

PUBLIC ACCOUNTS COMMITTEE
(1966-67)

SIXTY-FIFTH REPORT
(THIRD LOK SABHA)

**[Para 76 of Audit Report (Civil), 1966 relating to the
Ministry of Works, Housing and Urban Development
re: Undue benefit to a firm of hoteliers]**



सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

November, 1966 / Agrahayana, 1888 (Saka)

Price : 0.35

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CORRIGENDA TO SIXTY-FIFTH REPORT OF PAC
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<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
2	1.4	12	has	had
5	1.10	1	firm	company
6	1.12	9	assessed	assessed it
	1.13	3	Rs.21 lakhs	Rs.2 lakhs
9	1.18	22	he	they
10	1.20	10	Supply,	Supply's
11	1.21	23	re-entry of	re-entry for
12	1.24	6	Allotme- nt of	Allotment
	1.25	3	1:19	1.19
19	read S.No.4, etc. in juxtaposition of para beginning with "The Committee are sorry to note....."			
19	S.No.5	10	Supply;	Supply's

SUPPLEMENTARY CORRIGENDUM TO THE SIXTIETH
REPORT OF P.A.C. PRESENTED ON 15.11.66

<u>Page</u>	<u>Para</u>	<u>Line</u>	<u>For</u>	<u>Read</u>
26	3.52	1	It is... sortie- wise	The Committee also observe that the value of stores lost

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ACCOUNTS COMMITTEE HELD ON THE 15TH, 18TH AND 30TH (F.N.)
NOVEMBER, 1966

MINUTES OF THE SITTINGS OF THE MAIN COMMITTEE HELD ON THE
2ND SEPTEMBER AND 30TH NOVEMBER, 1966 (A.N.)

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PUBLIC ACCOUNTS COMMITTEE
(1966-67)

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4. Shri Ram Dhani Das
5. Shri Shivajirao S. Deshmukh
6. Shri Cherian J. Kappen
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16. Shrimati Devaki Gopidas
17. Shri P. K. Kumaran
18. Shri Om Mehta
19. Shri Gaure Murahari
20. Shri M. C. Shah
21. Shri B. K. P. Sinha
22. Col. B. H. Zaidi.

SECRETARIAT

Shri H. N. Trivedi—Deputy Secretary.

Shri R. M. Bhargava—Under Secretary.

*Resigned his seat in Lok Sabha with effect from the afternoon of 29th November 1966.

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf the Sixty-fifth Report on Para 76 of Audit Report (Civil), 1966 relating to the Ministry of Works, Housing & Urban Development re: undue benefit to a firm of hoteliers.

2. The Audit Report (Civil), 1966 was laid on the Table of the House on the 15th March, 1966. The Public Accounts Committee at their sitting held on the 2nd September, 1966 decided to appoint a Sub-Committee consisting of the following members to consider in detail the case referred to in Para 76 of the Audit Report (Civil), 1966.

- | | | |
|--|---|-----------------|
| 1. Shri R. R. Morarka— <i>Chairman</i> . | } | <i>Members.</i> |
| 2. Sardar Buta Singh | | |
| 3. Shri B. L. Chandak | | |
| 4. Shri Shivajirao S. Deshmukh | | |
| 5. Shri Cherian J. Kappen | | |
| 6. Shri Ku. Sivappraghassan | | |
| 7. Shrimati Devaki Gopidas | | |
| 8. Shri Om Mehta | | |
| 9. Shri B. K. P. Sinha. | | |

3. The Sub-Committee examined this para in detail at their sittings held on the 15th and 18th November, 1966. They finalised the Report at their sitting held on the 30th November, 1966 (FN).

4. The Committee considered and approved this Report at their sitting held on the 30th November, 1966 (AN).

5. Minutes of the sittings of the Sub-Committee and the main Committee form part of this Report (Part II*).

6. A statement showing the summary of the main conclusions/recommendations of the Committee is appended to the Report (Appendix). For facility of reference these have been printed in thick type in the body of the Report.

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

(vi)

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

8. They would also like to express their thanks to the Officers of the Ministry of Works, Housing & Urban Development etc. for the co-operation extended by them in giving information to the Committee.

NEW DELHI;

November 30, 1966.

Agrahayana 9, 1888 (Saka).

R. R. MORARKA,

Chairman,

Public Accounts Committee.

MINISTRY OF WORKS, HOUSING AND URBAN DEVELOPMENT

Undue benefit to a firm of hoteliers—pages 84-85, para 76—Audit Report (Civil), 1966.

With a view to provide residential accommodation to the delegates of UNESCO Conference to be held in November, 1956, a private firm of hoteliers were allotted in December, 1955 a plot of land measuring about 6.32 acres for the construction of a hotel. This allotment was made at concessional rates viz., 5.46 acres at a premium of Rs. 2 lakhs per acre; and 0.86 acre at Rs. 1 lakh per acre, plus ground rent at 2½ per cent of the premium, per annum, on the specific condition that the lessee would construct at least 100 rooms before the commencement of the Conference. This, however, was not fulfilled.

