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COMMITTEE ON PETITIONS

(EIGHTH LOK SABHA)

EIGHTH REPORT

[*Presented to Lok Sabha on 2 May 1989*]

LOK SABHA SECRETARIAT
NEW DELHI

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COMPOSITION OF THE COMMITTEE
(1988-89)

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Shri G.S. Bhasin—*Deputy Secretary*

Shri O.P. Chopra—*Under Secretary*

EIGHTH REPORT OF THE COMMITTEE ON PETITIONS

(EIGHTH LOK SABHA)

I

INTRODUCTION

1.1. I, the Chairman of the Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Eighth Report of the Committee to the House on the following matters :

(i) Representations regarding non-refund of fixed deposits by various companies.

(ii) Representation regarding plight of discarded wives whose husbands have settled in foreign countries.

(iii) Representation regarding regularisation of services of daily wage workers in National Seeds Corporation.

(iv) Representation regarding regularisation of Services of Employees of Sukinda Nickel Project.

1.2. The Committee considered the above matters at their sittings held on 21 July, 22 and 23 August, 12 and 13 September, 1988 and 12 and 27 January, 1989.

1.3. The Committee considered the draft Report at their sitting held on 20 April, 1989 and adopted it

1.4. The Committee would like to express their thanks to the officials of the Ministries of Industry (Company Affairs), External Affairs, Agriculture (Department of Agriculture and Cooperatiod) and Steel and Mines and also National Seeds Corporation and Hindustan Copper Limited for furnishing information to the Committee.

NEW DELHI ;
Dated: 20 April, 1989.

BALASAHEB VIKHE PATIL,
Chairman,
Committee on Petitions.

REPRESENTATIONS REGARDING NON-REFUND OF FIXED DEPOSITS BY VARIOUS COMPANIES

2.1. Six representations had been submitted to the Committee on Petitions relating to non-refund of fixed deposits and non-payment of interests on those deposits by certain companies registered under the Companies Act. The details of these petitions are given below :

S. No.	Name of the petitioner	Amount of Fixed Deposit	Name of the Company
1.	Smt. Janak Dulari Saldhi	Rs. 12000	M/s. Bilaspur Spinning Mills & Industries Ltd.
2.	Shri Arvind P. Gondalia	Rs. 3000	SLM Maneklal Industries Ltd.
3.	Jyoti B. Chhichhiya	Rs. 5000	-do-
4.	Shri Purshottam R. Gondalia	Rs. 5000	Amar Dye Chemical, Bombay.
5.	Shri Murlidhar Aidasani	(i) Rs. 5000	Amar Dye Chemical, Bombay.
		(ii) Rs. 5000	Vallabh Glass Works Ltd.
		(iii) Rs. 6000	Texmaco Ltd.
6.	Shri B. Gopalan	Rs. 5000	Ballarpur Industries Ltd.

2.2. The main points raised in these representations were as follows :

(i) Failure of Companies to ensure effective payment to the depositors of the interest amounts on time.

(ii) Failure of the Companies to repay fixed deposits on maturity.

(iii) Need for making adequate provisions in the Companies (Amendment) Bill, 1987 to safeguard the interests of the depositors.

2.3. While furnishing comments on the points raised in the representations, the Ministry of Industry (Deptt. of Company Affairs) have indicated :

(i) Government has no power to legally bind companies to ensure effective payment of interest to depositors.

(ii) Failure by a company to repay deposits on maturity or pay interest thereon gives rise to a civil claim and the appropriate remedy is to seek redress in a court of law.

(iii) The liability of the members of a limited company having share capital is limited upto the nominal value of the shares subscribed. The company is managed by Directors appointed by shareholders. There are regulatory provisions in the Companies Act, 1956, *viz*, Sections 397, 398 and 408 for seeking relief in case of oppression of minority and mismanagement.

(iv) Part VII of the Companies Act, 1956 deals with the winding up of a company by the court. The Official Liquidator has to conduct the winding up proceedings under the supervision, control and direction of the court.

(v) The deposits accepted by a company are in the nature of unsecured debts and the depositors concerned should take proper care before taking a decision to invest their money in such deposits.

(vi) In case of default the depositors can also seek winding up of the company under Section 433 of the Companies Act.

(vii) Provisions made in the Companies (Amendment) Bill, 1987 are expected to go a long way to protect the interest of the depositors. However, since the deposits with companies are unsecured it is difficult to say that the interests of the depositors will be absolutely safe after the Bill becomes an Act."

2.4. On 25th August, 1988, in reply to Starred Question No. 416 regarding complaints received by Government about default in repayment

of fixed deposits by several companies and the action taken against those companies, the Minister of Industry *inter alia* stated in Lok Sabha as under :

> "Companies Act does not provide for any remedy against default in repayment of fixed deposits by a company after the date of maturity."

Referring to the above reply of the Minister, the Speaker observed :

> "...I would like you to look into this matter. It seems to be quite funny...The answer to this question is quite disturbing."

2.5. When a Member pointed out that there should be a debate on this subject, the Speaker further observed :

> "There is no need for a debate. This is something which has to be rectified."

2.6. In view of the importance of the subject, the Committee decided to hear oral evidence of the representatives of the Ministry of Industry (Deptt. of Company Affairs) and accordingly the representatives of the Ministry were examined on 22.8.88 and again on 12.9.88.

2.7. During evidence, the Committee pointed out that in reply to Starred Question No. 416 answered on 25 August, 1987 the Ministry of Industry had informed Lok Sabha that complaints againts as many as 89 big companies regarding defaults in repayment of fixed deposits had been received by the Department of Company Affairs during the period 1.1.1986 to 14.8.1987. Asked to explain the action taken and how Government proposed to initiate measures for safeguarding the interests of the depositors, the representative of the Ministry stated as under :

> "Earlier under the provisions of the Companies Act, the Government had no powers to make the Companies to repay the deposits to their depositors. When we receive a complaint, we generally acknowledge it and inform that they will have to adopt a civil remedy for getting the deposit amount. Normally, we forward the complaint to the Registrar of Companies for such action as he could take to help the depositor. But legally, the Department had no authority at all to interfere in the matter."
>
> Recently, with the coming in of the Companies (Amendment) Act. 1988, which was passed by the two Houses of the Parliament

in May this year, and became a law thereafter, certain provisions have been introduced bywhich the Company Law Board will have certain authority in the matter. It has been mentioned in Sub-section (9) of Section 58, which reads as follows :

Where a Company have failed to repay any deposit or part thereofin accordance with the terms and conditions of such deposit, the Company Law Board may, if it is satisfied, either on its own motion or on the application of the depositor that it is necessary to do so to safeguard the interests of the Company, the depositors, or in the public interest, direct, by order, the Company to make repayment of such deposits or part thereof forth with or within such time and subject to such conditions as may be specified in the order.

Provided that the Company Law Board may, before making any order under this Sub-section, give a reasonable opportunity of being heard to the company and other persons interested in the matter.

So hereafter a depositor can approach the Company Law Board for giving direction to the Company to repay the deposit and the Company Law/Board can call upon the depositor, the Company and others who are interested in the matter and then pass a suitable order to make repayment, and it could also give some time to the Company to repay the deposit amount"

He then read out Sub-section (10) which reads as under :

"Whoever fails to comply with any order made by the Company Law Board under Sub-section (9) shall be punishable with imprisonment which may extend to 3 years and shall also be liable to a fine...."

2.8. The witness also stated that "once these provisions are enforced, there will be some kind of remedy available to the depositors. To a large extent, this would act as a deterrent on the companies not repaying the deposits."

Asked to state whether it was not incumbent on the part of the Government to devise a fool-proof system under which the repayment of deposits together with interest was ensured to the depositors and what action the Government took in case of frauds committed by a Company;

The Representative of the Ministry replied :

> "If the company has played a fraud on the depositor, for that there is a criminal action. If a depositor goes and deposit the money, it is expected that he is reasonably sure about the bona-fides of the company. What the Government can really do is to provide some provision that where the company's defaulting in the repayment, there should be an easy forum available for a depositor to approach. Apart from this remedy, the Government has also framed certain deposit rules under which the companies can raise deposits and the companies are supposed to disclose the particulars. There are certain terms and conditions for inviting deposits. These rules have been framed with a view to see that the companies should not take gullible people for a ride. Beyond this, since it is a civil contractual obligation between the depositor and the company, it is expected that the depositor would exercise due precaution before depositing money with the company."

2.9. When the Committee pointed out that since the number of cases of frauds was increasing, such companies should be debarred from collecting deposits and the interests of the depositors be protected, the representative of the Ministry stated :

> "What the Government can really do is to make laws in such a manner that the companies are bound by certain rules regulation's etc. Despite all the laws, there would be violation of laws and there would be still cheating going on. So, I do not think that any fool-proof method can be evolved."
>
> He added :
>
> "Now the Companies (Amendment) Act, has also made a provision that anybody can approach the Company Law Board which can pass the order to repay under certain terms and conditions, and if that order is violated, then penal action can be taken against them."

2.10. Explaining the position about the criteria adopted by the Government before giving permission to the Companies accepting deposits, the representative of the Ministry stated :

> "As far as giving of permission is concerned, Government does not have to give permission toany individual case. First the Company

is to get registered, that is, with the Registrar of Companies. It is only after the company is registered that it can raise deposits in proportion to the assets that it has by way of share capital, reserves, etc. That is the rule that is made for the deposit collection. The rules provide that no company can raise deposits exceeding 35% of the aggregate of the paid up share capital and free reserves of the company. So, this safeguard is there."

2.11. The Committee pointed out that there were companies which had raised deposits aggregating more than 100 per cent of their paid up capital. In this connection the representative of the Ministry replied :

"Where Section 58-A is violated and when it comes to notice, their prosecution takes place."

2.12. When asked how the Ministry ensured that the Companies did not accept deposits beyond 3[illegible] per cent of the paid-up-capital, the representatives of the Ministry stated :—

"We take care of this aspect while these are examined in the Annual Returns filed by the Company. Further, the Chartered Accountants, who audit the accounts, are expected to give us a certificate. These returns are also scrutinised by the Registrar of Companies. If it comes to our notice that the deposits are in excess of what is permitted, then a show-cause notice is issued. If there is no satisfactory answer, it will be followed by prosecution."

2.13. The Committee enquired what penal action could be taken if any company indulged in non-refund of deposits made by the public or in non-payment of interest on due date. The Ministry in a written communication stated :

"The cases for prosecution are filed either for violation of the provisions of section 58A of the Companies Act or for the rules made thereunder. Non-refund of deposits by companies to the depositors does not constitute a violation of either the section or the rules. As such, if there is an increase in violations in repayment of deposits by companies, it would not lead to any increase in the number of cases filed for violation of section 58A or the rules made thereunder."

In another note, the Ministry have stated :—

"Earlier, under Section 58A or the rules made there under, it was note penal offence in case a company did not repay the deposits in time. As mentioned earlier, the legislation has now provided for penal provisions if the directions of the Company Law Board regarding repayment are not complied with."

2.14. The Committee desired to know whether companies are required to take prior clearance from Government before inviting or accepting deposits. In this connection, the Ministry have stated :

"Companies are not required to obtain prior clearance from Government before inviting or accepting deposits. However, they are required to comply with the requirements of Section 58A and the Companies (Acceptance of Deposits) Rules, 1975, which, inter alia, require that where a company invites deposits, it shall issue an advertisement for the purpose in Leading English newspaper and in a Vernacular newspaper circulting in the State in which the Registered Office of the company is situated and the advertisement shall besides giving in brief the summarised financial position of the company, as revealed in its two latest audited balance sheets, also specify the name of the company, the date of incorporation, the business carried on by the company and its subsidiaries and the details of its branches or units, if any, brief particulers of management of the company, name address and occuptions of the directors, profits of the company before and after making provisions for tax for the three financial years immediately preceding the date of advertisement and dividends declared by the company in respect of the said years. Such an advertisement is also required to be filed with the Registrar of Companies. However, where a company intends to accept deposits without inviting such deposits, it shall before accepting deposits, file with the Registrar of Companies a statement in lieu of advertisement containing the required particulars."

