed under Stage II as was originally envisaged by Sir AGP in their Master Plan."

2.131. The Committee desired to know the total expenditure incurred, year-wise, so far on maintenance of the railway line. In a note, the Ministry of Defence stated:

"No maintenance expenditure on the length of 690 metres railway line has been incurred."

CHAPTER—III

EXECUTION AND PROGRESS OF WORKS UNDER STAGE-II

Audit paragraph

3.1. Administrative approval for Stage-II of the above scheme was accorded by Government in September 1964 at an estimated cost of Rs. 14.58 crores. A revised administrative approval for an estimated cost of Rs. 24.70 crores was issued in December 1967. The main reasons for the increase were increased quantities of work, increase in price levels, devaluation of the Indian rupee, etc.

3.2. The entire scheme was to be spread over a period of seven years from 1964-65 to 1970-71 as per the consultant's report. The administrative approval, however, did not specify any time schedule for the completion of the works.

3.3. For practical and administrative reasons, the tenders for all the civil engineering works were invited together. Tenders were called for in October 1965. The two tenders received in response to the call were both conditional and high as compared to the estimated cost of Rs. 11.63 crores for civil engineering works. These were referred (August 1966) to the consultants who advised that the main works in Stage-II might be divided into three parts, *viz.*, works A, B and C mentioned below, for calling for tenders:

	Rs. Lakhs
(i) *Works A.*—Construction of rubble mound break water and protective retaining bund south break water and deep water wharf and the minimum dredging necessary for the construction thereof Estimated cost (December 1967)	1412·30
(ii) *Works B* : Capital dredging and reclamation excluding dredging of rock alongside fitting out wharf Estimated cost (December 1967)	200·23
(iii) *Works C.*—Construction of the fitting out wharf including associated rock dredging Estimated cost (December 1967)	372·15

3.4. Before tenders were invited for work 'A', a third firm evinced interest in the works. The single tender of that firm submitted in June 1967 was accepted on 20th November, 1967 for works 'A' for Rs. 14.25 crores; the works were to be completed in 60 months *i.e.* by November 1972. According to the contract, Government was to bear the bank guarantee commission for the guarantees furnished by the banks on behalf of the contractor and insurance charges on the works, constructional plants etc. of the contractor till completion of the work. The contractor was given an extension of time up to 23rd October, 1973. This extension was necessitated *inter alia* due to the existence of rocks in the sea-bed requiring blasting which was not known at the planning and designing stage, as this could not be detected during site investigation carried out by the consultants. The existence of the rocks came to notice while dredging the foundations of the south breakwater in the middle of 1968, and blasting of the rocks was taken up at the end of 1968; an extension of time (115 days) was granted for this.

3.5. Extension for another 185 days was granted as the design of certain structures required for the breakwater was changed after the conclusion of the contract. The Ministry of Defence intimated (February 1974) that the design changes to the interior structure of the caissons forming the break-water became necessary due to change in requirements of electrical services and addition of certain services not projected earlier. The Ministry added that these changes came to be known after the conclusion of the contract for works 'A'. A further extension of 38 days was granted from 16th September, 1973 to 23rd October, 1973 due to black out restrictions during war, national holidays during the extended period of contract not taken into account while working out the actual extension of time and changes ordered on four caissons.

3.6. The extensions granted would cost Rs. 7.33 lakhs more (bank guarantee commission Rs. 2.41 lakhs and insurance charges Rs. 4.92 lakhs).

3.7. Although works 'A' were completed in October 1973 and the basin is ready, the facilities provided thereby cannot be availed of by ships as works 'B' are expected to be completed only by the end of 1977. The Ministry stated (February 1974) that synchronisation of works 'A' and works 'B' of Stage-II of the scheme was not technically feasible as the works were to be carried out independently and further, as all the dredging adjacent to the break-water and in the working sea area of works 'A' could only be carried out after the break-water was completed. The Ministry added that inclusion of

all rock dredging in works 'B' made any synchronisation all the more difficult.

3.8. The scope of works 'C' is currently (September 1974) under review by the Naval Headquarters|Ministry of Defence.

[Paragraph 11 of the Report of the Comptroller & Auditor General of India for the year 1973-74, Union Government (Defence Services)].

A. Selection of contractors

3.9. The Audit paragraph points out that initially, for practical and administrative reasons, the tenders for all the civil engineering works under Stage-II were invited together. Subsequently, however, the main works were divided into three parts, *viz.* works 'A', 'B' and'C', for calling for tenders, in view of the fact that the two tenders received in response to the original call were conditional and high. The Committee enquired into the details of these conditions which made it difficult for Government to accept them. The Defence Secretary stated in evidence:

> "We had intended to get a good response by advertising for the tenders globally following the World Bank's procedure. We wanted to evaluate the firms so that they could submit pre tender documents for evaluation. At that stage, we got a very good response, that is, 40 firms from all over the world sent for documents. Eventually after a detailed consideration of the information submitted by these firms and evaluating their technical and financial capability to carry out the work of this magnitude, 8 firms were informed that they would be considered to be qualified for submitting tenders by the Government. Then they were asked to make a request for the issue of the tender documents. Then four firms requested for the issue of the tender documents in November 1965. The tenders thereafter received were from two firms called M|s. HOCHTIEF and M|s. SAINRAPT and they were respectively for Rs. 20.2 crores and Rs. 23.45 crores. After an analysis of the main financial conditions stipulated by the tenderers and taking into account the devaluation of the Indian rupee, the value of the tenders was found to be Rs. 29.71 crores and Rs. 29.11 crores respectively with the foreign exchange components of Rs 9.49 crores and Rs. 11.88 crores respectively. These figures have to be taken against the administrative approval of Rs. 14 and odd crores. You

can see the higher nature of the tenders and the higher nature of the foreign exchange component.

The tenders were then referred to the consultants. The consultants opined that neither of the tenders should be accepted. The German offer was full of unsatisfactory conditions and conditions involving uncertain liabilities which could not be accepted. Some of the unsatisfactory and unacceptable conditions were as follows:

Firstly, for any payment which is delayed beyond a period as agreed to in the contract, the Government was required to pay interest at the rate of the Reserve Bank plus 4 per cent or at the rate of interest charged by the contractor on bankers.

Secondly, if the average output of the dredger was less than that assumed on which the bill of quantity was based, the unit rates in these items would have to be increased accordingly.

It means his own machinery, if it fails to operate diligently, he still claims for the whole amount that he was expecting from this machine.

Thirdly, if the output of the contractor's own dredgers falls 40 per cent below the output the contractor will have to be paid for the work at a higher rate.

Fourthly, on account of any extension of the time granted to the contractor arising from reasons beyond the control of the contractor, compensation will have to be paid at 0.03 per cent of the value of the section of the work directly or indirectly affected by such delays per day for each day or part of the day in which the delay occurred.

Under this clause the Government would have undertaken a fairly substantial liability for compensation for all kinds of delay which may be due to non-availability of things, import licences, clearances, permits etc. or due to the action or non-action of the employees, engineers or other authority directly or indirectly, affecting their operations or due to strikes, lockouts etc. This clause would also have given wide scope for all kinds of disputes. This is about the German offer.

Coming to the French offer, that also contained certain conditions which, if adopted, would have resulted in reduction in the contractor's commitment and more favourable terms of payment to the contractor. Some of them are: (1) The contractor should be allowed the payment of royalty at Rs. 2.15 per hundred cft. of stone...(2) In the case of variation of amount of work of plus 15 per cent, both parties reserve their right to negotiate the unit price.

Moreover, both the German and French offer involved a large amount of free foreign exchange, Rs. 949 lakhs in the case of the German offer and Rs. 1188 lakhs in the case of the French offer. In view of the foreign exchange position at that time not being satisfactory, the Government accepted the recommendation of the consultants for the rejection of the two tenders and for retendering of the work in three parts."

3.10. Drawing attention to the interest evinced in work 'A' of Stage II by a Yugoslav firm (M/s. Ivan Milutinovic-Pim) and to the statement made by the Defence Secretary that out of 40 firms who had responded to the global tender, only 8 firms had been considered suitable on the basis of the evaluation made before issuing the tender documents, the Committee desired to know the reasons for not obtaining the necessary details from the Yugoslav firm to enable an evaluation of the firm's capabilities being made. The Defence Secretary stated:

"Actually, the Yugoslav firm was one of those 40 who obtained pre-qualification enquiry, but they did not submit themselves to pre-qualification evaluation. At that time they were busy with other things. At least that is what they have told us. Later on, when the question of re-tendering arose, then we went in for this question as to how we should now retender. Then we were advised to go for splitting up of the work into works 'A', 'B' and 'C'. There also the feeling was that work 'A' was such that it should be given to tender and work 'B' we might attempt departmentally by getting a dredger pool and so on."

3.11. According to the Audit paragraph, a single tender submitted by the Yugoslav firm for work 'A' of Stage II, even before tenders for the work had been invited, had been accepted by Government and the work awarded to the firm. The Committee enquired into

the reasons for not inviting competitive tenders for this work and the basis on which the Yugoslav firm evinced interest in the work and was selected. The Committee also desired to know whether, before concluding the contract with this firm, its capabilities, performance in the execution of other Government contracts, etc. had been assessed. A note furnished in this regard by the Ministry of Defence is reproduced below:

"The Yugoslav firm, which was already doing works on behalf of several Government Departments and did, in fact take up dredging work on behalf of the Defence Ministry in April 1967 at Visakhapatnam, apparently had obtained knowledge of this work and made an offer in regard thereto. The firm know of the project as they had earlier requested for pre-qualification documents for the whole of Stage II works but did not submit the necessary details or submit themselves to evaluation for prequalification.

Their offer was referred to the consultants for report. The consultants after examination made the following observations:

(a) This is a genuine offer representing a reasonable value with very few qualifications.

(b) There are two substantial advantages over previous offers. These are (1) the tenderer proposed to use their own dredging plant entirely under their control; (2) there is trade and payments agreements existing between India and Yugoslavia.

(c) From previous international enquiries and tenders, it is considered that the offer has several apparent advantages unlikely to be repeated if this is turned down.

These aspects were brought to the notice of the Defence Minister and the Deputy Prime Minister and with their approval, a Negotiating Committee was constituted under the chairmanship of the Cabinet Secretary for finalising the offer. On the recommendation of the committee, a considered decision was taken by Government for not inviting competitive tenders again and awarding the work to the Yugoslav firm for the following reasons:

(i) The unsatisfactory response to the first global tender;

(ii) The advantages accruing to Government by accepting the offer of the Yugoslav firm as advised by the consultants;

(iii) The likelihood of higher quotations being received on a fresh tendering of this work and further loss of time that was inherent in calling fresh tenders."

3.12. Since it had been stated by the Ministry that though the firm had earlier requested for pre-qualification documents for the whole of the Stage II works, the firm did not submit the necessary details or submit themselves to evaluation for pre-qualification, the Committee desired to know the reasons for making a departure from the prescribed procedure in this case. The Defence Secretary stated during evidence:

"At the first stage we adopted the world Bank procedure in which the pre-qualification etc. came in. But, later on, we split the contract, one of the reasons being that we should try to find out Indian parties, if available, to make it convenient for them to tender, thereby avoiding unnecessary expenditure in foreign exchange. But they were not even given the tender documents. Therefore, the question of pre-qualification documents does not arise. It is in this context, when they came to know of this, they assured us that they would be willing to tender. So far as evaluating them is concerned, some sort of evaluation was done, but it was not on that global tender basis. But we did get in touch with the Ministry of Transport and asked for their experience because these people had been working in the Paradip port. We addressed a letter to the Transport Ministry on the 17th August 1957 regarding this firm and their experience and the reply we have got says:

'So far as the information available in this Ministry is concerned, the firm dredged material of the order of about Rs. 2.45 crores and their work has been found to be satisfactory. They are at present engaged in dredging the Haldia Dock system where the volume involved is 10.5 million cubic yards at a cost of Rs. 2.9 crores. The Ministry of Defence themselves have contracted this firm for dredging the North-Western Area of the Vishakhapatnam port. The firm is a reputed firm of Yugoslavia'.

When we asked them why they have not shown response on the first occasion the reply was that they were busy otherwise and so they could not have taken up a work of this magnitude then."

3.13. When asked whether any Indian contractor appeared on the scene as anticipated, the witness replied:

"Efforts were made and I think three or our firms were contacted to try to induce them, but they did not show any response. Between October 1966 and April 1967 we made efforts to induce the Indian contractors, namely, Hindustan Construction, Gammons & Shah Construction, but they did not respond."

3.14. Explaining further, at the instance of the Committee, the background leading to the selection of the Yugoslav firm, the Defence Secretary stated:

"While we were in the process of preparation, for calling for tender, this firm showed an interest for this work. There were unsatisfactory responses to first global tender. There were other reasons which I will refer to later on. So, consideration was given to this firm's offer. It cannot be considered that this consideration was done very lightheartedly or in any sort of deliberate contradiction of the normal procedure etc. The main aspect before Government was this. Will it serve the public interest to consider this particular offer? I have given an indication that while the administrative approval of work A was Rs. 14 crores, we got tenders amounting to 2 or 3 times of that value involving foreign exchange and all that. There were many other conditions which it was not just possible to submit to. This firm's offer nearly approximated our own administrative approval. We made enquiries about this firm. Its performance in other works was found to be satisfactory. The question is asked: why did you not proceed with normal procedure. I am afraid sometimes we find ourselves between the devil and the deep sea. When delay occurs we have to answer; in global tenders you have to evaluate these things; you have to get in touch with the consultants and take a considered decision. And if the tenderer comes from abroad he will need time to assemble the machines and that will take more time. So,

by going in for global tender there is no guarantee that we will get a better response than what we got during the last time and it will not certainly be as good a response as of this firm. This firm was already here. They don't have to spend too much on overheads. Their machinery pool has been here already. It was possible to divert those equipments on completion of their other works and it has been advantageous from the point of view of overall expenditure."

3.15. Inviting attention to the fact that the offer of the Yugoslav firm had been referred to a negotiating committee under the chairmanship of the Cabinet Secretary, the Committee asked why a decision could not have been taken on the offer by the administrative Ministry concerned, as was normally the practice in such cases. The Defence Secretary replied:

"We had this in view that we could be hauled up in the PAC for not following the normal procedure. And, therefore, a very well-considered and high level decision had to be taken in the very nature and the circumstances of the case. This would be my short answer."

3.16. The Committee desired to know whether there was any possibility of executing these works departmentally instead of engaging contractors. The Defence Secretary stated in evidence:

"So far as breakwater is concerned, the department had no experience. But we did have an idea of dredging work, that is, part 'B', which is normally to some extent carried out in our country in various ports. So, we thought we might consider taking up work of this order departmentally. But that would have involved acquiring sufficient number of dredgers to cope with the quantity of work involved, either from abroad or from within the manufacturing capacity of the country. This was considered first in the Defence Ministry and, later on, a suggestion was made that it would not be economical for Defence alone to have a pool and so the pool should be in the Ministry of Transport, who have work of this nature. So, it was then considered in consultation with the Ministry of Transport but, ultimately, nothing much materialised out of this and, as events showed, this also had to be given out on contract."

B. Progress of works 'A'

3.17. The Audit paragraph points out that though works 'A' under Stage II of the project was to be completed in 60 months, *i.e.* by November 1972, the work did not proceed according to schedule, on account of various difficulties encountered during actual execution, necessitating revision of the time schedule periodically. The extensions granted, from time to time, to the contractor along with the reasons therefor are briefly summarised below:

Period of extension	Reasons
115 days	. Existence of rocks in the sea-bed requiring blasting, which was not known at the planning and designing stage, as this could not be detected during site investigation carried out by the consultants.
135 days	. Change in the design of certain structures (caissons) required for the breakwater, after the conclusion of the contract.
38 days	. Blackout restrictions and national holidays during the extended period of contract not taken into account while working out the actual extension of time and changes ordered in the caissons.

As a result of these extensions, the work was finally to be completed by 23 October, 1973.

3.18. A note subsequently furnished by the Ministry of Defence in this regard is reproduced below:

> "Extensions of time were given to the contractor for two reasons. Firstly, the contract did not provide for removal of rocks as no rocks were expected in that area. When rocks were actually encountered, work had to be suspended till the rocks were removed. Secondly, the design of the caissons had to be changed by the Government while the contract was in progress to suit the revised requirement of services. This inevitably resulted in delay in the construction of the caissons .

In addition, extensions had to be given on account of black out restrictions doing December, 1971 and on account of national holidays and stoppage of work due to bundh.

The extensions granted were as under:

	Days
(i) On account of encountering rock	115
(ii) On account of delay caused by change of design of caissons .	204
(iii) On account of black out restrictions during 1971 . . .	15
(iv) On account of stoppage of work due to national holidays and bundh	4
TOTAL .	338"

3.19. One of the reasons for extending the time schedule for completing work 'A' of Stage II was that rocks had been encountered in the sea-bed, which had not been detected during the site investigation. The Committee desired to know the details of the consultants who had conducted the site investigation in respect of this work. In a note, the Ministry of Defence stated:

> "The consultants were Sir Alexander Gibb & Partners but they did not carry out the bores. The bores were carried out by specialist contractor in this field, M/s. Cementation Company Ltd."

3.20. The Committee enquired into the nature of tests conducted by Cementation Co. Ltd. and the reasons why the existence of rocks could not be detected during site investigation. In a note, the Ministry of Defence replied:

> "Jet, percussion and diamond drill boring of the sea-bed were carried out by the specialist contractors at various times from 1949 onwards. In August 1963, the consultants submitted the report on Stage II works which gave the alignment of the South Breakwater. On receipt of this report, 7 more bore holes were taken of which 5 were along the alignment of South Breakwater. These were taken on the recommendation of the Consultants. None of these disclosed any rock at the founding level of the caissons."

3.21. The Committee desired to know the total amount paid to the consultant for site investigation. In a note, the Ministry of Defence informed the Committee as follows:

> "No separate amount was paid to the consultants for site investigation. The contract amount for 1964 bores was Rs. 27,326."

