

12

COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)
TWELFTH REPORT



LOK SABHA SECRETARIAT
NEW DELHI

August, 2010/Bhadra, 1932 (Saka)

TWELFTH REPORT
COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)

MINISTRY OF CHEMICALS AND
FERTILISERS
(DEPARTMENT OF FERTILISERS)

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

(Presented to Lok Sabha on 31.08.2010)



LOK SABHA SECRETARIAT
NEW DELHI

August, 2010/Bhadra, 1932 (Saka)

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COMPOSITION OF THE COMMITTEE ON PETITIONS
(2009-10)

Shri Anant Gangaram Geete — *Chairman*

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2. Shri Rajendra Agrawal
3. Shri Khiladi Lal Bairwa
4. Shri E.T. Mohammed Basheer
5. Shri N.S.V. Chitthan
6. Shri Gurudas Dasgupta
7. Shri Dip Gogoi
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13. Dr. Sanjay Sinh
14. Shri Kabir Suman
15. Shri Joseph Toppo

SECRETARIAT

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2. Shri V.R. Ramesh — *Joint Secretary*
3. Shri U.B.S. Negi — *Additional Director*
4. Smt. Jagriti Tewatia — *Under Secretary*

TWELFTH REPORT OF THE COMMITTEE ON PETITIONS

(FIFTEENTH LOK SABHA)

INTRODUCTION

I, the Chairman, Committee on Petitions, having been authorized by the Committee to present the Report on their behalf, present this Twelfth Report of the Committee to the House on the following matters:

- I. Representation from Shri T. Chakraborty, Ex SO (USSD) and others and forwarded by Shri Basudeb Acharia, MP, Lok Sabha regarding non-payment of dues to the employees of HFCL, Haldia.
- II. Representation signed by Shri Gurudas Das Gupta, MP, Lok Sabha regarding delay in construction of a bridge over the river Rupnarayan on NH-6 in West Bengal.

2. The Committee considered and adopted the draft Twelfth Report at their sitting held on 26th August, 2010.

3. The observations/recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;
26 August, 2010
04 Bhadra, 1932 (Saka)

ANANT GANGARAM GEETE,
Chairman,
Committee on Petitions.

CHAPTER I

REPRESENTATION FROM SHRI T. CHAKRABORTY, EX SO (USSD) AND OTHERS AND FORWARDED BY SHRI BASUDEB ACHARIA, MP, LOK SABHA, REGARDING NON PAYMENT OF DUES TO THE VSS EMPLOYEES OF HFCL, HALDIA

Shri Basudeb Acharia, MP, Lok Sabha through his letter dated 22 December 2008 forwarded a representation from Shri T. Chakraborty, Ex-SO (USSD) and others regarding non-payment of dues to the employees of Hindustan Fertilizers Corporation Ltd. (HFCL), Haldia, who opted for the Voluntary Separation Scheme (VSS). In their representation, the petitioners have stated as under:—

- “1. Consequent upon the decision of the Union Government to close the HFCL, Haldia Division along with other factories of M/s Hindustan Fertilizer Corporation Ltd. (HFCL), a Public Sector Undertaking under the Ministry of Chemicals & Fertilizers, Government of India, HFCL *vide* their Circular no. HFC/CO/Pers/P-68 dated 19.09.2002 offered the employees to accept the benefit of Voluntary Separation Scheme (VSS) by 20th December, 2002, or to accept retrenchment compensation under ID Act, 1947.
2. Based on this offer, as there was no alternative, the petitioners and the ex-employees of M/s HFCL Haldia Division had to exercise their option for VSS on 20th December 2002 along with other employees.
3. Though most of the employees were released during January 2003 itself with payment of all their dues, the petitioners were not released immediately and the company intimated *vide* memo No. HD/Pers/VSS/07 dated 07.05.2003 that their VSS application have been accepted and the date of their release would be intimated separately.
4. The petitioners repeatedly requested the management to release them so that they could try alternate employment. But they were not released and were retained without any extra financial benefits. Meanwhile, chances for alternative employment came to them but they could not accept it, due to management’s reluctance to release them although their VSS applications were accepted long back.
5. Shri Joy Sengupta, APM who was also kept on role for Exigency Service of Ammonia handling like them and whose VSS application was also accepted but was not released, had submitted an application tendering resignation *vide* his letter dated 14th June, 2003 seeking release w.e.f. 30.06.2003. The activity of the Ammonia handling plant was in full swing then. In spite of that Shri Sengupta was not released on resignation

but was released under VSS w.e.f. 28.07.2003 and accordingly all VSS benefits were also granted to him.

6. Finally during August/September 2003, out of sheer frustration, the petitioners also submitted applications requesting for their immediate release on VSS or to treat the letter as resignation letter like that of Shri Joy Sengupta. Surprisingly, these applications were accepted and they were released without any VSS benefit during September, 2003 itself.
7. They made several appeals to the management for payment of the VSS benefits which the company did not entitle them. If Shri Joy Sengupta could get the benefit of VSS after submitting resignation, why they could not get the same in identical situation?
8. Also in an another identical situation Shri K.L. Pradhan A.E. (USSD) who was also kept on role for Exigency Service of Ammonia handling like them was released on 22.12.2003 along with few other employees with the benefit of VSS, as the said activity ended where Shri A.K. Sahu C/E, one of the petitioners was released on 17.12.2003 on resignation depriving him from the benefit of VSS.

The petitioners have alleged that it was a case of deprivation and discriminatory treatment which was meted out to them for no fault on their part as result of which they have to face innumerable and irreparable losses. They have, therefore, requested to pass necessary orders so that due VSS compensations are paid to them by the HFCL authorities and Department of Fertilizers.”

1.2 The Committee took up the above representation for examination under Dir. 95 of the Directions by the Speaker, Lok Sabha. Accordingly, the said representation was forwarded to the Ministry of Chemicals & Fertilizers on 25 November, 2009 requesting them to furnish their comments.

1.3 In their response, the Ministry of Chemicals & Fertilizers (Department of Fertilizers) *vide* O.M. dated 3 December, 2009 furnished their comments as under:—

“The circumstances under which petitioners Shri J. Sengupta, Ex-Asstt. Plant Manager was released under VSS and other four ex-employees namely, S/Shri T. Chakraborty, S.K. Poddar, Ex-Sr. Operators (USSD), S. Chakraborty, Ex-Technician Gr. I (USSD) and A.K. Sahu, Ex-Assistant Plant Manager of HFCL, Haldia Division were released on acceptance of their resignations, were got examined and observed as under:—

- (i) All the above named ex-employees had opted for VSS along with other employees of Haldia Division and their options were accepted by the management under intimation to them. Since they were working in Ammonia Handling Plant and their jobs were specialized ones, they could not be released under VSS earlier in the interest of the Corporation, as Corporation was under obligation to handle Ammonia for M/s. HFCL as per the contract with them which was valid till 31 December, 2003.

- (ii) Consequent to the above, Shri J. Sengupta, Ex-APM tendered his resignation on 14 June 2003, at the first instance, with the request to release him *w.e.f.* 30 June 2003. He was to superannuate on 31 October 2003. His resignation letter, duly processed, was placed before the Competent Authority *i.e.* the then Chairman and Managing Director for acceptance on 08 July 2003 after following proper procedure. However, the Competent Authority approved release of Shri Sengupta under VSS with the following observations:

‘Shri Sengupta opted for VSS which was accepted but could not be released due to not having suitable person to substitute him in the job. GM, Haldia Division has now noted that suitable substitute has been made, Shri Sengupta may be released on VSS. Accordingly, Shri Sengupta was released *w.e.f.* 31 July 2003 under VSS.’

- (iii) Subsequently, the four petitioners, ex-employees namely S/Shri T. Chakraborty, S.K. Poddar, S. Chakraborty and A.K. Sahu of HFCL, Haldia Division followed suit and submitted their resignations later on *i.e.* on 16 August 2003, 26 August 2003 and 17 September 2003 respectively with the request to release them at the earliest.
- (iv) While processing their resignation letters for consideration by the Competent Authority, it was indicated that the local management at Haldia Division had already intimated to them in writing about the acceptance of resignations and accordingly, S/Shri T. Chakraborty, S. Chakraborty were released on 15 September 2003, S.K. Poddar on 25 September 2003 and A.K. Sahu was released on 16 December 2003 respectively. At the time of their release, all the four ex-employees were having more than 10 years of left over service.
- (v) As per the terms and conditions of appointment, an employee of their status can leave the organization on resignation by giving one month/ three month notice (one month in case of workmen category and three months for officers category). Corporation is bound to accept the resignation tendered by an employee and release him from the services of the Corporation accordingly unless there is any disciplinary/vigilance case pending or contemplated against the resigned employee. Once an employee submits his resignation, management can retain him in service till completion of notice period only even if his services are essentially required by the corporation.
- (vi) Since the four ex-employees concerned tendered their resignation and requested the management for their release, management had no other option but to release them on accepting their resignation in conformity with the rules of the Corporation.
- (vii) With regard to the Shri K.L. Pradhan, Asstt. Engineer, it is submitted that he did not submit any resignation letter, asking for immediate release.

Since the Agreement with M/s. HFCL for handling/unloading of Ammonia was expiring by 31 December 2003, it was decided by the Management to release 65 employees (out of 85 employees, who were deployed for this operation) under VSS on or before 31 December 2003, for which instructions were issued by the then Director (Finance) *vide* his fax message dated 16 December 2003.