2.15. When asked what action was taken by Government on the complaints about non-refund or non-payment of interest on deposits, the Ministry stated :—

"All these complaints were forwarded to the Registrars of Companies for necessary action and the complainonts were informed

about the legal position that while the Government would consider taking action for violation of provisions of Section 58A of the Companies Act, 1956 if such contravation is established, it has no power to issue any directions to the company in the event of its refusal to repay the amount of deposit on its maturity. The failure to repay deposits by a company gives rise to civil claim and the appropriate remedy in such cases would be to seek redress in the court of law. The depositors can also move for winding up of a company under Section 433 of the Companies Act, 1956, in the event of such failure to pay."

2.16 The Committee enquired whether it was not incumbant on the part of the Government to devise a fool-incumbent on the part of the Government to devise a fool-proof system under which the repayment of deposits together" with interests was ensured to the depositors and whether Government proposed to initiate any measures for safe-guarding the interests of the depositors, the representative of the Ministery stated as under —

"Earlier under the provisions of the Companies Act, the Government had no powers to make the Companies to repay the deposits to their depositors. When we receive a complaint, we generally acknowledge it and inform that they will have to adopt a civil remedy for getting the deposit amount. Normally we forward the complaint to the Registrar of Companies for such Action as he could take to help the depositor. But legally, the Department had no authority at all to interfere in the matter."

2.17. He further added that recently with the coming in of the Companies (Amendment) Act, 1988, passed by Parliament in May, 1988, certain provisions had been introduced by which the Company Law Board would have certain authority in the matter. Section 58(A), as now amended, provided adequate safeguards against default in repayment of fixed deposits by the companies.

2.18. In a written not furnished to the Committe, the Ministry have also stated :

"Under the amended Section 58A (9), the Company Law Board can take cognizance of any case of non-repayment of deposits on maturity on an application of any depositor, including a small depositor. The Company Law Board can also take suo-moto

action. Thus, the amenned provision will provide relief even to small depositors. It is hoped that these provisious will go a long way in remedying the grievances of dapositors against non-repayment of deposits."

It has been further stated as under :-

"We feel that the interests of depositors will be safe-guarded to a large extent by the amended provisions. It is difficult to say at this stage, that their interest will be absolutely safe. In case, the depositors are not re-paid, as per directions of the Company Law Board, prosecution lies against the delinquant companies/ Directors. The penal provisions provide for compulsory imprisonment and fine. It is hoped that the deterrent punishment provided will help the depositors to get repayment."

Enforcement of the amended provisions

2.19. The Committee were informed that the amended provisions of the Companies (Amendment) Act, 1988, which become an Act in May. 1988, have not yet been enforced. It has been stated that these provisions are proposed to be brought into force after the reconstitution of the Company Law Board in terms of the amended provisions of Section 10E of the Companies Act, 1956. During evidence before the Committee it was stated that "the notification about new provisions is linked to the reconstitution of the Company Law Board."

2.20. The Committee pointed out that keeping in view the seriousness of the cases which had been brought to their notice and the interests of thousands of depositors whose deposits were in jeopardy, the notification should be issued at the earliest and it should not wait till the Company Law Board was reconstituted. Asked about the legal or technical difficulties in the matter, the representative of the Ministry stated :-

"At present, apart from the members of the Company Law Board at Delhi, only one member is there at Madras. We do not have such members at Calcutta or Bombay. If we issue the notification and we receive a large number of applications from those places, we need to have some members in those places to handle the applications. As of today, the Company Law Board members at Delhi—the Secretary, the Additional Secretary and

the three Joint Secretaries who are ex-officio members of that Board are looking after other work of the Government also."

2.21. Answering a specific question during evidence on 22.8.1988, as to how much time would be taken to enforce the act which was passed by Parliament in May, 1988, the Additional Secretary in the Ministry informed the Committee :

"We expect that very shortly decision would be taken about it. We have to go to the Cabinet for creation of posts and ask for the Budget sanction. Within three or four months, final decision about all these matters would be taken."

2.22. The Committee enquired whather it was not possible to notify the provisions of amended Section 58A without waiting for the reconstitution of the Company Law Board. It was stated that a reference to the Ministry of Law for advice would be made. Subsequently, on 13.12.1988, the Ministry informed that the Law Ministry had advised "that sub-section (9) of Section 58A of the Companies Act does not specifically refer to the reconstituted Company Law Board. Therefore, the Company Law Board in existence at the time of the commencement of the afore said Section in question may exercise the powers available to it under the afore said provision."

2.23. The Committee were informed during evidence that the benefits of the latest amendments to the Companies Act, 1956 would be available to those depositors only whose deposits become due for repayment after the enforcement of the amended Act and the depositors whose deposits became due before the enforcement of the Act, would not be entitled to the benefits under the amended Act. The Committee, therefore, suggested that the Government should bring an amending legislation to remove this anomaly, to which the representative of the Ministry agreed.

2.24. However, the Ministry in a written communication sent to the Committee on 13.12.1988 clarified the position about the applicability of the amended Act to the old cases of fixed deposits as under :

"The matter was referred to the Law Ministry. On re-consideration of its earlier opinion, the Law Ministry had agreed with the views of the Department of Company Affairs that the language of sub-section (9) implied that even the deposits, which had matured before this sub-section came into force, but had not been repaid, would be covered by this sub-section."

Company Law Board

2.25. The Committee desired to know whether the proposed Company Law Board would function in every State capital and what procedure would be followed by the Board for dealing with the complaints from the Depositors. In this connection, a representative of the Ministry stated :

> "Right now, the Board is functioning in the 4 metropolitan cities only. As the need arises, they may create more benches in other cities also.
>
> "About the procedure, it would depend upon the procedure of the Company Law Board. The Government is not laying down the procedures of the Company Law Board. The Company Law Board will itself decide its own procedure and possibly it can even deal with an application that has been received by post. I would not be in a position to give an opinion on this because as I mentioned, this is an item that the Company Law Board itself would settle."

2.26. The Committee pointed out that with only 4 offices of the Company Law Board functioning in metropolitan cities, the small investors would be put to great difficulty in lodging their complaints. The Committee also wanted to know whether the decisions of the Company Law Board would be final or there could be an appeal in the High Court.

In reply to above points, the representative of the Ministry stated :

> "The earlier remady has not been taken away

The remedy of civil suit still remains.

This is only an additional remedy,

> The second point is, any person aggrieved by any decision of the Company Law Board on any question of Law, may file an appeal to the High Court. Otherwise, the order of the Company Law Board would be final, on question of facts."

Non-Banking Financial Companies

2.27. Non-banking financial companies including investment companies had been exempted from the provisions of section 58A of the

Companies Act excepting in respect of the provision relating to advertisement by virtue of Central Government Notification issued under Section 58A(7) (b) of the Companies Act. The deposits to be accepted by non-banking financial companies including investment companies are governed by the following Reserve Bank of India directions and rules :

(i) Non-banking Financial Companies (Reserve Bank) Directions, 1977.

(ii) The Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1987.

(iii) Residuary Non-Banking Companies (Reserve Bank) Directions, 1977.

(iv) Non-Banking Financial Companies and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977.

2.28. It has been stated that it was a consensus decision to exclude non-banking financial companies from the purview of Section 58A of the Act. The Committee enquired why these investment companies could not be brought within the purview of Section 58A of the Companies Act. The Ministry in a written communication dated 13.12.1988 stated :

"The matter was referred to the Law Ministry who have advised that in view of the prohibition contained in Section 58A(7) (b) of the Act, sub-section (9) will not apply to financial companies, as notified in the notification issued thereunder."

2.29. It is seen that the Ministry of Finance has been asked through U.S.Q. No. 1441 dt. 3.3.1989, whether the Reserve Bank of India had received complaints against certain "blade companies" in the country which attracted huge public deposits and subsequently disappeared with the deposits and if so, the action taken in the matter. In reply the Minister of State in the Ministry of Finance informed the Lok Sabha as under :—

"Reserve Bank of India (RBI) has reported that it has received a number of complaints against some "blade companies". The "blade companies" are reported to be unincorporated bodies engaged in acceptance of deposits from the public and lending the same. Acceptance of deposits by unincorporated bodies is regulted under the provisions of Chapter III-C of Reserve Bank of India Act, 1934. These provisions prohibit acceptance of

deposits in excess of the specified number of depositors. The Act also provides for penal action including fine and imprisonment. against violations of the provisions of the Act."

"RBI has further reported that the Bank has, either on its own or jointly with the State Government officials, conducted raids in the office premises of 116 unincorporated bodies in the States of Gujarat, Karnataka, Tamilnadu and Kerala and the Union Territory of Delhi, and criminal complaints have been launched against some of these firms for violation of the provisions of Chapter III-C of Reserve Bank of India Act, 1934. In one case the accused pleaded guilty in the court of law and was imposed a fine of Rs. 11000/-. The other cases are in different stages of trial. RBI has also reported that the particulars of amount of deposits with the blade companies are not available as such bodies are not required to send any returns to RBI."

"The constitutional validity of Chapter III-C of Reserve Bank of India Act, 1934 has been challenged and the matter is pending in the Supreme Court and is, therefore, *sub-judice*."

Deposit Insurance scheme

2.30. The Committee had invited suggestions during evidence on 12.9.1988, from the petitioners as well as the representatives of the companies, with whom the depositors had made deposits, as to how the interest of the depositors as well as the companies could be protected. Some of the petitioners as well as the representatives of the companies wanted the deposits to be insured. The representative of a company suggested as under :

"There should be a Deposit Insurance Scheme as we have in banks, where there should be a penalty on the defaulting companies by raising the rate of premium. For banks also there is a deposit insurance scheme where they are perhaps paying 1/2% premium. If the deposits of all the companies are taken to gether, the total fixed deposits may come to about ten thousand crore rupees. To withdraw it wholly is not a matter of joke. So a fund could be made by the Deposit Insurance Scheme and the action against the defaulting companies should be concentrated. A monitoring agency also should be fixed."

2.31. Replying to the question of providing insurance cover to the depositors, the representative of the Ministry of Industry during evidence on 13.9.1288 stated :

> "It can certainly be examined, but the basic examination will have to be done by the insurance companies. We will communicate this to the Ministry of Finance."

2.32. In a subsequent note submitted to the Committee, it was stated that the matter was referred to the Ministry of Finance, Department of Economic Affairs (Insurance Division) who informed that the matter had been re-examined in consultation with the General Insurance Corporation of India and it has not been found possible to grant insurance cover to the deposits accepted by the companies.

Repayment of Company Deposits

2.33. As stated earlier, the following companies and dcfaulted in repayment of fixed depasits and representations against them were submitted to the Committee.

1. M/s. Bilaspur Spinning Mills & Industries Ltd.
2. M/s. SLM Manaklal Industries Ltd.
3. M/s. Amar Dye Chemical, Bombay.
4. M/s. Vallabh Glass Works Ltd.
5. M/s. Texmaco Ltd.
6. M/s. Ballarpur Industries Ltd.

