

EIGHTY-EIGHTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1986-87)

(EIGHTH LOK SABHA)

LICENSING OF LAND AT WADI BUNDER TO A FIRM

**MINISTRY OF RAILWAYS
(RAILWAY BOARD)**



Presented to Lok Sabha on 30-4-1987

Laid in Rajya Sabha on 30-4-1987

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1987/Vaisakha, 1909 (Saka)

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CORRIGENDA TO 88TH REPORT OF PUBLIC ACCOUNTS
COMMITTEE (8TH LOK SABHA)

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(vii)	7	6	1986	1987
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4	1.14	9	1,68,954/-	1,67,954/-
5	1.21	2	Civil	Civil Court
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*Not printed. One cyclostyled copy laid on the Table of the House and five copies placed in the Parliament Library.

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COMPOSITION OF THE COMMITTEE ON PUBLIC ACCOUNTS (1986-87)

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Shri E. Ayyapu Reddy

MEMBERS

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3. Shri Amal Datta
4. Shri Ranjit Singh Gaekwad
5. Shrimati Prabhawati Gupta
6. Shri G. S. Mishra
7. Shri Vilas Muttemwar
8. Shri G. Devaraya Naik
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16. Shri Bhuvnesh Chaturvedi
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19. Shri A. K. Antony
20. Shri Nirmal Chatterjee
21. Shri M. S. Gurupadaswamy
22. Shri Virendra Verma

SECRETARIAT

1. Shri K. H. Chayya—*Joint Secretary.*
2. Shri Krishnapal Singh—*Senior Financial Committee Officer.*

(iii)

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this 88th Report of the Committee on Paragraph 20 of the Advance Report of the Comptroller and Auditor General of India for the year 1982-83, Union Government (Railways) on Licensing of Land at Wadi Bunder to a Firm.

2. The Advance Report of the Comptroller and Auditor General of India for the year 1982-83, Union Government (Railways) was laid in Lok Sabha on 24 February, 1984.

3. The Committee in this Report have noted that Railway land measuring 9502 sq. metres at Wadi Bunder had been licensed to the Ministry of Defence in 1944 for erection of temporary structures during the war. Correspondence had been going on from mid-50's amongst the Central Railway, the Railway Board and the Ministry of Defence for the return of land free of all encumbrances to the Railway for their own operational needs. The Central Railway had in 1961 felt necessity of the land in question to enable shifting of parcel and motor-loading facilities from Bombay VT to Wadi Bunder. A work for development of such facilities at Wadi Bunder was included in Railways' final works programme for the year 1964-65 and approved by Parliament while voting the Budget for that year.

In August, 1978, the Defence Department took a decision to release the land back to the Central Railway.

In March, 1979, a firm, namely M/s. Kirit Enterprises approached the Railway Board for licensing of plot of land in their favour. The capital cost of the Defence assets as indicated to the Railway was Rs. 10.81 lakhs. The assets were sold to M/s. Kirit Enterprises at depreciated value assessed by Army authorities according to MES Regulations for Rs. 1,67,954.00, making a departure from the existing procedure.

In September, 1979, the Central Railway decided to license the

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land to the firm on standard general conditions and one of the special conditions that:

"The plot would be licensed only for a period of three years upto 31-12-1982."

On 30 January, 1980, Railway land was surrendered by the Defence Department to the Railway. On the same day Railway handed over the land to the firm.

4. The Committee have been distressed to find that the original agreement stipulated that the firm should vacate the land by December, 1982. Altogether the firm has been squatting on the property from the year 1980. The firm took possession of the Railway property under dubious circumstances, as was found by the C.B.I. by a malodorous deal, which resulted in an obvious loss of Rs. 10 lakhs to the Ministry of Defence as asset worth Rs. 10 lakhs was sold out for Rs. 1 lakh and odd only. The firm executed an agreement with the Railway agreeing to pay Rs. six thousand for 100 sq. metre of land the first two months and thereafter Rs. 12000 per 100 sq. metre of land. The firm has obviously beguiled the Central Railway as he did the Ministry of Defence, only for the purpose of enabling them to take possession of the property with avowed intention of not paying the stipulated rent, perhaps with full confidence in themselves that they would be able to use their influence to bend the Railway Administration to accept the terms convenient to them.

5. After bestowing very anxious consideration to the issues involved in this matter, the Committee have come to the painful conclusion that at that point of time M/s. Kirit Enterprises were shown undue consideration. There was clearly an attempt to help the firm to hold on the Railway property to the detriment of the interest of Railways and general public. The land grab was actively aided and abetted by extreme indulgence shown to this firm. In the opinion of the Committee, neither in equity nor in law M/s. Kirit Enterprises were entitled to hold on and be in possession of the property after admittedly committing breach of the condition of agreement and after being ordered to be evicted by the Estate Officer. The Committee have recommended that immediate action must be taken by Central Railway to get this matter cleared before the Estate Officer/City Civil Court, Bombay.

6. The Committee have recommended that the Railways should make concerted efforts for recovery of outstanding dues against M/s. Kirit Enterprises upto 31-10-1986 amounting to Rs. 82,73,198/-. In

order to safeguard the Railway interests the Central Railway Administration should have at least insisted on bank guarantee from the party before contesting the case in the court of Estate Officer/City Civil Court, Bombay.

The Committee have also recommended that suitable amendments to the existing Railway Act be enacted in respect of licensing of Railway lands so that encroachment/unlawful holding on, of the Railway property can be terminated expeditiously.

7. The Public Accounts Committee (1985-86) examined this paragraph at their sitting held on 8 November, 1985. The Public Accounts Committee (1986-87) continued examination of this paragraph further at their sittings held on 6 January and 7 April, 1986. The Committee considered and finalised this Report at their sitting held on 16 April, 1986. The Minutes* of the sittings form Part II of the Report.

8. For reference facility and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix III to the Report.

9. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1984-85) and (1985-86) in obtaining information for the Report.

10. The Committee would like to express their thanks to the officers of the Ministry of Railways (Railway Board) and Ministry of Defence for the cooperation extended by them in giving information to the Committee.

11. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;

April 21, 1987

Vaisakha 1, 1909 (Saka)

E. AYYAPU REDDY,

Chairman,

Public Accounts Committee.

*Not printed. One cyclostyled copy laid on the Table of the House and 5 copies placed in Parliament Library,

REPORT

LICENSING OF LAND AT WADI BUNDER TO A FIRM

1.1 The Audit Paragraph 20 of Licensing of land at Wadi Bunder to a firm — M/s. Kirit Enterprises, Bombay as appearing in the Advance Report of the Comptroller and Auditor General of India for the year 1982-83, Union Government (Railways) is reproduced as Appendix I to this Report.

1.2 The summary of points made in the Audit Paragraph is as follows:—

- (i) The land was required for the Railway's own use and the Ministry of Defence had been repeatedly asked to release it without encumbrances. Despite this in 1979 the Railway Administration/Railway Board decided to license it to a private party, without verifying its credentials fully.
- (ii) The initial fixation of rent at a lower rate for the first two months provided a handle to the party to dispute subsequent enhancement.
- (iii) Despite Railway Administration's notice of May, 1981 terminating the agreement with effect from 31st August, 1981, the Railway has not been able to regain possession of the premises so far (October 1983).

1.3 On 21-9-1944 Railway land measuring 9502 sq. mts. adjacent to the Central Railway Container Terminal at Wadi Bunder was leased to Ministry of Defence *vide* Agreement dated 19-3-1944. The Defence Authorities set up a cold storage depot at this location comprising of buildings, structures, Railway siding and plants and machinery. While the initial lease was for the duration of the 2nd World War plus six months by a subsequent addendum of 1951, the Defence Department was permitted use of the said land upto 23rd February, 1955.

1.4 According to the Ministry of Defence, the original agreement for lease of Railway land to the Ministry of Defence executed between the GIP Railway and the Governor-General-in-Council is not available. However, as per the standing instructions the

land to be dehiired or derequisitioned was to be restored to its original condition unless the owner of the land was willing to take them on transfer value.

1.5 Correspondence had been going on from mid-50's amongst the Central Railway, the Railway Board and the Ministry of Defence for the return of the land free of all encumbrances to the Railway for their own operational needs. The Central Railway had in 1961 felt necessity of the land in question to enable shifting of parcel and motor-loading facilities from Bombay-VT to Wadi Bunder. A work for development of such facilities at Wadi Bunder was included in Railways' final works programme for the year 1964-65 and approved by Parliament while voting the Budget for that year. While the Ministry of Defence returned the siding along with 1010 sqms. area of land in 1968, the remaining 8492 sqms. of land on which the cold storage plant and other structures were located remained in the custody of Ministry of Defence.

1.6 In August, 1978 the Defence Department took official decision to release the land back to the Central Railway and suggested that Railway should take over the assets (cold storage plant) for which the capital cost was indicated as Rs. 10.81 lakhs. The Railway, however, insisted (October 1978) on relinquishment of the land free of all encumbrances, as it was required for its own operational needs.

1.7 On 14 March, 1979, M/s. Kirit Enterprises approached the Railway Board for leasing/licensing of plot of land in their favour. On 18 March, 1979 Railway Board forwarded the party's request to the Central Railway for comments and also enquiring *inter alia* whether the Defence assets on this land were being purchased by the firm from the Ministry of Defence. The Central Railway was specifically advised to keep in view the Railway's own operational needs which had been a major factor in pressing the Ministry of Defence for return of the land and to ensure that the Ministry of Defence do not allow this firm or any other party to get a foothold in the Railway land under some pretext and later on refuse to vacate and create difficulties. The Board's letter to the Central Railway was signed by Joint Director (Civil) Engineer).

1.8 Prior to August, 1978 when the Defence Department decided to release the land back to the Central Railway the land and the Defence assets (cold storage plant) were lying idle for seven-eight years.

1.9 The capital cost of the Defence assets as indicated to the Railways was Rs. 10.81 lakhs. The assets were sold to M/s. Kirit Enterprises at depreciated value assessed by Army authorities according to MES Regulations for Rs. 1,67,954.00. However, no offer of Defence assets at depreciated value for Rs. 1,67,954.00 was made by the Defence authorities to the Railway.

The sale of assets to M/s. Kirit Enterprises was a departure from the existing procedure.

1.10 According to the Ministry of Defence, the valuation of Defence assets on the Railway land was also done by MES (i.e. in addition to the Defence Estate Officer) as per instructions from QMG's Branch dated 9.6.78. The QMG's Branch had asked for this information in pursuance of the advice from the Ministry for valuation of assets. They had asked for details of assets and their value and not depreciated value of the assets. In the Statement of Case dated 16-2-79 received from the QMG's Branch capital cost of assets as well as as depreciated value of assets had been indicated. It appears that the depreciated value had been worked out by the MES of their own.

The party had been representing to the Ministry and in their letter dated 12-12-79 had requested for transfer of assets *in situ* at the depreciated value as assessed by the Military authorities.

1.11 On 19 September, 1979, the Central Railway decided to license the plot of land under reference to M/s. Kirit Enterprises on standard general conditions and the following special conditions:—

- (i) The plot would be licensed only for a period of three years upto 31-12-1982. Further extension/renewal of licence will solely be at the Railway's discretion.
- (ii) On termination of the licence, the licensee shall hand over the plot of land back to the Railway free of all encumbrances.
- (iii) The annual licence fee for the plot would be at the rate of Rs. 6,000/- per 100 sq. mts. for the period upto 31-3-1980 and thereafter at the rate of Rs. 12,000/- per sq. mts. for the period upto 31-12-1980. This licence fee would be enhanced by 10% every year (without compounding) after 31-12-1980.

- (iv) The licensee will have to pay security deposit equivalent to 3 months' licence fee in addition to the payment of advance licence fee for the period of 3 months, at the time of entering into licence agreement.

Thereafter, the licence fee shall be paid for the quarter in advance, 15 days before the commencement of the quarter.

1.12 On 30 January, 1980, Railway land was surrendered by the Defence Department to the Railways. On the same day Railway handed over the land to the firm M/s. Kirit Enterprises.