Further, out of 65 employees, Haldia Division had also been directed to release 25 employees by 22 December 2003 and the balance 40 employees by 30 December 2003 *vide* Director (Finance)'s fax dated 19 December 2003.

Accordingly, Haldia Division sent a list of 25 employees, including Shri K.L. Pradhan, which were processed by Corporate Office and on acceptance of the proposal by the Competent Authority, they were released on 22 December 2003.

As stated above, since the Agreement for handling/unloading of Ammonia operation was expiring on 31 December 2003 and Shri K.L. Pradhan did not submit his resignation requesting for his early release from the services of the Corporation unlike the four petitioners, he was released on 22 December 2003.”

1.4 Giving a brief account of the case, the Ministry of Chemicals and Fertilizers (Department of Fertilizers) in their written note dated 15 December 2009 submitted as under:—

“Due to terminal sickness, HFCL was referred to BIFR on 20.04.1992 and declared sick. Subsequently, as the units of the Corporation were found to be unviable, Government of India took a decision to close down the Corporation in the month of September, 2002 by offering ‘Voluntary Separation Scheme’ to its workforce numbering 4881. Accordingly, a VSS circular bearing No. HFC/CO/Pers/P-68/2218 dated 19 September 2002 was issued enabling the employees to avail the same.

The petitioners had also opted VSS which were accepted but they could not be released under the scheme as they were engaged in handling/loading and unloading of liquid Ammonia operation at Haldia Division which was being done as a result of an agreement signed between HFCL and M/s Hindustan Lever and Chemicals Ltd. (HLCL). Subsequently, they tendered resignations for immediate release. Even on the body of their resignation letters, their Controlling Officer had asked for suitable replacement in view of their engagement in the above mentioned specialized job. However, they were released from the services of the Corporation on acceptance of their resignation on completion of their notice period as per terms and conditions of their appointments. Hence, they could not be paid any VSS compensation as per rules.”

1.5 As regards the terms and conditions offered to the employees seeking premature voluntary retirement, the Ministry in their written note submitted as under:—

“The scheme was applicable to all categories of permanent/regular employees of the Corporation. The scheme was in operation for a period of three months *w.e.f.* 21.09.2002 to 20.12.2002 (one month extension was allowed to employees of Durgapur Unit). All the employees had to opt for Voluntary Separation (VS)

under this scheme during this period. Workers not availing the offer of Voluntary Separation during this period were to be paid retrenchment compensation under Industrial Dispute Act, 1947 after obtaining permission from the competent authority. Officers not availing of the offer of voluntary separation were governed by their terms of appointment (*i.e.* three months wages).”

1.6 About the benefits/dues available to the employees seeking VSS, the Ministry in their written note submitted as follows:—

“The employees opting for VSS would have the option of getting benefit of *ex-gratia* from either of the following two schemes *viz.* Gujarat Model or DHI Model.

Gujarat Model: The compensation will consist of salary of 35 days for every completed year of service and 25 days for the balance of service left until superannuation. The compensation will be subject to a minimum of Rs. 25,000/- or 250 days salary that the employees would draw at the prevailing level for the balance of period left before superannuation.

Casual leave will be allowed to be encashed in proportionate measure before up to the date of VSS.

Payment of bonus will conform to the provisions of Payment of Bonus Act.

Department of Heavy Industries (DHI) Model: The compensation under VSS will consist of *ex-gratia* payment equivalent to 45 days emoluments (basic pay+DA) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before the normal date of retirement, whichever is less.

Those who have completed not less than 30 years of service will be eligible for a minimum of 60 months salary as compensation. This will be subject to the amount not exceeding the salary/wages for the balance period of service left at the time of voluntary separation.

Ex-gratia payment in respect of employees on pay scales at 01.01.1987 computed on their existing pay scales in accordance with the extant scheme shall be increased by 100%.”

1.7 Responding to a question about the number of employees still being retained by HFCL, Haldia and other units, in spite of their option for VSS, the Ministry informed the Committee in writing as follows:—

“Some of the employees opted for VSS earlier have been retained in the Units/ Division/Offices as detailed below to carry out the day-to-day ongoing activities.

Corporate Office	—	06
Durgapur Unit	—	04
Barauni Unit	—	04
Haldia Division	—	12
Kolkata based offices	—	05
Total	—	31

1.8 On being asked if such employees are being given any extra financial benefits, the Ministry in their written reply submitted as follows:—

“Since these employees have been retained by the management in the interest of the Corporation and they are getting 22 years old pay scales (pay scales were not revised after 1987), they are being paid a sum of Rs. 15,000/-, Rs. 10,000/- and Rs. 7,500/- per month as per the category they fall in towards monetary assistance to mitigate their financial hardship with the approval of the Board/Ministry.”

1.9 When the Committee asked from the Ministry about the number of workers in HFCL, Haldia and other units who were entitled to get compensation as ID Act, the Ministry in their written reply submitted as follows:—

“None of the workmen were entitled to get compensation for retrenchment under I.D. Act, 1947 in any of the Units/Divisions/Offices except Durgapur Unit where two workmen who did not opt for VSS were retrenched under the provisions of the said Act after obtaining approval of the Appropriate Authority.”

1.10. On being enquired by the Committee as to why the petitioners were not given the benefits under VSS, the Ministry in their written reply responded as under:—

“Shri Joy Sengupta, Ex-APM opted for VSS by his option dated 20.12.2002, which was accepted by the Management and notification to this effect was issued on 07.05.2003. Since he was engaged in handling/loading and unloading of liquid Ammonia which was going on at Haldia Division as per an agreement signed between HFCL, Haldia Division and M/s Hindustan Lever & Chemicals Limited, he could not be released under the Scheme in time. He had tendered resignation on 14.06.2003. However, Competent Authority approved his release under VSS on getting a substitute in his place as he was having only 3 months left over service at that time.

The petitioners could not be released on VSS as they were also engaged in the above said specialized jobs. For getting early release, they tendered resignation on 16.08.2003 (S/Shri T. Chakraborty and S. Chakraborty), 26.08.2003 (Shri S.K. Poddar) and 17.09.2003 (Shri A.K. Sahu). Their Controlling Officer while forwarding their resignations demanded suitable substitutes to carry out the specialized jobs being done by them. Since they had tendered resignations, the Corporation was bound to accept the same and release them on completion of their notice period unless any departmental proceedings were pending/contemplated against them. Accordingly, the Competent Authority accepted their resignations and released them from the services of the Corporation as no substitute was available in their case. Had they continued in the services of the Corporation, they could have also been released with VSS benefits on or after 22.12.2003.”

1.11 When the Committee asked about the cases where benefits under VSS were granted, the Ministry in their written note submitted as follows:—

“The agreement between HFCL and M/s HLCL for handling Ammonia was expiring on 31.12.2003. Directives were issued from Corporate Office to release 65 employees (out of 85) engaged for this job on or before 31.12.2003. Haldia Division expressed its difficulties to release 65 employees at a time and recommended to release 10 employees by that time which was not agreed to by the Management. Accordingly, Haldia Division was directed to release 25 employees by 22.12.2003 for which names were obtained from the Division. They had forwarded a list of 25 employees which includes the name of Shri K.L. Pradhan, Asstt. Engineer also. On acceptance of their options, all of them were released on 22.12.2003 and the balance 40 by 31.12.2003.”

1.12 On being asked about the difficulty in giving VSS benefits to the petitioners, the Ministry *vide* their written reply submitted as follows:—

“On receipt of similar representations from these ex-employees, Department of Fertilizers directed Shri J.K. Khanna, IPS, Additional Director General of Police and the then CVO of HFCL to get the matter investigated by his Department. Accordingly, an investigation was carried out by the Vigilance Department wherein the CVO had observed that “the petitioners had no case as they had submitted their resignation on their own which were accepted by the Management and they were released accordingly as per rules of Corporation.

It is further stated that similar representations of these ex-employees were forwarded to HFCL for consideration through Hon’ble MLA/MPs/PMO, which were replied explaining the same facts stated above.

Under the circumstances explained above, the above four ex-employees are not entitled for any benefits under Voluntary Separation Scheme. Giving any undue benefit against the stated rules of the Corporation would not be a wise decision as the existing employees may also ask for VSS benefits after giving resignation letters and they have to be released as per their terms of appointments.”

1.13 The Committee, thereafter, took oral evidence of the representatives of the Ministry of Chemicals and Fertilizers (Department of Fertilizers) on 17 December 2009.

1.14 At the outset, the Committee asked as to why the VSS options of the petitioners were not accepted even though in one case the same was accepted, the witness, Secretary, Ministry of Chemicals and Fertilisers, while explaining the Voluntary Separation Scheme responded as under:—

“There is slight difference in the definition. In voluntary retirement scheme, the relation between employer and employee is brought to separation by themselves, it is a separation of relations. In voluntary retirement scheme, both are benefited. The benefits are same but since VSS was approved for us that is why we implemented it. The second thing is that VSS scheme was announced in the

year 2002 and was opened for all employees but one sentence was added that the date on which one will be relieved, will be intimated to him separately.