The other terms of allotment were that:

- (i) The firm would pay 10 per cent of the premium immediately and the balance 90 per cent before 15th January, 1956; interest at 6 per cent per annum was to be charged on the amount remaining unpaid after 15th December, 1955;
- (ii) The firm were to deposit a security of Rs. 25,000 as a guarantee for completing the construction of at least 100 rooms by 31st October, 1956; this was liable to be forfeited in the event of breach of this condition.

While the firm paid the 10 per cent of the premium amounting to Rs. 1.18 lakhs immediately the balance 90 per cent amounting to Rs. 10.60 lakhs was paid by them only in July, 1956 and March, 1957, after four extensions up to 30th June, 1956 in the period of deposit had been obtained by them from Government.

1.2. On their failure to observe the condition regarding the construction of at least 100 rooms by the stipulated date, the security of Rs. 25,000 deposited by them was forfeited in October, 1957. This was also followed by orders for the re-entry of the premises issued by the Department in January, 1959. No action was, however, taken to secure physical possession of the premises. The matter was subsequently examined in consultation with the Ministry of Law who suggested (September, 1961) an amicable settlement, as, according to them, there was no concluded contract; the letter to the firm conveying the allotment by the Land and Development Office had not

been signed in the name of the President of India. On this basis, the deposit of Rs. 25,000 was refunded to the firm in May, 1964 and they were also allowed extension of time for the construction of the building up to 30th June, 1964. In July, 1962 an agreement for lease was also executed with the firm.

1.3. The following further points were noticed:

- (i) The firm were allowed to construct the building up to a height of 100 feet as against the permissible height of 70 feet without the levy of additional charges which work out to Rs. 2.44 lakhs;
- (ii) In December, 1960, the firm were found to have encroached upon Government land measuring about 860 sq. yards, which was vacated only in May, 1964. It was stated by Government in October, 1965 that instructions to recover damages amounting to Rs. 24,562 have been issued to the Land and Development Officer.

Agreement made without inviting tenders

1.4. In April, 1955, the President of the Company represented to the then Minister for Works, Housing and Supply that his firm was unfairly treated in allotment of land in 1951 for construction of a hotel in the Diplomatic Enclave. At that time there was also a talk about accommodating the UNESCO delegates who were coming to Delhi for a Conference to be held in November, 1956. The Secretary of the Ministry of Works, Housing and Supply wrote to the Ministry of External Affairs that the firm might be given a chance to put up a hotel on Mathura Road, and sought approval of the then Prime Minister. (Earlier in connection with the case of a hotel to be located in Diplomatic Enclave, the Prime Minister has said that it would be undesirable to permit this hotelier to acquire any interest in it, as he was already in the position of being a monopolist in the hotel business). After the proposal in this case was approved by the Prime Minister action was initiated to allot the land to the firm for construction of a hotel. The Committee asked why tenders were not invited for allotment of the land. The representative of the Ministry of Works, Housing and Urban Development stated that one of the reasons was that the firm had been negotiating for 2-3 years for allotment of a hotel site in the Diplomatic Enclave, but ultimately this was not allotted to them and Government themselves decided to construct a hotel on that site. The firm had represented that they had been put to a loss of about Rs. 2 lakhs in connection with the scheme for construction of a hotel in the Diplomatic Enclave in

making plans etc. Another reason was that the firm had considerable experience in the line of running hotels. The third reason was that the firm had undertaken to provide 100 rooms by October, 1956 for accommodating guests of the UNESCO Conference. Asked whether there was any record to indicate that it was a deliberate decision to do away with tenders, the witness replied: "There is no decision on the file to do away with tenders." The witness added that no reasons were given in the records except the Government's anxiety to see another hotel coming up. Asked if there was anything on record to indicate that because of Government's anxiety to have 100 rooms for the UNESCO Conference in time, they dispensed with tenders, the witness replied in the negative.

1.5. The Committee asked whether it was the intention of Government to allot the plot at a concessional rate. The representative of the Ministry of Works, Housing and Urban Development replied in the negative and referred to the letter dated 12th May, 1955 from the then Secretary of the Ministry of Works, Housing and Supply to the Secretary General of External Affairs stating that there was no intention to give any sort of concession to the hotelier and that he would be charged market rates for the land. The witness added that before the negotiations with the firm started the then Joint Secretary in the Ministry of Works, Housing and Supply had recorded the following note on 23rd June, 1955 in regard to the price of the land:

"I mentioned to him (Honourable Minister) that tentatively I was thinking that a premium of Rs. 1.5 to Rs. 2 lakhs per acre would be fair and not involve any subsidisation."