1.13 On 3 March, 1980, the Agreement was executed by the Railway with M/s. Kirit Enterprises.

1.14 A case was registered by CBI on the basis of a source information to the effect that the suspected officers viz. Smt. Arti Kant, N.E.O., Bombay, Ministry of Defence, Shri Z. S. Kher, Addl. Chief Engineer, M.E.S., Shri P. S. Gajjar, Senior D.E.N., Central Railway, Bombay, committed gross mis-conduct and caused pecuniary loss to the Government of India. In that Smt. Arti Kant and Shri Z. S. Kher disposed defence assets situated at the railway land at 118, Wadi Bunder at a very low price of Rs. 1,68,954/- to a private party by name M/s. Kirit Enterprises without calling for tenders and the two suspected officers of the Railway mentioned above suppressed the requirement of the above mentioned railway land for the Railway's own use and licensed to the private party M/s. Kirit Enterprises on rental basis.

1.15 The case regarding purchase of Defence assets by M/s. Kirit Enterprises and licensing of the land to the same firm by the Central Railway was investigated by the Central Bureau of Investigation. In their report, the CBI have observed:

"Although there is no evidence to show that any of the concerned officers had obtained pecuniary advantage for themselves in this deal, it is obvious from the trend of events that some influence were at play; otherwise, it is unthinkable as to how a private firm could get officials of two Ministries to concur in giving him things more or less on a platter, viz. (i) land at a reduced licence fee, and (ii) assets estimated at about Rs. 10 lakhs or more for little more than a lakh of rupees. However,

it has not been possible to bring to light these extraneous pressure and influence which operated in this case."

CBI also suggested certain action against Railway and Defence officers.

1.16 The licensee paid licence fee for the first quarter and represented that the licence fee was quite high and should be reduced. They also made representation to the Railway Board which was rejected in July 1980.

1.17 The firm was in arrears of licence fee of Rs. 12,82,083 upto June, 1981. They were served with a notice under Clause 15 of the Licence Agreement, terminating the agreement on 31-8-1981.

1.18 The party neither vacated the plot of land nor paid any dues. In September 1981 the Central Railway was forced to seek relief against the defaulting licensee before the Court of Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

On 19 May, 1982 the Estate Officer issued the orders for eviction of the party. Chief Engineer, Central Railway fixed 27 July, 1982 for physical eviction of the party.

1.19 On 3 June, 1982, the party filed a Misc. Appeal in Bombay City Civil Court against the orders of the Estate Officer.

1.20 On 17 June, 1982, the party also filed a Writ Petition in the Bombay High Court. On 24 June, 1982, the Writ petition was dismissed by the High Court.

1.21 On 29 June, 1982, the Misc. Appeal was admitted by the Bombay City Civil and a stay order was granted.

The stay order granted by the City Civil Court was subject to the condition that the Appellants deposit a sum of Rs. 1102,167/- in the office of the court on or before 2-8-1982. The same was deposited by the party on 2-8-1982 and subsequently received by the Railway through the Court.

1.22 The Committee are informed that on 21 December, 1983, M/s. Kirit Enterprises made a representation direct to the Minister for Railways for review of licence fee and renewal of Lease Agreement

for a further period of 30 years. The party did not choose to file their application before the Central Railway Administration or before the Railway Board.

1.23 The Committee are further informed that on 6 January, 1984, the Hon. Minister ordered that the case should be investigated by a competent officer of the Railway Board and made the following endorsement:—

“Enclosed representations from M/s. Kirit Enterprises Refrigeration Pvt. Ltd. This complaint is coming to me over and over again. I remember to have asked Chairman, Railway Board to look into the matter earlier. Whatever treatment we give to others — it should be uniform for all. It is highly improper to make discrimination against any particular person or group. If the terms and conditions for allowing occupation of railway land in a particular area are fixed, the same should be common for all occupants. Varying standards are highly prejudicial against norms of administrative impropriety. Keeping this in view, Chairman should cause a thorough look into the matter over again by deputing competent officers from the Railway Board as local officials seem to have failed to make out convincing and just treatment in the case. As the matter has been dragging quite for a long time, it will be proper to settle the issues expeditiously.”

1.24 The Committee is at a loss to understand the purport of the order by the Hon'ble Minister as the order presumes and assumes many facts and factors which are not at all warranted. It is obvious that the party had been making repeated representations which were obviously false and one-sided. There is an assumption that the Railway had made discrimination against the party and favoured someone else. Had a report been called from Central Railway, there would not have been any chance to assume discriminatory treatment to the party.

1.25 On 8 February, 1984, Joint Director, Land Management, Railway Board submitted his Report:

Findings — “No discrimination has been done with M/s. Kirit Enterprises and the rent fixed is reasonable.”

1.26 On 11 April, 1984, the Minister for Railways discussed the case of M/s. Kirit Enterprises with Member (Engineering),

Railway Board and directed that an independent team of Officers from the Engineering, Commercial and Accounts Department of the Railway Board might go into the question of Licence fee and submit a Report. Subsequently, a Committee of 3 Additional Directors of the Railway Board was appointed to examine the case again.

1.27 On 21 August, 1984, the Committee submitted its Report making the following remarks:—

"It would, thus, be seen that the very issues on which the firm have sought Railway Board's intervention and for which the present Committee was appointed to investigate and submit a report, are subjudice. We are, therefore, not in a position to offer our conclusive remarks on the issue of fixation of licence fee, its reasonableness or other wise and whether there has been any discrimination to the firm vis-a-vis other parties and whether there has been injustice in dealing with the firm by the Central Railway."

1.28 On 12 October, 1984 the party submitted further representation to the Hon. Minister for out-of-court settlement of the case, renewal of Lease Agreement and settlement of the Lease Rent.

1.29 On 9 November 1984, the Railway Board met and considered the request for out-of-court settlement of the case as directed by the Minister for Railways and submitted their recommendations against out-of-court settlement of the case (See Appendix II).

1.30 The Hon. Minister, however, made the following endorsement:

"M.R. Kindly do not wait for P.A.C. meeting. The party to my knowledge has been harassed too much. The fault lies with Railways. Why did they allow to construct permanent constructions? It is too late to do something else. Board's findings for out-of-court settlement to be implemented by the party. If they are ready to implement this may be done at once."