3.22. To a question whether Cementation Co. Ltd. were responsible for providing wrong data on which an incorrect estimate was prepared, the Defence Secretary replied in evidence:

> **"No, Sir. If I may explain the process, under the guidance of the consultants some trial bore data had to be collected. They say it is necessary to do this to find what exists under a particular surface. In this particular case the contract with those people was only for about Rs. 27,000; the scope for giving trouble should not be disproportionate to the amount of work that was entrusted to them. They have given us the data. That data has to be interpreted to find out what exists below; interpretation is something which is not left to those people."**

3.23. As regards the extension of 185 days granted to the contractor on account of a change in the design of certain structures after the conclusion of the contract, the Audit paragraph points out that the Ministry of Defence had intimated (February 1974) that the design changes to the interior structure of the caissons forming the break-water become necessary because of a change in the requirements of electrical services and addition of certain services not projected earlier. A note furnished by the Ministry of Defence, at the instance of the Committee, indicating the circumstances in which these changes could not be foreseen before the conclusion of the contract, is reproduced below:

> "The necessity to modify the designs of the caissons arose out of the revised electrical and mechanical requirements which were not projected earlier. Works 'A' contract was concluded on 20-11-1967. Till then, the nature and scope of these services as projected by M/s. AGP in 1963 and accepted by user remained unchanged. Thereafter, in mid-1968, in view of the augmentation of the Naval Fleet, a review of the scope of these services was undertaken. The matter was referred to the consultants in mid-1969 and after joint consultations of all concerned, it reached a final stage in 1970."

3.24. The Committee were informed by Audit that the Ministry of Defence had stated (September 1974) that the contractor had referred claims on account of the changes made in the caissons and that these claims were under examination. The Ministry had later (March 1975) informed Audit that the contractor's claims were under consideration of a Negotiating Committee constituted for this pur-

pose with the Additional Secretary and Financial Adviser of the Ministry as members. The Committee desired to know the total amount claimed by the contractor and the final outcome of the examination of the claims. In a note, the Ministry of Defence stated:

> "The total amount claimed by the contractors M/s. PIM for the changes in design, consequent delay and resultant increase in expenditure for the execution of the contract is Rs. 1,38,36,320. A Negotiating Committee constituted in December 1974 under the orders of the Defence Minister and with the approval of the Finance Minister is examining this claim."

3.25. Since this question was stated to be before a Negotiating Committee, the Committee asked why this had not been referred to the consultants for a final decision and their advice sought in the matter. The Defence Secretary replied in evidence:

> "The consultants are not required, under our arrangement with them, to administratively get involved and settle this matter though we do consult them on certain aspects of the work. That is why, negotiation for settlement of this claim has been taken up at Government level and not through the consultants."

When asked whether the decision of the Negotiating Committee would be acceptable to the contractor, the witness replied:

> "We are hoping for agreed results on both the sides. That is the whole purpose of negotiation."

3.26. According to the Audit paragraph, one of the conditions of the contract concluded with the Yugoslav firm for work 'A' of Stage II was that Government was to bear the bank guarantee commission for the guarantees furnished by the banks on behalf of the contractor and insurance charges on the works, constructional plants etc. of the contractor till the completion of the work. The Committee desired to know the reasons for the inclusion of such a clause in the contract. The Defence Secretary stated in evidence:

> "Any contractor who is looking for the work will see to it that all expenses for the services are included in the rate which he quotes. He also expects a certain return on the work that he does. It is just a matter of convenience,

presentation or classification of costs. A contractor can build in all the incidentals into the rate which he quotes or he may quote the rate separately for the work and in addition to that, he may ask for some incidental expenditure that he might incur. When we go in for the contract we see what is the total cost to us. From our point of view we want to be satisfied that we are paying correctly for the overall work which we want to get executed. Thus we put in a condition in the contract which was asked by the contractor. And, therefore, there was no objection to our accepting their condition from the overall cost point of view."

3.27. The Committee asked whether the International Conditions of Contract did not provide that such charges were to be borne by the contractor. The witness replied:

"The contractor can build into the rate his charges even without telling you."

He added:

"Can you expect to enter into a contract with any contractor without his charges being included in one form or the other? I do not think that any contractor would do that. The contractor has to recover whatever incidental expenditure he may incur from out of the total money for the contract."

3.28. The Committee desired to know the international practice in this regard and whether this would not have been to Government's advantage. The Defence Secretary replied:

"I am not aware of the international usage you referred to but I shall check this up.

The tender document which we issue is based on the World Bank procedure. And they would probably follow the international usage. I am just checking on that."

3.29. In this connection, the Committee learnt from Audit that the Bombay Port Trust who had been addressed in this regard had intimated (September 1974) as follows:

"The only recent contract entered into between this Port Trust and a non-resident firm, for works of a civil engine-

ering nature, was in connection with the Dock Expansion Scheme and the Ballard Pier Extension. According to the conditions of this contract, which were based on the Conditions of Contract (International) for works of civil engineering construction prepared by the Federation Internationale de Ingenieurs Consoils jointly with the Federation Internationale du Batiment et des Travaux Publics, the cost of the insurance of the (1) works, (2) third party claims and (3) claims in respect of accident or injury to workmen, had to be borne by the contractors. The Performance Bond furnished by the contractors was also at their own expense."

3.30. Drawing the attention of the Defence Secretary to the procedure followed by the Bombay Port Trust, the Committee asked whether any attempt was made, when it was decided periodically to grant extensions to the Yugoslav firm, to ensure that Government did not have to bear the liability towards bank guarantee and insurance charges during the extended period of the contract and, if so, with what results. The Defence Secretary stated:

"Under the terms of the contract which we have agreed to, we could not take such a view. We have to pay them if we extend the period of the contract with them for valid reasons. We have to pay the incidental charges such as bank commission etc. That is part of the contract."

3.31. When asked why a deviation from the international procedure had been made in this case, the witness replied:

"I have already submitted about the international procedure. It is very clear to me that no firm whether we follow the international procedure or not, would forgo this thing. They will build that into the rates which they quote. They do not charge for everything separately. You may have it that way."

He stated further:

"I hold no brief for this firm or any other firm. I feel that it was an advantage to the Government in executing this contract with this firm with whatever charges that we have agreed to bear. The proof of the pudding is in the eating. This is the firm which has delivered the goods."

3.32. Since it had been stated by the Defence Secretary that the proof of the pudding was in the eating, the Committee pointed out that the Naval Dockyard expansion had lingered on for over two decades. The witness replied:

> **"May I say this that the two things are not really related? We had to get hold of this firm and we had to stick to the schedule of the contract. The extra time that they have taken is not because of their fault. That was because we have extended the period of the contract. We had to change the designs that led to the delay in the completion of the work. The firm was not at fault at all. They have fulfilled their contract in the scheduled time."**

3.33. A note furnished subsequently by the Ministry of Defence, at the instance of the Committee, detailing the reasons for Government accepting the liability for these charges and for deviating from the international practice in this regard, is reproduced below:

> "In 1965, when the entire Stage II works were to be advertised for global tendering, it was decided by Government to adopt the standard 'Conditions of Contract (International) for works of Civil Engineering construction' evolved jointly by FIDEC (International Federation of Consulting Engineers) and FIBTP (International Federation of Public Works Contractors) with suitable modifications. These 'International' conditions specify only the obligations of the parties, and do not stipulate as to how the works should be priced or such obligations are to be paid for. These are left to the discretion of the parties in each case.
>
> The 'International' conditions require the contractor to take on insurance covering works, plant and materials, third party damages and workmen's compensation. They also provide for the contractor to furnish security in the form of Bank Guarantee, if the employer so desires. The expenses incurred by the contractor in fulfilling these obligations can be provided for either as an element of overheads in the item rates themselves, or as separate specific items on a firm lumpsum or on actuals basis. In any case, the incidence of such expenditure, whichever mode is adopted, will form an item which the contractor will expect reimbursement on.

The liability for incidental charges like bank guarantee commission etc., on an actual basis, accepted by Government as a part of the contract has to be read against the above background."

3.34. The cost of work 'A' had been estimated in December 1967 as Rs. 1412.30 lakhs. The Committee were informed by the Ministry of Defence that the total expenditure incurred on this work upto June 1975 was Rs. 1,551.88 lakhs.

C. Execution of works 'B'

3.35. Works 'B' of Stage II comprising capital dredging and reclamation excluding dredging of rock alongside the fitting out wharf was initially to be done departmentally. Ultimately, however, since nothing tangible materialised out of the efforts made in this regard, these works also had to be given out on contract. The Committee desired to know whether it was not Government's policy to make sure that as much of the work was done departmentally or by Indian personnel. The Defence Secretary stated in evidence:

"From my experience I can say that departmental work has to be taken up only if there is no other alternative. The reason for this is that you enter into a very unlimited liability when you take up the departmental work, whereas under contractual work, you at least know the limits of your liability and you have some way out, contractual or otherwise, of making good the losses, if any. In the case of departmental construction, you cannot hold people responsible. That is why the bulk of our works and that of the PWD etc. is done through contracts."

3.36. The Committee learnt from Audit that in 1973, the Director General, Naval Dockyard Expansion Scheme had, *inter alia*, informed the Controller of Defence Accounts, Poona, with reference to the draft paragraph on the Expansion Scheme proposed for inclusion in the Auditor General's Report that though a decision had been taken by Government in October 1966 that works 'B' should be carried out departmentally by acquiring suitable dredging plant, no worthwhile progress had been made in the matter till May 1968. Relevant extracts from this communication made available to the Committee by Audit are reproduced below:

"Government's decision in October 1966 was that works 'B' i.e. soft dredging should be carried out departmentally by acquiring suitable dredging plant. Consequent on this

decision, Naval Headquarters took upon itself the initiative and responsibility to progress the acquisition of the necessary dredging equipment on consultation with the DG, NDES. This modus was necessitated as it was desirable that the equipment so acquired should not only be useful in works at Bombay, but from an all-India point of view in so far as Navy was concerned. However, no worthwhile progress in the matter was made till May 1968. As a result, the DG, NDES was compelled to address Hqrs. that the critical stage had been passed, when the acquisition of such an equipment could be decided upon, procured and commissioned....Receiving no response to this communication for several months, DG, NDES, addressed the Ministry of Defence in 1968 on the same lines and suggested that the only course now open to get works 'B' completed in any reasonable time after works 'A' is to let it out on contract and not get it done departmentally. Government's approval to the course recommended by the DG was received in April 1970 authorising the DG to let out this work on contract as a result of global tendering. Thereafter, contract action was initiated, global tenders were advertised and invited. And though there was encouraging response for the tender document itself, only one valid tender was received in March 1971. All contract action was completed within a year on receiving Government's decision to go ahead and then it was transmitted to Government with DG's recommendation. Then further negotiations were held at Delhi in November 1971 and things finalised. However, due to emergency that arose at about that time, the award of the actual contract was delayed and the contract was accepted by Government only on 28-1-1972."

3.37. Since this communication appeared to suggest that there had been delay in implementing Government's earlier decision in regard to departmental execution, which was also in the national interest, the Committee desired to know the reasons therefor. The Defence Secretary stated in evidence:

"We started with that feeling that it would be in the national interest to do this work departmentally for the reason

that if we could assemble an adequate dredging pool, this would not only help us to complete this work, but we could have an asset at our command which could be used for various works in the country including Naval works. This particular idea had to be given a realistic shape. This involved, as I submitted earlier, acquisition of dredging equipment of a very large character. Dredgers, if imported from abroad, would cost large sums of money in foreign exchange; if we have to produce them in India—and some production has been organised in our country—it would take a large period of time to complete construction of the dredgers that we need and also substantial amount of foreign exchange would go into the construction of this equipment as a whole. The matter was examined as to have we could assemble the pool, the idea with which we had started. When approaches were made to the Ministry of Finance, because of our overall resources position and difficulties of foreign exchange, the idea took a different shape that instead of the Ministry of Defence organising this pool, the pool should be organised by the Ministry of Transport, who are incharge of ports, harbours etc. on the civil side and the same pool could do the work on behalf of the Navy. We took it up accordingly, but the results of these discussions were that ultimately it was not found possible to give effect to this idea of assembling a dredging pool which would take up this work. It is in that context that the DG made a reference when he was unhappy at the time taken. Ultimately, the Ministry of Defence decided that if we cannot go ahead in this way, we have no option but to give it on contract. This is how the decision was taken not to do it departmentally."

3.38. When asked whether this statement implied that despite all the exercised in planning to reduce dependence on foreign contractors and to build up indigenous expertise and capabilities, translation of Government's intentions into positive action still depended, to a large extent, on the resources position, the witness replied:

"It is our intention and, I think, it is the intention of our planners that not only on the Defence side, but on the civil side also, we should create capacity within the country. But sometimes, it is not possible to wait for the reaction of that capacity, if there is an urgent work pending and, resort

has, therefore, to be taken to letting out the works on contract. This applies to many other slippages, where we have got the capacity to build the equipment in the country but because of lag in time schedule, we have to meet our current requirements by imports. This is not something peculiar to Navy. I would say that the bonafides of our planners are not in doubt. They start on the right lines; they have the very object that you have mentioned, but we have to face the position of resources, with which we can fulfil those ideas. If the resources are not forthcoming, there is no option."

3.39. When the Committee observed, in this context that the Defence Ministry had apparently not displayed any sense of urgency in implementing the decision to execute the work departmentally, the Defence Secretary replied:

"We have been exploring all this. We have been in touch with the producers. But we are not given foreign exchange. In these circumstances we could do nothing but to think of some alternative to get the work done. We are not against the building up of dredger pool. We have a sense of urgency to go on with the work. If the country's overall—foreign exchange and financial position—does not allow dredging pool, I do not see how the Ministry of Defence is to be blamed."

3.40. The following picture emerges in regard to the execution of works 'B' from the material made available to the Committee by the Ministry and udit:

October 1966 . . .	Decision taken to execute works. 'B' departmently.
July 1968 . . .	Proposals under consideration for acquisition of dredgers.
December 1968 . . .	Proposal mooted for executing the works on contract basis.
October/December 1969	Proposal approved by Defence Minister.
April 1970 . . .	Formal approval conveyed to DG, NDES for inviting global tenders.
March 1971 . . .	Single valid tender received.
November 1971 . . .	Further negotiations held at Delhi.
January 1972 . . .	Contract awarded.

Thus, while it took nearly 3½ years to set in motion the process for the contract. The Committee also learnt from Audit that the con- the contract. The Committee also learnt from Audit tha the contract for these works had also been awarded to the Yugoslav firm, Ivan Milutinovic—Pim.

3.41. When the Committee drew attention to the unduly long time taken in arriving at a final decision in regard to execution of works 'B', the Defence Secretary stated:

> "When we start the work, there is a natural sequence for taking up the work. In so far as works 'A' is concerned it had to start in 1967. The contract was given and work was taken in hand.
>
> As regard works 'B' this is mainly in the nature of dredging of the outer basin. I will ask the DG to explain to you as to why work 'B' could not be taken up earlier than when it was taken up."

The Director General, Naval Dockyard Expansion Scheme stated in this connection:

> "When the decision to split the Stage II Civil Engineering Works into three parts was taken, it was decided at the same time that priority should be given to works 'A'. This gave the benefit to the Navy of a break-water which improved sheltered berthing conditions inside the inner basin, it enabled ships to be berthed alongside on the outer side of South breakwater where there was no much dredging required to be done in fair weather. It was only after works 'A' had reached an advanced stage that one could start works 'B'. As was pointed out..... works 'B' involved a certain amount of rock dredging which had to be carried out by blasting the rock. We could not carry out blasting because that would have damaged the caissons while they were standing by in an incomplete condition and before massed concreting had been done in them. Secondly, works of two contracts could not be carried out simultaneously in a restricted area as dredgers operating in close proximity could lead to all types of complications. Our anxiety was that if the dredging under works 'B' had to be done departmentally, then we must take a decision and acquire the necessary dredgers in time so that the work did not get

held up later. It was in that context that my organisation was urging Naval Hqrs. to expedite the decision for acquiring the dredgers. As the Secretary has pointed out there were difficulties about that and when we come to the conclusion that dredgers were not available action was initiated to go in for tenders for works 'B'. The two works could not have been taken up simultaneously."

3.42. When the Committee pointed out in this connection that the execution of works 'B' had been terribly delayed and had been hanging fire since 1966, the Defence Secretary stated:

"I am advised by my colleague here that decision to go in for work 'B' was taken in April 1970. If there is any sort of contradiction we will check it."

The Committee thereupon drew attention to the fact that the proposal for letting out works 'B' on contract had been mooted in 1968. The witness replied:

"That was the proposal which was made but the decision to go in for tender was taken in April 1970 after exploring all the avenues."

He added:

"Discussion at higher level had to be taken from time to time for going into the question of involvement of foreign exchange finding out the availability of manufacturing capacity within the country at various levels; these are not within the knowledge of the Dircetor General."

3.43. When asked, in this context, whether the Director General had initiated the proposal without being aware of the various factors involved, the witness replied:

"I was only trying to mention that he was a man on the spot who supervises all actual construction on this, programming with the contractors who have been awarded the works etc. On an issue like this when various avenues have to be explored, this can only be dealtwith by Government, at the appropriate level and not at the DG's level."

He stated further:

> "I have nothing more to submit than what I have said. But I would submit one point. Whereas the Committee and yourself are very rightly giving importance to the sense of urgency naturally, with the idea of seeing that our defences are appropriately looked after, I have to point out how in working out this programme we have taken up various measures to see that our current requirements are not in any way upset. We have kept the fleet operational and the evidence of this could be seen when we go back to the period 1971; the entire fleet was by and large operational and committed to the actual war operations. Regarding the basic hurdles I would say this. We cannot blast the rock under stage 'B'. That is the main work. There is no other work. We have had to remove the rock. It would be foolhardy on our part to go ahead with work 'B' simultaneously irrespective of the consequences to work 'A'."