Along with one unit of HFCL, was a chemical unit of Hindustan Lever which was given a contract to supply ammonia. About 85 persons were involved in that unit. As the time of contract was still remaining, it was not considered proper to relieve them. Now I come to those four persons who have submitted petition before you and one person about whom it is said that he had given application for VSS, he was given VSS, his resignation letter was with you. Whenever such situation arose we tried to find out an alternative arrangement in place of that person about whom we are discussing. He is a person named Shri J. Sen Gupta. He was posted there as Assistant Plant Manager. Thereafter, it was tried to find out whether there is any other officer who may be posted to perform his duties and thereafter he may be relieved. It was also felt that he had only three months time before retirement. Keeping these points in mind we accepted his VSS. Their intention might have been that financial pass out would not have been much and therefore he may be allowed to go. That is why VSS was given to him. It was done by CMD himself. It might have been done at the recommendation of GM but the role of GM was to that extent only.”

1.15 When the Committee asked whether you don't think that they were being discriminated, the witness responded as under:—

“I don't feel it is discrimination because if someone given application for resignation, we have to relieve him within one to three months.”

1.16 When the Committee enquired as to whether there was no compulsion for VSS and you were not bound by the offer given by you, the witness responded as under:—

“In VSS, there was restriction about the work. So it was not given. I am talking about facts.”

1.17 On being asked by the Committee if VSS of the employees was not accepted because they were needed by HFCL, the witness explained as follows:—

“Yes, it was so. Where we could make alternative arrangement we relieved them. But where alternative arrangement was not available, we told them that either they resign or have to wait for VSS. You may see that it was a matter of 14-15 days. When the contract was completed after December remaining people had been given VSS.”

1.18 When pointed out by the Committee that there are only 4 persons who were to be given the benefit of VSS, in response the witness clarified:—

“31 such persons are still posted. There were another 85 persons engaged in the contract, so we could not relieve them.”

1.19 On being pointed out that an employee opts for VRS or VSS when he had the opportunity to go elsewhere and if he is relieved when he has crossed his age then how he is going to be compensated, the witness clarified as follows:—

“That is right, but if the terms and conditions of VSS are seen there is one condition which says that they cannot be employed in any PSUs. They may go into private sector after submitting their resignation or by opting for VSS.”

He also added as under:—

“As we understand those who had confirmed offer for service, would have gone after submitting their resignation. Today many people would not accept VSS. We need 31 people because after actual close down, the issue of protecting the assets come up. Even now unless some alternative arrangement is made, 30 to 31 persons are protecting the property.”

1.20 When the Committee observed that it was an act of discrimination to debar four people who had opted for VSS and that non-payment of salary and statutory dues to these persons is a violation of labour laws, the witness responded as under:—

“Sir, there were about 85 people who had been involved in supplying material or transportation contract to Hindustan Lever Chemicals where the company was under legal obligation to give them. If at all any equity considerations are there, then one has to look within that 85 people.

I would very respectfully submit that in so far as labour laws are concerned, I do not think that we are in any infringement of labour laws. All that I would say is that the company did its best to offer VSS to as many people as possible so that hardship could be avoided. Now, what had really happened is that these people could not wait. I do not know why they could not wait because everybody knew that the end of the contract was very near. Obviously, I am only guessing at this point of time that they had something else in hand or at least they thought they had something in hand, and that is why they did offer their resignation and go for another job. But regarding labour laws there were four people involved in that thing, namely, a manager who was not actually covered under the labour laws and three workers. The labour laws apply in case you do retrenchment, but in this case retrenchment was not the question at all. It was a question of resignation where they are governed by the standing orders and laws of the company. This is all that I wish to submit.”

The CMD, HFCL added as follows:—

“.....As the Secretary was mentioning, right from the beginning, the relevant dates are very important to see. In fact, the first gentleman whose petition was put forward to the Hon’ble Committee has put forward his date of application which was much before the date of other people. All the dates are extremely important to see. This person, Mr. Sengupta, who was given this VSS applied for it on 14.06.2003. On that date, the other four people had never applied. He was the sole person and his application was pending with the management as on

that date. The management took a decision on his application. As has been mentioned, there was a specific contract with HFCL that we will continue to supply their services because of a legal contract till 31st December, 2003. To execute that contract, we required the services of 85-90 people. There is a legal binding. It is only because of that reason, these 90 people were withheld.”

1.21 In response to a specific query of the Committee as to why the VSS of four persons were withheld especially when the company itself had issued orders of either accepting VSS or to face retrenchment, the CMD, HFCL replied as under:—

“Sir, all those who have applied for VSS, their applications were accepted including of these people. While accepting their VSS, it was written that their date of release will be communicated later on. These petitioners have written in their petition that their VSS was accepted but they have not been relieved....”

1.22 When the Committee specifically asked that Shri Sengupta was given the benefit of VSS after he tendered his resignation, the witness responded as under:—

“The resignation was not accepted. I would like to read the order of 2003 of the CMD.

It is written that Shri Sengupta has opted for VSS. They accepted it and said that he would be relieved after the suitable person is available. Now the suitable person is available, hence the VSS has been approved.

The witness also added as under:—

“This particular question has been raised. From the records available of 2003 with the Ministry, the order says that the VSS has been accepted but the date of release will be intimated separately. If alternative arrangement is there, then it can be done.”

1.23 When the Committee observed that by withholding the orders, the company had obstructed a man from finding an alternate job, the witness clarified as follows:—

“As far as job is concerned, as has been cleared by the Secretary, previously, I am reiterating this – if four people themselves aware that if they do not have any urgency of any job like the other 85 people who are working, they will be released on 31.12.2003. This is the date as per the records is a legal liability of Hindustan Fertilizers Corporation to continue this operation with the contractual company, it is a contractual liability of the company when the company gets closed. Basically, when there is a commercial contract between ‘x’ and ‘y’ entity, when the company gets closed, they have to carry forward this activity. If the other people, that is, 85 have waited till 31st December, the said four employees were also having the option of waiting till 31st December.”

1.24 When the Committee pointed out that like these petitioners, one Shri Sengupta had also applied for VSS and when not released on VSS, he gave his

resignation but still he got the VSS benefits, whereas the petitioners did not get the benefit, the witness from HFCL clarified as follows:—

“From the records of 2003, it can be seen that the day option was given to Mr. Sengupta, we got his alternative arrangement and when he has his alternative arrangement then his case was closed in July, 2003.”

1.25 When the Committee enquired after how many days the company got replacement of Shri Sengupta, after tendering his resignation, the witness submitted as under:—

“The order mentioned in the letter is that the day the resignation was accepted the replacement was available.”

1.26 When the Committee observed that the petitioner’s resignation should also have been accepted only after getting their alternatives, the witness responded as under:—

“They were asked to wait till December, 31 but as submitted by the Secretary that they may have got job somewhere that’s why they could not wait till December 31. Despite no replacement their resignation was accepted because if dates are considered then the position will be more clear.”

1.27 On being pointed out by the Committee as to how it was possible to accept the resignation of the petitioners without finding any replacement, the witness, Secretary, Ministry of Chemical and Fertilizers submitted as follows:—

“Those employees who opted for VSS have been treated equally because till they wanted they were retained in the company. If you want me to answer that those who had given VSS should have been relieved immediately for that I do not have any answer.”

1.28 When the Committee pointed out that one Shri Pradhan was released on 22 December with all benefits of VSS whereas Shri Sahu was released on 17 December and was not given any VSS benefit, the witness, CMD, HFCL responded as under:—

“Sir, I will try to answer both the questions, first the case of rejecting the resignation on the humanitarian grounds then it is not at all necessary that his resignation should have been accepted. You don’t have any reason not to accept his resignation as any employee will not give resignation before finding alternative job and unless any disciplinary action or proceeding pending or any other issues against him then we did not have any option than to accept that resignation.

Second question is regarding the decision of the management taken on 16.12.2003 about not extending the agreement of HFCL and, it was not to be extended because the company was closed. That is why the process of giving VSS started for all the employees in the company after 16th and the policy working was to give maximum employees the benefit of VSS till 30th as said earlier, 85 employees were given VSS except Mr. Pradhan remaining 81 employees were given VSS that this way the company’s operation has come to an end.”

The witness further submitted as under:—

“What I have told you it was the decision of the management because the deadline was decided by the management, if Mr. Sahu have waited for 6-7 days or the decision should have been taken after 6-7 days then he should have been benefited. Because this fact is not mentioned in file that the management have taken decision on 16th if this has been taken on 22nd then Mr. Sahu must have benefited. No data in file is available in this regard. So, it is difficult to say that why management have chosen this date and taken decision before 4-5 days. But as soon as management had taken decision to give VSS to all the employees Mr. Pradhan was also included in that. If he had no urgency, then he could have given an additional application asking the Management to wait for 4-6 days more *i.e.* till 31 December then we could have waited for another 4 days. But he did not give any fresh application to stop his resignation.”