1.31 On 17 November, 1984, the Railway Board issued a letter to the Central Railway, Bombay conveying their decision for out-of court's settlement on following terms and conditions:—

(a) M/s. Kirit Enterprises Refrigeration Pvt. Ltd. should make a written request for the case.

(b) The firm should withdraw the case pending with the Bombay City Civil Court unconditionally.

(c) All outstanding dues in terms of the Award given by the Estate Officer upto the date of out-of-court settlement should be paid by the firm to the Railways through Demand Draft.

(d) The plot of land could be licensed to the firm upto 31-12-1985 only.

(e) Licence fee will be governed by the terms and stipulations of the existing agreement modified in terms of Board's letter No. 80/W2/18/0 dated 9 November, 1984.

(f) The firm will have to pay one year's licence fee and security deposit equal to one year's licence fee in advance, as per extant rules.

1.32 On 19 November, 1984, the Board during discussion advised M.R. against making any changes in the terms of the settlement specially in regard to rate of licence fee and period of extended licence.

1.33 On 20 November, 1984, the party had meeting with M.R. and gave undertaking in pursuance of the decision at that meeting.

1.34 On 22 November, 1984 the Railway Board communicated to the Central Railway the following orders of M/R. dated 20 November, 1984:—

“(1) The party Kirit Enterprises, should unconditionally withdraw their existing case which they have filed in the court.

(2) Kirit Enterprises, must pay rental at the rate of Rs. 6,000 per 100 sq. metres per year for the entire period as an interim measure pending further decision with regard to the higher rental of Rs. 12,000 per 100 sq. metres. This amount at the rate of Rs. 6000 per 100 metres must be paid for the entire period for which payment is still due to the Railways.

(3) The same court will decide what will be the fair price of rental for the covered and uncovered area irrespective of the agreement signed with the Railways.

- (4) In the meantime, it is ordered by me that the party could be allowed to continue in the area occupied by them for a period of 5 years after the withdrawal of their Court Case."

1.35 On 12 December, 1984, Central Railway based on legal advice requested Railway Board to reconsider their decision.

1.36 On 15 January, 1985 the case was reviewed by the new MR and the Central Railway was advised to contest the case in the City Civil Court, Bombay.

1.37 On 18th January, 1985, Railway Board cancelled the instructions contained in their letters of 17th November, 1984 and 22nd November, 1984 and asked the Central Railway to contest the case in the Court.

1.38 MR's orders dated 6th January, 1984 relating to investigation of the case by the Competent Officer of the Railway Board and further orders dated 20th November, 1984 contained in Railway Board's letter dated 22nd November, 1984 to Central Railway, Bombay relating to fixation of rent and extension of lease period were produced before the Bombay City Civil Court as Exhibits A&B to Affidavit dated 28th March, 1985 filed in connection with the writ petition by M/s. Kirit Enterprises.

1.39 Consequently on 3rd December, 1985, Bombay City Civil Court passed an order remanding the case back to the Estate Officer for rehearing and recording evidence and considering whether a compromise has been arrived at as alleged by the appellants.

1.40 The Bombay City Civil Court in its judgement dated 3rd December, 1985, has *inter alia* made the following observations:

"The truth or otherwise of the evidence that may be led to prove such compromise need not be considered at this stage. If there has been a bonafide compromise and the appellants are in possession of the evidence of such compromise it is fair that they should be allowed to lead such evidence. For this limited purpose, I will make a brief reference to the evidence that the appellants have in their possession. It is not disputed that the appellants did negotiate the compromise with Mr. A. B. A. Ghani Khan Choudhury who was in January 1984 the Minister incharge of Railways. At Ex. A to the affidavit in support of the Notice of Motion No. 1411 of 1985 is the

Minute recorded by the Minister. In this minute he asked the Chairman of the Railway Board to make a thorough enquiry in the matter and advised a proper settlement of the question. That was on 6.1.1984. On 20th November 1984 during the course of the negotiations and after the meeting of that date Mr. A. B. A. Ghani Khan Choudhury, the Minister made another noting in which he recalled discussions with the Chairman of the Railway Board, the Finance Commissioner and others.

He set down in writing his conclusions specifying the rent of Rs. 6000/- per 100 sq. metres per year and his conclusion that the appellants should be allowed to continue to occupy the premises for a further period of 5 years upon their withdrawal of this appeal. On the same day pursuant to the discussion in the Minister's Chamber, the appellant's Managing Director wrote a letter to the Minister. The mode of determining the rent payable was agreed by this writing. He also recorded his agreement to the extension of the licence for a period of five years. The appellants who inspected various documents have taken xerox copy of the minutes and other notings and they have affixed them to the affidavit in re-joinder. There are minutes of approval by the Chairman, Railway Board, the Member, Engineer and the Finance Commissioner, all of which have been photo copied by the appellants. It is no doubt true that subsequently the Union of India decided to the contrary.

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

Cancellation of the settlement implies that there was an agreement made by the former Minister. With such massive evidence in the possession of the Appellants it is impossible to hold that there is no case for leading evidence about the compromise. Whether on this evidence the appellant succeeds or not is altogether a different matter. I am certain that if the Estate Officer holds that the matter was compromised as claimed by the appellant it would mean that the Union of India granted them the authority to occupy the premises for a period of 5 years from the date mentioned in the compromise. This in turn would mean that the Estate Officer cannot evict them."

1.41 The Committee are informed that the Railway Board met on 9th November, 1984 and as directed by the Minister for Railways considered the representation of M/s. Kirit Enterprises for out-of-court settlement of their case, renewal of Licence Agreement and settlement of the lease rent. The Railway Board submitted their recommendations against out-of-court settlement of the case. These recommendations of the Railway Board were not acted upon at that point of time.

The Committee, however, observe from the affidavit filed by the party in the City Civil Court, Bombay that a meeting was held in the Minister's Room, where the Minister had passed the following orders which were reproduced by the party as part of affidavit.