3.44. The Audit paragraph points out that as works: 'B' are expected to be completed only by the end of 1977, the facilities provided by the completion of works 'A' in October 1973 cannot be availed of by ships. The Committee were also informed by Audit that the Ministry of Defence had stated (March 1975) that the naval ships commenced berthing alongside the South Breakwater with effect from 11 October 1974. The Ministry had, however, added that the facilities provided could only be put to limited use by the ships as the dredging of the basin to be executed under works 'B' was expected to be completed by the middle of 1975.

3.45. The Committee, therefore, asked whether Government would not concede that there was some anarchy in programming and synchronising various components of the project and whether any action had been taken against the consultants who had divided Stage II of the project into three groups which had apparently created difficulties in actual execution. The Defence Secretary replied:

> "The breaking up of the work into three contracts was primarily to get over the stranglehold of a global character. If the work of that magnitude was to be executed by one agency, it was not likely that any Indian agency could be able to handle it. One of the reasons for

splitting it was to enable the Indian contractor to do that job. We made an attempt in this regard.

The other point is that the statement that works 'A' could not be used until works 'B' are completed has to be seen in its real perspective. Works 'A' even today are being used in a limited manner in the sense that ships are being berthed there particularly in fair weather along the South Breakwater. It is also a fact that works 'B' had to be delayed to enable works 'A' to be completed and to some extent this delay was co-terminus with the consideration of forming a dredging pool which itself took time.

Works 'A' cannot be used fully at this stage for two reasons—

(1) Dredging in works 'B' has to be completed to make the fullest utilisation possible;

(2) All the electrical and mechanical facilities are to be installed.

It is only when those facilities are available, the ships would be able to have a berth with full facilities. They could not be dovetailed with the broad civil works of stage 'A'. To me it appears that there was no grave error or any sort of injury caused because these works 'B' were not taken up earlier because, as you would appreciate, in the very nature of things, they could not be taken up earlier. As I told you.....we were exploring the possibility of having our own dredging pool and in these circumstances, I am sure, you will be kind enough to take a more charitable view of our perfomance."

3.46. The Committee desired to know the progress made in the execution of works 'B' and the up-to-date expenditure incured thereon. The Ministry of Defence informed the Committe that the overall progress (August 1975) was approximately 80 per cent and as on 30 June 1975, an expenditure of Rs. 648.93 lakhs had been incurred on these works.

D. Works 'C'

3.47. According to the Audit paragraph, the scope of works 'C' under stage II was under review (September 1974) by the Naval

Headquarters|Ministry of Defence. The Ministry had informed Audit, in March 1975, that the user's requirement of works 'C' had been finalised in consultation with Naval Headquarters and had been forwarded to the consultants for undertaking their technical report.

3.48. The Committee were subsequently informed by the Ministry of Defence that the consultants' report and estimates had been received in April 1975 and were under examination for the issue of administrative approval and that no expenditure had been incurred on works 'C' so far.

E. Services for Works

3.49. As regards the electrical and mechanical services required in the Dockyard, the Ministry of Defence informed the Committee as follows:

> "To make the civil engineering works fully useful, it is necessary to provide various mechanical and electrical services. In the 1964 Administrative approval, these services were sanctioned only on a provisional basis. After works 'A' were contracted out, user requirements for these services were re-evaluated during 1968-69 in the light of acquisition programme of the Navy subsequent to 1964 and estimates based on this re-evaluation were called for from the consultants. These were received in November 1970 and projected to Government in March 1971. Government gave the 'Go ahead' sanction to the DG in January 1972 to proceed with these works pending formal administrative approval.
>
> The first contract,.....was concluded in November 1974 and completed in June 1975. Contract for the supply and erection of the.....was concluded in November 1974 and is to be completed by March 1977. Contract for miscellaneous civil engineering structures.....was concluded in April 1975 and scheduled to be completed by April 1977. Contract for electrical services totalling Rs. 2.57 crores was concluded in July 1975 and is scheduled to be completed by 1978. This leaves only the contract for the mechanical equipment and pipe work services to be progressed. The tenders for the mechanical services have since been received and are under scrutiny.
>
> This would leave the services for works 'C' to be dealt with which can be taken up after the civil engineering works 'C' is examined and approved."

F. General

3.50. The Committee desired to know whether the cost of works 'A', 'B' and 'C' estimated in December 1967 had undergone any revision subsequently and, if so, the reasons for the increase in costs. In a note, the Ministry of Defence stated:

> "The total cost of Stage II works 'A', 'B' and 'C' put together are expected to increase substantially from the revised estimates of 1967 amounting to Rs. 24.70 crores. The revised estimates are being re-revised for submission to Government for issue of revised Administrative approval. The main reasons for increase are:
>
> (a) Price escalation over the years.
>
> (b) Increase in Customs duties.
>
> (c) Quantity of Rock Dredging increasing substantially.
>
> (d) Maintenance dredging initially to be borne from Revenue Head now transferred to Capital Project Account.
>
> (e) Increase in scope of electrical and mechanical services."

3.51. To another question as to why it was necessary to revise the estimates for Stage II in 1966-67, the Defence Secretary replied in evidence:

> "The estimates had to be revised in 1966 because of the position emerging from the global tenders which were called. The response was very adverse to us. When you split the work, you naturally have to prepare fresh estimates relating to those particular works. That is why, we had to revise the project report. There are, of course, other factors like price escalation, devaluation that had taken place meanwhile, etc. For these reasons, fresh estimates were absolutely necessary."

Explaining further the reasons for the increase in cost of Stage II works from 14.58 crores in September 1964 to Rs. 24.70 crores in December 1967, the witness stated:

> "The reasons for the increase are as follows. There were changes in the quantities of work and they accounted for

Rs. 2.61 crores. There are new items which account for Rs. 0.53 crore. There has been an increase in prices from 1963 to 1967; on an average rate of five per cent per annum, it works out to about 20 per cent, 2.75 crores. There was an increase as a result of the devaluation of the Indian rupee which accounts for Rs. 2.87 crores."

3.52. The Committee asked whether it was a fact that the Defence Committee of the Cabinet had envisaged a period of seven years for the completion of works under Stage II and, if so, whether this did not imply a decision to go ahead with the projects with some urgency. The Defence Secretary replied:

"I will just check up the papers. At that stage when we went to the Defence Committee of the Cabinet, that kind of estimate was perhaps given. But, as we have already discussed, response to the global tenders and various other factors, set-backs which we came across, were responsible for the further shape which the events took."

When the Committee pointed out in this connection that the actual execution of the works had fallen short of the aspirations and programmes in this regard, the witness replied:

"If I may submit, estimates and projections have to be linked with the actual approvals and financial sanctions given."

CHAPTER IV

THE EXPANSION PROJECT IN RETROSPECT

4.1. As has been stated in paragraph 1.5 of this Report, the Public Accounts Committee (1965-66) had been informed that the consultants to the Naval Dockyard Expansion Project had envisaged that all the work relating to the expansion would be completed by 1960, *i.e.* 9 years after its commencement in 1951. Work on Contract No. 1 of Stage I had, however, commenced only in September 1954 and after a chequered progress during which the Navy found itself caught up in a turmoil of arbitration proceedings and other complications, Stage I of the project was completed in December 1970. Stage II is yet to be completed in all respects, even after the lapse of more than two decades.

4.2. The Committee enquired into the reasons for the delays at various stages of implementation of expansion project, the changes, if any, introduced at different times as a result of the changing face of the Indian Navy, etc. The Committee also desired to know how far the original project of the consultants, prepared in 1949-50, was valid in the present day conditions. A note furnished in this regard by the Ministry of Defence is reproduced in Appendix IV.

4.3. On the basis of the material furnished to the Committee in this regard, the major events in the two decade and odd history of the expansion project have been briefly summarised below:

1949 . . .	Appointment of Sir Alexander Gibb and Partners as Consultants to the Deckyard Expansion Project.
May 1950 . . .	Report received from Consultants.
November 1952 . . .	Necessity of the Project accepted by Government, Consultancy agreement signed and Administrative Approval issued for Stage I works at a cost of Rs. 5·55 crores
STAGE I	
Contract No. 1 of Stage I	
June 1953 . . .	Tenders advertised for Contract No. 1
October 1953 . . .	Tenders received

December 1953	Tenders considered and reported upon by Consultants
December 1953/August 1954	Negotiations with Bombay Port Trust
September 1954	Contract No. 1 accepted. (To be completed by May 1957)
June 1956	Contractors stop work
September, 1956	Work abandoned by contractors
December 1956	Forfeiture of the contract. Decision taken to execute the work departmentally.
February 1957	Administrator for the project appointed.
November 1957	Work recommended.
October/November 1958	Concern expressed by Government over slow progress of work. Director General, NDES. appointed in overall charge of the Project.
December 1959	Arbitration proceedings commenced
March 1961	Death of first arbitrator and appointment of second arbitrator.
November 1966	Work completed departmentally.
August 1973	Arbitration proceedings concluded.
February 1974	Award announced by arbitrator.

Other works under Stage I

Construction of Cruiser Graving Dock

November 1954	Tenders advertised
February 1955	Tenders received.
August/October 1955	Contract accepted and work commenced. (To be completed in January 1959)
November 1960	Work completed.

Extension of Ballard Pier

1963	Work sanctioned and commenced.
January 1967	Work completed (Departmental execution)

Machinery contracts for services

1963—1967	Various contracts taken up and completed.
May 1968	Last of machinery contracts completed.

Minor works under Stage I

December 1970	All works completed.

Stage II	
September 1964 . . .	Works under Stage II administratively approved at a cost of Rs. 14·59 crores. Decision taken to execute all works as one contract.
October 1965 . . .	Global tenders advertised.
May 1966 . . .	Two offers received from French and German firms.
August 1966 . . .	Offers referred to the Consultants.
October 1966 . . .	Offers rejected and decision taken to split civil engineering works into three parts— Works 'A', 'B', & 'C'.
December 1967 .	Revised administrative approval issued at an estimated cost of Rs. 24·70 crores.
Works 'A'	
October 1966—April, 1967	Efforts made to interest Indian contractors in the work.
June 1967 . . .	Single tender submitted by Yugoslav firm.
November 1967 . . .	Single tender accepted. (Work to be completed by November 1972).
October 1973 . . .	Works 'A' completed.
Works 'B'	
October 1966 . . .	Decision taken to execute works departmentaly.
October 1966 July 1968 .	Proposals under consideration for acquisition of dredgers.
December 1968 . . .	Proposal mooted for executing works through contractors
October—December 1969 .	Proposal approved by Defence Minister.
April 1970 . . .	Formal approval conveyed to DG, NDES for global tenders.
March 1971 . . .	Single tender received from Yugoslav firm.
November 1971 . . .	Further negotiations held at Delhi.
January 1972 . . .	Contract accepted. (To be completed by January 1975). Work expected to be completed by the end of 1975.
Works 'C'	
September 1974 . . .	Scope of works under review by Naval Headquarters/ Ministry of Defence.

April 1975 . . .	Reappraisal report and revise dates received from consultants.
August 1975 . . .	Consultant's report under examination for issue of administrative approval.
Services for works	
1964	Services sanctioned on a provisional basis.
1968-69	User requirements re-evaluated in the light of Navy's acquisition programme, subsequent to 1964 and estimates based on the re-evaluation called for from the consultants.
November 1970	Revised estimates received from consultants
March 1971 . . .	Estimates projected to Government.
January 1972 . . .	'Go ahead, sanction given to DG, NDES, pending formal administrative approval.
November 1974 . . .	First contract..... ....concluded.
December 1974 . . .	Contract for supply and erection of..... concluded. (To be completed by March 1977).
April 1975 . .	Contract for miscellaneous civil engine engineering structures concluded. (To be completed by April, 1977).
June 1975 . . .	First contract entered into in November 1974 completed.
July 1975 . . .	Contract for electrical services concluded. (To be completed by 1978). Tenders for mechanical services received and under scrutiny.

4.4. Drawing attention to the delays in the execution of the project at various stages, the Committee desired to know whether Government had not been perturbed over these delays and displayed a sense of urgency in completing a vital Defence project. The Defence Secretary stated in evidence:

> "If you are referring to the overall delay— Rs. 25 crores Plan— I would concede there has been a prolonged delay. But it is a major issue and one will have to go into the details to tell you why there was an unavoidable delay."

He stated further:

> "This does indicate that the funding of the Naval Expansion Plan was not certain. But the thing was approved in principle and implementation was to depend on availability of resources, which had yet to be assessed.

The Committee generally agreed with the immediate objectives set out in the plan. These would be subject to annual review in the light of financial, political and technological considerations arising during the period. It accepted the first three years' programme, which particularly involved training only, with the direction that capital expenditure should be carefully scrutinised and either curtailed or phased over a longer period as far as practicable. Here the inference which you were drawing is more or les borne out that there was no break-neck hurry displayed; in fact, if anything, the emphasis was on moderation and going gradually.

When you think of naval expansion, you have to think of harbour facilities, repair and maintenance. In July 1949, *i.e.* within 6 or 7 months, Sir Alexander Gibb and Partners were requested to submit a report on expansion of naval dockyard facilities. Even in the selection of consultants, a little time was taken. In 1948, we were closely allied to British admiralty and British practices. At that time, the Chief of the Indian Navy was also a British Officer. There were three British consultants in the run—Sir Alexander Gibb and Partners. Randel, Palmer and Tritton and Sir Bruce White and Partner. Randel, Palmer & Tritton were ruled out because they were consultants for the Pakistan naval dockyard at Karachi. Sir Bruce White and partner were ruled out because they were consultants to the Bombay Port Trust and their appointment would have led to conflict of interests. So, Sir, Alexander Gibb were appointed in July 1949. They submitted their project report in May-June 1950. Without going into much detail. I will just read from the summary of the general conclusions and recommendations contained in the report:

'We recommend the construction of this scheme be undertaken in five stages. The first stage should be under construction by October 1951 to be ready by March 1953. The operation for the construction of second stage should be under way by October 1952, in order that facilities required for expanding the Indian Navy may be available when required in 1956. If construction of the various stages is arranged so that the work on site is continued, we consider that the total scheme of development of the dockyard would be completed by 1960'.

Against this, you should keep in view the manner in which the DCC (Defence Committee of the Cabinet) had approved of the plan saying 'implementation to depend upon availability of resources'. The actual build-up of the navy was also different from the projections given to Sir Alexander Gibb.

After this, the preliminary action for dealing with this project was taken. The delay which is quite conspicuous here is of 2 years from 1950 to 1952. I understand after studying the records and discussions with my colleagues that these two years were taken to clear the project with certain authorities concerned. Sir Alexander Gibb and partners were asked to report on naval dockyard facilities to be expanded in Bombay and elsewhere. They picked up Bombay as the centre where the expansion should take place. Here it seems we came into clash with both Bombay Port Trust and Bombay Government. I am told the Bombay Government were rather upset about marring the beauty of Bombay, particularly the sea front. The thing is still of topical interest. I was in Bombay 10 days back and the discussion is still going on for redesigning the scheme so that it does not mar the beauty of the Gateway of India. The Governor's wife is taking a lot of interest in this matter and we are faced not only with delay to some extent on this account but also extra expenditure. The Bombay Port Trust was also averse to the Naval Dockyard Scheme taking shape in Bombay. I presume that this must have clashed with their own expansion scheme. This is a problem that comes up in many ways including the basic factor about how much money out of the total resources will go to Defence. We have all the time fought for additional funds and then we are told that this country has not only to defend itself but it has also to live. What happens in such cases is that the problem of apportioning resources is solved at the higher level. In this case, it was the Prime Minister who gave the decision ultimately."

When asked when this decision was taken, the witness replied that it was in 1952. He continued:

"It took two years to iron out the differences. But even before the Prime Minister's decision, various points of view had to be considered and discussions have to be held at different levels and this process took two years. I have been told that even the house of Tatas raised objection.

to this particular proposal because they thought that would spoil the beauty of Bombay. All kinds of people come up with objections. Then, after this clearance at PM level in October|November 1952, the Defence Committee of the Cabinet to whom the paper was submitted finally approved of the overall project costing about Rs. 34 crores and gave administrative approval for Stage I costing about Rs. 5.5 crores. In this Paper also which went to the Defence Committee of Cabinet, the Defence Ministry itself had said that no firm estimate could at present be given either for the time required or for the cost that would be incurred to complete the first phase as modified under the above proposal. The Consultants had one view that it should be phased in five stages and completed in 9 years. The time and money allocation were not fully spelt out for the entire project."

4.5. The Committee asked whether Government had truly proceeded with urgency in regard to the Dockyard. The Defence Secretary replied:

"I could not say myself that Government had not paid serious attention to it. The Government thinking was that they would go on earmarking fund phase by phase."

To another question whether this by itself could be considered an adequate justification for not expediting a project of national importance the witness replied:

"I would be the last person to withhold or conceal anything in this regard. In the morning, I have myself expressed unhappiness at the unusual delay that took place in the proceedings of arbitration. The delay factor does not arise until the Government gives administrative approval immediately. Until that has been done, you have no yardstick to measure."

4.6. The Committee desired to know the reasons for earmarking funds for the project in phases. The witness stated:

"At a certain point of time, the Navy was consciously given low priority."

When asked whether this was the position even after the 1971 experience, the witness replied:

"Since about 1964-65, Navy has been getting its due and perhaps a little more than what would be proportionately due

to make up the previous backlog. Till 1964-65, the Navy was a back number in the allocation of resources and authorisation for purchase of ships and other equipment."

4.7. The Committee desired to know how far the operational efficiency of the Indian Navy had been affected or jeopardised by the delay in the completion of the Dockyard project. In a note, the Ministry of Defence stated:

"The extent to which the operational efficiency of the ships of the Indian Navy has been adversely affected cannot be exactly quantified. However, what can be said is that the facilities when the ships come into harbour, to enable them to shut down machinery and carry out maintenance, have not been adequately available. This has caused avoidable utilisation of the ships' own machinery resulting in greater maintenance effort and longer refit periods."