Observations/Recommendations

1.29 The Committee note from the submission of the petitioners that following the decision of the Union Government to close the Hindustan Fertilizer Corporation Ltd. (HFCL), a Public Sector Undertaking under the Ministry of Chemicals and Fertilizers, a circular dated 19 September 2002 was issued by HFCL offering the employees either to accept the benefit of Voluntary Separation Scheme (VSS) by 20 December 2002 or retrenchment compensation under Industrial Disputes Act, 1947. The petitioners along with the other employees of M/s HFCL, Haldia Division, having no other alternative, had to exercise their option for VSS. According to the petitioners, though, most of the employees were released during January 2003 itself with payment of their dues, they were not released by the Company and instead they were intimated *vide* their memo dated 07 May 2003 that their VSS application have been accepted but the date of their release from the Company would be intimated separately. In this context, the petitioners have submitted that Shri Joy Sengupta, Assistant Plant Manager (APM) whose VSS application was also not accepted, subsequently tendered his resignation on 14 June 2003 and he was released by giving him all VSS benefits with effect from 28 July 2003. In an another identical case, Shri K.L. Pradhan, Assistant Engineer (AE) was also released on 22 December 2003 along with the benefits of VSS. Whereas Shri A.K. Sahu, Assistant Plant Manager (APM) and one of the petitioners was deprived of VSS benefits and was released on 17 December 2003 after he tendered his resignation. The petitioners have alleged that it was a case of deprivation and discriminatory treatment which was meted out to them for no fault on their part as a result of which they have to face innumerable and irreparable losses. They have, therefore, requested that due VSS compensations are paid to them by the HFCL authorities and Department of Fertilizers.

1.30 The Ministry of Chemical and Fertilizers (Department of Fertilizers) informed the Committee that due to the terminal sickness, HFCL was referred to BIFR on 20 April 1992 and declared sick. Subsequently, as the units of the Corporation were found to be unviable, Government of India took a decision to close down the Corporation in the month of September 2002 by offering VSS to

its workforce numbering 4,881. Accordingly, a VSS circular was issued on 19 September 2002 enabling the employees to avail the same. The petitioners had also opted for VSS which were accepted but they could not be released under the scheme in the interest of the Corporation as they were engaged in handling/loading and unloading of liquid Ammonia operation at Haldia Division and the Corporation was under obligation to handle Ammonia as per the contract with M/s Hindustan Lever & Chemicals Ltd. (HLCL) which was valid till 31 December 2003.

1.31 According to the Ministry/HFCL, Shri Joy Sengupta, APM who had earlier opted for VSS and accepted by the Management, could not be released under the scheme as he was engaged in handling/loading and unloading of liquid Ammonia. Subsequently, he tendered his resignation on 14 June 2003 with the request to release him with effect from 30 June 2003. He was to superannuate on 31 October 2003. His letter was placed before the Competent Authority *i.e.* the then Chairman & Managing Director, HFCL for acceptance on 08 July 2003 after following proper procedure. The Competent Authority approved his release under VSS on getting a substitute in his place and also on the ground that he was having only three months left over service at that time. Shri Joy Sengupta was released with effect from 31 July 2003 under VSS. Subsequently, the petitioners also submitted their resignations and even though no substitute was available in their cases, their resignations were accepted by the Management and they were released from the services of the Corporation as per the rules of the Corporation. Since they were released on acceptance of their resignation letters and not under VSS, no benefits under VSS were given to them at the time of their release as per rules of the Corporation as no substitute was available in their cases. With regard to Shri K.L. Pradhan, Assistant Engineer, it was informed that he did not submit any resignation letter, asking for immediate release. Since the Agreement with M/s HFCL for handling/unloading of Ammonia was expiring by 31 December 2003, it was decided by the Management to release 65 employees, out of 85 employees who were deployed for this operation, under VSS on or before 31 December 2003. Further, out of 65 employees, Haldia Division were also directed to release 25 employees by 22 December 2003 and the rest 40 by 30 December 2003. In the list of 25 employees sent by Haldia Division, the name of Shri K.L. Pradhan also figured and these employees were released on 22 December 2003.

1.32 The Committee are surprised to note that while one of the employees of the Corporation, namely Shri Joy Sengupta was released under VSS on 31 July 2003 after he tendered his resignation on 14 June 2003 and all the benefits under VSS were allowed to him, the same were denied to the petitioners as the resignations tendered by them were not accepted under VSS. The Management released these petitioners from the service of the Corporation after their resignations were accepted on completion of notice period as per the rules of the Corporation. The Committee are not convinced with the explanation given by the Ministry/HFCL that Shri Sengupta was released under VSS as a substitute was available for him and also because he had three months left for his superannuation on 31 October 2003 but in the context of the petitioners, the Corporation was bound to accept their resignations even though no

substitute was available for them and released them on completion of their notice period as per rule. In another instance, Shri K.L. Pradhan, Assistant Engineer who was also kept on roll for exigency services of Ammonia Handling Plant like the petitioners, was released on 22 December 2003 along with other employees with all the benefits under VSS, whereas one of the petitioners namely Shri A.K. Sahu, APM was released just six days before on 16 December 2003 on the basis of resignation tendered by him on 17 September 2003 and thus, depriving him all the benefits under VSS. The Committee fail to understand as to why the Management did not wait for six more days so that Shri Sahu could also have become entitled for the benefits under VSS. It is inexplicable that while resignation of an employee can be accepted by the Corporation without a substitute, he/she cannot be released under VSS if no substitute is available to replace him/her. If that was so, then Management should have acted judiciously and in a rational manner. The Management should have used their discretion and rejected the resignations tendered by the petitioners for want of suitable substitute. Alternatively, the petitioners may have been allowed to retire under VSS with a rider that the benefits accrued to them under VSS would be given to them later on after the contract with HLCL is over on 31 December 2003. The Committee are of the considered view that the action taken by the Management was an act of high handedness and clearly a case of discrimination towards the petitioners which deprived them of the benefits under VSS. The Committee, therefore, deplore the manner in which the resignations tendered by the petitioners were dealt with callously by the authorities concerned and recommend that their cases may be reviewed and the benefits under VSS may be allowed to them.

1.33 The Committee are distressed to note that the Corporation asked their employees to opt for VSS or else face retrenchment. These orders clearly suggest that the offer of VSS was not voluntary but was in fact camouflaged retrenchment of the employees if they did not opt for VSS. Under such conditions, the employees did not have any option but to accept voluntary retirement. Instead of releasing them under VSS, the Management gave their own reasons to retain them which ultimately compelled the petitioners to tender their resignations for which the petitioners may have their own compulsions/ reasons or obligations to find an alternate job. The Committee regret to note that while accepting their resignations, the Management completely ignored the genuine interest of the petitioners and their obligation to look out for alternate employment after their release from the Company and instead subjected them under great mental agony and financial hardships which percolates to the entire families of the petitioners.

1.34 The Committee note from the submission of the Ministry/HFCL that as per their rules/guidelines, the Management is bound to accept the resignation of any employee on completion of notice period unless any departmental proceedings is pending/contemplated against him. When such resignations are tendered by an employee who opts for VSS, no benefits under the scheme are allowed to him. The Committee feel that these rules/guidelines appear to be repressive in nature which completely ignore the interest of those employees particularly those who intend to resign from service. The Committee, therefore, desire that such rules/guidelines

need to be reviewed and suitably modified particularly keeping in view the interest of the employees who opt for VSS floated by the company but had to resign from service for one reason or the other before their option for VSS is effected. The Committee, therefore, recommend that the relevant rules/guidelines in the matter should appropriately be reviewed and amended so that interest of the employees are protected even if they tender resignations after they opt for VSS and given all the benefits which may accrue to them under VSS.

The Committee would like to be apprised of the conclusive action taken by the authorities concerned in this regard within three months of the presentation of this report.

CHAPTER II

REPRESENTATION SIGNED BY SHRI GURUDAS DAS GUPTA, MP, LOK SABHA REGARDING DELAY IN CONSTRUCTION OF A BRIDGE OVER THE RIVER RUPNARAYAN ON NH-6 IN WEST BENGAL

Shri Gurudas Das Gupta, MP, Lok Sabha has sent a representation dated 29 October 2009 regarding delay in construction of a bridge over the river Rupnarayan on National Highway (NH)-6 in West Bengal.

2.2 In his representation, the Hon'ble Member has stated that the construction of a bridge over the river Rupnarayan on NH-6 connecting Howrah District with Purba Medinipur is being delayed for a long time. Repeated representations to the Government have not succeeded in expediting the construction. It is a second bridge that is being constructed as the old bridge is in a bad condition, may be, in a dilapidated condition. He has, therefore, sought intervention of the Committee to expedite construction of the bridge for mitigating the sufferings of the people.

2.3 The Committee took up the matter for examination in accordance with Direction 95 of the Directions by the Speaker, Lok Sabha. Accordingly, the representation was forwarded to the Ministry of Road Transport and Highways to furnish their comments.

2.4 The Ministry of Road Transport and Highways *vide* their O.M. No. H/11016/21/2009.WB/P-3 dated 30 November 2009 stated as under:—

“The contract for the work of construction of Rupnarayan bridge along with 8 other bridges on NH-6 between km 17.60 to km 136, had earlier awarded to M/s Bhageeratha Engineering Ltd. in December, 2000 with scheduled completion by January 2004. The contractor, however, had completed the 8 other bridges, but could not complete the Rupnarayan bridge. Extension of time for completion of the project was also granted up to 30.06.2005. Despite financial assistance given to the contractor, he could not make much progress on the work of Rupnarayan bridge and therefore, the contract was terminated on 21.08.2008.