1.6. At the first meeting held with the President of the firm on the 27th July, 1955, in the Joint Secretary's room where the Joint Secretary (Finance) was also present, it was agreed that the firm might be charged Rs. 2 lakhs per acre plus annual ground rent @ 2½ per cent thereof. The Committee were informed that in July, 1955 the Land and Development Officer had also informed the Ministry (in connection with another case) that on the basis of the prices at which land and buildings in 4 new colonies were actually sold according to the sale deeds recorded in his office the following market values be adopted:

1. Sunder Nagar—Rs. 1,20,000 to Rs. 1,30,000 per acre.

2. Golf Links—Rs. 1,20,000 to Rs. 1,30,000 per acre.

3. Jorbagh Nursery—Rs. 90,000 to Rs. 1,00,000 per acre.

4. Krishna Nagar—Rs. 80,000 to Rs. 1,00,000 per acre.

(These prices were suggested by the Land and Development Officer for residential purposes).

In their note the Ministry stated that it might be argued that the rates suggested by the Land and Development Officer were for residential purposes and could not be adopted for a hotel site. In this connection, the Ministry mentioned that their experience showed that the price of land for a hotel site which was comparatively larger in area and on which the cost of construction, furnishing and equipment was quite high, was generally not higher than that of land for residential plots.

1.7. When the Committee pointed out that the price charged from the firm in this case was more than the rates given by the Land and Development Officer, the Land and Development Officer stated that the price of a commercial plot would be by and large almost double of that of a residential plot. In this case since the land value for residential use was Rs. 80,000 to Rs. 1,20,000, broadly for the purposes of commercial use it would be reasonable to estimate that the price would be something like Rs. 1½ lakhs to Rs. 2 lakhs. When the attention of the Land and Development Officer was drawn to the contention of the Ministry that "the price of land for a hotel site which is comparatively large in area and on which the cost of construction, furnishing and equipment is quite high is generally not higher than that of land for residential plots", he admitted that there would be this contradiction in the Ministry's note and added that he was merely trying to reconstruct the state of mind of the Government at the time when they came to the conclusion that it would be reasonable to put Rs. 1½ lakhs to Rs. 2 lakhs per acre. Asked whether the firm was actually charged the market price or more/less than the market price, the representative of the Ministry stated that according to the records the intention was to charge market price.

1.8. It is not clear to the Committee how the price of Rs. 2 lakhs per acre charged from the firm was arrived at by the Ministry. From the facts placed before them, the Committee find that at the time of negotiations with the firm the Ministry were not aware about the market rates of land for commercial use in the particular area. The rates given by the Land and Development Officer related only to the land for residential purposes. During evidence before the Committee two conflicting views about calculating the rates of land for commercial use (setting up of a hotel is a commercial activity) were expressed by the Ministry and the Land and Development Officer.

In the opinion of the Committee, if the intention was to lease the land at market rates it would have been a better course to ascertain it through a tender inquiry.

Concession in price

1.9. At the meeting held with the President of the company on the 27th July, 1955, it was made clear to him that construction of about 120 rooms in time i.e., by 31st October, 1956 for the UNESCO Conference "would be an essential condition of allotment of land to him and that in case the required number of rooms were not available by the scheduled time, he would be required to pay an additional premium to the extent of Rs. 50,000 per acre for the land". As an alternative to this penalty the Joint Secretary (Finance) suggested that a security deposit should be taken from him which in the event of the firm's failure to complete the required number of rooms should be forfeited by Government. With regard to the premium for the land, it was agreed that taking into account the location of the plot and the condition to be imposed for completion of the major portion of the hotel before the commencement of the UNESCO Session in New Delhi in 1956, the firm might be charged Rs. 2 lakhs per acre plus annual ground rent at the rate of 2½ per cent thereof.

1.10. Another meeting with the President of the firm was held on the 23rd August, 1955 in the room of Secretary, Ministry of Works, Housing and Supply. After this meeting the President of the company wrote a letter agreeing *inter alia* to the payment of price of land at Rs. 2 lakhs per acre and to the security deposit of Rs. 25,000 in bonds to be forfeited in the event of failure on the part of the firm to complete 100 rooms by 31st October, 1956.

1.11. The Committee drew attention to a note dated 10th October, 1955 recorded in the Ministry of Finance expressing "In our opinion the figure of Rs. 2 lakhs per acre is very low". The representative of the Ministry of Works, Housing and Urban Development stated that the note had been recorded by the Deputy Secretary (Finance). The Joint Secretary of the Ministry of Works, Housing and Supply had subsequently recorded on 11th October, 1955, that they could not reopen all these points. He had further recorded that when this matter had been discussed by him and Joint Secretary (Finance) with the Secretary, Ministry of Works, Housing and Supply and the hotelier, "we felt that the terms as embodied in the draft sanction were quite reasonable". The Joint Secretary of the Finance Ministry to whom this note was marked by the Joint Secretary of the Ministry of Works, Housing and Supply had confirmed the position.