The Defence Secretary in this context stated during evidence:

"I would say that any project which is taken in hand should be completed as soon as possible. We have conceded in our replies to your questionnaire that the operational capability of our Navy has been affected by the delay in construction of civil works and by other aspects. I am not wanting to cover up the delay, where it has taken place, but the delay must be judged in relation to some set plans and projects which have been approved, financially sanctioned and time-limit put on them. As a citizen of this country I want everything to go forward."

4.8. Explaining further the progress made in the expansion of the Naval Dockyard, the Defence Secretary stated in evidence:

"I would submit that in 1952, the Government generally approved of the project involving overall expenditure of 24 crores and indicated that this would depend on the money and other allocations. They also specifically approved of the Stage I at a cost of 5.5 crores. In the same month we were able to sign the consultancy agreement with our Consultants specifically for execution of Stage I. From November 1952 to May 1953, the site investigation work was taken in hand and completed. There is no undue delay here. During the period June to October 1953, tenders were called, received and evaluated. In August 1954, negotiations with the Bombay Port Trust for actual

transfer of land and assets were completed. On 2nd September 1954, contract No. 1 was accepted to be completed by May 1957. Later on, the following year October 1955, contract No. 2 for Cruiser Graving Dock was awarded.

With reference to Stage I, I would like to tell you the history of actual progress after conclusion of this contract.

Contract No. 1 was accepted on 2nd September 1954 to be completed by May 1957. As I stated, after 15 per cent of the work was executed, the Cntractors stopped the work in June 1956 and abandoned the contract in September 1956. This resulted in the forfeiture of the contract in December 1956 and the Government took up the work departmentally. Though the administrator was appointed for this purpose in February 1957, he could not re-start the work till November 1957 for these reasons:

(i) Time required to complete survey and inventory and evaluate the assets left behind by the defaulting contractor valued at approximate 16 lakhs.

(ii) Renovating and reactivating the equipment and machinery left by the contractor in a deplorable state and which had been inactive from June 1956.

(iii) Assembling the staff required for this purpose.

Because of the slow progress of work till November, 1958, the Government reorganised the project and appointed a Director General in order to get on with the work.'

When the Committee enquired into the object of this rather long-drawn explanation, the witness stated:

"I am giving you an opportunity to judge whether from one point of time to the next there has been delay and whether the delay has been excessive or tolerable."

He continued:

"The balance of the work then had to be taken up departmentally and the work was actually completed substantially in December 1962.

In Stage I, there were other works also. Contract No. 2 and the work of the Ballard Pier that was sanctioned in 1963 commenced immediately and was completed in January 1967.

During this period, various machinery contracts required to service the wharves were taken up and completed. The last of such machinery contracts was completed in May 1968 and the remaining minor works of Stage I were all completed by December 1970.

Now we come to Stage II, which deals with the lower portion, the expansion of the harbour proper, the breakwater and so on. In October 1959 the DG was deputed to London to negotiate the consultancy agreement in connection with Stage II. Here I will draw attention to a delay of about two years which took place in settling this consultancy agreement. My main purpose is to explain why this delay has taken place. The negotiations for the finalisation of the agreement went on till January 1962, for a period of two years. I understand there was some dispute about the copyright etc. of the designs consultancy. Then there was discussion about the scope of the consultancy agreement. There were negotiations on the fees, overall as well as break-down, for the different items of the consultancy service. We could perhaps take the view that this was too long. But it is a fact that it took two years. On the 12th January 1962 the agreement was signed with the consultants. Immediately, site investigation, negotiations with the Port Trust and model experiments went on up to about 1963. The project report was finally submitted by the consultants in August 1963. Two years and a half after the signing of the consultancy agreement, in September 1964 administrative approval was issued. That means, a year was taken between the submission of the consultancy report and the actual issue of the administrative approval for Stage II. Then there was further delay in taking the decision that the whole work should be given out on contract by advertising for global tenders. This decision was taken in February/April, 1965, which means another five to six months went in this. After this, the advertisement was issued in April 1965, calling for documents from the contractors. The tenders were invited for pre-qualification documents in December 1965 and in May 1966 the tenders were received. That means, from the date of calling for pre-qualification documents, one year more was taken. The intervening period is taken in submitting pre-qualification documents according to the world

Bank procedures and evaluation etc. Only selective people are notified that they will be given tender documents. It took one year. Meanwhile, the Yugoslav firm were invited to tender for work 'A' in May 1967. Efforts were also made to induce other Indian contractors. After the receipt of the global tenders mentioned elsewhere, the tenders were found to be unsatisfactory—very high, in cost and hedged in by so many unacceptable conditions. It was therefore decided to split up the work into three parts in October 1966

I will come to the short point which you want to know, some of which I have already dealt with. I would plead with you to view this question in the light of the history of this project. This project report is more or less a perspective plan, showing the extent to which facilities will have to be created for the dockyard in order to meet the requirements of the expansion of the navy, as it was visualised. You cannot consider delay in relation thereto, you will have to consider delay in relation to the actual projects that were sanctioned and compare it with the cost and the time schedule etc.

There are one or two other points that I want to emphasise. In the earlier years at least, despite what we may feel today, the navy was not getting the importance which the Committee seems to be thinking that it would have received. When we projected this requirement, or asked the consultants to work out the dockyard extension facilities, they were given a broad idea of what naval expansion they could expect. This expansion which was projected to them, I should take it, was not on the basis of any sanctioned programme; it was an *ad hoc* guideline of what the navy as such would be after the first decade and the second decade. Here the picture given to them was that in 1958 we would be having...carriers,... cruisers, ... destroyers, ... submarines, ... minesweepers, LST and so on, the total being....capital ships. In capital ships we include the carriers and cruisers—there would be major war vessels and....minor vessels, a total of ... vessels all told big and small. Actually, in 1958 we had only ....., as against .... projected to them. The projection for 1968 was that we will have as many as..... carriers—we today have only...., cruisers, ... destroyers and frigates .... submarines, ... minesweepers and so

on, the total being...capital ships, ...major war, vessels, ... other vessels, the total .... ships.

But, under our actual expansion, in 1968 we had only .... As against...capital ships we had only..., as against .... major vessels, we had only ... This will give you some idea of the actual naval expansion during this period. The expansion of the navy was in itself much slower, because the resources were not forthcoming to the extent required; I presume for the same reason the resources to match the overall programme of the initial project was not forthcoming for the dockyard project. This, I feel, is one major reason why the Committee is getting the impression that we have taken too much time."

4.9. When asked whether this implied that the Navy had not been provided with the necessary equipment required by them, the Defence Secretary replied:

"I do not think you need address this question to the Navy. I will deal with it. I am going to speak on their behalf and I may give you their feelings. The services make their projection from their point of view, to make as certain as possible that they can defend the country against any possible danger. But the demands of the services have to be dovetailed with the resources that we can muster. This is the short point. It is not that the Navy or Air Force or Army for that matter is at any time happy. There is always a gap between their demands and what is actually made available to them. This is a fact of life which we have to live with and I presume it is a factor which has to be contended with in all countries of the world. Even in the advanced and richer countries there is always some gap between what the services project and what is actually made available to them."

He added:

"These hard decisions do get taken and they have to be taken all the time. I know that even currently we are in the process of some such decisions.

I also want you to refer a little to a couple of annual reports submitted to Parliament which would also give you some idea as to how the actual build-up of the Navy compared with the socalled plan which has been referred to by the consultants.

I am only trying to submit that for the projection of the Navy's own expansion and for the projection for dockyard expansion made by the consultants, the matching resources were not made available or budgeted in the time span indicated by the consultants and for that conscious decisions of Government are there.

What I am currently dealing with is the overall master plan or perspective plan referred to by the consultants. In relation to that I am saying that at no time was a decision taken by Government to allocate the total resources needed or to indicate the time span in which the total plan would be completed. So, you cannot really judge the delay with reference to that.

As to the actual contracts, they flow from the different allocations against portions of these larger plans which Government approved or for which Government earmarked resources. There, wherever delays have taken place and when they cannot be defended I would agree with you. I am just completing the major picture.

I would like to read out just one paragraph from this report of 1963-64, just after the 1962 conflict with China, which would give you an idea as to how Government looked at it. It reads:

'The requirements of the Armed Forces in relation to the tasks assigned to them were carefully analysed. However, planning for the build-up of the required Defence Forces has to be done with due regard to the limitations of finance particularly foreign exchange, overall economic situation and availability of technical know-how. In following this programme we have set before ourselves the following immediate aims—

(i) Expansion and modernisation of the Army.

(ii) Modernisation of the Air Force.

(iii) Creation of an adequate production base.

(iv) Improvement and expansion in the means of communication and transport.

(v) Replacement of overage ships of the Navy and making it a balanced force'.

So, the Navy comes last and there is no mention of its expansion. This is the order of priorities which the Government set before itself in 1963-64. The following year, in 1964-65, the Report reads:

'As a first steps in this direction a Defence plan to be implemented over a period of five years has been prepared during the year. In brief, the plan is:

(a) build-up and maintenance of a well-equipped Army with a strength of.....men.

(b) Air Force, maintenance of a....Squadron Air Force, including programmes of replacement of old aircraft like..... by more modern ones and repair and communication facilities.

(c) A phased programme for replacement of overage ships'.

Replacement means one for one replacement, it is not really expansion, but certainly the effectiveness of the ship improves.

'(d) improvement of road communications in the border areas'.

The actual figures would show how relatively the Navy fared in the earlier years. Naval development was accorded low priority. The budgetary expenditure came down from 10.6 per cent for it in 1960-61 to 3.4 per cent in 1963-64. From 1964-65, I would say that the percentage of the Naval expenditure to the total expenditure gradually increased. Even from that point of view, the expenditure on the Army has been increasing. In 1962 its strength was ..... In 1963 it was ..... Later on it was increased to ..... and today it is about ..... A corresponding expansion of the Navy did not take place in the earlier years. Similarly, the Air Force used to have ....Squadrons, but after 1962 it was accepted that it should get....Squadrons. The Air Force projected their requirements at a much higher figure, but they had to be content with an approval of....Squadrons.

So, these are the actual figures against which you will kindly judge the period of completion of the overall dockyard

expansion scheme because this was related to the expansion of the Navy and funds had to be allocated for both. for the expansion as well as for the dockyard. The delays, I submit, should be judged in relation to the actual approvals and the funds made available for specific parts of this particular project."

4.10. In paragraph 18 of their 8th Report (Second Lok Sabha), the Estimates Committee (1957-58) had examined the budget provisions and actual expenditure on the Naval Dockyard, Bombay, during the years 1952-53 to 1956-57 and had observed that while in 1956-57, the expenditure under every sub-head of account fell short of the estimates, during the previous years also, the actual expenditure was consistently less under 'Stores' and 'Dockyard Expansion Schemes Again, in paragraph 28 of the Report, the Committee had pointed out that the actual expenditure on the development of the Dockyard during the First Five Year Plan was only Rs. 45 lakhs, as against the estimated expenditure of Rs. 330 lakhs. Since it had been stated earlier that the execution of the expansion project suffered on account of non-allocation of the necessary financial resources, the Committee drew attention to these observations of the Estimates Committee and asked whether this did not indicate that even when the necessary funds had been provided, the execution of the project was defective. The Defence Secretary replied:

"I would respectfully accept the charge there. When we have a specific resource allocation for a particular time and if we do not use it, within that time, certainly we will have to say that here there was delay which needs to be explained. But where we do not have such an allocation or time-bound programme approved initially, there we should really know the basis on which to calculate the delay. Sir, I am submitting with reference to the larger plans. I am only giving you the facts as far as I have been able to gather."

He added:

"That the fund which was actually allocated was not utilised is certainly a matter of concern. I must concede that to the extent that specific administrative approval was issued and budgetary allocation made, we are responsible for our failure for not utilising that or for partly utilising that. There we will stand before you to answer."

4.11. In this context, the Committee asked whether the period of nearly 20 years taken to complete Stage I of the project could be considered justifiable. The witness replied:

> "It is not that nothing was done. Plenty of work was done before that. I would also concede that with greater diligence that this work could have been completed earlier. But, I don't think it will be fair to say that the work has taken 20 years."

4.12. A statement furnished by the Ministry of Defence, at the Committee's instance, indicating the budget provision proposed by the Navy, budget allocations actually made for the Dockyard project, since 1958-59, and the actual expenditure during this period, is reproduced below:

(Figures in lakhs of Rupees)

Year	Budget provision originally proposed by the Navy	Final budget provision	Actual booked expenditure
1958—59	Figures not readily available	111·00	109·68
1959—60	Do.	205·00	203·76
1960—61	Do.	117·21	114·11
1961—62	Do.	174·98	175·43
1962—63	Do.	87·34	88·37
1963—64	Do.	76·98	83·35
1964—65	Do.	48·80	49·15
1965—66	Do.	85·co	73·74
1966—67	Do.	57·00	53·97
1967—68	Do.	227·84	223·57
1968—69	Do.	344·00	344·38
1969—70	Do.	245·50	247·70
1970—71	Do.	276·00	269·88
1971—72	450·00	395·00	386·90
1972—73	347·00	285·00	267·88
1973—74	630·co	277·00	273·25
1974—75	350·00	360·00	363.35

The Ministry also informed the Committee that the booked expenditure on the project upto 1974-75 was Rs. 32.90 crores and the provision made in the Plan for the remaining works was approximately Rs. 18 crores.

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

5.1 It is disconcerting that a project for the expansion of the Naval Dockyard at Bombay, conceived as far back as in 1949, and which, according to the projections of the consultants to the project, should have taken about 9 years, is yet to be completed fully even after lapse of more than 25 years. As early as 1958, the Estimates Committee (1957-58) had felt that in an important matter like the Naval Dockyard, 'a greater sense of urgency should have been shown'[1] and had recommended that 'more effective steps should be taken to secure the expeditious execution of the Expansion Project'.[2] Eight years later, the Public Accounts Committee (1965-66) were again constrained to comment on the 'tardy manner' in which this project had been handled by the authorities at different stages. Observing that they could not help getting the impression that 'the urgency of the matter was not fully appreciated by those who dealt with this scheme', the Committee had been expressed regret that despite the Estimates Committee's earlier observations, 'no serious attempt' had been made 'to accelerate the progress of work on the scheme', and that, in the meanwhile, further delay had continued to add to its cost.[3] Another decade has passed since then and the prospect of the project being really completed is still nowhere in sight. Its cost, initially estimated in November 1952, at Rs. 24 crores, increased by over 50 per cent to Rs. 36 crores and is expected to go up still further. This is certainly a most unstatisfactory state of affairs.

5.2. In the preceding chapters of this Report, the Committee have tried to examine, at some depth, the reasons for the delay in completing the project. It appears, on evidence, that much of the delay that had occurred from time to time was not entirely unavoidable and that some of the difficulties alleged could have been well overcome with advance planning. It has been conceded by the Defence

---

[1]Estimates Committee, 8th Report (2nd LS), March 1958, paragraph 28.

[2]*Ibid*, paragraph 33.

[3]Public Accounts Committee, 48th Report (3rd LS), April, 1966, paragraph 3·30.

Secretary that there had been 'prolonged delay' in the execution of the project, though at the same time the delay was sought to be explained away as unavoidable and beyond Government's control. It would, however, appear that in spite of the strategic importance of the project, its execution has been peculiarly leisurely, and the time-projections made, perhaps, validly, when the project was conceived, have been repeatedly upset.

5.3. For instance, it took more than two years for Government to consider and approve the scheme for expansion submitted by the Consultants in June, 1950 and another 2½ years to commence work on Stage I of the scheme. The Committee have been informed that the initial period of two years was spent in overcoming the objections of the Bombay Port Trust, the erstwhile Bombay Government and private interests affected by the Dockyard expansion. While the Port Trust appears to have been averse to the scheme on account of its clash with its own expansion plans, the objections of the Bombay Government and also, it seems, the Tatas had certain aesthetic overtones inasmuch as it was feared that the Dockyard would mar the beauty of Bombay. The Committee feel that if the planning had been so meticulous as to obviate difficulties experienced later in execution, the initial delay of two years could, perhaps, even be justified in retrospect. This, however, was by no means the case, and the Committee regret that a project relative to the country's defence requirements was thus held up without sufficient warrant. It appears extraordinary that even as late as 1975 there was talk of a not unlikely re-designing of the Naval Dockyard Scheme with a view to its being fitted into still hypothetical city beautification plans. Whatever the merits of the latter, this is not, in the Committee's view, the way in which a long standing national project with top Defence priority, should be handled.

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

by the Consultants; in fact this matter should have been taken up much earlier after the necessity of the scheme had been accepted by Government. This lapse needs to be explained.

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

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

5.7. After the contract was forfeited in December 1956, Government decided to execute the incomplete portion of the work departmentally, at the firm's risk and cost, through a departmental organisation to be set up for the purpose. Though an Engineer-Administrator was appointed for this purpose in February 1957, the

work could not even be recommended till November 1957 for the following alleged reasons:

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

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

(c) assembiing the staff required for the purpose.

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

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

5.9. As regards the contention of Government that some delay could be attributed to the fact that this work was not in the normal line of operation of the agency entrusted with the work, the Com-

mittee feel that in view of the project's strategic importance, Government should have taken adequate steps to appoint experienced administrators and engineers familiar with maritime works. The Committee also find from the arbitrator's award referred to in the preceding paragraph that Government did in fact appoint such officers and engineers. In the circumstances and in view of the fact that another main civil engineering component of Stage I, namely, the extension of the Ballard Pier, had been successfully executed departmentally at about the same time, the Committee find it difficult to accept this explanation. As has been pointed out by the arbitrator, Government should have made special efforts to avoid all unnecessary delays and ensured completion of the works as soon as possible, especially in view of the fact that the cost of carrying out these works was also continuously increasing from year to year. That this was not done is indicative of negligence in over-all supervision.