Further bids for completion of balance work Rupnarayan bridge was first invited in December 2008 but no bids were received. The bids were again invited in February 2009 and May 2009. However, no bids were received. Accordingly, the work of construction of Rupnarayan bridge is now included in the Project for 6 laning of Dankuni-Baleshwar section of NH-6 and NH-60 to be executed on Build Operate Transfer (BOT) Toll basis. ‘Request for qualification’ for short listing of the bidders have already been received and are at advance stage of finalization. Bids from the qualified bidders will be invited by mid December 2009 and the work is expected to be awarded by March 2010. Construction of the bridge is expected to start by September 2010.”

2.5 Giving the latest status of the case, the Ministry in their subsequent written note dated 01 June 2010 submitted as follows:—

- “➤ All substructures completed except Pier Nos. P-9, P-11 and P-12.
- All superstructures completed except six spans between Pier P-8 to P-14 which are falling in water portion, having box girder super structure.”

2.6 As regards the reasons which caused delay for non-completion of the Rupnarayan bridge the Ministry in their written comments submitted as follows:—

- “(i) Excessive tilting of 2 well foundations (P-9 and P-11) and also damage of 1 foundation (P-12).
- (ii) Non-Performance of the contractor during the period of one year before the termination.
- (iii) The Contract with M/s. Bhageeratha Engineering Ltd. was terminated on 21.08.2008 by National Highways Authority of India (NHAI) due to non-performance as per conditions of the Contract Agreement.”

2.7 Elaborating the efforts made by the concerned authorities to finish the construction of Rupnarayan bridge within a scheduled time frame, the Ministry in their note submitted as follows:—

- “➤ The work was awarded in January 2001 with schedule completion as January, 2004.
- Extension of time for completion of the project was granted up to 30.06.2005.
- Financial assistance had also been provided to the contractor for completion of the said bridges. But they could not make progress on the work of Rupnarayan bridge.
- The contractor M/s. Bhageeratha Engineering Ltd. was terminated on 21.08.2008 by NHAI due to non-performance as per conditions of the Contract Agreement.
- Subsequently tender for the balance work of the incomplete Rupnarayan Bridge was first invited in December, 2008 for completion of balance work of the bridge over Rupnarayan at Kolaghat, but no bid were received. The bids were again invited on two occasions further. However, no bids were received on those occasions also.
- The completion of Rupnarayan Bridge has since been included in 6 laning of Dankuni-Kharagpur Section of NH-6 under NHDP Phase-V on BOT (Toll). The bids have been received on 19.05.2010 and are under evaluation.”

2.8 Furnishing the details of the 8 other bridges which were awarded to the same contractor viz. M/s. Bhageeratha Engineering Ltd. ,the Ministry in their written reply submitted as follows:—

“Date of commencement	—	15.01.2001
Scheduled date of completion	—	14.01.2004
Date of termination	—	21.08.2008
Total sanctioned cost	—	Rs. 67.29 crores (total Package cost)
Actual cost incurred upto termination	—	Rs.65.20 crores (with-out escalation)

Out of 9 bridges under the contract, the following 8 bridges were completed by February, 2007

Sl No.	Name of the Bridge	Chainage	Length of Bridges
1.	ROB	Km.18.094 of NH-6	220.00m
2.	Rajpur Canal Bridge	Km.46.817 of NH-6	70.90m
3.	Banspathi Bridge	Km.49.680 of NH-6	57.95m
4.	Damodar Bridge	Km.60.540 of NH-6	168.00m
5.	Dehati Bridge (LHS & RHS)	Km.77.460 of NH-6	133.00m (LHS) 113.00m (RHS)
6.	Kangsabati Bridge (LHS & RHS)	Km.92.725 of NH-6	182.20m (LHS) 182.20m (RHS)
7.	Box culvert	Km.94.430 of NH-6	39.80m
8.	Midnapur Canal Bridge	Km.128.266 of NH-6	85.00m”

2.9 As regards the procedure followed for awarding the contract, the Ministry in their writer reply submitted as follows:—

“For award of work, two stage bidding is followed:—

Stage-I: the Contractors are shortlisted based on following minimum pre-qualification requirement:

Minimum average Turnover during last 10 years	:	32 Cr.
Successful completion of at least 1 contract pertaining highway and/or Bridge work during last 6 years for an amount of	:	32 Cr.
Financial capability	:	8.0 Cr.
Minimum Bid Capacity	:	80 Cr.

Existing expertise of the firm in bridge construction of various types.

Adequate personnel capability

Adequate equipment capability

Stage-II: Price Bids were invited from the prequalified (Shortlisted) bidders. The work was awarded to the bidder who quoted lowest bid amount.”

2.10 Explaining the reasons for awarding the contract of all the 9 bridges to only one contractor, the Ministry in their written comments submitted as follows:—

“Four-laning of Dankuni to Kharagpur section of NH-6 in West Bengal was divided into 3 contact packages viz. (i) Road Works from Dankuni-Kolaghat (Package WB-I), (ii) Road Works Kolaghat to Kharagpur (Package WB-II), and (iii) Works of 9 Nos. Bridges including Rupnarayan bridge between Dankuni to Kharagpur (Package WB-III).

For WB-III (Bridge work), the firms were pre-qualified based on minimum stipulated qualification criteria and their expertise in bridge construction of various types. Accordingly, out of 45 firms applied for short listing for the Package WB-III, 17 firms qualified the criteria. All the pre-qualified bidders were invited for bidding and 5 firms submitted bids by prescribed time on due date.

Based on the lowest quoted bid amount, M/s. Bhageeratha Engineering Ltd. was awarded Package WB-III (Bridge works).”

2.11 Giving the details of financial assistance given to the contractor, the Ministry in their written reply submitted as follows:—

“Details of Financial assistance given to the Contractor against B.G. in addition to Mobilization/Plant and Machinery Advance as per the Contract Agreement:

Date of payment	Purpose	Amount (Rs.)
19.01.2001	Mobilization Advance	67286882
04.10.2001	Plant & machinery Advance	16123212
28.12.2001	Plant & machinery Advance	6162300
25.07.2002	Plant & machinery Advance	5653059
30.12.2002	Plant & machinery Advance	5704870
11.02.2003	Addl. Mobilization Advance	33643441
21.04.2004	2nd Addl. Mobilization Advance	33643441
08.02.2005	Discretionary Advances	5000000
04.03.2005		1300000
19.04.2005		3700000
06.05.2005		5000000
01.06.2005		5000000
27.07.2005	Material Advances	4500000
25.10.2007	Cash Advance	5000000
Total Advance		197717205”

2.12 When enquired about the reasons for not receiving any bids in December, 2008 and again in February and May, 2009 *i.e.* after termination of the contract of M/s. Bhageeratha Engineering Ltd., for construction of Rupnarayan bridge, the Ministry explained as follows:—

“Response on any bid depends upon the prospects of profit that a bidder expects in that particular project as well as the viability of the project. It seems that in this project which has become complicated due to damage of foundation and tilts etc., as well as difficulty in assessing the actual position of foundation below the water, had made it complicated for quoting a rate and completing it within a defined time framework.

The reasons for not receiving any bid during the month of December, 2008 is that the balance work of Rupnarayan bridge which includes rectification of tilted and damage well foundation, was a highly specialized job but the cost of work was Rs. 25 crores and therefore no major contractor was interested in open bidding.

Subsequently, during the pre-bid meeting on 26.02.2009, the participants showed their apprehension about feasibility of rectification of tilted wells (P-9 & P-11) already sunk for 24-30 m and reconstruction of damaged well (P-12, requiring rebuilding of casing and under water concreting up to about 6-7 mtrs.) was raised by the representative of the bidders. Therefore, it was felt that such a proposal may not be safe due to excessive force required to correct tilt, time consuming, unrealistic and exorbitantly expensive too. Therefore, it was suggested that the effected spans may be sub-divided into three spans with a smaller span length of 35.9 m each (between P-8 & P-10 and between P-10 & P-12).

Accordingly, the tender were floated on 28.05.2009 for the said work but during the pre-bid meeting on 15.06.2009 no contractor has turned up in pre-bid meeting and therefore, it was decided to include this work in six laning of Dankuni-Baleshwar Section of NH-6 and NH-60 under NHDP Phase-V.”

2.13 In response to a query as to how inclusion of the work of construction of Rupnarayan bridge in the project for 6-laning of Dankuni-Baleshwar Section of NH-6 and NH-60 to be executed on Build Operate Transfer (BOT) Toll basis, would ensure in expeditious and timely completion of the bridge, the Ministry in their written reply responded as follows:—

“Completion of Rupnarayan bridge is included in 6 laning of Dankuni-Kharagpur Section of NH-6 to be executed on BOT (Toll) basis. The BOT concessionaire has to complete the 6-laning works including Rupnarayan bridge in 30 months. For delay in completion of the 6-laning, the concessionaire has to pay damages @ Rs.13.922 lakh per day (*i.e.* 0.1% of the performance security per day). In case 6-laning is not completed within 270 days of schedule completion date, the agreement will be terminated.”

2.14 The Committee also took oral evidence of the representatives of the Ministry of Road Transport and Highways on 3 June 2010.