At their sitting held on 12.9.1988, the Committee heard some of the depositors who had given repressentations, as also representatives of some of the companies.

(*a*) *M/s. Bilaspur Spinning Mills & Industries Ltd.*

2.34. During evidence before the Committee, a representative of the company stated as under :

> "There are 2500 depositors. We have cleared 1400 depositors. Now 1100 depositors are left and out of the 1100 depositors, from April to August, we have again settled over 188 cases and schedule of repayment has been made along with interest. We are clearing their dues. We hope that in the next two to three years' time, whether the bank helps or does not help, we will

clear their dues. We want to pay each and every depositor his due along with the interest. Secondly, we take small deposits first. We are trying to clear that. Then we take big deposits, Even in the case of big deposits, we are trying to pay partially."

2.35. The representative of the company also added that if bank sould help them and give necessary finance they would clear all the outstanding deposits.

In a note, the Ministry have informed the Committee as under :

"In so far, as M/s. Bilaspur Spinning Mills and Industry is concerned, it may be stated that the company was wound up by the High Court on 2.2.1988 and the said order was stayed by the Division Bench of the Calcutta High Court on 4 2.1988."

(*b*) *M/s. Shree Vallabh Glass Works Ltd.*

2.36. While giving evidence before the Committee, the representive of the company stated :

"The company wanted to pay to the depositors in a phased manner who agreed to waive the interest part but then the Bank of Baroda and the other financial institutions came in the way and went to the Gujarat High Court. Bank of Baroda and other financial institutions said no payments should be made to the fixed depositors till their dues have been cleared. If these financial institutions had not come in the way then the company would have paid to the fixed depositors in a phased manner."

2.37. When asked how much principal and interest was due to the depositors, the representative of the Company stated ;

"The interest comes to about Rs.1.40 crores and the principal amount of these fixed depositors is Rs. 4 crores."

2.38. Regarding the total liability of the company he stated as under :

"Our total liability is Rs. 42 crores. The total assets at the market price are Rs. 60 crores. They are very modern plants. If depreciated value is taken, it would be around Rs. 25 crores."

2.39. On being asked how the company would be in a position to meet all its liabilities, he stated ;

> "A study has been undertaken by Tata Economic Consultancy—another big company. They have shown that company can pay back."

2.40. The Ministry have in a note stated as under :

> "M/s. Shree Vallabh Glass Works Limited has explained that it has been declared as a sick industrial company by an order of the Board of Industrial and Financial Reconstruction dated 12.8.1987; that the Gujarat Government has declared the company as a relief undertaking; and that the company has moved the High Court for permission to pay deposits and the said application is pending."

(*c*) *M/s. Amar Dye Chemicals Ltd.*

2.41. The Committee asked for the details of the money which was to be refunded. The representative of the Company informed the Committee as under :

> "In December, 1980, our outstanding fixed deposits were around Rs.330 lakhs. In the last seven years, inspite of huge losses we have tried our best to repay them. And as of today, the outstanding amount to Rs. 220 lakh. Deposits paid off during these seven years come to Rs. 120 lakhs."

2.42. Giving details of the scheme of arrangement for repaying the fixed deposit, he stated :

> "All dues of fixed depositors as on 31 December, 1985 and outstanding on 30 April, 1988 are to be frozen with effect from 31 December, 1985 and no interest will be payable from 1.1.1986. The principal amounts of these fixed deposits are payable in ten quarterly instalments starting 30 September, 1988 or after the expiry of three months from the date of approval, whichever is later. Interest accrued upto 30 September, 1985 will be repayable. This scheme has been prepared basically by the financial institutions and banks."

2.43. The position regarding repayment of fixed deposits by M/s. Amar Dye Chem. Ltd., M/s. Shree Vallabh Glass Works Ltd. and M/s. Bilaspur Spinning Mills and Industries Ltd. (Principal amount and interest to Shree Arvind P. Gondalim and principal amount to as explained by the Ministry is as under :

> "It has been explained by M/s. Amar Dye Chem. Ltd. that it has been declared as a reliaf undertaking for the period ending 2.12.1988 under the Bombay Relief Undertakings (Special Provi. sions) Act, 1958 and any liability incurred or accrued before 3.12.84 and any remedy for the enforcement thereof shall be suspended and all proceadings relating there to pending before any court shall be stayed; that the company has been declared as a steel industrial company by the Board of Industrial and Financial Reconstruction *vide* Order dated 21-9-1987, and that the company has filed a scheme of arrangement under Section 391/392 of the Companies Act 1956, seeking repayment of fixed deposits in instalments and the same is pending in the High Court."

2.44. In regard to the other companies, the Ministry informed the Committee that repayment of fixed deposits has been made to the complainants by M/s. SLM Maneklal Industries Ltd. and M/s. Taxmeco Ltd.

2.45. The Committee pointed out that interest of depositors who were in a way contributing to the national kitty should be safeguarded. In this context, the Committee enquired whether the company deposits, which were unsecured could not be grouped with secured debts and workers dues for repayment at the time a company was declared as sick. A representative of the Ministry stated :

> "This can be examined, but the initial reaction would be that security will have to be provided to that extent by the company. The amount of secured loans which can be raised by the company will have also to be linked to this, if you decide to treat some unsecured deposits as secured deposits. You can not have secured deposits without security."

2.46. When the Committee enquired whether the interest of depositors could not be safeguarded either through a legal remedy or otherwise the Secretary, Ministry of Industry stated :

> "Here, what you are suggesting is to make a distinction between equity capital raised by the company, and the deposits raised it in the market from various people. If

as you suggest, there is some sort of remedy made available for the depositors to get there money back, by the same logic this principal should be applied to equity also. While Government given permission to the company to raise their equity, things cannot be put on the same footing where the company has taken a loan which is secured, from a financial institution. I am sure that it would not be anybody's case that equity subscribed by people, should have an overriding priority, i.e over other debts. Equity and other deposits would be by and large in the same category, because nobody is forcing anybody to subscribe to the capital, or to make any deposits."

2.47. It was brought to the notice of the Committee by some companies that in the context of present financial position of the companies they had been rastrained by the banks and financial institutions from repaying the company deposit and interest thereon. The Committee wanted to know whether the Companies could be legally restrained from repaying public deposits and interest thereon. Further when the rehabilitation programme for sick companies was drawn up in consultation with Banks/ financial institutions, could it not be stipulated that all public deposits should first be paid alongwith interest. In this connection, the Ministry in a written reply stated—

"The matter was referred to the Ministry of Finance, Department of Economic Affairs (Banking Division) and the position explained by them is as under :—

(a) Government have not issued any instructions to banks advising them to restrain there corporate borrowers from repayment of company deposits and interest thereon. In fact, while assessing the maximum permissible bank finance of the companies, the amount of public deposits which fall due for payment during the next one year is treated as current liability meaning thereby that the company concerned is supposed to repay the same during the next one year.

(b) When rehabilitation package is prepared by financial Institution in respect of a sick company, repayment of public deposits is provided for in the cash flow statement. It is not considered advisable to stipulate that all public deposits should be paid first along with interest. It is an established fact that banks and financial institutions are making a lot of sacrifices for rehabilitation of sick

industries, If the stipulation for preferential repayment of public deposits is also made, then banks and institutions will have to shall out more funds which will not be equitable. The depositors have enjoyed the benefit of good returns on there deposits when the company was doing well. So it is but natural, that they should also be prepared to secrifice some of their inte rest when the company is in difficulty.

In regard to the question whether the companies can be legally restrained from repaying public deposits and interest thereon, It may be clarified that companies cannot be legally restrained from repaying public deposits and interest thereon, Even in the case of prohibitory orders issued by Reserve Bank under section 45 K (4) to a fiinancial company, the restraint is only against exceptance of further deposits and not against repayment of deposits and interest thereon."

OBSERVATIONS/RECOMMENDATIONS

2.48. **In the Indian capital market there has of late been a scramble on the part of companies to attract deposits from investors. All sorts of inducements are offered to the potential depositors to select a particular company or a group of companies for making deposits. For thr companies concerned, public deposits represent the cheapest source of finance. At the same time these company deposits have been particulary attractive to the lay man who finds the procedure for purchase of shares or debentures too cumbersome. These lay people are mostly retirsd persons, widows or small savers who deposits there life saying's in good-faith anticipating regular payment of interest and repayment of the amount when due. Unfortunately, however, several unscroupulous company managements have shattered the faith of a large number of depositors by dishonouring the commitment for regular payment af interest or repayment of deposit amount on maturity. When such a situation arises, the unwary depositor finds to his uttar dismay that the ,aw does not offer him any protection as the only remedy available to him is to file a civil suit in the capacity of on unsecured creditor.**

2,49. **The Committee were shocked to learn from the reply given by the Minister of Industry in the Lok Sabha on 25.8.1988 that the Companies Act does not provide for any remedy against default in repayment of fixed deposits by a company after the date of meturity, The Minister had further informed the Lok Sabha that complaints against as many as 89 big companies regarding defaults in repayment of fixed deposits had been received by the Department of Company Affairs during the period 1.1.1987 to 14.8.87. In response to a number of representations against companies forwarded to the**

Ministry through the Committee, it has been stated that as per the existing provisions of the Law, Government has no power to legally bind companies to ensure effective payment of interest to depositors and that the failure by a company to repay deposits on maturity or pay interest there on gives rise only to a civil claim for which the appropriate remedy is to seek redress in a court of law. The Committee are of the view that it is very unbecoming of a welfare state to allow the innocent investors to be cheated by unscrupulous managements in this manner. Despite a plethora of statutory provisions and enactments, it is a pity that they have failed to provide basic protection to the small investors. What is still more brffling to the Committee is that the authorities concerned have not found it fit to take a serious view of the situation and to devises an effective way out.

2.50. The Committee have been informed that earlier under the provisions of the Companies Act, Government had no powers to make the compnies to repay the deposits to their depositors. But recently with the promulgation of the Companies (Amendment) Act, 1981, certain provisions have been introduced by which the Company Law Board will have some authority in the matter. Under the new provisions, where a new company fails to repay any deposit in accordance with the terms and conditions of such deposit, the Company Law Board is empowared to direct the company to make repayment and whoever fails to comply with such directions can be penalised. Thus for the first time non-payment of a deposit or a default in repayment py any company is sought to be made a penal offence and machinery has been created for dealing witb the complaints regarding non payment of deposits. The Committee are happy that even though belatedly, Government have at last realised the need for having such a legal frame work for safegarding the interest of small investors.

2.51. The Committee, however, note that Companies (Amendment) Act, 1988 which *inter alia* envisages involvement af Company Law Board in in matters relating to company deposits, has not yet been notified. The Act passed by Parliament in May 1988 has yet to be brought into force. The explanation given by the Department for delay in the non-implementation of the new provisions was that the constitution of the new Company Low Board was a time consuming process and the notification about new provisions was linked to the reconstitution of the company law Board. At the instance of the Committee, the Department of Company Affairs consulted the Ministry of Law, who have now advised that the Company Law Board in existence at the time of the commencement of the amended Act could exercise the powers available under the new provisions. The Committee derire that the necessary notification for the enforcement of the amended provisions may be issued

without any further loss of time and the machinery sought to be created for protecting the interest of small depositors should be set in motion immediately.

2.52. The Committee find that under the amended Section 58 A (9), the Company Law Board can take cognizance of any case of non-payment of deposits on maturity on an application of a depositor or even take suo moto action. The Company Law Board has thus been nominated as a body charged with the duty of remedying the grievances of the depositors- The Committee feel that the Company Law Board as an institution may already be overburdaned with work and hence it is necessary that with in the Board a separate cell is carved out specifically for the purpose of following up the complaints regarding company deposits and taking remedial action. The Committee feel that the traditional set up may not be well equipped to cope with the number and magnitude of the complaints and it is, therefore, desirable that these aspects are taken care of right from the beginning.