5.10 In this context, the administrative arrangements made for the expansion project merit mention. Initially, in spite of the magnitude of the project, the progress of work was watched only by a Construction Committee consisting of (i) a representative of the Ministry of Defence, not below the rank of Joint Secretary, who was the Chairman of the Committee, (ii) a representative of the Ministry of Finance (Defence) of appropriate rank, (iii) Chief of Material (Navy) or his representative, (iv) Engineer-in-Chief, Army Headquarters or his representative and (v) the Under Secretary (Navy) in the Ministry of Defence who acted as ex-officio Secretary to the Committee. It is deplorable that in spite of the existence since 1953 of such a Committee, constituted specifically to expedite the execution of the project, the progress of work was unsatisfactory. The Estimates Committee (1957-58) had noticed that out of the 40 meetings held by this Committee between April 1953 and November 1957, only one meeting was held in Bombay, and had been constrained to regret that the Construction Committee had not been effective in its work.* It would appear that the day-to-day supervision of the project had been largely left to the Consultants. Judging from the initial delay in the departmental execution of the incomplete portion of the work under Contract No. 1, discussed in the preceding paragraphs, the Engineer—Administrator subsequently appointed in February 1957 had also failed to secure expeditious completion of the work. It was only in December 1958 that Government realised

---

*Estimates Committee 8th Report (2nd LS) March 1958 paragraph 33.

the necessity of a closer supervision of the project and appointed a Director-General, Naval Dockyard Expansion Scheme, to be in overall charge of the project and responsible directly to Government. The Committee are of the view that for the execution of this vital project, Government ought to have appointed a sufficiently high ranking officer well-versed in the technicalities of the work and of proven leadership right from the inception.

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

5.12. The Committee are not unwilling to concede that after the contractor had chosen to invoke the arbitration clause in the contract, there was not much that Government could do to extricate itself from the peculiar chain of consequences that followed. The Committee are also aware that the case being a complicated one; some delay in its examination might have been unavoidable. However, the prolongation of the proceedings from four months prescribed in the Arbitration Act to more than twelve years appears to be, prima facie, unconscionable and inexplicable. The Committee cannot help the impression that adequate steps had certainly not been taken to ensure that the arbitration proceedings were not unnecessarily protracted. The evidence before the Committee also indicates that the conduct of the case by Counsel whom Government lavishly compensated for their pains, was informed neither by a sense of urgency over a nationally important project nor of the

patriotic responsibility which such assignments call for. The Committee consider that this issue is so grave that Government should examine the position in all its implications and decide also the role which in such cases should be played by the Ministry of Law.

5.13. The Committee find from the arbitrator's award, for instance, that at no stage did any party object to the procedure adopted by him for bringing oral and documentary evidence of the parties on record. Neither of the parties had also ever objected to the procedure adopted by the arbitrator for hearing their respective arguments, such procedures having been adopted with the prior consent of Counsel for both parties. The contractor's stand seems understandably motivated by a desire to prolong the proceedings as much as possible. His refusal to accept a suggestion of the arbitrator that the proceedings could be cut short by conducting the examination-in-chief of the witnesses through affidavits filed by the parties and by the examination of the witnesses by the opposite party thereafter, found support, strangely, from Government Counsel who agreed to an elaborate procedure which virtually turned the arbitration proceedings into something like the Original Side proceedings in a court. The Committee can only regretfully conclude that the prosecution of the case by Government Counsel was impermissibly inefficient.

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

5.15. Hearings of the case could take place only occasionally between October 1965 and 1969 on account of the delay in the final preparation of Government's accounts in support of their claims before the arbitrator. The Committee are concerned to note that this process took as long as four years, in spite of repeated exhortations from the arbitrator. In fact, at one stage of the proceedings, the delay had become so extraordinary that the arbitrator had to order

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

5.16. The Committee are intrigued by a statement made by the Senior Government Counsel that the delay that had occurred in this case was beyond his control and that the lacunae in the existing Arbitration Act made the arbitrator's position in speeding up the matter difficult. The Council had, however, not spelt out what the lacunae were, and it appears to be the view of the Law Ministry that, prima facie, there are no lacunae in this Act which has been long on the statute book. Nevertheless, the Law Ministry seemed to admits that in practice, wrongful advantage could be taken of the provisions relating to adjournment, extension of the proceedings, etc. as had apparently happened in this particular case. Besides, as has been stated by the Defence Secretary during evidence before the Committee, 'all possible legal methods seemed to have been used' in this case to drag on the proceedings. In fact, the representative of the Ministry of Defence has even gone to the extent of conceding that in addition to the contractor's own motivation for prolonging the proceedings 'there may be other people who may have had their own reasons for prolonging it'. The Arbitration Act had been framed by Parliament with the intention of ensuring that disputes aris-

ing out of contracts are resolved expeditiously without having to go through other more time-consuming processes of law. Since the purpose for which the Act had been conceived has apparently been largely defeated in this case where the proceedings have been prolonged for more than 12 years, the Committee would urge Government to learn from the rather unsavoury experience of this case as well as of others which have come to the notice of the Committee and examine urgently whether amendments to the Act are necessary to obviate scope for such abuses.

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

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

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

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

5.21. While Government's share of the arbitrators' fees amounted to Rs. 1.95 lakhs, the Senior and Junior Counsel appointed to conduct Government's case before the arbitrator were paid such large sums as Rs. 11.52 lakhs, as on 1 July 1975, out of which Rs. 9.04 lakhs represent the Senior Counsel's fees. No ceiling had, however, been fixed in regard to the Counsels' fees. The Committee have been informed that the Senior Government Counsel, an advocate of the Supreme Court, was paid at the rate of Rs. 1600 per hearing for the first 30 hearings and Rs. 1000 per hearing thereafter. The Committee

feel strongly that in our country this kind of expenditure is an extravagance which the public exchequer cannot be expected to bear. The decision to brief, at a very heavy price, a Senior Counsel practising in the Supreme Court appears to have been taken on the basis of the largeness of the contractor's claim (Rs. 84 lakhs) before the arbitrator. The stakes were, no doubt, heavy in this case, but the Committee cannot countenance the idea that except at stupendous cost the defence of Government's case before the arbitrator could not have been properly performed. Arbitration proceedings, in any case, do not normally require the most expensive type of counsel, and in this case, judging from its results, and also the manner of Government Counsel's functioning, the Committee are afraid that the selection was unsound. The Committee further feel that, after this unhappy experience, Government should evolve procedures whereby competent but not too expensive advocates, practising in the High Courts or even in lesser tribunals, can be requisitioned for more purposive espousal of Government cases.

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

5.23. The Committee are concerned that here appears to be no specific machinery within Government to monitor and supervise concurrently the conduct and progress of arbitration proceedings to which Government is a party. The Committee learnt with consternation from the Law Secretary that so far as arbitrations are concerned, the

Law Ministry suggests the names of counsel only and does not watch the progress and expenses, and that apart from rendering advise on specific legal issues which may be referred to it by the administrative Ministries concerned, the Ministry does not keep itself abreast of what is happening in regard to the arbitration. Such a passive role, in the opinion of the Committee, is hardly becoming of an agency entrusted with the responsibility of safeguarding Government's legal interests. The Law Ministry could and should play a more positive role in such matters instead of remaining content with leaving the matter to the administrative Ministries which in any cases, lack the necessary expertise and wherewithal and have to necessarily rely on former. This is also not the first occasion when the Committee have found the Law Ministry's performance in legal matters somewhat wanting. The Committee are keen that Government should take very serious note of this deficiency and ensure that the Law Ministry, instead of being a largely passive agency, invariably maintains a careful and thorough check on the conduct of arbitration and other legal proceedings involving Government. The country will suffer gravely if this is not done in a meaningful and purposive manner.

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

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

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

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

5.28 The Committee have been assured in this connection by the representative of the Ministry of Defence that there would be enough traffic to justify the railway line once the entire project is completed. The Committee trust that all necessary steps would be taken to ensure the optimum utilisation of this facility in the none-too-distant

future and that the expenditure thereon would not ultimately prove to be infructuous.

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

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

5.31. The contractor for works 'A' and 'B' of Stage II is the same Yugoslav firm and apparently no element of competitive tenders was involved in entrusting works 'B' to a contractor. The Committee feel that the decision to entrust these works on contract could have well been taken in November 1967 along with works 'A' or at least in December 1968 itself when formal proposals in this regard

were made by the Director General. It has, however, been contended by Government spokesmen that these works could not be carried out simultaneously as all the dredging adjacent to the break-water and in the working area of works 'A' could only be carried out after the break-water was completed and because works 'B' also involved a certain amount of dredging in rocky strata requiring blasting. The Committee would like to know whether the consultants had also envisaged, at the time of splitting the works under Stage II into three groups 'A', 'B' and 'C' in October 1966 (after the attempts to execute all the works as one contract had proved abortive) that works 'B' would have to be taken up only after the completion of works 'A', and whether the possibility of dredging those areas away from the break-water, excluding rock-blasting, had been explored so as to ensure that at least some dredging was carried out simultaneously with works 'A'.

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

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

of the sea-bed conditions, and for adoption of appropriate corrective measures.

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

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

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

5.37. Though the major portion of the civil engineering works have after long delay been completed, various mechanical and electrical services are yet to be provided to make the said works fully useful. The Committee are concerned that considerable delay has occurred in the provision of these facilities. It is not clear to the Committee why these services were sanctioned only on a provisional basis in 1964 and why re-evaluation of the services, in the

light of the changing requirements of the Navy, could not have been undertaken earlier than 1968-69, that is to say, considerably after the 1965 war. It is distressing that even after this 're-evaluation', it took about 3 years for Government to give the 'Go ahead' sanction and yet another 2½ years to conclude the first contract for a portion of the work. The contract for the electrical services has been concluded only as recently as July 1975 and that for the mechanical equipment and pipe work services is still to be processed. The Committee are perplexed by this apparently lackadaisical approach and would like to be satisfied that all this delay in completing a strategic project which, presumably, has been urgently required by the Navy, was really unavoidable.

5.38. While the representative of the Ministry of Defence conceded that with greater diligence the Expansion Project could have been completed earlier, he contended at the same time that the execution of the Expansion Project has been as per the budgeted allocation of resources. In this context, the Committee have to draw attention regretfully to the Report of the Estimates Committee (1957-58) wherein they had pointed out that against the estimated expenditure of Rs. 330 lakhs on the development of the Dockyard during the First Five Year Plan, the actual expenditure was Rs. 45 lakhs only.[5]

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

NEW DELHI:
March 30, 1976.
Chaitra 10, 1898 (*S*).

H. N. MUKERJEE,
Chairman,
Public Accounts Committee.

[5]Estimates Committee, 8th Report (2nd L S), March 1958, Paragraph 28.

APPENDIX I

Recommendations of the Consultants, Sir Alexander Gibbs & Partners, on the Termination of Contract No. 1 (vide paragraph 2.18)

(a) If it has not already done so, Government should immediately give seven day's notice to Hind Constructions Ltd. to remove from the site, and should thereafter enter on the site and take over the Contractor's plant etc. as provided in Clause 63 of the Conditions of Contract.

(b) On expiry of the notice, Government should immediately authorise the Engineers to arrange for CITRA to take over a small amount of work in their contract area which was left uncompleted by Hind Constructions Ltd. and which may otherwise give rise to unnecessary claims under Contract No. 2.

(c) On confirmation of (a) above, the Engineers should discuss with the Naval Authorities whether it would be practicable for this Authority to undertake certain work.

(d) Final approval of the design for the Ballard Pier Extension to be expedited (Bombay Port Trust) and any necessary re-grouping works in State I of the Dockyard Development should then be considered.

(e) Apart from any work carried out under (c) above, Government should not undertake any of the Stage I construction works departmentally, and should immediately authorise the Engineers to approach suitable and approved contracting firms.

(f) The future of the SILM EGYCO dredging fleet now in Bombay should be decided in relation to the outcome of the matters enumerated above.

(g) Any necessary steps should be taken to ensure that construction plant or materials on site are not unlawfully removed from the site by Hind Constructions Ltd. or their sub-Contractor.

APPENDIX II

Points in Dispute Referred to the Arbitrator in the matter of Arbitration between Hind Construction Co. Ltd. and the Union of India [*vide* paragraph 2.20]

Re: Naval Dockyard, Bombay.

Points in dispute in the present reference as suggested by both the parties.

1. Is the Preliminary Statement a part of the Contract, if not, can it be used in any way in the construction of the Contract?

2. Can the Company rely on the preliminary statement?

3. What information, if any, in the preliminary statement is incorrect or misleading and if so what is its effect?

4. Was time the essence of the Contract? If so, what is its effect?

5. Was the Company ready and willing to carry out its obligations in accordance with the terms of the Contract

6. Were the various sections of work to be carried out under the Contract inter-dependent and if so to what extent?

7. What is the scope of the Engineer's authority and their functions with regard to the works under the Contract?

8. Were the Engineers agents of the Government, and if so, to what extent?

9. Is the Government responsible for the defaults, if any, committed by the Engineers in matters in which they were not acting for and on behalf of the Government?

10. If the reply to point No. 9 is in the affirmative, then were the defaults etc. committed by the Engineers of such a nature as to discharge the Company from performing its obligations under the Contract

11. Did the Government and/or the Engineers refuse and/or neglect to perform their obligations under the Contract? If so, was the Company entitled to put an end to the Contract?

12. Did the Government and|or the Engineers by their acts and| or defaults prevent the Company from fulfilling its part of the Contract? If so, was the Company discharged from its obligations under the Contract?

13. Is the Company entitled to any damages and/or compensation by reasons of breaches and/or preventions on the part of the Government and/or its Engineers? If so, what is the amount of such damages or compensation?

14. If it be held that the Engineers refused and|or neglected to perform any part of their obligations under the Contract and were guilty of acts of preventions, was the Government entiled to enforce any of the terms of the Contract against the Company?

15. Is any claim not made by the Company in the notice under Sec. 80 of the C.P.C. outside the scope of the present reference?

16. Did the Engineers withhold and/or refuse certificates in respect of any work done or services rendered by the Company as stated in para 31 of the Statement of Claim of the Company. If so, what is the effect thereof?

17. Has the Company waived its rights to make any claims on the basis of any delays, defaults, preventions or breaches on the part of the Government and/or the Engineers?

18. Is the Company estopped from making any claim on the basis of Engineers' delays, defaults, preventions or breaches as set out in para 25 of the Claim of the Company?

19. Could this Contract be frustrated in part?

20. Was the contract frustrated wholly or partly on the grounds mentioned in the Company's Statement of Claim? If so, on what basis and from what date are the rights and liabilities of the parties to be determined?

21. Can any part of the works to be done under the contract be separated to determine if the contract was only partly frustrated? If so, with what effect?

22. Should the company be directed to specify the date or dates of frustration in regard to the entire contract or in regard to various items of work under the Contract?

23. Does the evidence prove that the contract was void *ab initio* partly or in its entirely on the ground of mutual mistake or impossibility of performance as distinct from frustration of contract? If so, with what effect?

24. Is the determination of point No. 23 within the scope of the present reference?

25. If it be held that the contract was frustrated, is the Company entitled to be paid in terms of cl. 65 of the Contract? If so, what is the amount?

26. Is the Company in case of frustration, entitled to be paid on any basis independently of Cl. 65 of the Contract. If so, what is the amount?

27. Did the Company abandon all or any of the work under the Contract? If so, what is its effect?

28. Were the Engineres justified in issuing their certificates of 4th October 1956?

29. Was the Government justified in forfeiting the contract on 27/28th December 1956?

30. Was the forfeiture of the contract on the part of the Govt. wrongful? If so, to what relief is the Company entitled?

31. Was the Government entiled to seize and take possession of the plant and machinery etc. lying on the site at the time of forfeiture of the contract? If not, what is the effect thereof?

32. What are the items of plant and machinery, building and construction materials, buildings etc. taken by the Govt. at the site of the work and what is their value?

33. Did the Company give requisite cooperation after forfeiture of the contract in the preparation of Inventories of the items lying on the site and which fell into Government's possesion? If not, what is its effect?

34. Did the Government seize and take possession of the dredging fleet as alleged by the Company? If so, was the seizure wrongful and what is its effect?

35. What claims, if any, have been made by SILM and/or SEDECEGYCO in respect of the alleged wrongful seizure of the dredging fleet? Is the Government liable for any of these claims? If so, to what extent?

36. Is the Government entitled to use building constructed or erected by the Company for the works without paying any compensation to the Company? If so, is the Government entitled to any other rights in regard to these buildings?

37. What are the quantities of works carried out and services rendered by the Company under the Contract till 27/28th December, 1956?

38. What were the terms and methods, if any, provided in the Contract for concreting the foundation of the Boat Pond Wall? Could or was the Company liable to do under-water concreting by any method other than that provided in the Contract?

39. When was the Company entitled to be paid as and by way of advance a sum equal to 75 per cent of the amount paid by the Company towards Customs Duty? Did the Engineers commit any breach in respect of the same, and if so, what are the consequences thereof?

40. Have the disputes set out in para 25C of the Company's Statement of Claim, *i.e.* regarding Boat Pond Wall foundation been referred to the Arbitrator and has the Arbitrator jurisdiction to adjudicate on the same?

41. Did the Company satisfy the provisions of the Contract regarding insurance of the Dredging fleet and pumping plant? If no, what is its effect?

42. Did the Company sign the Contract with the full knowledge that it would not be able to fulfil essential conditions of the Contract in regard to vesting of plant and joint insurance as regards the Dredging fleet and pumping plant proposed to be provided by it? If so, what is its effect?

43. Is the Company entitled to recover from the Government a sum of Rs. 15,45.000/- as per particulars given in Exhibit 'F' of the Company's Statement of claim?

44. Is the Company entitled to recover a sum of Rs. 45,69.395/- from the Government as per particulars given in parts I and II of Exhibit 'B' of the Company's Statement of Claim?

45. Is the Company entitled to recover a sum of Rs. 4,485,140 from the Government as stated in para 33 of the Company's Statement of Claim?