- “(1) The party, Kirit Enterprises, should unconditionally withdraw their existing case which they have filed in the court.
- (2) Kirit Enterprises must pay rental at the rate of Rs. 6,000 per 100 sq. metres per year for the entire period as an interim measure pending further decision with regard to the higher rental of Rs. 12,000 per 100 sq. metres. This amount at the rate of Rs. 6,000 per 100 sq. metres must be paid for the entire period for which payment is still due to the Railways.
- (3) The same court will decide what will be the fair price of rental for the covered and uncovered area irrespective of the agreement signed with the Railways.
- (4) In the meantime, it is ordered by me that the party could be allowed to continue in the area occupied by them for a period of 5 years after the withdrawal of their Court case.”

Thus the party was enabled to defeat and delay the just claim of Central Railway to recover possession of the land and also amount of rent due from the party. The party filed on 28.3.1985 an affidavit accompanied by photostat copies of the orders of the Minister made on a file. Though the order was not issued to the party nor marked to the party, the Committee are very much pained to find that the party was able to get a photostat copy of the order and produce it before the court. The Railway Board was unable to explain as to how the party could have access to the file so as to take the photostat copy of the order and produce it before the court.

1.42 Here it is relevant to point out that the original agreement stipulated that the firm should vacate the land by December, 1982. Altogether the firm has been squatting on the property from the year 1980. The firm took possession of the Railway property under dubious circumstances, as was found by the CBI by a malevolent deal, which resulted in an obvious loss of Rs. 10 lakhs to the Ministry of Defence as assets worth Rs. 10 lakhs were sold out for Rs. 1 lakh and odd only. He executed an agreement with the Railway agreeing to pay Rs. six thousand for the first two months. He has obviously beguiled the Central Railway as he did the Ministry of Defence, only for the purpose of enabling him to take possession of the property with avowed intention of not paying the stipulated rent, perhaps with full confidence in himself, that he would be able to use his influence to bend the Railway Administration to accept the terms convenient to him.

It is quite appropriate here now to recall the sequence of events—the property was leased to the firm in January, 1980; the firm paid licence fee for the first quarter; the Central Railway administration filed an eviction case in September, 1981 for non-payment of arrears of Rs. 12.82 lakhs upto September, 1981 in the Court of Estate Officer; in June, 1982, the party filed a Misc. Appeal in Bombay City Civil Court against eviction orders of the Estate Officer and stay order was granted; meanwhile the party made representation in December, 1983 to the Hon'ble Minister of Railways; the case was investigated by a competent officer of the Railway with conclusion reached in February, 1984 that 'no discrimination has been done with M/s. Kirit Enterprises'; the party made further representation in October, 1984 to the Hon'ble Minister of Railways for out-of-court settlement of the case, etc. The terms of out-of-court settlement were spelt out in the Chamber of Minister on 20 November, 1984 and the Railway Board and the Central Railway were directed to accept the out-of-court settlement. It is pertinent to point out that this was contrived when the initial lease period of three years had already expired. There was a change in the incumbency of the Minister of Railways in January, 1985. Immediately, thereafter the Central Railway as well as the Railway Board reconsidered the entire matter and the orders of out-of-court settlement issued by the previous Minister were cancelled. In fairness, it must also be stated that the extract of the notes, which is at Appendix II, shows that the Members of the Railway Board resisted the out-of-court settlement proposed from the very beginning.

1.43 After bestowing very anxious consideration to the issues involved in this matter, the Committee have come to the painful

conclusion that at that point of time M/s. Kirit Enterprises were shown undue consideration. There was clearly an attempt to help the firm to hold on to Railway property to the detriment of the interest of Railways and general public. The land grab was actively aided and abetted by extreme indulgence shown to this firm.

In the opinion of the Committee, neither in equity nor in law M/s. Kirit Enterprises were entitled to hold on and be in possession of the property after admittedly committing breach of the condition of agreement and after being ordered to be evicted by the Estate Officer. The Committee recommend that immediate action must be taken by Central Railway to get this matter cleared before the Estate Officer/City Civil Court, Bombay.

1.44 The Committee are happy to note that Railways have since issued orders banning commercial leasing of plots which are not connected with the working of Railways. However, if necessary, suitable amendments to the existing Railway Act be enacted in respect of licensing of railway lands so that encroachment/unlawful holding on, of the Railway property can be terminated expeditiously.

1.45 The firm has been in possession of the plot of land since January, 1980.

1.46 As regards the present stage of litigation, a number of hearings had been held by the Estate Officer and on 21.11.86, the Estate Officer passed an interim order for payment of Rs. 53 lakhs towards the arrears of licence fee (without interest) as against Railway's claim of Rs. 80 lakhs with interest upto 31.5.1986. The time limit for such payment was fixed before the subsequent hearing held on 15.12.1986.

During the hearing held on 15.12.1986, M/s. Kirit Enterprises represented in the Court of the Estate Officer that there was no case of payment of arrears as they had already paid the licence fee @ Rs. 6,000 per 100 M² per annum (Rs. 42,500 per month). They further argued that in view of the stand taken by them, they have moved the City Civil Court for granting stay order against the interim order of the Estate Officer. Necessary steps have been taken to defend the case on behalf of the Railway in the City Civil Court.

1.47 Arrears as claimed by the Railway in the Court of the Estate Officer were to the tune of Rs. 79,96,948 (including liquidated damages) as on 31.5.86. Thereafter the licence fee @Rs. 1,40,250 per month for a period of 5 months works out to Rs. 7,01,250. The party

has paid Rs. 4,25,000 (licence fee for a period of 10 months from January to October, 1986 @Rs. 6,000 per M² per annum) leaving a balance of Rs. 2,76,250.

Total arrear dues as claimed by the Railway upto 31.10.86 are Rs. 82,73,198 (excluding liquidated damages after 31.5.1986).

No Bank Guarantee has been asked for in view of the Court's order dated 3.12.1985.

1.48 The Committee note that the Bombay City Civil Court on the appeal of M/s. Kirit Enterprises had passed an order remanding the case back to the Estate Officer for rehearing and recording evidence and considering whether a compromise, had been arrived at. The Court of the Estate Officer is seized of the matter. The Estate Officer has passed an interim order on 22.11.86 for payment of Rs. 53 lakhs towards the arrears of licence fee as against Railway's claim of Rs. 80 lakhs with interest upto 31.5.86. However, the party has moved the City Civil Court for granting stay order against the interim order of the Estate Officer. The Committee recommend that Railway Administration should defend the case for determination of the licence fee to be levied on M/s. Kirit Enterprises after 1.4.1980 on the basis of the terms and conditions stipulated in the original agreement entered into by the party with the Railway Administration.

1.49 The Committee note that outstanding dues against M/s. Kirit Enterprises upto 31.10.1986 as claimed by the Railway amount to Rs. 82,73,198 (excluding liquidated damages after 31-5-1986). There is apparent failure of the Railways in the battle of wits which has permitted the party to exploit legal remedies to stall payment of huge sums of money due to the Railways. The Committee recommend that the Railways should shed the laxity and make concerted efforts for recovery of these huge arrears of dues from the party. In order to safe-guard the Railway interests the Central Railway Administration should have at least insisted on bank guarantee from the party before contesting case in the court of Estate Officer/City Civil Court, Bombay. If necessary, they should go in appeal to the higher Court, to nullify the delaying tactics followed by the party to perpetuate their hold on the prime land of the Railways.

1.50 Definite plan should be drawn up for use of land for opera-

tional requirements of the Railways. The Committee would like to be apprised of the action taken in this regard. The whole episode suggests that the system of leasing Railway lands immediately required for Railway use needs total revamping to ensure that lands not surplus to the requirements of the Railways, but not under use for Railway purposes are economically exploited without allowing any one to gain undue hold over it. The Committee cannot refrain from recalling another case of unauthorised occupation of Railway land at Delhi by a soft drink manufacturer noticed by them earlier, and come to the conclusion that the Ministry of Railways have failed to take measure to improve their land management. The Committee hope that this will be done now without any further delay.

1.51 In this connection, the Committee would like to reiterate their earlier recommendation contained in para 1.69 of their 54th Report (Eighth Lok Sabha), which is reproduced below:

"1.69 In their note to the Committee, the Ministry of Transport (Department of Railways) have suggested the following three major steps to check and prevent encroachments:—

- (i) Amendment of the Public Premises (Eviction of Unauthorised Occupants) Act to give more effective judicial powers to the Estate Officers so that their direction to summon police help is an obligation under the law and not a simple direction, which may or may not be complied with.
- (ii) The relevant Act should be amended to give powers to the Railway Magistrates for eviction of encroachers.
- (iii) Separate posts of Estate Officers with minimum supporting organisation may be created on the Zonal Railways to deal full time with the encroachment cases instead of nominating Engineering Officers as Estate Officers in addition to their normal duties/functions.

The Committee feel that the proposal of the Department of Railways for delegation of more powers to the Estate Officers in regard to giving magisterial authority to summon police/assistance and powers to Railway Magistrates

for eviction of encroachments, being in the interest of preventing effectively the encroachments of public premises, merit serious consideration. The Committee recommend that the proposals should be examined by the Government in all aspects and implemented, if found feasible."

NEW DELHI;
21 April, 1987.
Vaisakha 1, 1909 (Saka)

E. AYYAPU REDDY
Chairman,
Public Accounts Committee

APPENDIX I

(See para 1.1 of the Report)

[Para 20 of the advance Report of C&AG for the year 1982-83, Union - Government (Railways)—Licensing of land at Wadi Bunder to a Firm—M/S. Kirit Enterprises]

Railway land measuring 9502 sq. metres adjacent to the Central Railway container terminal at Wadi Bunder had been licensed to the Ministry of Defence in 1944 for erection of temporary structures during the war. The Ministry of Defence released an area of 1010 sq. metres of land in June 1968. Thereafter, the issue of releasing the balance area of 8,492 sq. metres of land remained under correspondence between the Ministries of Railways and Defence. In August 1978 the Ministry of Defence suggested to the Ministry of Railways (Railway Board) to take over assets (cold storage plant) created on this land. The Ministry of Railways (Railway Board) insisted (October 1978) on relinquishment of the land free of all encumbrances, as it was required for Railway's own operational needs. This was reiterated by the Ministry of Railways (Railway Board) in December 1979 to the Ministry of Defence. Meanwhile, in March 1979, a firm approached the Ministry of Railways (Railway Board) for licensing of this land. The latter forwarded the application to Central Railway Administration and asked it to submit a Report indicating whether the Defence Department assets on the land were being purchased by the firm. The Ministry of Railways (Railway Board) also asked the Central Railway Administration to ensure that the Ministry of Defence, while disposing of their assets, did not allow this firm or any other party to get a foothold on the Railway land. The firm approached the Railway Administration (September 1979) to license the land in its favour, stating that the Ministry of Defence had agreed to hand-over the assets to it, if the licence agreement for the land was finalised by the Railway. The Railway Administration's approval to license the land was conveyed to the firm on 27th September 1979. The land was surrendered by the Defence Department to the Railway on 30th January, 1980 and was handed over to the firm by the Railway on the same day (afternoon). The agreement was signed by the firm on 3rd March 1980.

Thus, railway land taken back from the Defence Department for meeting Railway's own operational needs, was ultimately licensed to a private party and the proposed transfer of goods handling operation from Carnac Bridge Goods Shed to Wadi Bunder had to be shelved.

The licence fee due from the party was fixed @ Rs. 5,10,000 per annum for the period from 31st January 1980 to 31st March 1980 (2 months) and @ Rs. 10,20,000 for annum for the period from 1st April 1980 to 31st December 1980 (9 months) and @ Rs. 11,22,000 and Rs. 12,24,000 for the years 1981 and 1982 respectively. The party's request (May 1980) for reduction in the licence fee on the ground that it had not been able to commission the cold storage machinery as high costs were involved in replacement of the parts, was rejected (July 1980) by the Railway Administration. The Ministry of Railways (Railway Board), on a representation from the party to the Railway Minister to the effect that they were being harassed, directed (July 1980) Central Railway Administration to maintain status quo (i.e. to recover the licence fee @ Rs. 5,10,000 annum) till further orders. This directive was, however, subsequently withdrawn (March 1981).

The fixation of rent at a lower rate even for a short period of 2 months resulted in loss of Rs. 86 thousand to the Railway Administration. Besides, it provided a handle to the party to dispute the subsequent enhancement of rent after the expiry of two months.

The party deposited Rs. 1,27,500 in October 1979 towards security deposit (equivalent to 3 months rent) and another Rs. 1,27,500 towards rent for the quarter 31-1-1980 to 29-4-1980. A few other payments made by the party were not accepted by the Railway Administration as these were not according to the terms of the agreement. In May 1981 the Railway Administration issued notice to the party, terminating the agreement with effect from 31st August 1981 and asking it to vacate the premises. The party did not vacate premises (October 1983), but took recourse to litigation which is pending in the City Civil Court, Bombay. The amount of licence fees due as on 31st August 1981 (date of termination of agreement) worked out to Rs. 15.97 lakhs. Besides, damages for illegal occupation beyond 31st August, 1981 are also due from the party. The total licence fee due from the party from the date of occupation to end of October 1983 worked out to Rs. 42.16 lakhs. As against this, the party has so far paid an amount of Rs. 13.60

lakhs inclusive of Rs. 11.02 lakhs received through the court, leaving a balance of Rs. 28.56 lakhs still to be recovered (October 1983).

The following points deserve mention in this case:

- (i) The land was required for the Railway's own use and the Ministry of Defence had been repeatedly asked to release it without encumbrances. Despite this in 1979 the Railway Administration/Railway Board decided to license it to a private party, without verifying its credentials fully.
- (ii) The initial fixation of rent at a lower rate for the first two months provided a handle to the party to dispute subsequent enhancement.
- (iii) Despite Railway Administration's notice of May 1981 terminating the agreement with effect from 31st August 1981, the Railway has not been able to regain possession of the premises so far (October 1983).
- (iv) Acceptance of an unsolicited offer from a lone party (on single tender basis) was not in the interest of the Railway. There is need for evolving a better system of licensing of railway land, which should, *inter alia*, ensure competitive offers from prospective bidders, say, through the medium of advertisement or auction, and also guard against non-payment by the licensee, say, by obtaining a bank guarantee.

APPENDIX II

(See Para 1.29 of the Report)

[Recommendations made by the Railway Board in connection with out-of-Court Settlement of the case of M/s. Kirit Enterprises as directed by Minister for Railways]

The full Board in its meeting held on 9-11-84 examined the question of licensing of land to the above firm in its entirety. The issues examined were:—

- (a) In the context of the Court case, CBI investigations and PAC meetings, whether it is advisable to reach an out-of-court settlement with the firm.
- (b) In the context of our stand taken till 1979 that the land is required for Railways' own needs, at this juncture, whether as part of settlement, licence of the land for a further period may be given and if so, for what period.
- (c) If the lease for some period is possible, whether it would be in the Railways' interest to give to the same party.
- (d) If a settlement is to be reached with M/s. Kirit Enterprises, what terms and conditions should apply to the same.

On the question of out-of-court settlement and further licensing, following consensus emerged from discussions:—

- (i) Legally, there is nothing to preclude an out-of-court settlement being reached simply because the matter is pending before the Court. However, when the examination of the PAC is not complete, it may be considered as an act of impropriety to settle the case.
- (ii) A Techno-Economic Survey for shifting traffic from Carnac Bunder and remodelling of V.T. and Dadar was completed, but so far no decision has been taken on the Reports. However, a stage has now been reached in the light of the fast growing traffic in the suburban section on the Central Railway, to have double discharge platforms for suburban trains and also washing and maintenance facilities for the long distance trains. For this

the space at Carnac Bunder may have to be utilised, shifting therefrom certain existing facilities to Wadi Bunder, where this piece of land is located. At the same time, the process of decision and inclusion in the Works Programme and Commencement of the work may easily take about one and half years to start implementing. Therefore, in the meantime, it should be possible for the Railways to earn as much as possible by continuing to license this plot. Keeping the land vacant after taking it back from this firm, may even lead to encroachment by outsiders. Accordingly, licensing of the land upto the 31st December, 1985, to the same party seems to be all right.

- (ii) On account of out-of-court settlement, if the Railways are going to realise outstanding dues of over Rs. 30 lakhs immediately and also advance licence fee for the next 12 months, it would be preferable as part of the settlement. Besides if the land is taken back, it may not be practicable to license it for a short period of about one year or so to any new party. However, there is always a risk of the licencees, whoever, it may be, not vacating at the end of the licence period, resorting to litigation.
- (iv) For out of court settlement, following conditions should apply:—
 - (a) M/s. Kirit Enterprises Refrigeration Pvt. Ltd. should make a written request for the same.
 - (b) The firm should withdraw the case pending with the Bombay City Civil Court unconditionally.
 - (c) All outstanding dues in terms of the Award given by the Estate Officer upto the date of out-of-court settlement should be paid by the firm to the Railways through Demand Draft.
 - (d) The plot of land could be licensed to the firm upto 31-12-1985 only.
 - (e) Licence fee will be governed by the terms and stipulations of the existing agreement modified in terms of Board's letter No. 80/W2/18/0 dated 9-11-84 (SN 163).
 - (f) The firm will have to pay one year's licence fee and security deposit equal to one year's licence fee in advance, as per extant rules.

As the PAC meeting is expected to take place shortly, it would be advisable to await for the PAC proceedings to be completed before a decision is taken.

M.R. may kindly see for orders.

Sd/-

D.L.M.

13-11-85

Sd/-

L.A./13-11-84

Sd/- (R. Balachandran)

M.E./13-11-84

Sd/-

(Venkataraman)

F.C./13-11-84

Sd/-

M.T./13-11-84

Sd/- (K. T. V. Raghavan)

C.R.B./13-11-84

M.R. Kindly do not wait for PAC meeting. The party to my knowledge has been harassed too much. The fault lies with railways. Why did they allow to construct permanent constructions? It is too late to do something else. Board's findings for out-of-court settlement to be implemented by the party. If they are ready to implement this may be done at once.

May pl. see.

Sd/-

(A. B. A. Ghani Khan Chaudhury)

M.R./13-11-84

Sd/-

(R. Balachandran)

M.E./14-11-84

APPENDIX III

Statement of observations/Recommendations

Sl. No.	Para No.	Ministry concerned	Observations/Recommendations
1	2	3	4
1.	1 22	Railways (Railway Board)	<p>The Committee are informed that on 21 December, 1983, M/s. Kirit Enterprises made a representation direct to the Minister for Railways for review of licence fee and renewal of Lease Agreement for a further period of 30 years. The party did not choose to file their application before the Central Railway Administration or before the Railway Board.</p> <p>The Committee are further informed that on 6 January, 1984, the Hon. Minister ordered that the case should be investigated by a competent officer of the Railway Board and made the following endorsement:—</p>
2.	1. 23	—do—	<p>“Enclosed representations from M/s. Kirit Enterprises Refrigeration Pvt. Ltd. This complaint is coming to me over and over again. I remember to have asked Chairman, Railway Board to look into the matter earlier. Whatever treatment we give to others — it should be uniform for all. It is highly improper to make discrimination against</p>

any particular person or group. If the terms and conditions for allowing occupation of railway land in a particular area are fixed, the same should be common for all occupants. Varying standards are highly prejudicial against norms of administrative propriety. Keeping this in view, Chairman should cause a thorough look into the matter over again by deputing competent officers from the Railway Board as local officials seem to have failed to make out convincing and just treatment in the case. As the matter has been dragging quite for a long time, it will be proper to settle the issues expeditiously."

3. 1.24 Railway (Railway Board) The Committee is at a loss to understand the purport of the order by the Hon'ble Minister as the order presumes and assumes many facts and factors which are not at all warranted. It is obvious that the party had been making repeated representations which were obviously false and one-sided. There is an assumption that the Railway had made discrimination against the party and favoured someone. Had a report been called from Central Railway, there would not have been any chance to assume discriminatory treatment to the party.

4. 1.41 —Do— The Committee are informed that the Railway Board met on 9th November, 1984 and as directed by the Minister for Railways consi-

dered the representation of M/s. Kirit Enterprises for out-of-court settlement of their case, renewal of Licence Agreement and settlement of the lease rent. The Railway Board submitted their recommendations against out-of-court settlement of the case. These recommendations of the Railway Board were not acted upon at that point of time.

The Committee, however, observe from the affidavit filed by the party in the City Civil Court, Bombay that a meeting was held in the Minister's Room, where the Minister had passed the following orders which were reproduced by the party as part of affidavit.

"(1) The party, Kirit Enterprises, should unconditionally withdraw their existing case which they have filed in the court.

(2) Kirit Enterprises must pay rental at the rate of Rs. 6,000/- per 100 sq. meters per year for the entire period as an interim measures pending further decision with regard to the higher rental of Rs. 12,000/- per 100 sq. meters. This amount at the rate of Rs. 6,000/- per 100 sq. meters must be paid for the entire period for which payment is still due to the Railways.

(3) The same court will decide what will be the fair price of rental for the covered and uncovered area irrespective of the agreement signed with the Railways.

(4) In the meantime, it is ordered by me that the party could be allowed to continue in the area occupied by them for a period of 5 years after the withdrawal of their Court case."

Thus the party was enabled to defeat and delay the just claim of the Central Railway to recover possession of the land and also amount of rent due from the party. The party filed on 28-3-1985 an affidavit accompanied by photostat copies of the orders of the Minister made on a file. Though the order was not issued to the party nor marked to the party, the Committee are very much pained to find that the party was able to get a photostat copy of the order and produce it before the court. The Railway Board was unable to explain as to how the party could have access to the file so as to take the photostat copy of the order and produce it before the court.

5 M. 42 Railways (Railway Board) and Defence

Here it is relevant to point out that the original agreement stipulated that the firm should vacate the land by December, 1982. Altogether the firm has been squatting on the property from the year 1980. The firm took possession of the Railway property under

dubious circumstances, as was found by the CBI by a malodorous deal, which resulted in an obvious loss of Rs. 10 lakhs to the Ministry of Defence as assets worth Rs. 10 lakhs were sold out for Rs. 1 lakh and odd only. He executed an agreement with the Railway agreeing to pay Rs. six thousand for the first two months. He has obviously beguiled the Central Railway as he did the Ministry of Defence, only for the purpose of enabling him to take possession of the property with avowed intention of not paying the stipulated rent, perhaps with full confidence in himself, that he would be able to use his influence to bend the Railway Administration to accept the terms convenient to him.

It is quite appropriate here now to recall the sequence of events — the property was leased to the firm in January, 1980; the firm paid licence fee for the first quarter; the Central Railway administration filed an eviction case in September, 1981 for non-payment of arrears of Rs. 12.82 lakhs upto September, 1981 in the Court of Estate Officer; in June, 1982, the party filed a Misc. Appeal in Bombay City Civil Court against eviction orders of the Estate Officer and stay order was granted; meanwhile the party made representation in December, 1983 to the Hon'ble Minister of Railways; the case was investigated by a competent officer of the Railway with conclusion reached in February, 1984, that 'no discrimi-

nation has been done with M/s. Kirit Enterprises; the party made further representation in October, 1984 to the Hon'ble Minister of Railways for out-of-court settlement of the case, etc. The terms of out-of-court settlement were spelt out in the Chamber of Minister on 20 November, 1984 and the Railway Board and the Central Railway were directed to accept the out-of-court settlement. It is pertinent to point out that this was contrived when the initial lease period of three years had already expired. There was a change in the incumbency of the Minister of Railways in January, 1985. Immediately, thereafter the Central Railway as well as the Railway Board reconsidered the entire matter and the orders of out-of-court settlement issued by the previous Minister were cancelled. In fairness, it must also be stated that the extract of the notes, which is at Appendix II, shows that the Members of the Railway Board resisted the out-of-court settlement proposed from the very beginning.

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The Committee feel that the proposal of the Department of Railways for delegation of more powers to the Estate Officers in regard to giving magisterial authority to summon police/assistance and powers to Railway Magistrates for eviction of encroachments, being in the interests of preventing effectively the encroachments of public premises, merit serious consideration. The Committee recommend that the proposals should be examined by the Government in all aspects and implemented, if found feasible."