2.15 At the outset, the witness, Member (Technical), NHAI explained the position as under:—

“The total length of Rupnarayan bridge is one kilometer, and there are 20 spans for this. Amongst the foundation of 10 spans, 3 each from both sides are pipe foundation and the spans at centre are with well foundation. Originally it was planned that the two foundation at centre will be floating cases considering the depth of water but when we started the work we found that the depth of water is 12-13 metre and the level of water increases by 3 to 4 metre during high tide. It was decided that 8 well foundations will be kept on the side of case one foundation of steel and then it will be constructed by concreting. Earlier, the whole contract from Dankuni-Kharagpur was awarded in three parts. Among them two were road projects and third one was bridge project. During the year 2000, there were separate construction agencies in India for construction of bridges and roads but today one construction agency take up both the works. Considering the size of Rupnarayan bridge it was decided to award tender for bridge and roads separately. Two tenders were awarded for roads and one for the construction of the bridge. At that time tender for total 9 bridges, Rupnarayan bridge and other 8 bridges including Road over bridge and a bridge over Konssawati river at km 90 were awarded. The tenders were awarded in the beginning of the year 2001 and the target year of completion was 2004. The contractor was given the extended time up to June, 2005 but he was not able to complete the work and there were problems of foundation in this project. Even today, there are three defective foundations out of which two have excessive tilting and in one foundation, which is above the steel case one has cracks in it because it was hit by a barge. This problem is also there. Rest all foundations are complete, only these three foundations are there which have not been completed. Total 20 spans were to be constructed. Of these, remaining 6, rest 14 have been completed. Other 8 bridges have also been completed, the last one was completed in February 2007. While constructing this bridge besides technical problems contractor’s financial problem was also there. Considering the situation NHAI had also provided financial help to the contractor so that the work could be completed. Even the material suppliers were paid directly by NHAI and they were told to treat it as advance to the contractor with a condition that it would be deducted from IPCs of the contractor. This way efforts were made but when he didn’t work he was terminated in August, 2008. Thereafter, efforts were also made to invite bids for balance work of Rupnarayan bridge. Bidding were done two times and too on EPC, because it is the safest way, in which we have to pay according to work done. The biddings were done in the year 2009. No bidder turned up and meanwhile a 6-laning project under BOT was finalized to widen the stretch from Dankuni to Kolaghat and the balance project of Rupnarayan bridge was also made a part of the project. Nowadays many expert agencies are available who can take contract of both road and bridge work. The bidding has been done after structuring the project in that way. The bids have already been received on 19 of the last month and we have engaged financial consultants for assessment of cost and revenue of this project

and as per their assessment we would get 5 per cent premium for 15 per cent of IRR. But the bids we have received as per their calculation in one case 8.88% is the minimum grant which they have asked and in case of remaining two it is 9.53% and 9.67%. We are evaluating the bids, financial consultant are studying it and it will be decided.”

2.16 Giving in brief the latest status of construction of Rupnarayan bridge, the witness, Chairman, NHAI submitted as follows:—

“We have received three bids as the bidding process was finalized on 19 May. The grant for this project, since it is board’s project is anticipated that it will include 5 per cent viable gap funding since it is under L-1. We keep 5 per cent of the amount for it. We also keep 5 per cent margin for plus or minus sometimes risk involved may be more than anticipation and sometimes it may also be possible that the bidders consider that the traffic will be more than our forecast, therefore, it is possible that lesser bid may be quoted. Thus when we decide the level of bid we keep 5 per cent of its amount as margin. We had received three bids on 19 May and all were under this 5 per cent margin. The comprehensive financial analysis is being done and the work will be awarded by this month.”

2.17 On being enquired by the Committee about the names of these bidders, the witness (Member, Technical, NHAI) responded as under:—

“The bidders are ISOLAX Soma Consortium. The VGF amount that they have quoted is Rs.133 crore, which is 9.53 per cent of the TPC. The second one is, NCCIHL and VBC Consortium. They have quoted the minimum bid VGF, which is Rs.124 crore, which is 8.88 per cent of the TPC. The third consortium is ILFS Transportation Networks Limited. They have quoted the highest bid, which is Rs.135 crore, and it is 9.67 per cent of the TPC.”

2.18 When the Committee enquired about the viability and the performance record of these companies, the witness replied as follows:—

“These are Indian companies. ISOLAX is Spanish. The rest are all the Indian companies. They are already working on other BOT projects in the country.”

The Chairman, NHAI further submitted as follows:—

“Sir, the first company is ISOLAX–Soma. ISOLAX is the second largest road construction company, perhaps, in Spain. It is a big Spanish company-ISOLAX Consortium and they are in partnership with Soma which is an Indian company. Soma has, perhaps got more than 16 contracts. It is a company from Andhra Pradesh. They have got more than 16 contracts. I think it is 16 to 18. We will give you the exact number as to how many ongoing contracts they have got with us. We have not had any case of default by either of these people in the past. IL&FS Transportation Network is a subsidiary floated. It is a public limited company. It is quoted on the Stock Exchange. It is a subsidiary of Infrastructure Leasing and Financial Services which is partly private-partly public company. IL&FS has got a big shareholding from LIC, GIC, HDFC and also other partners. The IL&FS Transportation Network is their road construction

company. As per my information they are the largest operators of toll roads in the country today. They have got the biggest number of projects in Jharkhand and in Rajasthan. They are also a well-reputed company.

Sir, Nagarjuna construction is another reputed company from Andhra Pradesh. They have also done a number of projects with us. They have not been blacklisted etc. for any of these things. As far as the road work is concerned, all of them have got a very satisfactory record. All of them have got good record in bridge construction also. The problem here is one of rehabilitation of the bridge. They will have to come out with an explanation as to how they are going to set right the foundation. As the Technical Member had explained, in three places the cessions, which are the wells, have tilted or got displaced. Usually it is cheaper in these circumstances if the angle of tilt has become very large; it is usually cheaper to replace the entire well and go for a new foundation rather than seeking to rectify it. I am confident that all three, in their own assessment, would have said—we will replace the well. They would have factored that in into the pricing.

The problem was that when we had gone for the earlier bids where we did not get a response twice, we had asked the companies to, in fact, set the well right by correcting the tilt which is technically a little challenging and not every company can do it. We only need to check up and that is why we are doing the valuation. Whether they are proposing to replace the existing foundation which is normally a cheaper and safer and quicker option or whether they are trying to correct the tilt of the foundation and move the well back to its original location which is possible but it requires a higher degree of technical skill, is to be seen.

But, as far as road construction is concerned, we have no complaint against any of these three companies. In bridges also this sort of a bridge with well foundation, it is not regarded as technically very challenging. There are hundreds of such bridges in the country. So, we would not have any apprehensions on that score.”

2.19 When enquired if there is any penalty clause, the witness replied in affirmative.

2.20 On being asked by the Committee about the time-frame fixed for completion of the bridge, the witness, Member Technical, NHAI submitted as follows:—

“As per the draft concession agreement, the total concession period is 25 years and the construction period is two-and-a-half years. In that, the scheduling that has been done is that this bridge has been asked to be done in the first phase; they should complete this bridge early so that it becomes functional although for the entire project to be completed to six-lane standards, the time-frame given is two-and-a-half years.”

2.21 Elaborating about the penalty clause attached in case of non-completion of the project within a fixed time-frame, the witness further submitted as follows:—

“Sir, for delay in completion, the concessionaire has to pay the damages at the rate of Rs.13.922 lakh per day, that is 0.1 percent of the performance security

per day. In case six-laning is not completed within 270 days of the scheduled completion date, the agreement will be terminated. That is what it is, irrespective of whatever is the input that we have provided.”

2.22 When enquired about the action taken against the contractor for cheating the Government, the witness, DG (Roads) replied as under:—

“The contractor has already been declared a non-performer. He cannot get any work or contract.”

The witness, Chairman, NHAI further clarified as follows:—

“The action taken is that after he is terminated, he is blacklisted. On the question of criminal action, I would submit that criminal action can be taken and distinction must always be drawn between a criminal action and a civil action. We have taken only civil action because criminal action also requires us to have proof that he has done so deliberately and with an intention to cheat. The criminal intention has to be part of the action.”

The witness also added as under:—

“.....what has happened in this regard is that it is not a question just of the bridge which was being built by Bhagirath Engineering Limited; it is also a question of the existing 2-lane bridge where also we have had exactly the same technical problem. It was perhaps built in 1964.”

2.23 On being pointed out by the Committee that the contractor had never started the work, the witness responded as follows:—

“..... that it is not a correct statement to say that he had never started the work. After all what we have stated in the reply is that he started the well foundation, which is tilted. I am going to add to that, the well foundation has tilted even in the existing bridge. In other words, there is something in the river which is a differential settlement. The river is subject to lot of flow because if Chota Nagpur plateau gets flood, it has a strong tidal action and we are seeing differential settlement also in the existing bridges.

The Hon’ble Member is quite correct to point out that the existing bridge is vibrating and is in a bad shape. It is because the same process of differential settlement of foundation and tilt of the wells has affected even the existing bridge.”

2.24 On being asked by the Committee about the basis for not taking criminal action against the contractor, the witness replied as follows:—

“Sir, we will get the legal opinion from the Solicitor-General whether a case of cheating is made out. We will place the facts before the Hon’ble Solicitor-General and get his opinion, which we will submit to the Hon’ble Committee and Hon’ble Chairman. The charge made is that it is a case of cheating. This can be ascertained by the Solicitor-General’s Office.”

2.25 In response to a query of the Committee as to why the contract of the contractor was terminated in 2008 after 3 years of extended time *i.e.* (till 2005), the witness stated as follows:—

“I would like to point out that perhaps the Committee is thinking that this is one contract for one bridge. Our reply must be appreciated. We have said that this is not a single contract for a single bridge. We have to consider all the bridges together, and I think that the last bridge was finished by them in February 2007 or so.”

2.26 Reacting to the specific query of the Committee for not taking any action against the contractor, the witness, Secretary, Ministry of Road Transport and Highways submitted as follows:—

“Sir, the Hon’ble Member, Shri Gurudas Das Gupta, had met the Minister. I still remember, it was sometime in September/October of 2007, the Minister issued instructions.....The instructions were very clear, that is, either get the work completed or terminate the contract, and concern was also expressed by the Minister as to why no action was taken after January, 2004 till date. I think, I remember, it was some time in August/September, 2007. Mr. Sinha who is sitting here right next to me, who is now the Director General and Special Secretary in the Ministry, was the Member (Technical) and in-charge of this work in NHAI. The then NHAI Chairman was Mr. Gokul Ram and everybody else was also there. So, the instructions were very clear. I definitely would say, as far as the Government is concerned, we review the things very regularly. There is a monthly report from NHAI which goes to the Planning Commission, to this Ministry and to the Programme Implementation. So, everything is reviewed, and Government expects the NHAI that they must enforce the contract as tightly and as expeditiously as possible. Our instructions are very clear and we expect the NHAI to manage their affairs very efficiently. NHAI, as you know, is an autonomous body created under an Act of Parliament. They have all the powers, and they do not need any approval from the Government to cancel the contract or not to cancel the contract or to run it. However, what is important is the Member (Technical) or the Chairman must take steps in a way which they think is in the best interest of the work because that one thing is always there. It goes without saying that everything is in writing in the contractual obligations of the contractors, that is, what penalty he has to face, everything is there. So, if NHAI has not done, definitely, I find no reason why they should not have terminated their contract earlier. After January, 2004 or whatever is the date, the work was going on, there is a date up to which work was going on when it was suspended, in this case, Rupnarayan Bridge. So, I definitely feel that taking so much time even for termination, taking three years, is somehow or the other, I find it difficult to justify, to tell you honestly.....Then, coming to the other seven or eight bridges, though they may have been part of the same contract, but I do not know the details of the contract, whether there is a different package or one package, and whether their decision to prolong the action to cancel was influenced by the work going on, on the seven bridges, these are the issues which NHAI and

NHAI alone has to decide. We in the Government, of course, if there are cases, we would not hesitate to do whatever is expected of us by the Committee. We definitely are answerable to Parliament, and we will do whatever the Committee says or directs in whatever way you want. If you permit, Mr. Sinha, who was Member (Technical), now he is the Special Secretary in the Ministry, will throw some light on this.”

2.27 When the Committee observed that the old bridge is in a dilapidated condition which can collapse any moment and therefore NHAI should have taken stringent action against the contractor and the new tenders should have been called earlier in view of its public importance, the witness, Director General and Special Secretary, Ministry of Road Transport and Highways, replied as follows:—

“Sir, in that crucial period of 2007-08, I was the Member in-charge and I had once called you because you wanted me to explain the situation some time in 2007. I had said that we had two options. If we rescind the contract, terminate the contract, the kind of position the work is in, we did not expect any good contractor to really respond to it. Our stand was vindicated in 2009. What I had anticipated in 2007 that terminating the contract was not an answer, this was vindicated in 2009. Twice, NHAI tried to award the work, but nobody came because there were so many problems in the bridge itself, tilting of the bridge, etc. We could not change the design in the EPC. At that time, NHAI policy was, as per the consistent policy of NHAI, that whichever contract was in problem because of financial problems of the consultants, you give assistance to them, of course, on loan terms and recovered from their bills. As part of the same policy, we applied it to them also. We tried. I would say that we succeeded.....”

2.28 In response to a query of the Committee about when and how much funds were provided to the contractor, the witness, Member Technical, NHAI replied as follows:—

“As per the contract, we gave first ten percent. Mobilization advance was given in February 2003.....From February to July, advances were given. The total advance was about Rs.2.5 crore in all.”

2.29 The Committee pointed out that despite giving financial support, the contractor could not complete the bridge and therefore, the Committee desired to know as to how the fund of Rs. 2.5 crore was utilized by him. In response thereto, the witness, Chairman, NHAI submitted as follows:—

“The discretionary advance, machinery advance or the mobilization advance was given for this bridge. As we already stated, this is a single package consisting of nine bridges. All these advances have been recovered from the bills of the other bridges. As far as our accounts are concerned, we do not have anything pending.”

He further clarified that:—

“Member, Technical has said that Rs.2.5 crore was given for this bridge. I do not think that is correct. Nor could it be given for this bridge because there is no separate contract for this bridge. The contract is for nine bridges.”

2.30 When the Committee asked about the response of the Government on the way in which NHAI has acted with regard to incompleteness of the bridge and the delinquent behaviour of the contractor, the witness, Secretary, Ministry of Road Transport and Highways responded as follows:—

“In this case, this particular case, when the work was stopped as early as 2004 and termination took place in 2008 irrespective of the fact whether the eight bridges were part of the contract or not, I will find it difficult to justify this time lag, the four years to terminate. As far as I am personally concerned, I am very clear about it. I have expressed that view everywhere.”

The witness further added as under:—

“This kind of four years delay, on the face of it, nobody can justify including the officers. But there are some reasons which have compelled them to prolong the case, they have to be carefully looked into and examined. We must go into the depth of it.”

2.31 When the Committee enquired if the new contractor is given the job, will he be able to stick to the time schedule so that this bridge is completed and the existing one is repaired within a specific period of time, the witness submitted as follows:—

“Sir, as I have been repeatedly submitting, the NHAI is a very large organization set up under an Act of Parliament with very senior officers in it. So, the Government expects that they would manage their contracts in such a way that the time schedules are kept to the extent possible. Here are there in a few cases there may be delays if there are good reasons. Let me just further add and this might help the Committee. I have a feeling that this work will be completed in time if the concession is awarded under the BOT. There have been delays in completion of work under the item-rate contract system. But by and large there have been no delays and time lags in the case of BOT projects. This is a general statement which is borne out by the facts of the projects completed under BOT. All contracts by and large have been completed within two and a half years from the date of commencement of the work. I am not saying that it necessarily has to be awarded under BOT because there are many factors which the NHAI has to assess. The bids received have not been evaluated. The three companies are very large companies. By and large their track has been good. Not only these companies but perhaps all the companies which are doing BOT works are keeping to the time schedules. That is because if they do not do so, they will lose. NHAI interference is not there. NHAI does not give any financial support. All these things are gone. These are unfortunately the legacies of the PPC contract. There the time overrun leads to the extra cost and that is at the NHAI cost and not at the cost of the contractor. Here in the BOT toll any time lag, any cost overrun will be at a cost to the contractor. So, there is a big difference. I think with the system change, it makes me feel that this bridge will be completed if it is awarded on BOT toll.”

Observations/Recommendations

2.32 In his representation, Shri Gurudas Das Gupta, MP, Lok Sabha has stated that construction of a bridge over the river Rupnarayan on NH-6 connecting Howrah District with Purba Medinipur is being delayed for a very long time. Repeated representations to the Government have not succeeded in expediting the construction. It is the second bridge that is being constructed as the old bridge is in a bad condition. He has, therefore, sought intervention of the Committee to get the construction of the bridge expedited for mitigating the sufferings of the people.

2.33 The Committee note from the submission of the Ministry of Road Transport and Highways that the contract for the work of construction of Rupnarayan bridge along with 8 other bridges on NH-6 was awarded to M/s. Bhageeratha Engineering Ltd. through bidding on 15 January 2001 with scheduled completion by 14 January 2004. Since the project could not be completed by the scheduled time, the contractor was granted extension of time to complete the project by 30 June 2005. Out of 9 bridges under the contract, 8 bridges were completed by February 2007. However, despite financial assistance given to the contractor, he could not make much progress on the work of Rupnarayan bridge and, therefore, the contract of M/s. Bhageeratha Engineering Ltd. was terminated on 21 August 2008 for his non-performance as per the conditions of the Contract Agreement. Subsequently, the tender for the balance work of the incomplete Rupnarayan bridge was first invited in December 2008 but no bid were received. The bids were again invited on two occasions further. However, no bids were received on those occasions also. In the meanwhile, the stretch of NH-6 from Dankuni to Kharagpur was taken up for six laning under NHDP Phase-V and therefore, the Rupnarayan bridge falling in the stretch has been included as part of six laning project under NHDP Phase-V on Build Operate Transfer (BOT) Toll basis. The bids for six laning of Dankuni-Kharagpur section of NH-6 including Rupnarayan Bridge, on BOT (Toll) have already received on 19 May 2010 and the same are under evaluation.

2.34 The Committee note with concern that the Rupnarayan bridge is very old and in a dilapidated condition. It has been reported that the bridge is incapable of handling the heavy traffic load and vibrates. Lakhs of people and overloaded vehicles cross the bridge every day. It is feared that the bridge may collapse any day. Therefore, the timely construction of Rupnarayan bridge is of utmost importance for the safety of the people.

2.35 The Committee are, however, anguished to note that the construction of Rupnarayan bridge could not be completed within a stipulated timeframe of three years and during the extended period of one year. The project along with 8 other bridges on NH-6 was awarded to M/s. Bhageeratha Engineering Ltd. through bidding on 15 January 2001 and the same was to be completed by 14 January 2004. The contractor was also extended financial assistance and granted one year extension of time to complete the project by 2005. But he made no progress in completion of construction work of the project. The Committee are distressed to note that the authority concerned did not take any effective and stringent action against him for his inability to complete the bridge and delinquent behaviour. In fact, the authorities

concerned went into slumber for four years and woke up in August 2008 for terminating his contract without any convincing justification for the delay. This only shows the callous and insensitive attitude of the authorities concerned on the issue which is of utmost public importance. While tendering evidence before the Committee, the Secretary, Ministry of Road Transport and Highways was also forthright and candid enough on this issue. According to him, "... when the work was stopped as early as 2004 and termination took place in 2008, irrespective of the fact whether the eight bridges were part of the contract or not, I will find it difficult to justify this time lag, the four years to terminate.....". The Committee are, therefore, of the considered opinion that blacklisting of the contractor for his failure to complete the project was not adequate enough. After taking funds from the Government, the contractor deliberately failed to complete the project and therefore, he not only deceived the Government with the money but also made the people to suffer which amounts to an act of utter apathy and insensitiveness on his part. The Committee, therefore, recommend that as assured during the course of evidence, the legal opinion of the Solicitor-General on the issue may be solicited and if any element of criminal intent is found against the contractor, the action may be taken against him as per law.

2.36 The Committee note that the completion of Rupnarayan bridge has since been included in 6-laning of Dankuni-Kharagpur Section of NH-6 under NHDP Phase-V on (BOT) Toll. The bids have been received on 19 May, 2010 and are under evaluation. The Committee also note that the BOT concessionaire has to complete the 6-laning works including Rupnarayan bridge in 30 months. The Committee expect that the bids received for the purpose will be finalised on priority basis so that the construction of work of the bridge could be started without any further delay. The Committee would also like the Ministry to coordinate with all the concerned and keep track of the progress made in this regard so that the work is completed within a stipulated time frame.

The Committee would like to be apprised of the action taken in this regard within 3 months of presentation of the report to the House.

NEW DELHI;
26 August, 2010
04 Bhadra, 1932 (Saka)

ANANT GANGARAM GEETE,
Chairman,
Committee on Petitions.

MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)

The Committee on Petitions sat on Thursday, 17th December, 2009 from 1600 hours to 1715 hours in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Anant Gangaram Geete — *Chairman*

MEMBERS

2. Shri Rajendra Agarwal
3. Shri Khiladi Lal Bairwa
4. Shri E.T. Mohammed Basheer
5. Shri N.S.V. Chitthan
6. Shri Gurudas Dasgupta
7. Shri Dip Gogoi
8. Shri Jagdambika Pal
9. Prof. Ramshankar
10. Shri Sarvey Sathyanarayana
11. Dr. Sanjay Sinh
12. Shri Joseph Toppo

SECRETARIAT

1. Shri Ashok Sarin — *Joint Secretary*
2. Shri V.R. Ramesh — *Director*
3. Shri U.B.S. Negi — *Additional Director*

WITNESSES

Ministry of Chemicals and Fertilizers

1. Shri S. Krishnan — Secretary
2. Shri Deepak Singhal — JS (F&P) cum CMD, HFCL
3. Shri B.N. Tiwari — Director (E&S)

4. Shri K.C. Katta — Director (Finance), HFCL
5. Shri J.N. Agarwala — OSD, HFCL
6. Shri P.R. Babu — Chief Personnel Officer, HFCL

2. At the outset, the Chairman welcomed the Members of the Committee, Prof. Ram Shankar, newly nominated Member of the Committee and the representatives of the Ministry of Chemicals and Fertilizers (Department of Fertilizers). The Chairman, then drew attention of the Ministry to Direction 55 (1) of the directions by the Speaker, Lok Sabha, regarding confidentiality of the proceedings.

3. The Chairman, thereafter, referred to a representation received from Shri T. Chakravorty, Ex- SO and others regarding non-payment of dues to the employees of Hindustan Fertilizer Corporation Limited (HFCL), Haldia, who had opted for Voluntary Separation Scheme and asked the representatives of the Ministry to give a brief account of the background of the case. The Secretary, Ministry of Chemicals and Fertilizers explained the circumstances leading to introduction of the Scheme and the manner in which it was offered to the employees. The Members sought certain clarifications which were explained by the Secretary of the Ministry and the CMD, HFCL.

The witnesses then withdrew.

5. A copy of the verbatim proceedings of the sitting of the Committee has been kept on record.

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The Committee then adjourned.

MINUTES OF THE FIFTEENTH SITTING OF THE COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)

The Committee on Petitions sat on Thursday the 3rd June, 2010 from 1400 hrs. to 1625 hrs. in Committee Room 62, First Floor, Parliament House, New Delhi to take oral evidence of the representatives of the Ministry of Road Transport and Highways and Ministry of Railways (Railway Board).

PRESENT

Shri Anant Gangaram Geete — *Chairman*

MEMBERS

2. Shri Khiladi Lal Bairwa
3. Shri E.T. Mohammed Basheer
4. Shri Gurudas Das Gupta
5. Shri Jagdambika Pal
6. Shri N.S.V. Chitthan
7. Shri Devendra Nagpal

SECRETARIAT

1. Shri N.K. Sapra — *Additional Secretary*
2. Shri V.R. Ramesh — *Director*
3. Shri U.B.S. Negi — *Additional Director*
4. Shri Hulasi Ram — *Deputy Secretary*
5. Smt. Jagriti Tewatia — *Under Secretary*

WITNESSES

Ministry of Road Transport and Highways

1. Shri Brahm Dutt — *Secretary (RT&H)*
2. Shri A.V. Sinha — *DG (RD) & Spl. Secretary*
3. Shri Brijeshwar Singh — *Chairman, NHAI*
4. Shri B.N. Singh — *Member, NHAI*
5. Shri M.P. Sharma — *CGM, HQNHAI*

6. Shri Ajay A.	—	CGM, RO, NHAI
7. Shri A.K. Yadav	—	Superintending Engineer, Ministry of RT&H
8. Shri V.L. Patankar	—	Member, NHAI
9. Shri Sandeep Khare	—	GM(T)- West Bengal, NHAI/HQ. NHAI
10. Shri S.K. Chaudhary	—	P.D./PIU. Kolkata, NHAI
**	**	**

Ministry of Road Transport and Highways

2. At the outset, the Chairman welcomed the representatives of the Ministry of Road Transport and Highways. The Chairman then drew their attention to Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings.

3. The Chairman, thereafter referred to the representation signed by Shri Gurudas Das Gupta, MP (LS) regarding delay in construction of a bridge over the River Rupnarayan on NH-6, West Bengal. The representatives of the Ministry of Road Transport and Highways explained the reasons for the inordinate delay in the construction of the bridge over the River Rupnarayan and its present status. The Committee were informed that bids from three companies were received and the same are being finalized. The Committee were also informed about the names of the companies who participated in the bidding process and their viability/performance record, time frame for completion of project and the penalty claim, if the projects are not completed within the stipulated time. The Ministry also informed the Committee that they will get the legal opinion as to whether a case of cheating could be made out against the contractor for criminal negligence and delinquent behavior to complete the bridge. They will take action as per the directions of the Committee. According to the Ministry, the bridge will be completed if it is awarded under BOT as the cost overrun will be at the cost to the contractor.

The witnesses then withdrew.

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The Committee then adjourned.

MINUTES OF THE TWENTIETH SITTING OF THE COMMITTEE ON PETITIONS
(FIFTEENTH LOK SABHA)

The Committee on Petitions sat on Thursday, 26th August, 2010 from 1500 hrs. to 1545 hrs. in Chairman's Room No.014, Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Rajendra Agrawal — *In the Chair*

MEMEBER

2. Shri Khiladi Lal Bairwa
3. Shri Devendra Nagpal
4. Shri Jagdambika Pal
5. Prof. Ram Shankar
6. Shri Rakesh Singh
7. Dr. Sanjay Sinh
8. Shri Joseph Toppo

SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Shri N.K. Sapra | — | <i>Additional Secretary</i> |
| 2. Shri V.R. Ramesh | — | <i>Joint Secretary</i> |
| 3. Shri U.B.S. Negi | — | <i>Additional Director</i> |
| 4. Shri Hulasi Ram | — | <i>Deputy Secretary</i> |
| 5. Smt. Jagriti Tewatia | — | <i>Under Secretary</i> |

2. In the absence of the Chairman, the Committee chose Shri Rajendra Agrawal to act as Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, the Chairman welcomed the Members of the Committee and then the Committee considered and adopted the Tenth, Eleventh and Twelfth Reports with minor corrections.

4. The Committee also authorized the Chairman to finalize and present the Reports to the House.

5. The Committee, thereafter, decided to undertake an on-the-spot study visit to Kochi, Munnar, Bengaluru and Mumbai during September, 2010 to hold informal discussion with officials of Central/State Governments in connection with some of the representations undertaken by the Committee for examinations.

The Committee then adjourned.

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