46. Is the Company entitled to the return of plant and machinery etc. as claimed? In the alternative, is the Company entitled to the value thereof? If so, what is the amount of such value?

47. What amount, if any, is the Company entitled to on account of detention and deterioration of plant and machinery etc. and the use thereof by the Government?

48. Is the Government entitled to sell the assets of the Company at any time or to set off the proceeds of sale in or towards the satisfaction of any sum alleged to be due from the Company?

49. Is the Company entitled to be paid insurance monies received or receivable in respect of the policies in the joint names of the Company and the President of India?

50. Is the Company entitled to be indemnified in respect of the claim of SILM and/or SEDECEGYCO regarding the Dredging fleet?

51. Is the Company entitled to interest on any of the amounts claimed by it? If so, at what rate?

52. Are the claims relating to items in Exhibit 'B' part II of the Company's Statement of claim and specified in para 4 of the Government's 'Preliminary Objections' within the scope of this arbitration?

53. If any amounts are found due to the Company, to what extent are they to be set off against the amount claimed by the Government as set out in Exhibit 'B', 'C' and 'E' of the Government Statement?

54. What were the terms agreed by and between the parties in respect of the work of dredging?

55. Was use of any particular type of dredger contemplated or provided for in the contract?

56. Was it the basis of the Contract that almost the entire work of dredging under items 1, 2 and 11 the Bill of Quantities

would be of such a nature as could be done by Suction dredger?

57. Did the Company while doing the work of dredging encounter substantial quantity of materials which were not capable of being dredged by Suction dredger?

58. Did the Company while doing the work of dredging encounter materials which were of entirely different character and composition from what was agreed or contemplated at the time of Contract? If so, what is the effect thereof?

59. Has the Arbitrator jurisdiction to decide whether the materials met with during dredging were of an entirely different character and composition than what was contemplated under the Agreement?

60. Under the circumstances as set out in the Company's Statement of Claim with regard to the work of dredging, was the Contract frustrated? If so, on what date was the Contract frustrated?

61. What is the quantity of materials dredged by the Company?

62. What amount, if any, is the Company entitled to in respect of the work of dredging done under the Contract or stated in the Statement of Claim filed by the Company?

63. Did the Company carry out and fulfil its duties and/or obligations and/or responsibilities and/or requirements under the Contract in regard to the Dredging and Reclamation work? If not, what is its effect?

64. Was the Company justified in ceasing dredging operations on 9th June 1956? If not, what is its effect?

65. Did the Company commit any breach of Contract in regard to the vesting of plant and joint insurance of the dredging and pumping plant provided by it? If so, what is its effect?

66. What amount, if any, is the Government entitled to recover in respect of claims set out in Exhibit 'E' of the Statement of Claim?

67. Is the Government entitled to refund of Rs. 1,45,850/- being the refundable advance paid to the Company on account of Customs duty on the Dredging fleet?

68. Did the parties enter into the Contract relating to rock-breaking on the basis that its character and composition were such that it could be broken up within the terms of the Contract by the BPT rockbreaker as described in the Statement of Claim of the Company? If so, did its character and composition turn out to be of different character? What was the extent of the difference and what is the effect thereof?

69. Has the Arbitrator jurisdiction to decide whether the rock was unbreakable and/or of entirely different character and composition than what was contemplated under the agreement and/or it was impossible to break the rock within any reasonable time as stated in the para 12 of the Company's Statement?

70. Was the Contract relating to rockbreaking and rock/dredging frustrated on any of the grounds set out in the Company's Statement of Claim? If so, on what date was the Contract frustrated?

71. What is the quantity of rock broken by the Company?

72. What amount, if any, is the Company entitled to for breaking of the rock under the Contract or on any other ground stated in the Statement of Claim filed by the Company?

73. Did the Company carry out and fulfil its duties and/or obligations and/or responsibilities and/or requirements under the contract in regard to rock-breaking and rock-dredging? If not, what is its effect?

74. Was the Company justified in ceasing rockbreaking operations on 9th June, 1956 and grabbing operations in July, 1956? If not, what is its effect?

75. What were the duties and/or obligations and/or responsibilities and/or requirements of the Company under the Contract in regard to rockbreaking on the line of Frigate and Boat wharves? Did the Company carry out and fulfil them? If not, what is its effect?

76. If the answer to point 75 is in the negative, did the Company further refuse to agree to the Government carrying out this work at the Company's cost by other agency? If so, what is its effect?

77. What amounts, if any, is the Government entitled to in respect of the claims set out in para 67 of its Statement Part C?

78. What were the terms agreed by and between the parties with regard to the work of construction of wharves?

79. What were the terms, basis, length and method of driving or sinking of cylinders agreed upon by and between the parties?

80. Did any situation fundamentally different from what was agreed upon unexpectedly emerge? If so, what is the effect thereof?

81. Has the Arbitrator jurisdiction to decide whether a situation fundamentally different from what was agreed upon unexpectedly emerged?

82. With regard to the work of construction of wharves under the circumstances mentioned in the Company's Statement of Claim, was the Contract frustrated? If so, or what date was the Contract frustrated?

83. Did the Company make provisions for necessary plant and machinery on the basis that the lengths of cylinders would not exceed 50 ft. and the depths to which the cylinders were to be sunk or driven would not exceed 10 ft.? What is its effect?

84. As a result of the borings taken in February 1956, was it found that the lengths of cylinders would exceed 50 ft. and depths to which they were to be driven or sunk would be much more than 10 ft.? If so, what is the effect thereof?

85. Was the Company required to do the work of pile driving in respect of cylinders under the Agreement?

86. Was the Company required to construct cylinders of lengths exceeding those agreed upon by the parties in the Contract?

87. Did the Company carry out and fulfil its duties, obligations, responsibilities and requirements under the Contract in regard to the construction of the wharves? If not, what is the effect thereof?

88. Did the Company refuse to comply with the Engineer's instructions dated 22-3-56 and 5-4-56 in regard to this work? If so, what is its effect?

89. Did the Company carry out and fulfil its duties, obligations, responsibilities and requirements under the Contract in regard to the construction of Boat Pond Wall and Customs Basin walls? If not, what is the effect thereof?

90. Was the Company justified in ceasing operations on these works in May 1956? If not, what is the effect?

91. Did the Company commit breach of contract so as to justify the Government to carry out the contract works which were not started or not completed by the Company?

92. Was there any lack of collaboration or disputes between the Company and SILM? If so, what was its effect on the performance of the Contract by the Company?

93. Did the Company secure necessary technical collaboration from SILM? Were there any disputes between the Company and SILM? If so, did such disputes have any effect on the performance of the Contract?

94. What is the date on which the Arbitrator entered upon reference in respect of Government's claims as a substantive claim? What quantities of work under the Contract were carried out by Government from 28-12-56 (a) till the aforesaid date and (b) thereafter?

95. Has the Government incurred any extra cost in completing the works under the Contract? If so, is the Company liable for the same and to what extent?

96. To what amount, if any, is the Government entitled in respect of the claim set out in Exhibits 'B', 'C', 'D' and 'E' of its claim?

97. Is the damage claimed by the Government in its Statement contained either in Part 'C' or 'D' remote in law? If so, is the Government entitled to the same?

98. Has the Government suffered loss on account of any delay of the Company in carrying out its obligations under the Contract?

99. Has the Government waived its right to make any claim on the basis of any delay or defaults on the part of the Company?

100. Was the delay, if any, in commissioning dredging fleet and/or starting dredging operations caused by reason of circumstances beyond the Company's control? What is its effect?

101. What is the effect of approval by or on behalf of the Govt. of programmes, designs, plant, materials and labour submitted and/or brought on site and/or provided by the Company?

102. Did the craft hired from the Naval authorities sustain any damage in the hands of the Company? Is the Company liable to pay to the Government in these proceedings any sum on account of alleged hire charges or repair charged. Has the Arbitrator jurisdiction to entertain such a claim?

103. Were the Engineers not entitled to invoke Cl. 46 of the Conditions of Contract by their letter dt. 19-12-55 (7-10-55) in the circumstances of the case? If not, what is its effect?

104. In what respects are the time, conditions and circumstances under which the Government has completed or is completing the works different from those provided in the Contract? What is the effect of such differences on the claim of the Government?

105. Did the Government construct the cylinders or drive or sink the same in accordance with the provisions of the Contract? If not, what is the difference and what is its effect?

106. Was the work in connection with the Contract No. 2 held up? Was the same due to any defaults and/or negligence of the Company?

107. Is Government entitled to interest on its claims and if so, to what extent?

108. Is Government entitled to refund of the sum of Rs. 4,68,520/- being the outstanding amounts of advance on plant and machinery due by the Company?

APPENDIX III

Details of Hearings held in Connection with the Arbitration between Hind Construction Co. Ltd. and Union of India. (Vide paragraph 2.36)

Before late Shri J. N. Majumdar

All 31 hearings were held at CALCUTTA which was his residence.

Before Shri Bishan Narain

A total of 608 hearings were held at Delhi, 87 at Calcutta and 84 at Bombay. The dates and places of hearings are indicated in para 3 below. The venue is indicated by the letters B.C.D. which stand for Bombay, Calcutta and Delhi respectively.

Dates	No. of hearings	Place
15 Apr 61	1	D
12 to 20 Aug 61	9	D
9 to 17 Oct 61	9	D
9 to 18 Jan 62	10	D
20 to 27 Mar 62	7	B
18 to 22 Apr 62	5	D
4 to 11 May 62	8	D
18 July 62		D
11 to 25 Sep 62	15	D
5 to 25 Nov 62	22	D
14 to 16 Jan 63	3	B
22 Feb 63	1	D
15 to 22 Mar 63	8	D
16 to 27 Aug 63	12	D
10 to 30 Oct 63	20	D
4 to 15 Nov 63	13	D
4 to 13 Jan 64	10	C
10 to 19 Feb 64	10	D
28 Mar to 11 Apr 64	14	D
15 to 28 June 64	14	C
27 to 31 Jul 64	3	D
15 to 21 Sep 64	7	D
9 to 22 Nov 64	14	D

Dates	No. of hearings	Place
1 to 6 Dec 64	6	D
23 to 27 Dec 64	4	C
21 to 27 Feb 65	6	D
6 to 17 Apr 65	12	D
8 to 16 Aug 65	9	D
24 to 31 Aug 65	8	C
28 Nov to 4 Dec 65	7	D
21 Feb 66	1	D
26 Mar to 2 Apr 66	8	D
20 to 26 Apr .66	7	D
10 to 15 Oct 66	6	B
14 Dec 66	1	D
31 Dec 66	1	D
28 Feb to 9 Mar 67	12	D
1 to 24 Jul 67	21	D
11 to 23 Sep 67	12	D
6 to 16 Dec 67	10	D
12 Jan 68	1	D
16 to 31 Jan 68	16	C
3 to 26 Feb 68	23	D
28 Mar to 1 Apr 68	4	D
27 Jul to 4 Aug 68	10	D
29 Oct to 5 Nov 68	8	B
24 Nov to 1 Dec 68	8	D
24 Dec 68 to 3 Jar 69	13	B
26 Feb to 13 Mar 69	14	D
15 Jun to 6 Jul 69	20	C
29 Jul to 1 Aug 69	4	B
14 to 21 Sep 69	9	B
21 to 29 Oct 69	9	B
1 to 19 Dec 69	17	D
21 to 28 Jan 70	8	D
10 Feb to 17 Mar 70	44	D
26 & 28 Jul 70	2	D
21 Oct to 7 Nov 70	15	D
1 to 8 Dec 70.	7	D
24 to 29 Jan 71	5	B
23 Mar to 9 Apr 71	18	D
1 to 15 Jul 71	16	D
2 to 16 Sep 71	14	D
15 to 24 Dec 71	10	D
1 to 12 Apr 72	12	D
25 Jun to 6 Jul 72	12	C

Dates	No. of hearings	Place
26 Aug to 9 Sep 72	15	D
28 Oct to 11 Nov 72	13	D
27 Dec 72 to 6 Jan 73	11	B
7 Feb to 17 Feb 73	11	C
28 Mar to 1 May 73	31	D
21 Jun to 3 Jul 73	13	B
17 Aug to 31 Aug 73	19	D
TOTAL	779	

APPENDIX IV

Note furnished by the Ministry of Defence indicating the reasons for delay in implementation of the Naval Dockyard Expansion Scheme [vide *paragraph* 4.2]

Stage I

The Project Report of Sir A. G. P., Consulting Engineers was received in May 1950 and was under consideration by the Government till November 1952, when necessity was accepted, Consultancy Agreement signed and administrative approval issued for what was known as Stage I Works at a cost of Rs. 5.55 crores.

2. Thereafter, site investigations in the form of borings and surveys were conducted and completed by May 1953, tenders advertised for Contract I in June 1953, received in October 1953, and considered and reported upon by the Consultants by early December 1953. However, the contract could not be accepted till 2nd September, 1954 mainly for the reason that it took this interval from December 1953 to August 1954 to negotiate with Bombay Port Trust and get possession of their various assets to enable this Contract to commence.

3. Contract I which was accepted on 2nd September, 1954 was to be completed by May 1957 but after only 15 per cent of the physical work was executed, the contractors stopped the work in June 1956 and abandoned the Contract in September 1956. This resulted in the forfeiture of the Contract in December 1956, at which time Govt. decided to get the balance of works done through a departmental organisation to be set up for the purpose. Though the administrator for this purpose was appointed in February 1957, he could not restart the work till November 1957 for the following reasons:—

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

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

(c) assembling the staff required for this purpose.

4. The works remained under the control of this Engineer Administrator till October/November 1958, when the Government concerned about the slow progress of the work, reorganised the Project and appointed a Director General in overall charge of the Project responsible to Government direct.

5. Apart from Contract I, the other major work of Stage I was the construction of the Cruiser Graving Dock. This was advertised in November 1954, tenders received in February 1955, accepted at a sum of Rs. 2.77 crores in August/October 1955 when works started. This contract, which was initially to be completed in January 1959, was actually completed in November 1960, the delay being occasioned by the following factors:—

(a) consequence of default of Contract No. 1;

(b) decision to extend dock by 20 feet in November, 1959;

(c) delays for which the Contractor was wholly responsible and for which he was liable for liquidated damages.

6. The other main civil engineering works, namely, extension of the Ballard Pier, was sanctioned in 1963, and commenced immediately thereafter and completed in January, 1967, the work being executed departmentally.

7. During this period, various machinery contracts required to service the wharves, were taken up and completed. The last of such machinery contracts was completed in May, 1968 and the remaining minor works of Stage I were all completed by December 1970.

Works A

Stage II

The balance of works, for which necessity was accepted in 1952 and which were not included in Stage I were administratively approved by Government in September, 1964 as Stage II at a cost of Rs. 14.59 crores. A decision was taken to execute all the civil engineering works of this Stage as one contract, Global tenders were advertised as per World Bank Procedures, tenders received in May, 1966 and rejected in October, 1966 as they were too high and qualified by unacceptable conditions. It was then decided to split the civil engineering works into three parts and go out to tender for the first part designated Works A. At this time a Yugoslav firm already working in India on some other projects, evinced interest. Ultimately the

work was entrusted to this firm in November 1967 at a cost of Rs. 14.25 crores to be completed in November 1972. The work was substantially completed in October 1973, the extended period being covered by valid extensions to the contract.

Works B

Dredging and reclamation was initially to be done departmentally by acquisition of suitable equipment. However, as nothing tangible materialised for a considerable time, it was decided in April 1970 to go out to contract for these works also. Again World Bank procedures were followed, global tenders advertised and received in March 1971. After negotiations which were finalised in November 1971, the contract was accepted, in January 1972 for a sum of Rs. 6.89 crores to be completed in January 1975. The works are still in progress and are expected to be completed by the end of 1975. Extension of time has been granted on valid grounds by the Engineer.

Works C

This leaves Works 'C' of the Civil Engineering Works for implementation. Government requested reappraisal and revised estimate of this work from the consultants and their report has been received in April 1975. This is under examination.

Services for Works

To make the civil Engineering Works fully useful, it is necessary to provide various mechanical and electrical services. In the 1964 Administrative approval, these Services were sanctioned only on a provisional basis. After Works 'A' were contracted out user requirements for the services were re-evaluated during 1968-69 in the light of acquisition programme of the Navy subsequent to 1964 and estimates based on this re-evaluation were called for from the Consultants. These were received in November 1970 and projected to Government in March 1971. Government gave the 'Go-ahead' sanction to the D.G. in January 1972 to proceed with these works pending formal administrative approval.

The first contract, was concluded in November 1974 and completed in June 1975. Contract for was concluded in December 1974 and is to be completed by March 1977. Contract for miscellaneous civil engineering structures was concluded in April 1975 and scheduled to be completed by April 1977. Contract for electrical services totalling Rs. 2.57 crores was concluded in July 1975 and is scheduled to be

completed by 1978. This leaves only the contract for the mechanical equipment and pipe work services to be progressed. The tenders for the mechanical services have since been received and are under scrutiny.

This would leave the services for Works 'C' to be dealt with which can be taken up after the civil engineering Works 'C' is examined and approved.

Cost

Stage I, which was originally approved in November 1952 for Rs. 5.55 crores, was revised to Rs. 10.72 crores in 1963 and to Rs. 11.32 crores in 1967. It is estimated that the completion cost of Stage I would be Rs. 12.10 crores. The increase arose out of the change in scope of these works during the intervening years, general escalations in cost and compensation payable to BPT.

Stage II, which was originally approved for Rs. 14.59 crores in 1964 was revised in December 1967 to Rs. 24.70 crores. It is now expected that this Stage will cost substantially more. Reasons for the escalation are same as for Stage I and in addition, the devaluation in June 1966.

Validity of Project Report

The original project remains basically valid today and the only changes that have had to be made are:—

(i) The omission of the main graving dock for the present, and

(ii) updating the service facilities for the ships keeping in view the later acquisitions and changes in technology which were not known at the time the original project was prepared.