2.53. The Committee consider that the Company Law Board functioning in a few metropolitan cities may not be of much use for small depositors living in far off areas. The Committee therefore, recommend that with a view to make the functioning of the Board more practicle and within the reach of small depositors, its benches should be set up in major cities or at least in all State capitals. Further to make justice easier,speedir and cheaper for the ordinary depositors, the proccdures to be followed by the Company Low Board should be simplified. Its decisions could be made time-bound-so as to ensure quick and timely justice. One essential procedure that suggests itself is that Company Law Board should entertain all complaints from depositors even those received by post. The Board should be armed with adequate powers to obviate unnecessary delays in obtaining the necessary information/replies from the Companies.

2.54. The Committee had sought clarification on the point whether the amended Act would be applicatble to old cases of fixed deposits. The Law Ministry had informed them that even the deposits which had matured before the amended Act came into force but had not been repaid, would be covered by the amended provisions of the Companies Aet. The Committee wonld like this aspect of the matter to be widely publicised by using all media like T.V., Racio, press etc. Similary, after the Company Law Board is in position and has decided about its procedure, general public should be apprised of the new set up through the press and other media . This will go a long way in educating the investing Public about the mechinery available to them for the redressal of their grievances in so far ascompany deposits are concerned.

2.55. The Committee find that according to the Deptt. of Company Affairs the interests of depositors will be safeguareded to a large extent by the amended provisions of the Companies Act. However, the Company Law Board has yet to be set up and geared for undertaking the stupendous task of attending to numerous complaints from the depositors. The actual working of the new procedure will have to be carefully watched and monitored. The Committee feel that other avenues for ensuring safety of the small deposite with the companies also need to be explored. One such method could be that small company deposits say deposits upto Rs. 5,000/- made by an individual ebositor may be insured for repayment and for this purpose a deposit Insurance Scheme on the lines of the insurance for bank deposits could be formulated by the Ministry of Finance and General Insurance Corporation. The proposal for such a scheme seems to have been rejected out of hand by the Department of Economic Affairs (Insurance Division). The Committee desire that the matter may be considered afresh. If the basic proposition is that the small depositors need protection is accepted, the Committee have no doubt that a suitable insurance scheme could be worked out in the larger interest of the depositors. Before the Companies are allowed to invite public deposits, it could be stipulated that companies will have to seek insurance cover for the deposits for which the premium will be paid by the companies.

2.56. The Committee note that non-banking financial companies including investment companies are exempted from the provisions of Section 58A of the Companies Act. The deposits accepted by these companies are governed by the directions and rules issued by the Reserve Bank of India. These companies which are also known by the name "blade companies" are reported to be unincorporated bodies engaged in acceptance of deposits from the public and lending the same. Of late there have been numerous complaints against these 'blade companies' which have been attracting huge public deposits and have subsequently disappeared with the deposits. Acceptance of deposits by unincorporated bodies is regulated under the provisions of Chapter III-C of Reserve Bank of India Act, 1934. In the context of large number of complaints against these companies being received from different parts of the country, it can be inferred that the existing provisions of the Reserve Bank of India Act are inadequate to meet the situation. Furthermore, the constitutional validity of Chapter III-C of Reserve Bank of India Act, 1934 has been challenged and the matter is pending in the Supreme Court. The Committee desire that the existing arrangements for keeping a tab on the activities of such 'blade companies may be comprehensively reviewed and a fool proof system for ensuring that the depositors of

these Companies are not duped, may be evolved in consultation with the Reserve Bank. If considered necessary, these companies may also be brought with in the purview of Section 58A, of the Companies Act so that at least the machinery of Company Law Board will the available to the depositors of these companies. Further, if the need arises, the provisions of Chapter III—C of the Reserve Bank of India may be suitably modified and amended.

2.57. The Committee received representation alleging defaults in repayment of deposits by five companies. On the matter being taken up by the Committee, the Ministry have informed that two companies namely M/s. SLM Maneklal Industries Ltd. and M/s Texmaco Ltd. have since made repayments of the fixed deposits. However the cases of other three companies namely M/s.Amar-Dye Chemicals Ltd., M/s. Bilaspur Spinning Mills & Industries Ltd and M/s. Vallahb Glass Works Ltd. were pending in courts on proceedings had been initiated. The Committee strongly feel that the interest of the depositors in these three companies need to be protected and the Ministry should render all possible assistance to ensure that the depositors get their money back together with interest.

2.58. The Committee had examined the representatives of some of these companies to ascertain the reasons why repayment of deposits had not been made in time. It was brought to the Committees, notice that in the context of the present financial position of the Companies, they had been restrained by the Banks and Financial Institution from repaying the company deposits and interest thereon in preference to other liabilities. Further when the rehabilitation programme for sick companise was drawn up it was not stipulated that all public deposits should get priority over other liabilities of the company. Even though the Ministry of Finance have stated that no such restrictions are stipulated in any instructions/orders issued by the Banking Division, the fact remains that the policies of financial institutions/Banks do not so any special favour to the small company depositors. The Committee desire that the Ministry should consider whether it is not feasible to provide that whenever a company faces financial stringency, small depositors as a class should get preferance over the other creditors and for the purpose of repayment fixed deposits should be placed at par with secured creditors.

2.59. The Committee desire that where small depositors are forced to go to courts of law for the recovery of their deposits, free legal aid for fighting the court case should made available to these depositors. The Committee also feel and strongly recommend that for maintaining financial discipline and for keeping a check on the unscrupulous company managment, non-

payment of deposits when due may be made cognizable offence and the repayment of deposits and interest thereon may be treated as land revenue to be recovered by the competent authority. The Committee would also like that the machinery for the recovery of overdue deposits by the depositors should be strengthened, in the interest of the depositors in such a manner that no company may dare to cheat the public by taking advantage of the lacunae in the existing laws or rules on the subject.

III

REPRESENTATION REGARDING PLIGHT OF DISCARDED WIVES WHOSE HUSBANDS HAVE SETTLED IN FOREIGN COUNTRIES

3.1. Shri K.H. Vaghela, Special Executive Magistrate and a Social Worker forwarded representations on 2 May, 1988, and 11 August, 1988, regarding plight of discarded wives whose husbands have settled in foreign countries In this connection, the petitioner stated—

> "Recently a married lady approached me who is a Government servant married in the year 1983 has been discarded by her husband who is a Doctor settled in America. After marriage the couple had been to America on a Visit Visa for sometime. The wife returned to India after her short stay. The husband preferred to stay back for some more days. The husband being a qualified Doctor was instigated by the local people in America to stay over and divorce his married wife. This was with the intention that he can marry the American Indian wife and stay there permanently. The letters addressed by her to the husband are not responded and hence she is now in a helpless condition for past few years living an unmarried life though married.
>
> On my visit to Delhi recently I had contacted the Protector of Immigrants, to seek advice on the subject whereupon I was informed that if the husband has married another woman in America he has committed an offence of bigamy and would be punishable in India. However, since he has committed no offence under the American Laws, no action is taken against him in America for discarding/deserting his married wife in India. I had also approached the Deputy Secretary, Ministry of External Affairs to seek his advice who too advised that nothing could be done in such cases. However, he had agreed to look into the matter.
>
> The above type of cases are on the increase and as a result number of Indian married women whose husbands have settled in foreign countries subsequently are deprived of their married life

and are put in very awkward position. In such cases there should be some arrangement/understanding between the Government of India and the Government of the foreign country to repatriate or send back such husband to India so that the husband who had preferred to stay in foreign country discarding his Indian wife is forced to come back to India and lead a happy life here.

Government of India has understanding with foreign governments on number of similar matters such as income tax laws etc, If an understanding is arrived at between the Indian government and the foreign government in the above cases also it would go a long way in making the Indian wife happy rather than putting her in miserable condition."

3.2. In their communication dated 30 June, 1988, the Ministry of External Affairs furnished following comments on the various points raised in the representation :

"The cases of desertion/neglect of married Indian women by their husbands residing abroad come to the notice of this Ministry from time to time. Such cases are referred to our Mission for their attention and possible help to the aggrieved parties. But in most countries particularly in the USA desertion is not a punishable offence and does not violate the local laws. In these circumstances, it becomes difficult to seek extradition of delinquent husbands. From the legal point of view, further facts in regard to the petition are furnished below :

(a) It may not be possible to enter into agreement with foreign countries for deportation of erring husbands in view of the fact that deportation is a procedure whereby a country expels an undersirable alien from its territory and is entirely discretionary on the part of that country. The alien deportee is free to go to any country which may admit him. Moreover, if the erring husband has acquired the nationality of the foreign country, except for some offences of a very grave nature, he will not be subject to deportation procedure in most of the countries.

(b) The deserted wives may file suits for maintenance after consulting their lawyers. The maintenance decrees could

be enforced against the husbands, if and when they come to India.

(c) Bigamy is an offence in the United States and many other countries. If the wife is sure that the erring husband has married without obtaining a valid divorce, she could send a complaint to the appropriate police authorities for whatever action they deem fit provided, he is not a Muslim. Even if the Bigamy is committed in foreign country the wife could make a complaint before an Indian Court, provided the husband is an Indian citizen. In such a case if he comes to India, he could be proceeded against for having committed an offence of Bigamy

(d) If a warrant against him is issued by a competent Indian Court, the question of impounding the husband's Indian Passport could also be considered."

3.3. The Committee desired to know what type of assistance was rendered by the embassies when cases of desertion/neglect of married Indian women by their husbands were brought to the notice of the Ministry. The Ministry in a note dated 27.2.1989, stated as under :

"The husband against whom desertion has been alleged is called in by the Indian Embassy concerned and attempts are made at a personal level to settle the marital conflict that has arisen. Persuasion is used to make the husband realise his obligations."

As regards the number of cases where Indian embassies had succeeded in sorting out the cases of desertion of Indian wives the Ministry intimated that there had been no such case during the last three years.

3.4. The Committee enquired whether Indians living abroad are registered with the Indian Embassies in foreign countries and whether it is obligatory on the part of the Indian citizens to inform the embassy about their marriage. In reply the Secretary, Ministry of External Affairs stated :

"The cases regarding the solemnisation or registration of marriage do come to our notice *i.e.* our embassy or the office. After satisfying ourselves, the marriages are solemnised. But it is in a very few cases that the persons get their marriage registered."

He further added :

"Registration is entirely voluntary. We encourage them to do that but there is no law which compels them that they must get their marriage registered. There is no way of imposing that law in a foreign country. We cannot say that if they do not get themselves registered, we will take some administrative action against them. It is open to an Indian citizen not to contact the Embassy at all if he chooses to do so. It is in their interest that we do that. In addition, wherever there is a large Indian community, the policy of the Government of India for many years has been to maintain very close contacts with them to use them as a bridge for maintaining good understanding between our country and that country. We try to bring them together not only on National Days, like Independence Day and Republic Day, but also on festivals like Diwali and Holi. There are regional associations of the Indian community. We keep in touch with all of them. We encourage the associations to function together pointing out that they have more clout and more effectiveness if they represent them as Indians rather than as Bengalis, Gujaratis and others."

3.5. The Committee desired to know whether the Indian Embassies could not impose a condition upon the Indian citizens living abroad that whenever they got married they should inform the embassy. To this the Secretary, Ministry of External Affairs replied :

"I do not think it will work, but for many years now we have been encouraging the people to get themselves registered. In the case of Bahrain, our present Ambassador has recently been successful with the local authorities to encourage the process and have a campaign for registration. There is an interest in the community also to get themselves registered to protect their right of being legitimate immigrants. All the legal immigrants are registered in Baharain. But even after 40 years of our independence, our number of registrants is far short of the total number of persons living there. Local authorities will not take the responsibility of imposing it."

The Secretary, further stated :

"We are trying to build the information with the help of the associations. There are already more than 500 associations in

USA and many of them are professional associations. With their help we are trying to build up the information. Even then it is a very small portion of the total number. The number of registrants may be only 10-15%. So we keep in touch with them through associations."

3.6. On being asked as to what instruments the Government of India had, to exert pressure on Indian nationals living abroad, the Secretary of the Ministry replied :

"The first instrument will be good offices and advice. The second instrument will be through the Indian associations and again their good offices and advice. The third instrument will be to be able to take up enforcement of the court order where a court order exists and the agreement exists with that country. Where there is no such agreement for implementation of court orders, we will not be able to enforce. In between there is another possibility and that is impounding the Passport of the person or harassing the man in regard to passport facilities that he wants."

3.7. The Committee enquired that in case the wife relised thar her husband had committed an act of bigamy and if she wanted to lodge a complaint, whether she should lodge the complaint in India or with the foreign police authorities. To this the representative of the Ministry replied :

"There are various options. She can go to the court of law to prove that there is bigamy. Thereafter she can approached the foreign office or the local police authority. As bigamy would be an offence in several countries the local authorities also may consider taking action in such cases. So, it will not only be the violation of Indian laws but violation of their own laws also. They will take action according to their own rules and regulations.

Then as far as the question of sending summons is concerned, summons in civil cases there can be routed through the foreign office or through the local courts in that country if there is an agreement between the two countries for serving summons. In criminal cases it is not possible to serve summons abroad except seek extradition where such arrangements have been entered into on a Government to Government basis."

3 8. The Committee suggested whether it would not be desirable that registration of Indian nationals with the Indian embassies abroad be made obligatory. The Ministry of External Affairs have in a written note on the subject stated :

> "The Ministry of External Affairs have examined the suggestion. There is in existence no legislation in India under cover of which an Indian abroad can be compelled to register himself with the concerned Indian mission. Any such compulsion may violate the fundamental rights of the individual whose registration is sought. In these circumstances persuasion remains the only course available."

3.9. The Committee desired to know whether there was any mechanism through which an Indian in a foreign country could be identified or some control could be exercised over him. The Secretary, Ministry of External Affairs stated :

> "I must say that one of the things which is of great importance to the Indian community is that they can visit India at any time. Those who manage to get local nationality, they require a visa to come to India. If a person comes to us for giving him visa and if something adverse has come to our notice about him, we may not give visa to him, but if he is a well-behaved person, we will nothesitate to give him visa to visit his family in India. Or if there is some emergency for him to visit his family in India, we will consider his request sympathetically but with the condition that he should be have well in future. With regard to enforcing the registration of any Indian, we do not have the legal means to do so. If we try to enforce it by administrative means, it will be countrary to the Act."

He added :

> "People go from one corner to another, one job to another. To keep track of all that we get in touch with the associations. About a particular person when the time comes to renew the Passport, then we would come to know about him. So we depend more on the Indian associations than by any enforcement procedure, There is no means of enforcing otherwise."

3.10. The Committee desired to know whether the behaviour of an Indian citizen who violated the law of the country, could be matched

regulated by our embassies. The Secretary, Ministry of External Affairs stated :

"Strictly speaking, the Indian nationals abroad have to abide by the law of that country in which they are living. For example, an Indian national has to travel right of the road instead of the left according to the law of that country. He is not to travel according to the law of our country. That applies to all other aspects. Therefore, we are really concerned with influencing rather than regulating his conduct. We try to keep in touch with the Indian community, we encourage them to invest in India, to take active part in the local activities and project Indian in the best possible way. In these ways we try to influence them. Any effort to regulate them will actually turn out to be counter productive. What will happen is that they actually resist dealing with the Embassy at all. So we will achieve much more results in this way."

3.11. The Committee pointed out that unless the deliquent Indian national could be traced by the Indian embassy in a foreign country, no useful purpose would be served by obtaining a court order against him or by approaching a police organisation in a foreign country for enforcement of the order. In this connection, the representative of the Ministry stated :

"If there is a court order obtained by the wife in India then even in a country where we do not have extradition arrangement, the embassy taken up the task on behalf of the wife and contacts the person concerned and sees to it that the notice is served on him. That is all we can do."

3.12. The Committee invited the Ministry's suggestion on the question whether a change was necessary in the present law to regulate the behaviour of Indian nationals abroad. The Secretary of the Ministry replied ;

"It will not be very effective. If it is brought to their notice that they will get more facilities and protection if they get themselves registered with an embassy this will be more effective than trying to change the law. We are in touch with the Indian community."

3.13. On being asked whether on the suit field by the discarded wife a warrant could issue against the husband who was living abroad, the Secretary of the Ministry replied that the Indian Court could issue a summons or warrant against the husband depending on the merits of the case throught the Ministry of External Affairs. The Government would examine the question of impounding of the passport of the husband in terms of the Passport Act, 1967, in such cases.

The Committee were informed that during the last three years there had been three cases where the Ministry had impounded the passport of erring husbands.

3.14. As regards the remedies available to the deserted wives in cases where the erring husbands did not return of India, the Committee were informed that in case there was a reciprocal arrangement for enforcement of maintenance orders with the country in which the husband resided, under section 3 of the Maintenance Order Enforcement Act, 1921, maintenance orders obtained from an Indian Court could be enforced in the Foreign Court, diplomatic channels being used for transmission of those orders.

3.15. With regard to the possibility of entering into agreement with foreign countries, the Secretary of the Ministry informed the committee as under :—

> "We have reciprocal arrangement for court decrees in respect of only the following countries—Australia, Burma, Sri Lanka, U.K. i.e. the Northern Ireland, Malaysia, Fiji, Kenya, Malawi, Mauritius, Zambia, Zimbabwe, Seychelles, Singapore, Somalia and Uganda.
>
> We do not have such an arrangement with USA which is a matter of greatest concern at the moment because many of our professionals are living there. From USA more such cases are coming up than any other country. In the absence of such an arrangement, there is nothing more that our mission can do except to exercise its good offices to contact persons concerned and try to persuade them to fulfil the obligations. It is legally permitted only with those countries where there is actual a court order and an agreement to enforce the Indian court's orders. Where there is such an arrangement we can take up the matter through local office and minimise the expenditure of the litigants. But where there is no enforcement, we leave it to the missions'

good offices to contact the husband for bringing to his notice that such and such problem is there. But it does not give a power of enforcement."

3.16. The Committee pointed out that most of the cases of desertion arose because the practice of bigamy. In this context, the Committee enquired whether agreements could be entered into with other countries for including bigamy as one of the offences for which a person could be deported. The Secretary, Ministry of External Affairs replied :

> "Bigamy is an offence in most countries. If a person is a foreign national, he is governed by that country's laws.
>
> He added :
>
> "There is one arrangement. We have extradition arrangements dealing with moral turpitude, crimes against the State. That is for extradition purposes, not for deportation. We do not have any deportation agreement with any country."

3.17. In this connection, the Ministry further informed *vide* note dated 27.2.89 as under :

> "Deportation is a sovereign right exercised by a country. A country is free to deport undesirable aliens from its soil. Under International Law and Practice such agreements have not been concluded by any country. Desertion of a wife by the husband or vice versa is not an extraditable offence in terms of the Extradition Act, 1962. The Ministry will explore the possibility of including such an offence within the ambit of the Extradition Act.

3.18. In regard to extradition arrangements with USA, the Secretary, Ministry of External Affairs explained as under :

> "There is a slight difficulty with the USA. We have inherited from USA the extradition arrangements between the British Government and the Government of USA. So, at an early stage, soon after the independence, the USA had raised a point with us to extradite somebody from India and we said that we had not got these extradition arrangements entered into with the previous Government. So, they dropped that case as it were. Subsequently, we took the matter with them regarding extradition in regard to

some other cases many years later and the US said that 'you have pointed out at that time that you wanted to see whether you could enter into new extradition arrangements.' We are the inheritors of the extradition arrangements between the British Government and the US Government. But the two governments are still to work out the present extradition arrangements. In dealing with particular cases, we have got their willing cooperation, for example, to deal with cases involving terrorism. So, to that extent we can go forward on extradition proceedings, but so far the cases in the American courts are complex. With Canada it is more convenient. So, we are happy to tightern up those arrangements so that they do not get bogged down. But I doubt whether a bigamy case will succeed with an extradition arrangement with USA."

OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

3.19. The Committee note with concern that cases of desertion/discarding of married Indian women by their husbands residing abroad are on the increase. As a result the family life of a number of Indian married women whose husbands have settled in foreign countries has been ruined and they have been put to great hardships and mental and emotional stress. From the information made available to the Committee, it is noticed that many Indians after contracting marriage in India go abroad, remarry and settle there permanently leaving the Indian wives in the lurch. Unfortunately, however, there is no easy mechanism at present through which such erring husbands could be forced to come back to India. When such cases are referred to the Ministry of External Affairs or Indian missions abroad for their attention and possible help to the aggrieved parties, no serious action can be taken because it may not be possible at all to locate the particular person involved in the case. As it is there is no system in the Indian missions for keeping a track of the large number of Indians settled abroad. There is no system of registration with the Indian missions of the Indian passport holders so that in case of need they could be identified and located. Registration of Indians settled in foreign countries is entirely voluntary. The Ministry of External Affairs have stated that efforts are being made by the Indian missions to build up to the extent possible, information about the Indians settled in a country through the local associations—social, or cultural, and professional organisations of Indians. It has however been stated that there is in existence no legislation in India under cover of which an Indian abroad can be compelled to register himself with the concerned mission. The Committee feel that it would be desirable to have a suitable legislation on the subject. A system of compulsory registration of all Indians staying abroad say, for a period of 3 months or more with the concerned missions will surely facilitate identification and location of any Indian citizen who may be required to be contacted in connection with any case against him.

3.20. Under the provisions of the existing law, the deserted wife can file a suit for maintenance and the maintenance decrees awarded by Indian courts could be enforced against the husband, if and when he comes to India. Again if a wife is sure that the erring husband has married without obtaining a valid divorce, she may have her complaint forwarded to the

appropriate police authorities in the foreign country as bigamy is generally considered an offence in most countries including U.S.A. Further even if bigamy is committed in foreign country the wife could make a complaint before an Indian Court, provided the husband is an Indian citizen. In such cases he could be proceeded against for having committed an offence of bigamy only when he comes to India.

3.21. From the above it is clear that as a first step action has to be initiated by the deserted wife in an Indian court or with police authorities in foreign countries. Even if a court decree is awarded in favour of a deserted wife it could be enforced against an erring husband only when he comes to India This remedy would thus appear to be as good as useless. In the circumstances some effective methods will have to be devised by the Ministry of External Affairs to bring round the erring husband e.g. by impounding his Indian passport or otherwise putting pressure on him to see reason and seek reconciliation with his wife.

3.22. The Committee are of the view that there should be a separate cell in the Ministry of External Affairs for rendering all possible assistance to the deserted wives. This may be given wide publicity. Also instructions be issued to all our missions abroad to render all possible assistance to the complainants to trace the erring husband. Once the erring husbands come to know that they will be called upon by Government agencies particularly the Indian Missions to account for their behaviour towards their wives left in India, it may have a deterrent effect. The Committee desire that the Ministry should explore the feasibility of setting up such a cell without delay.

3.23. It has been stated that it may not be possible to enter into agreements with foreign countries for deportation of erring husbands in view of the fact that deportation is a procedure which is resorted to by each country under its sovereign powers and it is entirely discretionary. However, the possibility of seeking extradition of erring husbands from countries with whom Indian Government has entered into such arrangements on Government to Government basis could be explored. For this purpose the offence of bigamy would have to be declared an extraditable offence and specifically incorporated in the agreements entered into with foreign countries. The Committee desire that in the case of countries where extradition agreements already exist, the question of including

bigamy as an extraditable offence in the relevant agreements may be examined for appropriate action. In cases where new extradition agreements are entered into, bigamy may invariably be included as an offence for which extradition can be sought.

3.24. It has incidentally come to notice that India does not have an extradition treaty with the Government of U.S.A. In the absence of such a treaty, there is nothing more that the Indian mission can do except to exercise its good offices to contact persons concerned and try to persuade them to fulfil their obligations. Since a large number of Indian citizens are living in USA and the number of such cases in which Indians residing in USA are involved, is quite large compared to any other country, it is necessary that an extradition treaty is concluded with the Government of USA. **The Committee recommend that the question of having a suitable extradition treaty with USA may be considered at the highest level and brought about most expeditiously.**

IV

REGULARISATION OF SERVICES OF DAILY WAGE WORKERS IN NATIONAL SEEDS CORPORATION

4.1. Shri Narsingh Dube, Branch Secretary. National Seeds Corporation Workers Union Gorakhpur, had represented on 28.11.1985 to the Committee that daily wage worker working in the Corporation for 8 to 10 years had not been rgularised. These daily rated casual workers were being paid a meagre amount of Rs.433 p.m. in accordance with the Minimum Wages Act as applicable in U.P.

4.2. On 30.4.1986, the Ministry of Agriculture (Department of Agriculture and Corporation) had in their factual note informed the Committee that 13 out of 78 daily wage workers in U.P. had already been regularised by the National Seeds Corporation. The question of regularising the remaining daily wage workers, inculding the 15 petitioners was stated to be under the consideration of the NSC. It had also been pointed out that the Ministry had directed the NSC to finalise the issue regarding regularisation of these daily wage workers at the earliest.

4.3. While taking note of the factual position indicated by the Ministry, the Committee on Petitions, in Third Report (Eight Lok Sabha) presented to Lok Sabha on 2.4.1987 observed as follows :—

> "...the Committee note with satisfaction the contents of the reply furnished by the Ministry of Agriculture. The Committee trust that the Ministry would expeditiously finalise the regularisation of services of remaining daily wage workers working in National Seeds Corporation and the Committee may be informed of the position in due course."

4.4. On 16.11.87, the Ministry of Agriculture (Department of Agriculture and Cooperation) while forwarding the action taken reply on the Committee's observations stated the position as under :—

(i) There is on vacant post Group 'D' available in Lucknow region;

(ii) There is ban on creation of new posts and therefor daily wages staff cannot be appointed on permanent basis. some of the deserving case will bc taken up after lifting up of the ban order ;

(iil) They are assessing the need based recuirement of Group 'D' employees after taking into account NSC's activities in the matter of production, marketing and processing ;

(iv) NSC is extending all benefits and facilities to its daily wage workers as per provisions of the relevant enactments such as Minimum Wages Act and Payment of Wages Act, etc."

4.5. The Committee took evidence of the representatives of the Ministry of Agriculture and National Seeds Corporation on 21.7.1988.

Explaining the reasons for the engagement of casual workers by the National Seeds Corporation, the Secretary Department of Agriculture and Cooperation stated :—

"Because of the seasonal nature of the activities it becomes inevitable for the Corporation to regulate the total number of employees on its roll from time to time depending on the size of the activities

In almost all the regions barring Karnataka, Jammu and Kashmire and Himachal Pradesh even in Group 'C', there are daily wage workers whose number is 115 compared to 207 regular employees. In Group 'D' we have daily wage workers in all the regions barring Himachal Pradesh where vegetable seeds are processed. In category 'D' the daily wage employees are 600 as compared to regular sanctioned posts of 292 The nature of opreations of this Corporation is such that it becomes inevitable for the Corporation to take recourse to the employment of casual labour."

4.6. Regarding the action taken for regularisation of daily waee workers, the Secretary of the Ministry stated :—

"In 1984-85 the NSC had regularised 13 daily wage workers in category 'D' in the Lucknow region from where the petitioners come. Subsequent to this from December, 1986 onwards 15 daily wage workers in category 'D' have been regularised—6 in the

Poona region, 6 in the Ahmedabad region and 3 in the Chandigarh region. These regularisations were done in February, March and April, 1988.

These regularisations are governed by the policy guidelines issued by the Government of India and adopted by the Bureau of Public Enterprises. Service for a specified length of time as a daily wage workers confers on the daily wage worker eligibilty but not a right for being regularised as a regular employee provided there are vacancies in the regular cadre due to retirements or creation of new posts."

4.7. Explaining the difference between the wages of the regular employees and daily wage workers, the Secretary of the Ministry stated :—

"It varies depending on the category, but for comparison purposes, in category D on entary, a daily wager gets on the basis of minimum wage of the area Rs. 539 per month, Rs.11.50 per day as wage and Rs. 9.20 per day as DA for 26 days in a month. A regular worker in that category gets Rs. 970.45, thus difference of Rs. 431.45 p.m."

4.8. The Committee pointed out that the daily wage earners as compared to a regular employee were entitled to only a few benefits. Therefore, persons who have been working on daily wage basis regularly year after year in an establishment like NSC should not be deprived of the benefits of a regular worker. In this connection, the Secretary stated :—

"In Government, there are permanent posts and temporary posts. People get confirmed only against permanent posts; and a certain procedure is to be followed when temporary posts are converted into permanent ones. The same type of parctice is extented to the public undertakings also. The point of the hon. Member is very valid *viz.* that in contrast to a regular employee a daily wage earner is at a definite disadvantage in terms of security of employment and the wage he gets for the same type of job which a regular employee does. But consistent with the policy of Government in NSC also, rights and privileges, benefits and facilities available under the Minimum Wages Act, Factories Act, Shops and Establishments Act, ESI Payment of Bonus Act etc. have been extented to the daily wage earners also."

He further added :

> "Ideally speaking, whenever a daily wage earner is continuosly in service for 240 days, according to the instructions of the Government he should get converted in to a regular employee. I would not like to go into the desirability of doing it in the public Sector. But here it is felt, particulary in NSC, that compared to the total size of its activities, possibly it is over-staffed. So, before sanctioning its regular strength, to convert temporary employees into regular employees, the Board of NSC is going to have a management study conducted, so that the permanent and temporary staff can be clearly delineated. on the basis of which regularisation can be got done. While equity and justice require that what the hon. Member wants is done, it would also mean increased costs and further losses to be incurred by NSC which already is not in a healthy financial state."

4.9. As to the benefits given to the daily wage earners, the Managing Director of National Seeds Corporation added :

> "Recently we reviewed the entire position. We could not give them the full facilities as for regular staff. We classified them, and for those who are working for more than four years. we considered if we could increase their wages to some extent to give them some relief. We made a provision from October, 1987. According to the length of service and experience, we gave them Rs. 104 to Rs. 130 extra benefit per month. That was in addition to the minimum wage given by the respective State. By this way, we tried to bring down the difference between the regular staff and the daily wage workers. Initially the difference was to the extent of about Rs. 431. But with the recent introduction of that system to give more financial benefit. the difference comes to about Rs. 300 to Rs. 327. We could minimise the differencc by about Rs. 104 to Rs. 130."

4.10. About the implentation of the reservation policy for SC/ST in recruitment by the National Seeds Corporation the Managing Director agreed that there was some backlog and they were trying to clear that backlog. He informed the Committee that out of 13 persons who had been regularised in U.P. region, there was only one candidate who belonged to a scheduled caste. The Committee directed the representatives of National Seeds Corporation to examine the feasibility of extending all the benefits enjoyed by the regular employees to daily wage workers who had com-

pleted 240 days of service but could not be regularised due to imposition of ban by Government on creation of new posts.

4.11. One of the reasons given for not regularising the daily wage workers was that there was a ban on the creation of new posts and therefore daily wage staff could not be appointed on permanent basis. The Committee enquired when this ban was first imposed and whether the non-absorption of daily workers was due to the ban only. In reply the Ministry have in a written note stated as under :—

> "The ban was imposed in public Sector Enterprises with effect from 6.1.84. In the year 1985 the ban relaxed and the public sector enterprises was allowed to create posts below board leval and other categories of officers, supervisory staff and workers under exceptional circumstances with the prior approval of the Board. The non absorption of daily wage workers was not on account of ban on creation of posts."

4.12. The Committee enquired whether any assessment of the sanctioned strength and the actual requirement of Group 'D' employees in the National Seeds Corporation had been made. In this connection, the Ministry have in a note stated :

> "No assessment has been made so far. However, action was initiated to get the study of the staff requirements of NSC by an outside agency such as SIU, Administrative Staff College or private agencies, but so far no final decision for entrusting the study to any of these agencies has been taken. The requirement of staff would also depend upon the viability of units and sub-units of NSC. The Ministry of Agriculture has issued an advertisement for engaging a principal consultant under NSC-III. The consultant to be engaged by NSC would also review the economic viability of Regional unit/sub-units."

4.13. From the information furnished to the Committee, it is seen that as on 7.11.88 the total strength of daily wage staff of all categories in the 18 regions of the Corporation was 730, out of which 153 were Scheduled Castes and 11 belonged to Scheduled Tribes. During evidence before the Committee, the Managing Director of NSC stated as under :

> "After this matter was taken up by the Petition Committee, we could regularise only 15 posts of daily wagers depending upon their length of service. In UP we have done it in the case of 13

posts and other 3 regions we have done in the case of 15 posts. After that we are not having any vacancies in U. P. So we have to go by what is the actual requirements. Then that post has to be created for that."

In the same context the Secretary, Department of Agriculture stated in evidence :—

> "In Lucknow in category 'C' against 31 regular posts there are 29 daily wagers, and in Andhra Pradesh, Hyderabad region against 20 regular posts there are 29 daily wagers. In category 'D' against 36 regular posts in Luckhnow region there are 119 daily wagers and in Hyderabad region against 30 regular posts there are 217 daily wagers."

4.14. The Committee enquired whether for workers who have been continuously employed by NSC but could not be regularised for want of vacancies, any additional benefits such as those enjoyed by the people who are in regular service could be extended to them till these daily wage workers were also absorbed in regular cadres. In this connection a representative of the Ministry stated as under :

> "We are following completely the guidelines of the Government of India and the Deptt. of Personnel and the Bureau of Enterprises in the regularisation of people who are employed as daily wage workers. As the Secretary assured, we are also going to have a study undertaken. Thereafter the Government will take a decision on the basis of all facts before them. Till dicision is taken we will continue to follow guidelines given to us by the Govt. of India."

4.15. Subsequently, in a written note furnished to the Committee the Ministry stated as under :

> "So far regularisation of daily wage workers of NSC who have completed 240 days service including the daily wage workers of Gorakhpur region of NSC is concerned, it may be mentioned that NSC is reviewing the requirement of employees in various categories in the Corporation on a need-based pattern and as soon as the report of the study becomes available, the NSC will take a decision for regularising the daily wage workers of NSC who have put in more than 240 days service. While regularising the daily wage workers of NSC, due care would be taken to safeguard the interests of SC/ST candidates as per existing instructions on the subject."