1.12. The Committee drew attention to the communication dated 24th September, 1957 from the Ministry of Finance (Delhi State Division) wherein it had been stated that "the lessees in this case were given substantial concessions because of their specific undertaking to make 100 rooms available by 31st October, 1956 for Government guests of the UNESCO Conference." In this note, the Ministry of Finance had also stated that "the value of this land can easily be Rs. 3 lakhs per acre; the Works, Housing and Supply Ministry have themselves assessed at Rs. 2.5 lakhs per acre, *vide* their note dated 24th August, 1955 . . ." The representative of the Ministry of Works, Housing and Urban Development stated that this note had been recorded by the Deputy Secretary (Finance) about 16 months after the agreement was reached with the firm. From the notings in the Ministry of Works, Housing and Supply nothing could be inferred to suggest that there was any concession given to the firm. Asked if the contention of the Ministry of Finance was disputed by the Ministry of Works, Housing and Supply, the witness stated that there was nothing on record to show that this contention was disputed. Actually at the end of the Ministry of Finance's note there was a suggestion that the security deposit should be forfeited which was accepted by the Ministry of Works, Housing and Supply. The witness added that there was no occasion to dispute the contention of the Finance Ministry regarding concession given to the firm. Asked whether the extra premium of Rs. 50,000 per acre suggested originally in the event of firm's failure to complete 100 rooms in time did not indicate that the firm was being charged a concessional rate of Rs. 2 lakhs per acre, in consideration of making the accommodation available in time, the representative of the Ministry of Works, Housing and Urban Development replied in the negative and added that "Finance may take a certain view about the price."

1.13. From the above facts the Committee have no doubt that in consideration of the firm's undertaking to make available 100 rooms in time, the premium of Rs. 21 lakhs per acre charged for the land involved certain concession. The Ministry of Finance were all along of the view that the rate of premium was too low. The Committee note that in October, 1955 the Joint Secretary (Finance) confirmed that the terms embodied in the draft sanction as already discussed with the Secretary, Ministry of Works, Housing and Supply and the President of the company were quite reasonable. In the opinion of the Committee, "reasonable" terms as agreed to with the firm are to be judged in the context of the essential condition imposed on the

firm to make available 100 rooms by 31st October, 1956 for the use of the delegates of the UNESCO Conference. This is also clear from the minutes of the first meeting held with the firm on the 27th July, 1955. It is also significant to note in this connection that the Ministry of Works, Housing and Supply did not dispute the views that "the lessees in this case were given substantial concessions", expressed by the Finance Ministry even as late as 24th September, 1957. Even when the reply to the draft para was sent by the Ministry to Audit in October, 1965, they did not dispute the fact that the land was allotted at a concessional rate; though during the evidence before the Committee, the witness pleaded that it was an oversight.

1.14. The Committee asked how the amount of security of Rs. 25,000 required to be deposited by the firm was fixed. The representative of the Ministry of Finance stated that the original suggestion was that in the event of the firm's failure to complete the minimum number of rooms in time they should pay an additional sum of Rs. 50,000 per acre. The Joint Secretary (Finance) had made the second suggestion that the hotelier should be asked to make a security deposit but the amount of the security deposit was not indicated by him. This amount was mentioned for the first time in the hotelier's letter dated 26th August, 1955 addressed to the Ministry of Works, Housing and Supply after he had discussions in the Secretary's room on the 23rd August, 1955. The representative of the Ministry of Works, Housing and Urban Development stated that this letter gave the resume of the discussion held at the meeting on 23rd August, 1955. The Committee asked whether apart from the hotelier's letter of 26th August, 1955, there was any record of the decision taken at the meeting held on the 23rd August, 1955. The witness stated that there was a note on the file recorded on 24th August, 1955 stating that a further discussion was held with the hotelier in the Secretary's room and he "promised to write a letter for the consideration of Government". The witness added that when this note was written, the intention was that certain points were discussed and decision taken. The hotelier was to write a letter setting out the facts correctly. Asked if certain decisions had been taken at that meeting why the expression "for consideration" was used in the office note, the witness stated that "I think probably the use of the words 'for consideration' is rather unfortunate", considering the contents of the hotelier's letter and the Ministry's note thereon dated 6th September, 1955. The Committee pointed out that even in the office note dated 6th September, 1955 there was a mention that the security deposit of Rs. 25,000 suggested by the firm seemed to be too low, which meant that there was no decision on that point. The representative of the Ministry of Works, Housing and Urban Development stated that the firm's letter summarised

the "discussions that have taken place and also the tentative decision". These decisions became final after the Ministry had examined them. When the Committee pointed out that there was no indication to show that the decisions were tentative, the witness agreed with this and stated that the letter sent by the firm had been reconsidered in the Ministry's note dated 6th September, 1955. The witness agreed that there was no finality about this point till 6th September, 1955.

1.15. It is not clear to the Committee as to what were the reasons for fixing the security deposit at such a low figure of Rs. 25,000. The Committee note that originally it had been suggested that an additional premium of Rs. 50,000 per acre might be charged from the firm in the event of their failure to provide the required number of rooms in time. This worked out to Rs. 2,73,000 for 5.46 acres. The Committee consider that the security deposit of Rs. 25,000 finally agreed to was too low as compared with the original proposal to realise Rs. 50,000 per acre. As the completion of rooms by the 31st October, 1956 was an essential condition, the security deposit should have been adequate to make the firm fulfil this condition seriously.

1.16. The Committee are sorry to note another disquieting feature that no record was maintained in the Ministry of the discussions held with the President of the company on the 23rd August, 1955 where important decisions were said to have been taken which superseded some of the earlier decisions.

Concession in height line

1.17. In their letter dated 26th August, 1955 addressed to the Ministry of Works, Housing and Supply summing up the discussions and decisions taken at the meeting held on the 23rd August, 1955, the firm stated that "the height of the building will not exceed 120 feet". In the Ministry of Works, Housing and Supply letter dated 10th December, 1955 to the Chief Commissioner regarding the sanction of the lease to the firm, it was stated: "As regards the maximum height of the building, this will have to be considered separately, if any relaxation of the ordinary by-laws is involved." This was conveyed to the firm in the allotment letter issued by the Land and Development Officer on the 17th December, 1955. The Committee asked how the height of 120 feet was agreed to instead of the permissible height of 70 feet and why no additional charges were recovered from the firm for this. The representative of the Minis-

try of Works, Housing and Urban Development stated that in a note recorded in the Ministry on the 3rd July, 1956 it was mentioned:

"As to the question of relaxation of the height restrictions I think that we may permit height up to 100 feet on the condition that the total covered area does not exceed the total area permissible under our bye-laws, i.e. 70 feet \times 1/3rd of 5.46 acres, which was the buildable area."

"I discussed this point with the L. & D.O. and he has confirmed to me on phone that the total covered area will be less than 1/3rd of 5.46 acre of buildable land multiplied by 70 feet permissible height, and subject to Municipal bye-laws of height of individual floors."

1.18. The witness added that there would have been justification for charging extra premium or additional ground rent if the firm had covered a bigger area by increasing the height of the building. Asked whether it was a deliberate decision not to charge anything extra even if the firm constructed the building higher than the permissible limit provided the total covered area did not exceed what was permissible, the witness replied in the affirmative. He referred to the notes recorded in the Ministry of Works, Housing and Supply on the 16th August, 1956 and 20th August, 1956 wherein the suggestion of the hotelier to increase the height to 109 feet was accepted by the Ministry and the Town Planning Officer without charging the additional ground rent. The witness also referred to the note recorded on the 28th August, 1956 in the Ministry of Finance wherein Finance also agreed to relax the height line as may be approved by the architect (not exceeding 120 feet) without levying any additional charge. The Committee asked whether it was realised that the firm would not be able to complete 100 rooms for the Conference, when the Government approved the relaxation of height of the building in August, 1956. The witness stated that this was realised at that time, because the Municipal Plans etc. had not been approved. Asked why this concession regarding height was given to the firm in spite of the fact that he could not complete the minimum number of rooms in time, the witness stated that the firm had submitted the plans to the New Delhi Municipal Committee in March, April, 1956 but they were not allowed by that body, to go beyond 70 feet height line, unless relaxation was given by Government. Government decided about this point only in August, 1956. Asked if the delay in this regard was attributable to Government or to the contractor, the witness stated: "It was the fault of the circumstances." Asked why in that case it was decided to forfeit the firm's security deposit, the witness replied that ultimately in July, 1962 when it was decid-

ed to forgo the forfeiture of the security deposit, it was recorded that the delay took place for reasons beyond the control of the firm. The witness gave the following chronology of events in this case:

- (i) on 10th December, 1955 the sanction letter allotting a plot was issued;
- (ii) on 17th December, 1955, the Land and Development Officer communicated the sanction to the firm;
- (iii) on 13th January, 1956 possession of the plot was given to the firm;
- (iv) on 10th April, 1956 the firm submitted the plans to the N.D.M.C.;
- (v) on 17th April, 1956 the plans were rejected by the N.D.M.C. and the firm was also stopped from proceeding with the construction;
- (vi) on 4th August, 1956 the firm wrote a letter requesting for relaxation of height line;
- (vii) on 5th September, 1956, Government communicated the decision about the height line;
- (viii) on 5th October, 1956 a show cause notice was issued to the firm for not completing 100 rooms.

1.19. The Committee pointed out that the hotelier was responsible for 3 months delay in submitting his plans after the possession of land was given to him and another 4 months delay in asking for relaxation of height line after his plans were rejected by the N.D.M.C. The witness agreed that the firm was responsible for seven months' delay.