Change in Scope

According to the acceptance of necessity letter issued by Govt. in November 1952, the works accepted were valued at Rs. 24 crores at the then existing price levels. Subsequently, none of the works then accepted have been deleted except the main Graving Dock. On the other hand the following additions have had to be made to the scheme:—

(a) construction of a patent slipway.

(b) extension of the Ballard Pier.

(c) enlargement in the scope of Services for both Stage I and Stage II.

The main changes in scope have occurred in respect of Services both in Stage I and II necessitated by the changes in acquisition pattern of Naval Ships and progress in technology in the intervening years.

APPENDIX V

Statement showing the Conclusions/Recommendations of the Committee

Sl. No.	Para No. of the Report	Ministry Concerned	Conclusions/Recommendations
1	2	3	4
1.	5·1	M/o Defence	It is disconcerting that a project for the expansion of the Naval Dockyard at Bombay, conceived as far back as in 1949, and which, according to the projections of the consultants to the project, should have taken about 9 years, is yet to be completed fully even after lapse of more than 25 years. As early as 1958, the Estimates Committee (1957-58) had felt that in an important matter like the Naval Dockyard, 'a greater sense of urgency should have been shown[1] and had recommended that 'more effective steps should be taken to secure the expeditious execution of the Expansion Project'[2] Eight years later, the Public Accounts Committee (1965-66) were again constrained to comment on the 'tardy manner' in which this project had been handled by the authorities at different stages. Observing that they could not help getting the impression that 'the urgency of the matter was not fully appreciated by those who dealt with this scheme', the Committee had then expressed regret that despite the Estimates Committee's earlier observations, 'no serious attempt' had been made 'to accelerate the progress of work on the scheme' and that, in the meanwhile, further delay had continued to add to its

cost.[1] Another decade has passed since then and the prospect of the project being really completed is still nowhere in sight. Its cost, initially estimated, in November 1952, at Rs. 24 crores, increased by over 50 per cent to Rs. 36 crores and is expected to go up still further. This is certainly a most unsatisfactory state of affairs.

2. 5·2 -Do- In the preceding chapters of this Report, the Committee have tried to examine, at some depth, the reasons for the delay in completing the project. It appears, on evidence, that much of the delay that had occurred from time to time was not entirely unavoidable and that some of the difficulties alleged could have been well overcome with advance planning. It has been conceded by the Defence Secretary that there had been 'prolonged delay' in the execution of the project, though at the same time the delay was sought to be explained away as unavoidable and beyond Government's control. It would, however, appear that in spite of the strategic importance of the project, its execution has been peculiarly leisurely, and the time-projections made, perhaps, validly, when the project was conceived, have been repeatedly upset.

3. 5·37 -Do- For instance, it took more than two years for Government to consider and approve the scheme for expansion submitted by the Consultants in June 1950 and another 2½ years to commence work

---

1. Estimates Committee, 8th Report (2nd LS), March 1951, Paragraph 28.
2. *Ibid*, Paragraph 33.
3. Public Accounts Committee, 48th Report (3rd L.S.), April 1966, Paragraph 3·30

1	2	3	4
			on Stage I of the scheme. The Committee have been informed that the initial period of two years was spent in overcoming the objections of the Bombay Port Trust, the Bombay Government and other private interests affected by the Dockyard expansion. While the Port Trust appears to have been averse to the scheme on account of its clash with its own expansion plants, the objections of the Bombay Government and also, it seems, the Tatas had certain aesthetic overtones inasmuch as it was feared that the Dockyard would mar the beauty of Bombay. The Committee feel that if the planning had been so meticulous as to obviate difficulties experienced later in execution, the initial delay of two years could, perhaps, even be justified in retrospect. This, however, was by no means the case, and the Committee regret that a project relative to the country's defence requirements was thus held up without sufficient warrant. It appears extraordinary that even as late as 1975 there is talk of a not unlikely re-designing of the Naval Dockyard Scheme with a view to its being fitted into still hypothetical city beautification plans. Whatever the merits of the latter, this is not, in the Committee's view, the way in which a long standing national project, with top Defence priority, should be handled.
4.	5·4	M/o Defence	Though the administrative approval for Stage I works, costing Rs. 5.5 crores, was issued in November 1952 and tenders for Contract No. 1 of Stage I were issued in June 1953, (the interim period having

			been spent in site investigations, surveys, trial bores, etc.), the contract was concluded in September 1954 only, that is to say, after nearly 22 months. The main reason for the delay is stated to be the protracted negotiations with the Bombay Port Trust, from December 1953 to August 1954, for taking possession of their assets and their transfer to Government to enable the contract to commence. It is not clear to the Committee why the negotiations in this regard were delayed till the tenders had been reported upon by the Consultants; in fact this question should have been taken up much earlier after the necessity of the scheme had been acceptd by Government. This lapse needs to be explained.
5.	5·5	-Do-	Contract No. I was to be completed by May 1957, but after only about 15 per cent of the physical work had been executed, the contractor (Hindi Construction Ltd.) stopped the work in June 1956 and finally abandoned the contract in September 1956. The actual work on the contract had also started only in late June 1955, nearly nine months after the conclusion of the contract. One of the reasons for this delay is stated to be the diversion of the dredging fleet earmarked for the work elsewhere by the contractor's Italian associates. This was an impermissible and ominous beginning, which foreshadowed the shape of things to come, culminating finally in the forfeiture of the contract in December 1956 and the almost interminable arbitration proceedings that followed thereafter.
6.	5·6	-Do-	It is significant in this context that, initially, global tenders had been invited for the work on the ground that there were no Indian

1	2	3	4
			contractors with the necessary expertise. Somewhat paradoxically, however, the contract was finally awarded to an Indian firm without previous experience in dockyard construction, on the strength of an assessment by the Consultants of the firm's previous experience in the Konar Dam, and because they were also the lowest tenderers. Another factor which weighed with the Consultants in selecting the firm for the work was that the firm had taken as partners an Italian firm, Societa Italiana Per Lavori Maritimi, presumably endowed with the requisite know-how and experience. While the Committee certainly welcome preference being given to Indian entrepreneurs in the execution of national projects, it is a moot point whether at that particular point of time when Indian expertise was admittedly not available, Government was justified in undertaking a risk that turned out to be a protracted and costly experiment in a strategic project.
7.	5·7	M/o Defence	After the contract was forfeited in December 1956, Government decided to execute the incomplete portion of the work departmentally, at the firms' risk and cost, through a departmental organisation to be set up for the purpose. Though an Engineer-Administrator was appointed for this purpose in February 1957, the work could not even be recommended till November 1957 for the following alleged reasons: (a) time required to complete survey and inventory and

evaluate the assets left behind by the defaulting contractor, valued at approximately Rs. 16 lakhs;

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

(c) assembling the staff required for the purpose.

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

8. 5·8 -Do- It has been stated by the representative of the Ministry of Defence that the comparative inexperience of the Government agency entrusted with the departmental execution might explain the delay to some extent. Nine years spent on this work appears, however, to be abnormal and the reasons for the delay are neither clear nor cogent. Government witnesses before the Committee have tried to explain only the initial delay of nine months in recommencing the work abandoned by the contractor. The Committee, however, find from the award of the arbitrator, on the reference entered on 8 January 1962, that between February 1957, when the Engineer-Administrator was appointed, and December 1958, when the project was placed under the overall charge of a Director-General, very little work was done in spite of the Consultant's constant complaints. The arbitrator also went on record that taking into consideration the

1	2	3	4
			reasonable time required for preparing the inventories, getting the plants in working order, etc., he was not satisfied that the Engineer-Administrator had acted diligently in not commencing the work before November|December 1957. It would, therefore, appear that the Engineer-Administrator had been lax in ensuring expeditious completion of the work. The Committee would like to be informed whether any action had been taken in this matter, for it appears that Government had also been concerned about the slow progress of the work which prompted them to reorganise the project in November 1958 and place a Director-General in overall charge.
6.	5·9	M/o Defence	As regards the contention of Government that some delay could be attributed to the fact that this work was not in the normal line of operation of the agency entrusted with the work, the Committee feel that in view of the project's strategic importance, Government should have taken adequate steps to appoint experienced administrators and engineers familiar with maritime works. The Committee also find from the arbitrator's award referred to in the preceding paragraph that Government did in fact appoint such officers and engineers. In the circumstances and in view of the fact that another main civil engineering component of Stage I, namely, the extension of the Ballard Pier, had been successfully executed departmentally at about the same time, the Committee find it difficult to accept this explanation. As has been pointed out by the arbitrator, Government

should have made special efforts to avoid all unnecessary delays and ensured the completion of the works as soon as possible, especially in view of the fact that the cost of carrying out these works was also continuously increasing from year to year. That this was not done is indicative of negligence in over-all supervision.

10. 5·10 —Do—

In this context, the administrative arrangements made for the expansion project merit mention. Initially, in spite of the magnitude of the project, the progress of work was watched only by a Construction Committee consisting of (i) a representative of the Ministry of Defence, not below the rank of Joint Secretary, who was the Chairman of the Committee, (ii) a representative of the Ministry of Finance (Defence) of appropriate rank, (iii) Chief of Material (Navy) or his representative, (iv) Engineer-in-Chief, Army Headquarters or his representative and (v) the Under Secretary (Navy) in the Ministry of Defence who acted as ex-officio Secretary to the Committee. It is deplorable that in spite of the existence since 1953 of such a Committee, constituted specifically to expedite the execution of the project, the progress of work was unsatisfactory. The Estimates Committee (1957-58) had noticed that out of the 40 meetings held by this Committee between April 1953 and November 1957, only one meeting was held in Bombay, and had been constrained to regret that the Construction Committee had not been 'effective in its work'.[4] It would appear that the day-to-day supervision of the project had been largely left to the Consultants. Judging from the

4. Estimates Committee, 8th Report (2nd LS), March 1958 paragraph 33.

1	2	3	4
			initial delay in the departmental execution of the incomplete portion of the work under Contract No. 1, discusssed in the preceding paragraphs, the Engineer-Administrator subsequently appointed in February 1957 had also failed to secure expeditious completion of the work. It was only in December 1958 that Government realised the necessity of a closer supervision of the project and appointed a Director-General, Naval Dockyard Expansion Scheme, to be in overall charge of the project and responsible directly to Government. The Committee are of the view that for the execution of this vital project, Government ought to have appointed a sufficiently high ranking officer well versed in the technicalities of the work and of proven leadership right from the inception.
11.	5·11	M/o Defence	If the departmental execution of Contract No. 1 was ineffective, its handling of the arbitration proceedings was inept. The arbitration proceedings relating to Contract No. 1 commenced in December 1959 when the arbitrator held the first hearing. Unfortunately, before he could proceed with the substantive matters of the dispute, he died in March 1961. Thirty-one hearings had been held but the death necessitated appointment of a second arbitrator. Under the Arbitration Act, an award requires to be made within four months after reference subject to the right of the Court, if invoked, to grant extensions. What happened here is that the arbitration proceedings dragged on for more than twelve years, during which period, as

many as 779 hearings were held by the second arbitrator, as many as eight extensions were extracted from the Court, and 23 adjournments of the proceedings were mutually agreed to and granted. As on 1 July 1975, a total expenditure of Rs. 19.74 lakhs had been incurred on the arbitration by Government as against the net amount of Rs. 15.70 lakhs finally awarded to Government by the arbitrator in February 1974. To be fair to the Ministry of Defence, its representative frankly conceded that this agony of an arbitration had neither been 'profitable nor creditable' to Government.

12. 5·12 -Do- The Committee are not unwilling to concede that after the contractor had chosen to invoke the arbitration clause in the contract, there was not much that Government could do to extricate itself from the peculiar chain of consequences that followed. The Com mittee are also aware that the case being a complicated one, some delay in its examination might have been unavoidable. However, the prolongation of the proceedings from four months prescribed in the Arbitration Act to more than twelve years appears to be, prima facie, unconscionable and inexplicable. The Committee cannot help the impression that adequate steps had certainly not been taken to ensure that the arbitration proceedings were not unnecessarily protracted. The evidence before the Committee also indicates that the conduct of the case by Counsel whom Government lavishly compensated for their pains, was informed neither by a sense of urgency over a nationally important project nor of the patriotic responsibility which such assignments call for. The Committee con-

1	2	3	4
			sider that this issue is so grave that Government should examine the position in all its implications and decide also the role which in such cases should be played by the Ministry of Law.
13.	5·13	M/o Defence	The Committee find from the arbitrator's award, for instance, that at no stage did any party object to the procedure adopted by him for bringing oral and documentary evidence of the parties on record. Neither of the parties had also ever objected to the procedure adopted by the arbitrator for hearing their respective arguments, such procedures having been adopted with the prior consent of Counsel for both parties. The contractor's stand seems understandably motivated by a desire to prolong the proceedings as much as possible. His refusal to accept a suggestion of the arbitrator that the proceedings could be cut short by conducting the examination-in-chief of the witnesses through affidavits filed by the parties and by the examination of the witnesses by the opposite party thereafter found support, strangely, from Government Counsel who agreed to an elaborate procedure which virtually turned the arbitration proceedings into something like the never-ending Original Side proceedings in a high court. The Committee can only regretfully conclude that the prosecution of the case by Government Counsel was impermissibly inefficient.
14.	5·14	-Do-	On the arbitrator's own averment, very little progress was made in the case between 1965 and 1969. It is also seen from the award

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

15. 5·15 -do- Hearings of the case could take place only occasionally between October 1965 and 1969 on account of the delay in the final preparation of Government's accounts in support of their claims before the arbitrator. The Committee are concerned to note that this process took as long as four years, in spite of repeated exhortations from the arbitrator. In fact, at one stage of the proceedings, the delay had become so extraordinary that the arbitrator had to order Government to complete the adjustments of accounts other than those relating to the disposal of the assets by 31 March, 1967 or to face the consequences and be debarred from making any further adjustments. The Committee find it very surprising that documents in support of a claim of Rs. 1.24 lakhs could not be made available to the company for inspection as they had been allegedly destroyed under Government rules. It is regrettable that the authorities concerned had not taken adequate care to preserve these documents even though

1	2	3	4
			they knew that the litigation was in progress. Similarly, since the incomplete portion of the work was being executed departmentally, at the contractor's risk and cost, the authorities were aware that on the completion of these works, they would have to satisfy the contractor that the expenses incurred on the departmental execution were reasonable. Yes, strangely, the authorities concerned had not maintained these accounts. B/Q item-wise or work-wise but had maintained them in accordance with the usual practice in this regard. This, according to the arbitrator, was wholly unsuitable for the purposes of Clause 63 of the contract under which Government had a right to recover the extra expenditure incurred on the works from the contractor, and had led to considerable complications in adjudicating upon Government's claims. In the opinion of the Committee, these are serious lapses which should be thoroughly investigated. The Committee would like to be informed of the action taken against the delinquent officials.
16.	5·16	M/o Defence	The Committee are intrigued by a statement made by the Senior Government Counsel that the delay that had occurred in this case was beyond his control and that the lacunae in the existing Arbitration Act made the arbitrator's position in speeding up the matter difficult. The Counsel had, however, not spelt out what the lacunae were, and it appears to be the view of the Law Ministry that, *prima facie*, there are no lacunae in this Act which has been long on the statute book. Nevertheless, the Law Ministry seemed to admit that

in practice, wrongful advantage could be taken of the provisions relating to adjournments, extension of the proceedings, etc. as had apparently happened in this particular case. Besides, as has been stated by the Defence Secretary during evidence before the Committee, 'all possible legal methods seemed to have been used' in this case to drag out the proceedings. In fact, the representative of the Ministry of Defence has even gone to the extent of conceding that in addition to the contractor's own motivation for prolonging the proceedings 'there may be other people who may have had their own reasons for prolonging it'. The Arbitration Act had been framed by Parliament with the intention of ensuring that disputes arising out of contracts are resolved expeditiously without having to go through other more time-consuming processes of law. Since the purpose for which the Act had been conceived has apparently been largely defeated in this case where the proceedings have been prolonged for more than 12 years, the Committee would urge Government to learn from the rather unsavoury experience of this case as well as of others which have come to the notice of the Committee and examine urgently whether amendments to the Act are necessary to obviate scope for such abuses.

17. 5·17 -Do-

Incidentally, the Committee also find that under the Arbitration Act, the Arbitrator is not bound to give any reasons for the award. The result is that often it becomes difficult to challenge such non-speaking awards on any particular ground. The Committee are of the view that it should be made obligatory on arbitrators to give detailed reasons for their awards so that they may, if necessary,

1	2	3	4
			stand the test of objective judicial scrutiny. The Committee desire that this aspect should be examined and the necessary provision brought soon on the Statute Book.
18.	5·18	M/o Defence	The manner in which the ceiling fixed on the arbitrator's fees was periodically revised upwards causes serious concern to the Committee. Initially, the fees payable to the Arbitrator, fixed on a 'per sitting' basis were subject to a ceiling of Rs. 30,000 for the whole case to be shared equally between Government and the contractor. Subsequently, however, when the number of hearings tended to go beyond the anticipated number on which the original ceiling had been based, the arbitrator brought the issue to the notice of the parties with a view to securing an enhancement of the ceiling. On the basis of such requests made by the arbitrator from time to time and the recommendations made in this regard by Government Counsel and on the advice also of the Law Secretary who had appointed the arbitrator and fixed his fees initially, the ceiling was raised to Rs. 60,000 in June 1962, Rs. 1 lakh in February 1964, Rs. 1.75 lakhs in May 1965, Rs. 2.50 lakhs in November 1968 and finally Rs. 3.65 lakhs in October 1972. No doubt, Government had been placed in an unenviable predicament with the arbitration proceedings dragging on endlessly, and that too partly on account of their own default in not expediting the departmental execution of the work abondoned by the contractor. However, in the absence of any evidence to the

contrary, the Committee cannot escape the unhappy conclusion that prior to 1972 when the final ceiling of Rs. 3.65 lakhs was fixed, the mounting expenditure on the arbitration had not unduly disturbed Government and no concrete steps had been taken to ensure that the fees payable to the arbitrator was restricted within reasonable limits.