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4.16 The National Seeds Corporation Workers Union, Gorakhpur *vide* their representation dated 28 November, 1985 brought to the notice of the Committee that daily wage workers working in the Corporation continuously for 8 to 10 years had not yet been regularised and they continued to work only as casual workers. The matter was taken up with the Ministry of Agriculture (Department of Agriculture and Cooperatian), who informed the Committee on 30.4.1986 that 13 out of 78 daily workers in U.P. had already been regularised and that the question of regularising the remaining daily wage workers including the 14 petitioners was under the consideration of the N.S.C. It had also been stated that the Ministry had directed the NSC to finalise the issue regarding regularisation of daily wage workers at the earliest. In their third report presented to Lok Sabha on 2.4.1987, the Committee had expressed the hope that the matter regarding regularisation of services of daily wage workers would be expeditiously finalised by the Ministry.

4.17. On 16.11.1987 the Department of Agriculture and Cooperation while forwarding the action taken reply on the Committees' observation *inter alia* stated that no Group 'D' posts were available against which casual workers could be posted and on account of a ban on creation of new posts the daily wages staff could not be appointed on permanent basis. It was however, stated that the need based requirement of Group 'D' employees in the NSC was being assessed. During evidence before the Committee, an impression was given that the NSC was already overstaffed and because of the ban imposed by Government on creation of new posts, the daily wage workers could not be regularised. It was later on clarified that the non-absorption of daily wage workers was not on account of ban on creation of posts.

4.18. The Committee feel that the issue raised in the petition namely the regularisation of daily wage workers in the NSC, where these workers have been continuously engaged for years, is one of fundamental importance. According to Government's own guidelines which are equally applicable to public sector undertakings whenever a daily wage earner is continuously in service for 240 days, he is required to be converted into regular emplyee. The petitioners in question have been working in NSC as daily wage earners for years but still they continue to work only as daily casual labourers. This clearly show that things are being manipulated in such a manner that no casual worker in NSC is allowed to complete 240 days of continuous service so as to become entitled to the benefits of a regular post.

4.19. The Committee find that as on 7.11.88 the total strength of daily wage staff of all categories in the 18 regions of the National seeds Cor-

poration was 730, out of whom 153 were scheduled castes and 11 belonged to scheduled tribes. After the matter regarding regularisation of casual workers was first taken up by the Committee in 1986, the Corporation has been able to regularise the services of only 15 workers in three regions. However not a single worker has been regularised in U.P. region after 1984-85. The Committee have been informed that Government have decided to have a study of the staff requirements of NSC made by an outside expert agency. The Committee recommend that the management study should be got completed without any further loss of time and the optimum strength of the various units of the Corporation fixed on a realistic basis.

4.20. The Committee expect that after completion of the proposed staff study, the respective strengths of the regular and casual workers would be realistically fixed. However, keeping in view the fact that some casual workers including the 14 petitioners, have been continuously working in NSC for the last 8 to 10 years, the question of their regularisation should be accorded the highest priority. In case there is some insurmountable difficulty in regularising the services of these workers, the Committee desire that workers who have put in three years of service should be assured of employment throughout the year. They should be offered *ad-hoc* appointments in regular scales of pay and all the benefits such as provident fund, bonus, ESI, leave facilities to which regular employees are entitled, should be extended to them. They should be absorbed against regular vacancies as soon as they occur. The Committee would like to be apprised of the action taken in this behalf within 3 months.

V

REPRESENTATION REGARDING REGULARISATION OF SERVICES OF EMPLOYESS OF SUKINDA NICKEL PROJECT

5.1. Shri N.K. Jena and 6 others of Sukinda Nickel Project, Ratha Road, Bhubaneswar, submitted representations on 10.7.87 and 19.6.88 regarding regularisation of their services (Appendices I & II). The main points submitted by the petitioners in their representation dated 10.7.87 are as follows :

(i) Since the inception of the Sukinda Nickle Project in 1973, they had been working against temporary posts of LDC, Driver, Watchman, Peon and Sweeper etc.

(ii) In the order of their appointment, it was mentioned that they would be deemed to be the employees of the new company or Undertaking and no option would be given to them to join in Hindustan Copper Limited. Their terms and conditions were to be governed by the policies, Rules and Procedures of the new Company.

(iii) Most of them had completed 13 years of service and were eligible to get the revised scale of pay w.e.f. 1.1.1986 as per IV Pay Commission's recommendations.

(iv) The then Hon'ble Minister for Steel and Mines had at one stage asked scientists to suggest alternative site for setting up a Nickel Project as the existing site at Sukinda in Cuttack District of Orissa was not considered economically viable. The Minister had also stated that instead of terminating the services of employees working in Sukinda Nickel Project, the Government would consider to engage them in other similar public sector undertakings.

5.2. The petititioners further stated in their representation dated 19.6.1988, that M/s Hindustan Copper Limited instead of regularising their services terminated their services and closed down the project w.e.f. 31.5.1988 and the compensation paid to them had not been correctly calculated.

5.3. The petitioners prayed that :

(a) "the services of all the employees may be regularised;

(b) arrears of pay as a result of revision of pay scales as per recommendations of 4th Pay Committee may be paid; and

(c) all of them may be absorbed in any of the Government of India undertakings/Establishments i.e. NALCO, HCL, etc."

5.4. The Ministry of Steel and Mines in their communication dated 23.2.1988 furnished their comments as under :

> "This was considered in consultation with Hindustan Copper Limited (HCL) and it was found that on account of the unfavourable economics of producing Nickel at Sukinda there does not appears to be sufficient justification for setting up a pilot plant at Sukinda. In view of this, the project has been shelved. It is also decided to close down the establishment of Sukinda Nickel Project at Bhubaneswar. In the above circumstances, it is not possible for HCL to provide gainful employment to eight existing employees of SNP. Necessary action for their retrenchment is being taken by the Company.
>
> The possibility of their absorption in other Public Sector Undertakings is being looked into and the Department of Public Enterprises have also been requested to see whether any of the Public Sector Undertakings under that Department would be in a position to absorb the surplus personnel".

5.5. In another note dated 13 April, 1988, the Ministry stated :

> "The possibility of absorption of the petitioners has been taken up with Department of Public Enterprises, Mineral Exploration Corporation Ltd. and National Aluminium Company Limited (NALCO).
>
> The Company (NALCO) has informed that no security personnel are being borne on the Rolls of NALCO since the Central Industrial Security Force looks after this requirement of the Company. Further, at present there is no vacancy of driver. However if and when there is a requirement for driver, they will consider the lone driver in the list,"

5.6. The Ministry further informed *vide* O.M. dated 3.6.1988 that :

"The Department of Public Enterprises has informed that they are not concerned with it."

Again *vide* note dated 8.6.1988, the Ministry stated :

"Mineral Exploration Corporation Ltd. has also informed that it is not possible to accede to the request of the employees of Sukinda Nickel Project."

5.7. At their siting held on 23 August, 1988 the Committee considered the replies furnished by the Ministry. The Committee were not satisfied with the replies and decided to take oral evidence of the representatives of the Ministry of Steel and Mines, Hindustan Copper Limited (HCL) and Deptt. of Public Enterprises.

5.8. During oral evidence on 12 January, 1989, the Secretary of the Ministry of Steel and Mines explained the background of the case as under :

"...In the first instance the Hindustan Copper Limited was asked to look after this project. Normally, when a new project comes up, a company would be registered and they will do that. As I went through the records I noticed that when it was entrusted to the Hindustan Copper Limited, the Government had suggested that we may do it as an agency and bring it to being as a Company as and when it becomes necessary. So the HCL continued doing like that. Then what hnppened was that over a period of time, we tried to bring the company into being but the technology has from time to time eluded us".

He added :

"This is one of the few cases in which despite the best intentions of the Government—on account of very low grade ores and there being no viable technology—nor could it be developed over a period—it had to be regrettably shelved. In fact when it was decided, the pilot plant was costing about Rs. 50 crores. So, it was such an uncomfortable decision we have to take in shelving this project. Now in that context the HCL was faced with the problem of giving employment to those people."

5.9. Asked whether the seven petitioners could not be absorbed in any of the Government of India Undertakings, the Secretary of the Ministry stated that the Hindustan Copper Limited was under a severe ban because it was already having 26,000 employees and they had been told not to take any more employees and this should be followed strictly.

The Chairman of Hindustan Copper Limited stated that from December, 1985, there had been a ban on recruitment of even a casual labour in Hindustan Copper Limited He further stated that the Hindustan Copper Limited already had surplus staff in all the three units and the process of offering them voluntary retirement was already on. Clarifying the position further, he stated :

> "Hindustan Copper Ltd. has three units, which function at three places and according to the agreement reached between Hindustan Copper and the Union, work force cannot be transferred from one unit to another. Each unit has a separate panel and a long list of people waiting for their number. Therefore in future they should be given chance. In these three units there are thousands of people on the list. Actually these people were not appointed by the officer of the Hindustan Copper and they do not fit in our pay scales. What we have done is simply on sympathy basis as stated by the Secretary just now. The compensation given to them is more than that admissible under the rules. In case we are forced to absorb them, it will create a situation of industrial unrest on large scale. During the last three years, we have reduced the workers to the extent of about 1800. We have granted voluntary retirement. As per our statistics the work force is still surplus. These persons are not the employees of Hindustan Copper Ltd. If an order is issued for their absorption we shall have to face a big problem."

5.10. On being asked how many retrenched employees apart from the seven petitioners, had been absorbed elsewhere, the representative of the Ministry stated that except the seven petitioners, there was nobody else on this project left unabsorbed.

When the Committee enquired whether these seven employees could not be taken in any public undertakings even on casual basis, the Secretary, Deptt. of Mines stated :

> "I would like to submit, that unless we regularise them, there will be no advantage for them. The question that they may be

taken on a casual basis may not arise either because they will be benefited only if they get regularised. In this case I want also to submit one more thing. The company had taken a very sympathetic view in respect of these people, because Rs. 76 thousand had been paid to these seven people as compensation. It is not as if they were just being thrown out. They were paid gratuity. They were given retrenchment compensation and other benefits that are due to them under such circumstances. In fact a liberal view was taken, in that respect. The only question is that we could not give them employment. So it is not as if there was a hostile atmosphere, or any such thing. After all we have to find out a solution. The only solution which we could find out was the financial solution. There was no lack of sympathy at all. There was full understanding of the whole situation. They have received the compensation. How can I employ them now ?"

5.11. As regards the possibility of absorption of the petitioners in other Public Sector Undertakings like NALCO, the representative of the Ministry stated :—

"They have their own rules. They will take people in the first instance from the employment exchange; secondly by giving preference to land oustees for the project. and thereafter anybody else. I think the employment exchange can produce enough number of Drivers. Land-oustees will also get a high priority, with a separate justification for it. That is why the company has taken a liberal view of giving them retrenchment compensation "

5.12. On his attention being drawn to the fact that one of the grievances of the petitioners was that the compensation paid to them had not been correctly calculated and they had demanded that they should be paid proper compensation, the Secretary of the Ministry stated :—

"After receiving compensation, when they had said that the calculations were not to their satisfaction, the matter was taken up with the Department of Labour, There were conciliation proceedings, which also have not yielded results. These men were saying that they should get more. They were told the basis of these calculations. They have been given gratuity. There leave salary has also been calculated. The salary for May 1988 has been fully given. One month's notice pay has been given, and then retrenchment compensation has been given. One person has got Rs. 22,655, another Rs. 16,126 and yet another Rs. 14,734.

As a matter of fact, a liberal view has been taken by the company."

5.13. The Committee pointed out that a sum of Rs. 6000/- or 7000/- given to the petitioners as compensation was not even equal to their six months salary. Moreover, most of the seven petitioners belonged to backward class and were class IV employees and posts could be created to accommodate them in any of the three units. The Committee desired the Ministry to take a sympathetic view of the matter and to seek the approval of the Government for absorption of the seven persons. In this context, the Secretary of the Ministry informed the Committee as under :

> "I would submit that in the case of NALCO, I do not think that people in these categories have been brought from outside. All I would submit is that as per the existing instructions of Government in the matter, NALCO will help them. The only problem is one set of rules comes in conflict with another. We will look into it with sympathy. That is an admission of our inability to absorb them as per the rules under any of these things. For example the local land oustees an be a problem and they have to be compensated. There are instructions that the local land oustees should be provided for. If we cannot absorb, what we do is, we pay them a little more compensation."

5.14. The Committee enquired how much cost had been incurred in preparing the project report and by whom that cost was borne. In reply the Secy., Deptt. of Mines stated :

> "It was the Deptt. of Mines who decided to set up the project and who would act as its agent. Upto date about Rs. 76 lakhs had been spent. There was one officer of Special Duty plus these 7 employees. From 1972-73 there was an officer from Orissa; from 1974-75 there was an officer from Khetri Copper Mines."

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5.15. The Committee find that the Sukinda Nickel Project was set up in 1973 by the Department of Mines for the purpose of exploring the possibility of producing nickel at Sukinda. To start with project was to be handled by the Hindustan Copper Ltd. as agents and ultimately a new company was to be brought into existence to carry out the work of the project. An officer on special duty was nominated who alongwith seven other employees

specially recruited for the purpase, worked for the project. After 15 years i.e. in 1988, the Department of Mines decided to shelve the project because the ores were found to be of a very low grade and no viable technology was available or could be developed for the setting up of the project. In the process an amount of Rs. 76 lakhs was stated to have been spent. The Committee are shocked to learn that it took the Department of Mines/Sukinda Nickel Project authorities, 15 long years to come to the conclusion that on account of the unfavourable economics of producing nickel at Sukinda, there did not appear to be sufficient justification for setting up a pilot plant at Sukinda. The Committee feel that the Department of Mines Owe an explanation for the infructuous expenditure of Rs. 76 lakhs on the project, which only after 15 years was found to be unviable and uneconomical.

5.16 The Committee further note that after it was decided to close down the establishment of Sukinda Nickel Project at Bhubaneswar, 7 employees specially recruited for the project, became superfluous and were thrown out of employment. Thus these seven employees who worked for the project since its inception in 1973 found themselves literally in the road after a period of about 15 years. In terms of a peculiar condition stipulated in the letters of appointment of these employees, they were not given the option to join Hindustan Copper Limited after the Sukinda Nickel Project was wound up. It is unfortunate that these seven employees who spent the best part of their career in the service of the project could not be absorbed permanently in any of the undertakings working under the administrative control of the Department of Mines. It is seen that out of these seven workers, three were watchmen, one was a driver, another a peon, yet another a sweeper and one worked as LDC-cum-typist. Four out of these belonged to Scheduled Castes and Scheduled Tribes. The Committee cannot be persuaded to believe that such low paid employees could not be provided with suitable jobs in other undertakings, under the same Ministry inspite of the fact that at one stage the then Minister of Steel and Mines was himself reported to have stated that instead of terminating the services of employees working in Sukinda Nickel Project, Government would consider to engage them in similar public sector undertakings. The Committee are of the view that both on humanitarian and moral grounds, the cases of these employees for absorption in service need to be reviewed afresh by the Department of Mines. The Committee would like to be informed of the precise action taken in this regard.

5.17 Another point made by the petitioners was that the compensation paid to them after the termination of their services had not been correctly calculated. With the implementation of the recommendations of the Fourth Pay Commission, w.e.f. 1.1.1986, the workers who were in the regular pay

scales became entitled to revised and better scales. Similarly, four employees who had been given consolidated salaries for several years became entitled to regular scales after completion of 240 days of continuous service. The salaries of all these employees, if refixed in the revised scales recommended by the 4th Pay Commission would substantially enhance the amount of compensation paid to them. The Committee desire that not only the Ministry should provide jobs to these workers without further delay, their pay scales should also be refixed and their dues calculated accordingly.

NEW DELHI;
Dated : *20 April 1989*

30 Chaitra, 1911, (Saka)

BALASAHEB VIKHE PATIL,
Chairman,
Committee on Petitions.

APPENDIX I

(*See* para 5.1 of the Report)

The Hon'ble Speaker,

Lok Sabha

In the matter of a Petition submitted by the Employees of Sukinda Nickel Project, Bhubaneswar, Orissa.

Respected Sir,

We the humble petitioners, the seven employees of Sukinda Nickel Project hereby bring to your kind notice the problems we have been facing since 1973-75. The project was formed in 1973 and was looked after by M/s. Hindustan Copper Ltd. Which has been confirmed vide letter No. 15/10/78-Met. V, dated 30.5.1978 under the signature of Shri A.K. Ghosh, Additional Secretary to Government of India, Ministry of Steel and Mines, Department of Mines, New Delhi.

During the inception of the project we were appointed temporarily either against regular scale of pay or in consolidated salary, comprising of posts, such as LDC-cum-typist, Driver, Watchman, Peon & Sweeper etc. on the event of our appointment, it was mentioned in the order of appointment that we shall be deemed to be the employee of such Company or Undertaking and no option would be given to us to join in Hindustan Copper Ltd. Further in such event, our terms and conditions of service will be governed by the Policies, Rules and procedures of the new company. Details of our Designation, Salary, etc. is mentioned here under, for your ready reference.

Sl. No.	Name/Designation	Dated of Joining	Scale of Pay
1	2	3	4
1.	Shri N. K. Jena Driver	7.5.74	260-6-326-EB-8-300
2.	Shri M. Rout, Peon-Offg. as LDC-cum-Typist	22.3.74	196-3-220-EB-3-232.
3.	Shri R.C. Kanhar Watchman	1.5.75	196-3-220-EB-3-232

1	2	3	4
4.	Shri S. Dash, Poon (Consolidated)	14.10.75	Rs.300/-
5.	Shri A. Mohanty, Watchman (Consolidated)	15.10.73	Rs. 240/-
6.	Shri G. Jena, Watchman (Consolidated)	1.10.73	Rs. 240/-
7.	Shri K. Nayak, Sweeper (Consolidated)	1.5.74	Rs. 90/-

It may likely be noticed from the above that most of us have completed 13 years of service. As per the policy and practice prevailing in the Government of India's Office, employees at Sl. No. 4,5,6 &7 (Consolidated) deserve the regular scale of pay after completion of 240 days continuous service. Besides, all of us are eligible to get the revised scale of pay effective for the Government of India Offices since 1.1.1986, according to 4th Pay Commission Report.

For equalisation of posts, scale of pay and to absorb us in any of the Government of India Establishment, we have been submitting representations to the Ministry of Steel and Mines and to M/s. Hindustan Copper Limited. But there has been no indications from the authority concerned about the future of our services, as Government of India has already declared that Sukinda Nickel Project is not feasible and shall be wound up.

It is for your kind information that all of us have crossed the upper age limit to seek fresh appointment elsewhere. Besides, we have been rendering our services to the establisment efficiently since 1973, but have been victimised with no fault of ours.

In one instance, Hon'ble Minister for Steel and Mines, Shri K.C. Pant, has confessed (referred Oriya News Paper "SAMBAD" dated 18.12.1986) that "the Government have asked the Scientists to advise a suitable alternative site to set up a Nickel Project as the existing site at Sukinda in Cuttack Distriet of Orissa is not to be economically feasible. He further asserted that instead of terminating the services of employees working in the project, the Government have been considering to engage them under other similar Public Sector Undertakings.

In an instance we could learn that many employees of Neelachal Ispat Nigam have been absorbed in NALCO. Thus our case is also a deserving one for considering for absorbtion in any organisations. The Sl. No. 1, 3, 6 & 7 of the employees belongs to Scheduled Castes and Scheduled Tribes.

PRAYER

Under the circumstances mentioned above we hereby request yoar kindness to please interfere into the following ;

(i) For regularisation of all employees immediately ;

(ii) Payment of our arrear dues on the regular scale of pay from the date of our entitlement; and

(iii) Absorbing all of us in any of the Government of India Undertakings Establishments, *i.e.* NALCO, H.C.L., etc.

And your petitioner (s) as in duty bound will ever orey.

Name of Petitioner	Address	Signature or thumb impression of Employees
1. Shri N.K. Jena,	Sukinda Nickel Project, Ratha Road, Rameswar Patna, Bhubaneswar-2	Sd/
2. Shri M. Rout	-do-	Sd/-
3. Shri R.C. Kanhar	-do-	Sd/-
4. Shri S. Dash	-do-	Sd/-
5. Shri A. Mohanty	-do-	Sd/-
6. Shri G. Jena	-do-	Sd/-
7. Shri K. Nayak	-do-	Sd/-

APPENDIX II

(*See* para 5.1 of the Report)

The Hon'ble Speaker,
Lok Sabha

In the matter of Grievances regarding Termination of Services of the Employees of Sukinda Nickel Project, Bhubaneswar, Orissa

Respected Sir,

Kindly refer to our representation dated 9.6.1987, a copy of which is also enclosed herewith. The said representation was acknowledged by the Senior Legislative Committee Officer, *vide* letter No. 53/C-I/87, dated 16.6.1987.

In this connection, we beg to inform you that M/s. Hindustan Copper Limited instead of regularising our services or solving our grievances, have abruptly terminated our services (copy of the termination notice attached) and closed down the project with effect from 31.5.1988.

Sir, we have rendered more than 14 years of continuous service to the Company. We are eligtble for pay and emoluments at par with the pay structure of other employees in other Units of Hindustan Copper Limited. It is the legal and moral responsibility of the Company to absorb us in their other Units operated within India. But, inspite of several representations the Management had turned a deaf ear to our grievances.

We belong to the economically oppressed group in the society. We are now overaged and can not seek a fresh job elsewhere. We do not know how we will servive in the hard days ahead and maintain our families. Further added to our misery, the Company has paid us the compensation. mentioned in the termination notices which are not acceptable to us, as the calculations are not based on the legitmate and eligible emoluments in terms of "Equal pay for equal work" principle, as compared to the emoluments of the employees of H.C.L. in the other Units.

Under the circumstances stated above, we fervently request your intervention and pray that you will be kind enough to us your good offices and to insist the Management of Hindustan Copper Limited to adjust us in their other Units and if this is not possible, we should be

paid proper compensation basing on the pay scale of the employees of H.C.L. with retrospective effect after fixing up our pay along with pay protection as per rules of the Company.

For this act of your, we shall be ever grateful to you. As this is a life and death question to us, please initiate steps for immediately redressal of our case.

Yours faithfully,
The Workmen of Sukinda
Nickel Project.

Dated : 19.6.1988

1. Shri N.K. Jena, ... Sd/-
   N.A.C. Colony
   Quarter No. 16 (Flat),
   Unit-III,
   Bhubaneswar-751001.
2. Shri M. Rout ...... Sd/-
3. Shri R.C. Kanhar ...... Sd/-
4. Shri S. Dash ...... Sd/-
5. Shri A. Mohanty ...... Sd/-
6. Shri G. Jena ...... Sd/-
7. Shri K. Nayak ...... Sd/-

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