1.20. The Committee note that when the Ministry considered the question of relaxation of height line of the building in August-September, 1956 it was realised that the firm would not be able to fulfil the essential condition of the agreement viz. making available, 100 rooms for the delegates of the UNESCO Conference by 31st October, 1956. In the opinion of the Committee before agreeing to the relaxation in height, the Ministry should have re-examined the whole matter and not allowed any relaxation beyond the permissible limit without an extra charge. The Committee also note that according to the Ministry of Works, Housing and Supply, note recorded in August, 1956 there was no great justification for charging the additional ground rent as the income capacity of the hotel was not going to be increased. The Ministry of Finance at that time were not impressed by this argument although they agreed to no additional

charges being levied in view of the earlier commitment. Secondly in this case the delay was mainly due to a long time taken by the firm in submitting their plans to the N.D.M.C. and in approaching Government after the plans were rejected by the N.D.M.C. The Committee feel that there was no justification for giving the concession.

Execution of the agreement

1.21. After the firm failed to construct 100 rooms by the stipulated date, the Land and Development Officer issued orders on the 13th December, 1957 forfeiting the security deposit of Rs. 25,000. As the firm failed to pay interest on belated payment of premium for the land and ground rent therefor, the Chief Commissioner, Delhi re-entered upon the premises on the 15th January, 1959 and asked the company to hand over possession of land to the Land and Development Officer on the 2nd February, 1959. The Company did not comply with these orders and Land and Development Officer sought further instructions from the Ministry by his letter dated the 20th January, 1961. The matter was considered in consultation with the Ministry of Law who opined that the letter allotting the land issued by the Land and Development Officer was neither expressed in the name of the President nor signed on his behalf. It, thus, failed to comply with the requirement of article 229 of the Constitution and the transaction evidenced by the allotment letter was, therefore, not a binding and enforceable contract and no right or action could be based on non-observation of its terms. The possession of the land by the company and the work carried out thereon was, however, unauthorised and constituted trespass in law. In view of the above legal position, Law Ministry however advised that there was no question of forfeiture of security deposit and cancellation of allotment and re-entry of breach of conditions of this supposed contract. According to that Ministry, although action could be taken for recovering possession of the land and demolition of the building constructed thereon under the Public Premises Eviction Act the proper course for the Government would be to reach a fair settlement of the outstanding matters by negotiations with the company who had invested a substantial amount of money in erecting a costly modern hotel building on the land.

1.22. In view of the advice given by the Ministry of Law, the matter was discussed with the representatives of the firm on the 30th June, 1962 and the 3rd July, 1962. Thereafter, the matter was discussed by the then Joint Secretary with the Minister for Works, Housing and Supply. It was, *inter alia* decided that the Company

shall pay all the arrears of ground-rent and interest on premium. Their security deposit of Rs. 25,000/- however need not be forfeited. This decision was taken because 100 rooms which were originally required to be completed by the 31st October, 1956 could not be completed in time on account of delay in sanctioning the building plans by the New Delhi Municipal Committee. These plans were sanctioned by the Committee only in April, 1957. The delay in sanctioning the plans was considered by the Ministry to be due to the time taken by Government in permitting construction upto a height of 109 feet.

1.23. After the lease documents were executed by the Company on the 19th December, 1963 and the Land and Development Officer had confirmed that all payments in full together with interest on arrears at 6 per cent per annum had been made by them, sanction for the refund of security deposit was issued by the Ministry on 8th May, 1964 with the approval of the Ministry of Finance. In July, 1962 the period of completion of the entire building was extended upto 30th June, 1964.

1.24. The Committee consider it unfortunate that the letter of allotment issued by the Land and Development Officer in December, 1955 was neither expressed in the name of the President nor signed on his behalf. They were informed during evidence that at that time a certain practice was followed in the Land and Development Office. Allotment of letters are since being issued by the Land and Development Officer on behalf of the President.

1.25. The Committee do not agree with the Ministry that the delay in sanctioning the plans was due to the time taken by the Government. As already stated in para 1:19 above the firm took 3 months to submit the plans to the New Delhi Municipal Committee and another 4 months to approach Government for sanctioning the height line after the plans were rejected by the N.D.M.C. The Committee, therefore, feel that these circumstances were not beyond the control of the firm, and the original decision taken by Government in December, 1957 to forfeit the security deposit was justified. As regards the question that the forfeiture of the security deposit was illegal, the Committee feel that in view of the fact that the whole agreement was void and the firm could be treated as a trespasser on the land, there was no case for giving effect to the illegality of the agreement only to the forfeiture of the security deposit. The Committee, therefore, see no justification for the refund of the security deposit after negotiations with the firm, either on the ground that the circumstances

leading to delay were beyond the control of the firm, or on the ground that the agreement was void.

1.26. The Committee asked about the reasons for delay of 9 months in starting negotiations with the firm after the receipt of the Law Ministry's opinion in September, 1961. The representative of the Ministry stated that they were working out the terms of compromise with the party in consultation with the Ministry of Finance. The witness admitted that the period taken by them was rather long. The Committee then pointed out that the Land and Development Officer re-entered the premises in January, 1959 but asked for further instructions in the matter only in January, 1961. The Land and Development Officer admitted that there had been delay in this matter also and added that "obviously the files were not in order." The representative of the Ministry of Works, Housing and Urban Development stated that the case could have been referred to the Ministry of Law at the most after a period of six months from the date of re-entry.

1.27. The Committee consider that the delay in the matter was unconscionable and hope that such delays will not recur.

Encroachment of Government land

1.28. The Committee were informed that the firm erected a wall on the foot-path adjoining the hotel in December, 1960 and the area encroached upon was 1253 sq. ft. This encroachment was vacated on 31st May, 1964. The Department had initiated a case against the firm for the recovery of damages. Asked whether the settlement made with the firm did not include the question of vacation of the encroachment, the witness stated that at the meeting held in the Minister's room in July, 1962 this question was considered. It was decided not to allot any additional land desired by the party and that the land required for the construction of a road would have to be resumed. It was also decided that a clear understanding to this effect should be arrived at with the hotel authorities. Asked whether in the settlement with the firm any condition was laid down that the encroachment should be vacated by the firm, the witness stated that in the agreement they had mentioned about allotment of only 5.46 acres of land which implied that this additional land was not given to the firm. Asked why the encroachment was allowed for two years even after the settlement, the Land and Development Officer stated that the firm had not been reasonable and they were proceeding against them. The witness informed the Committee that apart from this encroachment there was a bigger encroachment by the firm on

the other side in 1964. The hotel authorities were physically evicted in that case following the judgment of the Supreme Court. In reply to a question, the witness stated that the damages claimed for the encroachment came to about Rs. 50,000 on one side and in all they had claimed Rs. 1,68,000. Asked why after the first encroachment came to the notice of Government no action was taken to vacate it, the witness replied: "I can only make a surmise."

1.29. In a note subsequently furnished by the Ministry, they have stated that when encroachment was noticed in December, 1960 there were two issues before the Government for consideration, namely:—

- (i) whether action should be taken under the Public Premises Eviction Act to take possession of the premises;
- (ii) whether the encroachment made by the company by erecting compound-wall should be removed.

1.30. At that time, both these pieces of land vested in the Government and their possession had to be taken back from the Company. Accordingly a reference was made to the Ministry of Law for their advice in May, 1961. They advised in September, 1961 that the position of the company in respect of the land allotted to them was of a trespasser in view of the allotment letter not having been issued in the name of the President. Action for their eviction could therefore be taken under the Public Premises Eviction Act. They, however, advised against this action and suggested that the outstanding matters might be settled with the company by negotiation. As regards the question why no specific mention was made in the agreement executed with the firm in July, 1962 about the vacation of the encroachment, it has been stated in the note that as it had not been decided to allot this land to the company, an agreement for lease was executed with the company in July, 1962 only in respect of the land measuring 6.32 acres previously allotted to them. Separate action was to be taken in regard to the encroached land. On 20th August, 1962, the Land and Development Officer recorded a note that the party was prepared to surrender its possession. Action for the forcible eviction of the company was therefore not taken. In June, 1963 after the company had paid all dues in respect of the land allotted to them and wanted the agreement for lease to be registered, they were informed that this would be done after they had vacated the encroached land. The party pleaded their inability to do so because their building material was lying on this land. They, however, gave an undertaking on 2nd July, 1963 that they would vacate the land as soon as they re-commenced the construction of the hotel building

and were able to use the material lying on the land. This undertaking was accepted by the Government and the agreement for lease registered. The unauthorised wall was demolished by the company in May, 1964.

1.31. The Committee are perturbed to note that in spite of concessions given to the firm by Government they took an illegal action and encroached upon the Government land twice i.e. in 1960 and 1964. The Committee are not satisfied with the inaction on the part of Government in allowing encroachment for two years in the first case even after the agreement was entered into with the firm in July, 1962. The Committee feel that a specific mention should have been made about the encroachment by the party at the time of settlement and the lease documents should not have been executed unless the encroachment was vacated by the party.

1.32. The Committee desire that the Government should recover the full damages from the party for the two encroachments.

NEW DELHI;

November 30, 1966.
Agrahayana 9, 1888 (S).

R. R. MORARKA,

Chairman,
Public Accounts Committee.

APPENDIX

Summary of the main conclusions/Recommendations

1	2	3	4
1.	1-8	Works, Housing and Urban Development	It is not clear to the Committee how the price of Rs. 2 lakhs per acre charged from the firm was arrived at by the Ministry. From the facts placed before them, the Committee find that at the time of negotiations with the firm the Ministry were not aware about the market rates of land for commercial use in the particular area. The rates given by the Land and Development Officer related only to the land for residential purposes. During evidence before the Committee two conflicting views about calculating the rates of land for commercial use (setting up of a hotel is a commercial activity) were expressed by the Ministry and the Land and Development Officer. In the opinion of the Committee, if the intention was to lease the land at market rates it would have been a better course to ascertain it through a tender inquiry.
2.	1-13	do.	From the above facts the Committee have no doubt that in consideration of the firm's undertaking to make available 100 rooms in time, the premium of Rs. 2 lakhs per acre charged for the land involved certain concession. The Ministry of Finance were all along of the view that the rate of premium was too low. The Committee note that in October, 1955 the Joint Secretary (Finance) confirmed

that the terms embodied in the draft sanction as already discussed with the Secretary, Ministry of W.H. & S. and the President of the company were quite reasonable. In the opinion of the Committee, reasonable" terms as agreed to with the firm are to be judged in the context of the essential condition imposed on the firm to make available 100 rooms by 31st October, 1956 for the use of the delegates of the UNESCO Conference. This is also clear from the minutes of the first meeting held with the firm on the 27 July, 1955. It is also significant to note in this connection that the Ministry of Works, Housing and Supply did not dispute the views that "the lessees in this case were given substantial concessions", expressed by the Finance Ministry even as late as 24th September, 1957. Even when the reply to draft para was sent by the Ministry to Audit in October, 1965, they did not dispute the fact that the land was allotted at a concessional rate; though during the evidence before the Committee, the witness pleaded that it was an oversight.

It is not clear to the Committee as to what were the reasons for fixing the security deposit at such a low figure of Rs. 25,000. The Committee note that originally it had been suggested that an additional premium of Rs. 50,000 per acre might be charged from the firm in the event of their failure to provide the required number of rooms in time. This worked out to Rs. 2,73,000 for 5.46 acres. The Committee consider that the security deposit of Rs. 25,000 finally

do. agreed to was too low as compared with the original proposal to realise Rs. 50,000 per acre. As the completion of rooms by the 31st October, 1956 was an essential condition, the security deposit should have been adequate to make the firm fulfil this condition seriously.

The Committee are sorry to note another disquieting feature that no record was maintained in the Ministry of the discussions held with the President of the company on the 23rd August, 1955 where important decisions were said to have been taken which superseded some of the earlier decisions.

do. The Committee note that when the Ministry considered the question of relaxation of height line of the building in August, September, 1956 it was realised that the firm would not be able to fulfil the essential condition of the agreement viz. making available, 100 rooms for the delegates of the UNESCO Conference by 31st October, 1956. In the opinion of the Committee before agreeing to the relaxation in height, the Ministry should have re-examined the whole matter and not allowed any relaxation beyond the permissible limit without an extra charge. The Committee also note that according to the Ministry of Works, Housing and Supply; note recorded in August, 1956 there was no great justification for charging the additional ground rent as the income capacity of the hotel was not going to be increased. The Ministry of Finance at that time were not impressed by this argument although they agreed to no additional charges being levied in view of the earlier commitment. Secondly in this case the delay was mainly due to a long time taken by the

firm in submitting their plans to the N.D.M.C. and in approaching Government after the plans were rejected by the N.D.M.C. The Committee feel that there was no justification for giving the concession.

6. Works, Housing and Urban Development

1-24

The Committee consider it unfortunate that the letter of allotment issued by the Land & Development Officer in December, 1955 was neither expressed in the name of the President nor signed on his behalf. They were informed during evidence that at that time a certain practice was followed in the Land and Development Office. Allotment letters are since being issued by the Land and Development Officer on behalf of the President.

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The Committee consider that the delay in the matter was unconscionable and hope that such delays will not recur.

The Committee are perturbed to note that inspite of concessions given to the firm by Government they took an illegal action and encroached upon the Government land twice i.e. in 1960 and 1964. The Committee are not satisfied with the in-action on the part of Government in allowing encroachment for two years in the first case even after the agreement was entered into with the firm in July, 1962. The Committee feel that a specific mention should have been made about the encroachment by the party at the time of settlement and the lease documents should not have been executed unless the encroachment was vacated by the party.

The Committee desire that the Government should recover the full damages from the party for the two encroachments.

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Sl. No.	Name of Agent	Agency No.	Sl. No.	Name of Agent	Agency No.
27.	Bahree Brothers, 188, Lajpatrai Market, Delhi-6.	27	33.	Bookwell, 4, Sant Narakari Colony, Kingsway Camp, Delhi-9.	96
28.	Jayana Book Depot, Chapparwala Kuan, Karol Bagh, New Delhi.	66			
29.	Oxford Book & Stationery Company, Scindia House, Connaught Place, New Delhi.	68	34.	Shri N. Chaoba Singh, News Agent, Ramlal Paul High School Annexe, Imphal.	77
30.	People's Publishing House, Rani Jhansi Road, New Delhi.	76			
31.	The United Book Agency, 48, Amrit Kaur Market, Fajar Gani, New Delhi.	88			
32.	Hind Book House, 82, Janpath, New Delhi.	95			
				AGENTS IN FOREIGN COUNTRIES	
			35.	The Secretary, Establishment Department, The High Commission of India, India House, Aldwych, London, W.C.—2.	

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