19. 5·19 M/o Defence

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

1	2	3	4
			time. This assurance, unwisely given to the arbitrator, must have influenced subsequent decisions.
20.	5·20	M/o Defence	What irks the Committee most in this distasteful episode is that the Arbitrator suspended the proceedings at one stage until the parties made up their mind to revise the ceiling of his fees. The Committee was told by the Law Secretary that it was not open to the arbitrator to suspend the proceedings in this manner merely because his fees had not been enhanced. He added, however, that a refusal to agree to the enhancement might have meant appointing another arbitrator and starting the proceedings *de novo*. Government, unfortunately, appear to have been caught on the horns of a dilemma and faced with a predicament, chose was thought the lesser of the two evils. It pains the Committee that a person of the eminence of a retired Chief Justice of a High Court should have behaved in this manner in the middle of a long-drawn arbitration proceedings.
21.	5·21	-do-	While Government's share of the arbitrators' fees amounted to Rs. 1.95 lakhs, the Senior and Junior Counsel appointed to conduct Government's case before the arbitrator were paid such large sums as Rs. 11.52 lakhs, as on 1 July 1975, out of which Rs. 9.04 lakhs represent the Senior Counsel's fees. No ceiling had, however, been fixed in regard to the Counsels' fees. The Committee have been informed that the Senior Government Counsel, an advocate of the

Supreme Court, was paid at the rate of Rs. 1600 per hearing for the first 30 hearings and Rs. 1000 per hearing thereafter. The Committee feel strongly that in our country this kind of expenditure is an extravagance which the public exchequer cannot be expected to bear. The decision to brief, at a very heavy price, a Senior Counsel practising in the Supreme Court appears to have been taken on the basis of the largeness of the contractor's claim (Rs. 85 lakhs) before the arbitrator. The stakes were, no doubt, heavy in this case, but the Committee cannot countenance the idea that except at stupendous cost the defence of Government's case before the arbitrator could not have been properly performed. Arbitration proceedings, in any case, do not normally require the most expensive type of counsel, and in this case, judging from its results, and also the manner of Government Counsel's functioning, the Committee are afraid that the selection was unsound. The Committee further feel that, after this unhappy experience, Government should evolve procedures whereby competent but not too expensive advocates, practising in the High Courts or even in lesser tribunals, can be requisitioned for more purposive espousal of Government cases.

22. 5·22 -do- It is strange that in selecting Government Counsel, the Law Ministry should have ignored its own standing counsel who, the Committee presume, are appointed on the basis of certain well-defined criteria. In this connection, the Committee have been informed that while the Law Ministry does not normally engage counsel from outside the panel, the wishes of the administrative

1	2	3	4
			Ministry concerned are taken into account in appointing counsel. The Committee are of the view that, as far as possible, arbitration proceedings like the one under examination should be conducted with arbitrators who are persons of proven integrity, judicially inclined, fair and competent enough but not too expensive, and with counsel who should be drawn from those echelons of the legal profession which are experienced and well versed in these matters but not unconscionably expensive. The Law Ministry, in particular, should be able to draw valuable lessons from the experience of this case and play a more positive role in the conduct of Government's cases before arbitrators and other judicial bodies. Government should also seriously consider the possibility of regulating the fees of arbitrators and counsel on a fixed lump-sum basis, depending upon the complexities of each case, instead of regulating such fees with reference to the number of hearings.
23.	5.23	M/o Defence	The Committee are concerned that there appears to be no specific machinery within Government to monitor and supervise concurrently the conduct and progress of arbitration proceedings to which Government is a party. The Committee learnt with consternation from the Law Secretary that so far as arbitrations are concerned, the Law Ministry suggests the names of counsel only and does not watch the progress and expenses, and that apart from rendering advice on specific legal issues which may be referred to it by the administrative

Ministries concerned, the Ministry does not keep itself abreast of what was happening in regard to the arbitration. Such a passive role, in the opinion of the Committee, is hardly becoming of an agency entrusted with the responsibility of safeguarding Government's legal interests. The Ministry could and should play a more positive role in such matters instead of remaining content with leaving the matter to the administrative Ministries which, in any case, lack the necessary expertise and wherewithal and have to necessarily rely on the former. This is also not the first occasion when the Committee have found the Ministry's performance in legal matters somewhat wanting. The Committee are keen that Government should take very serious note of this deficiency and ensure that the Law Ministry, instead of being a largely passive agency, invariably maintains a careful and thorough check on the conduct of arbitration and other legal proceedings involving Government. The country will suffer gravely if this is not done in a meaningful and purposive manner.

24. 5·24 —do—

In this particular case, though the Ministries concerned felt from time to time that, *prima facie*, there was something wrong with the conduct of the arbitration proceedings they appear to have somewhat helplessly reconciled themselves to the delay. A number of shortcomings on the part of Government have also been pointed out by the Arbitrator in his award. All this indicates that the conduct of the entire proceedings was far from satisfactory. Now that the arbitration proceedings have at last come to a close, a detailed probe

1	2	3	4
			must be undertaken not only into the causes of the peculiarly prolonged arbitration proceedings but also of the delay in the departmental execution of the work. Responsibility of the delinquent officials should also be fixed and remedial measures adopted.
25.	5·25	M/o Defence	Even after the prolonged arbitration proceedings, resulting in a net award of Rs. 15.70 lakhs to Government, the Committee learn that the contractor has decided to contest the award in Court, and that consequently the amount has not been decreed for recovery. The Committee fear that this is yet another ruse by the contractor to trap Government ino further expenditure and delay. The Committee can only hope that commonsense and goodwill should prevail and that the court proceedings would and soon and the agony of the law's delay be minimised.
26.	5·26	-do-	The Committee learn that apart from Contract No. 1, the other components of Stage I of the project have been completed without any difficulty and that no unhappy experience has been reported in regard to the contractors entrusted with these works. The Committee, however, find that the other major work of Stage I, the construction of the Cruiser Graving Dock, scheduled to be completed in January 1959 was actually completed only in November 1960. One of the reasons for the deviation from the original schedule is stated to be 'delays for which the contractor was wholly respon-

sible and for which he was liable for liquidated damages'. The Committee would welcome some additional details in regard to the contractor's lapses in this case and would like to know the amount of liquidated damages levied and recovered.

27. 5·27 -do- There appears to have been some confusion over the provision proposed earlier, of a railway line inside the dockyard. The Committee find that out of a total length of 1136 metres of railway line laid under Stage I at a cost of Rs. 7.81 lakhs, 690 metres laid at a cost of Rs. 2.74 lakhs, between February 1970 and December 1970, has not been utilised so far. Various views on the utility of the railway line were expressed on different occasions by the then Commodore Superintendent of the Naval Dockyard and the Naval Headquarters. Though the Consultants had recommended the laying of railway lines to feed the existing workshops to be modernised and the new ones to be established on the reclaimed land within the Dockyard, and the idea had also been accepted by Government, the plan for the construction of workshops in the Dockyard prepared subsequently, in November 1969, by the National Industrial Development Corporation, necessiated further consultations and discussions to revise the layout of workshops and roads so as to permit the linking of the railway lines from the area reclaimed under Stage I to that being reclaimed under Stage II. In the interim period, some *ad-hoc* facilities constructed to meet the Navy's immediate requirements appear to have precluded the use of the railway line so far laid. The Committee feel that all this could have been

1	2	3	4
			avoided had the various components of the project been synchronised carefully with a little advance planning and steps taken to coordinate, in an integrated manner, the various activities in the Dockyard, both present and future, by means of a perspective plan.
28.	5·28	M/o Defence	The Committee have been assured in this connection by the representative of the Ministry of Defence that there would be enough traffic to justify the railway line once the entire project is completed. The Committee trust that all necessary steps would be taken to ensure the optimum utilisation of this facility in the none-too-distant future and that the expenditure thereon would not ultimately prove to be infructuous.
29.	5·29	-do-	As regards Stage II of the Dockyard Expansion Scheme, the Committee are concerned to observe that though the Defence Committee of the Cabinet had envisaged a period of 7 years (1964-65 to 1970-71) for the completion of the works under this stage, all the works are yet to be completed and that the administrative approval for this stage had not even specified any time schedule for the completion of these works. This indicates a serious lacuna in programming the works. For instance, though works 'A' under Stage II have been completed, also after the scheduled date stipulated in the contract, in October 1973 and the basin is ready, the facilities provided could be put only to limited use by the Naval ships as the

			dredging of the basin to be executed under works 'B' had not been completed. This, to say the least, represents a sorry state of affairs.
30.	5·30	-do-	The Committee find that there had been considerable vacillation over the execution of works 'B'. Though a decision had been taken as early as October 1966 to execute these works departmentally by acquiring suitable plant and equipment, no tangible progress had been made in the matter till December 1968 when a proposal was mooted by the Director General of the Expansion Scheme for executing the works through contractors. It took almost a year for this proposal to be approved by Government and after a further lapse of four to six months, Government's approval to the Director General's proposal was finally communicated in April 1970. Thus, for almost four years no worthwhile progress had been made in regard to these works. It took another year to advertise for global tenders and to receive a single tender from a Yugoslav firm, and after examination of this tender and further negotiations, the contract was accepted only in January 1972. It is distressing that a vital defence project should have been thus delayed on account of indecision and vacillation. The Committee take a serious view of the delay of about 16 months in the Defence Ministry in communicating Government's approval to the proposal made by the Director General in December 1968 and desire that reasons therefor should be investigated with a view to fixing responsibility.
31.	5·31	-do-	The contractor for works 'A' and 'B' of Stage II is the same Yugoslav firm and apparently no element of competitive tenders

1	2	3	4
			was involved in entrusting works 'B' to a contractor. The Committee feel that the decision to entrust these works on contract could have well been taken in November 1967 along with works 'A' or at least in December 1968 itself when formal proposals in this regard were made by the Director General. It has, however, been contended by Government spokesmen that these works could not be carried out simultaneously as all the dredging adjacent to the break-water and in the working area of works 'A' could only be carried out after the break-water was completed and because works 'B' also involved a certain amount of dredging in rocky strata requiring blasting. The Committee would like to know whether the consultants had also envisaged, at the time of splitting the works under Stage II into three groups 'A', 'B' and 'C' in October 1966 (after the attempts to execute all the works as one contract had proved abortive) that works 'B' would have to be taken up only after the completion of works 'A', and whether the possibility of dredging those areas away from the break-water, excluding rock-blasting, had been explored so as to ensure that at least some dredging was carried out simultaneously with works 'A'.
32.	5·32	M o Defence	The works under Stage II were divided into groups 'A', 'B' and 'C' on the advice of the Consultants. Since such a division apparently created more complications and made synchronisation of works 'A' and 'B' not technically feasible, the Committee would like

to be informed whether any action has been taken or contemplated against the Consultants.

33.	5·33	-do-	As pointed out earlier, some delay had also occurred in the completion of works 'A'. The Committee find that though these works were to be completed in 60 months, that is, by November, 1972, the execution did not proceed according to schedule, on account of various difficulties, necessitating the revision of the time schedule periodically. While an extension of 115 days was considered necessary on account of existence in the sea-bed of rocks requiring blasting, which had not been detected during site investigations, a further extension of 185 days was granted to the contractor on account of the changes introduced, after the conclusion of the contract, in the design of the caissons required for the break-water. The Committee are surprised that though detailed bore-hole data to determine the sea-bed conditions had been collected with the help of a specialist firm (Cementation Co. Ltd.), the existence of rocks had not been detected during site investigation. Another instance where the bore-hole data furnished by this same firm for the expansion of Mormugao Port ultimately proved wrong has also been brought to the Committee's notice. Such recurrently incorrect estimates, leading to disputes and avoidable extra expenditure, would lead the Committee to conclude that the performance of this firm has been far from satisfactory. The Committee, therefore, ask for an inquiry into the circumstances leading to incorrect estimation of the sea-bed conditions, and for adoption of appropriate corrective measures.

1	2	3	4
34.	5·34	M/o Defence	As regards the change in the design of the caissons, the Committee learn that this arose out of the revised electrical and mechanical requirements which were not projected earlier or were catered for ashore and had to be transferred to the caissons, consequent upon the expansion of the Indian Navy and augmentation of the Naval Fleet with new acquisitions. The Committee find that a review of the scope of these services was undertaken only in mid-1968 and was referred to the Consultants only a year later. Since the delay is somewhat conspicuous, the Committee would like to know when the 'new acquisitions' of the Navy had been thought about and whether Government had not considered it necessary to review the requirements in this regard in the light of the experience of the 1965 war. The reasons for one whole year's delay in referring the matter to the Consultants also needs to be explained.
35.	5·35	-do-	Apart from the delay in the completion of works 'A', the Committee find that on account of the changes in design, the consequent delay and increase in expenditure for the execution of the contract, the Yugoslav firm have preferred a claim for Rs. 1.38 crores. This claim is stated to be under examination by a Negotiating Committee constituted in December 1974. Now that more than a year has elapsed since this Committee was constituted, the negotiations should by now have been completed, if it has not already been done, and adequate steps taken to safeguard the financial interests of Government.

36.	5·36	-do-	More than 9 years have elapsed since the works under Stage II were split up into three groups. Yet, works 'C' have not yet even been taken up for execution. The Committee have been informed (August, 1975) that the Consultants' report and estimates were received in April, 1975 and that these were under examination for the issue of administrative approval. While the Committee trust that these works would at least now be completed with the required expedition, they would like to know why it had not been possible to finalise the scope and quantum of these works for as long a period as 9 years after the Consultants had suggested that these works should be taken up separately as a separate group.
37.	5·37	-do-	Though the major portion of the civil engineering works have after long delay been completed, various mechanical and electrical services are yet to be provided to make the said works fully useful. The Committee are concerned that considerable delay has occurred in the provision of these facilities. It is not clear to the Committee why these services were sanctioned only on a provisional basis in 1964 and why re-evaluation of the services, in the light of the changing requirements of the Navy, could not have been undertaken earlier than 1968-69, that is to say, considerably after the 1965 war. It is distressing that even after this 're-evaluation', it took about 3 years for Government to give the 'Go ahead' sanction and yet another 2½ years to conclude the 1st contract for a portion of the work. The contract for the electrical services has been concluded only as recently as July, 1975 and that for the mechanical equipment

1	2	3	4
			and pipe work services is still to be processed. The Committee are perplexed by this apparently lackadaisical approach and would like to be satisfied that all this delay in completing a strategic project which, presumably, has been urgently required by the Navy, was really unavoidable.
38	5·38	7 M o Defence	While the representative of the Ministry of Defence conceded that with greater diligence the Expansion Project could have been completed earlier, he contended at the same time that the execution of the Expansion Project has been as per the budgeted allocation of resources. In this context, the Committee have to draw attention regretfully to the Report of the Estimates Committee (1957-58) wherein they had pointed out that against the estimated expenditure of Rs. 330 lakhs on the development of the Dockyard during the First Five Year Plan, the actual expenditure was Rs. 45 lakhs only.
39	5·39	-do-	Viewed in retrospect, it is evident that there has been a truly disturbing delay in completion of an essential national project. Admittedly, this delay has resulted in the postponement of the advantages initially anticipated. Though the extent to which the operational efficiency of our Navy might have been adversely affected by this delay may not be exactly quantified, the fact remains

that the facilities envisaged have not been adequately available, and there had to be much avoidable utilisation of the ships' own machinery, resulting in greater maintenance effort and longer refit periods. This is a sad deflection on the performance of our planning and of our administration. The Committee trust that Government would conduct a careful review of what went wrong at different stages of the Project, derive a lesson from this unhappy saga of delays and doldrums, and ensure that such defaults do not recur at least in national projects of strategic importance.

---

[1] Estimates Committee, 8th Report (2nd LS), March, 1958, paragraph 28.

GMGIPMRND—LS II—2855 LS—8-4-1976—1100.

Sl. No.	Name of Agent	Sl. No.	Name of Agent

WEST BENGAL

21. Grantholoka,
5/1, Ambica Mookherjee Road,
Belgharia, 24-Parganas.

22. W. New Man & Company, Ltd.,
3, Old Court House Street,
Calcutta.

23. Firma K. L. Mukhopadhyay,
6/1-A, Banchharam Akrur Lane,
Calcutta-12.

24. Mrs. Manimala, Buys & Sells,
128, Bow Bazar Street,
Calcutta-12.

25. M/s. Mukerji Book House,
Book Seller, 8B, Duff Lane,
Calcutta.

DELHI

26. Jain Book Agency,
Connaught Place, New Delhi.

27. Sat Narain & Sons,
3141, Mohd. Ali Bazar,
Mori Gate, Delhi.

28. Atma Ram & Sons,
Kashmere Gate, Delhi-6.

29. J. M. Jaina & Brothers,
Mori Gate, Delhi.

30. The Central News Agency,
23/90, Connaught Place,
New Delhi.

31. The English Book Store,
7-L, Connaught Circus,
New Delhi.

32. Lakshmi Book Store,
42, Municipal Market,
Janpath, New Delhi.

33. Bahree Brothers,
188, Lajpat Rai Market,
Delhi-6.

34. Jayna Book Depot,
Chhaparwala Kuan,
Karol Bagh, New Delhi.

35. Oxford Book & Stationery Co.,
Scindia House, Connaught Place,
New Delhi.

36. People's Publishing House,
Rani Jhansi Road,
New Delhi.

37. The United Book Agency,
48, Amrit Kaur Market,
Pahar Ganj,
New Delhi.

38. Hind Book House,
82, Janpath, New Delhi.

39. Book Well,
4, Sant Nirankari Colony,
Kingsway Camp,
Delhi-9.

40. M/s. Saini Law Publishing Co,
1899, Chandni Chowk,
Delhi.

MANIPUR

41. Shri N. Chaob Singh,
News Agent,
Ram Lal Paul High School
Annexe, Imphal.—MANIPUR.

PUBLISHED UNDER RULE 382 OF THE RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN LOK SABHA (FIFTH EDITION) AND PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI