

LITIGATIONS PENDING FOR SETTLEMENT IN PUBLIC UNDERTAKINGS

MINISTRY OF INDUSTRY
(DEPARTMENT OF PUBLIC
ENTERPRISES)

COMMITTEE ON
PUBLIC UNDERTAKINGS
1993-94

TENTH LOK SABHA



LOK SABHA SECRETARIAT
NEW DELHI

TWENTY NINTH REPORT

COMMITTEE ON PUBLIC UNDERTAKINGS (1993-94)

(TENTH LOK SABHA)

LITIGATIONS PENDING FOR SETTLEMENT IN PUBLIC UNDERTAKINGS

MINISTRY OF INDUSTRY
(DEPARTMENT OF PUBLIC ENTERPRISES)

Action taken by Government on the recommendations contained in the
9th Report of the Committee on Public Undertakings (Tenth Lok Sabha)



Presented to Lok Sabha on
Laid in Rajya Sabha on

LOK SABHA SECRETARIAT
NEW DELHI

March, 1994 / Phalgun, 1915 (Saka)

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Corrigenda to the 29th Action Taken Report of Committee on Public Undertakings (1993-94) on Litigations pending for settlement in Public Undertakings.

Page Para Line for read

iii In the last add:

A. Dr. C. Silvera, MP ceased to be a member of the Committee consequent on his appointment as Minister in the Council of Ministers w.e.f. 17th February, 1994.

B. Shri M.A. Baby, MP elected as member of the Committee w.e.f. 12th August, 1993 vice Sh. Sunil Basu Ray ceased to be Member of the Committee w.e.f. 9th July, 1993 consequent on his retirement from Rajya Sabha.

1	<u>Caption</u>	SA'	Cases spending	cases pending
3	10	3	Whatever	Wherever
5	1	11	and	an
6	3	8	expenditures	expenditures
6	4	1	reiteration	reiteration
6	last	2	PBE	BPE

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COMMITTEE ON PUBLIC UNDERTAKINGS
(1993-94)

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Shri Vilas Muttemwar

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3. Shri R. Anbarasu
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**ACTION TAKEN SUB-COMMITTEE OF THE COMMITTEE ON
PUBLIC UNDERTAKINGS
(1993-94)**

1. Shri Vilas Muttemwar — *Chairman*
2. Shri Basudeb Acharia — *Convener*
3. Shri Chetan P. S. Chauhan
4. Shri R. K. Dhawan
5. Shri V. Narayanasamv

INTRODUCTION

I, the Chairman, Committee on Public Undertakings having been authorised by the Committee to submit the Report on their behalf, present this 29th Report on Action Taken by Government on the recommendations contained in the 9th Report (10th Lok Sabha) of the Committee on Public Undertakings on 'Litigations pending for settlement in Public Undertakings.'

2. The 9th Report of Committee on Public Undertakings was presented to Lok Sabha on 20th August, 1992. Replies of Government to all the recommendations contained in the Report were received on 17th May, 1993. The replies of Government were considered by the Action Taken Sub-Committee of Committee on Public Undertakings on 27th January, 1994. The Committee also considered and adopted the Report at their sitting held on 27th January, 1994.

3. An analysis of the Action Taken by Government on the recommendations contained in 9th Report (10th Lok Sabha) of the Committee is given in Appendix-II.

NEW DELHI;
March 7, 1994
Phalgun 16, 1915 (S)

VILAS MUTTEMWAR,
Chairman,
Committee on Public Undertakings.

CHAPTER I

REPORT

The Report of the Committee deals with the action taken by Government on the recommendations contained in the 9th Report (10th Lok Sabha) of the Committee on Public Undertakings on 'Litigations pending for settlement in Public Undertakings'. The Report was presented to Lok Sabha on 20 August, 1992.

2. Action Taken notes have been received from Government in respect of all the 13 recommendations in the Report. These have been categorised as follows:—

- i) Recommendations/Observations that have been accepted by the Government.
Sl. No. 3,4,5,6,7,8,10,12.
- ii) Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies.
NIL
- iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee.
Sl. No. 1,2,9 and 11.
- iv) Recommendations/Observations in respect of which final replies of Government are still awaited.
Sl. No. 13

3. The Committee desire that the final reply in respect of recommendation at Sl. No. 13 for which only interim reply has been given by Govt. should be furnished to the Committee expeditiously.

4. The Committee will now deal with the action taken by Govt. on some of their recommendations.

A. *Litigation cases spending in STC*

Recommendation Sl. No. 1 & 2 (Para 2.1 to 2.6)

5. While noting that there were as many as 787 cases of litigation pending in STC, the Committee had pointed out a glittering case *viz.* that of *M/s. Photovision Vs. STC* which related to 1977-78 period. Though this case was for recovery of the bank guarantees for Rs. 500 and Rs. 442 from STC, no single attempt was made by the Company to settle the dispute prior to November, 1990. Even on the directive given by Board of

Directors at its meeting on 14th September, 1990 for reviewing all the pending cases and putting up report with recommendation for out of court settlement, the Company had not made any effort worth the name for out of court settlement of the dispute, with M/s. Photovision. The Committee also noted that no progress had been made to review other cases pending with the Company for settlement. Taking into consideration such large number of cases pending with STC, the Committee had recommended that these cases should be reviewed immediately and the Ministry should also monitor the same regularly and the responsibility should be fixed on the negligent officers including CMD, who are found to be responsible for inordinate delay in settlement of these cases. The Committee also desired to be apprised of the action taken in this regard, within one month of the presentation of their report.

6. In their reply the Government while agreeing with the views expressed by the Committee have stated that instructions have already been issued to the enterprises to fix responsibilities in case of inordinate delay involved due to the negligent attitude of any officer of any rank. The administrative Ministries have also been advised suitably to monitor the litigation cases in the enterprises under their administrative control and make efforts to settle such cases out of court. So far as STC, is concerned, the observation of the Committee is stated to have been communicated to the administrative Ministry.

7. The Committee are constrained to observe that the reply of the Government is silent about the case relating to M/s. Photovision Vs. STC which was pending since 1977-78. In spite of the categorical assurance by the CMD, STC that the case would be pursued and brought to a conclusion, the Committee have not been informed of the ultimate outcome of the case. Besides, the Committee had recommended that all pending cases in STC should be reviewed and the action taken in regard to fixing of responsibility in cases where inordinate delay was involved due to the negligent attitude of officers including CMD, should be intimated to the Committee within one month of presentation of the 9th Report. The Government in their reply, have simply stated that the observations of the Committee have been communicated to the Administrative Ministry concerned. The Committee cannot but deprecate the casual manner in which their recommendation has been treated. They reiterate that all pending cases of litigations in STC should be reviewed urgently and suitable action taken against the officers/officials responsible for inordinate delays in settling the case.

B. Resort to Arbitration in the Absence of Arbitration Clause

Recommendation Sl. No. 9 (Para 2.15)

8. The Commerce Secretary in a note submitted to the Committee had *inter-alia* suggested that even if a contract does not provide for arbitration but the other party seeks arbitration for resolution of a dispute, the PSU should consider favourably the request for arbitration unless there are

compelling reasons. The Secretary, Department of Public Enterprises had further clarified the matter stating that 'But, in any given case, where willingly or unwillingly, arbitration clause does not find place in a contract entered into by a Public Undertakings with a private individual/party/citizen, the same must be read to have been there as a matter of fact and the disputes referred to arbitration, provided, of course, the private party/citizen so agrees.'

Agreeing with the views of the Secretary, Ministry of Commerce and Secretary, DPE, the Committee had *inter-alia* recommended that in all existing contracts/agreements where there is no clause for arbitration, the arbitration clause should be deemed to exist unless the other private party/individual refuses to refer the same to conciliation/negotiation or arbitration.

9. In their reply, the Government have stated that there is already an instruction from Department of Enterprises to the enterprises for inclusion of arbitration clause in all the contracts. The public enterprises shall be advised to implement the Government decisions. The Government feel that for settlement of disputes through arbitration, it is necessary that there is an arbitration agreement between the parties to refer the disputes to the arbitrator. Thus, in contracts/agreements where there is no arbitration clause, the arbitration clause cannot be deemed to exist. However, with mutual consent of both parties arbitration can be resorted to.

10. The Committee are surprised at the stand now taken by Government. The Secretary, Department of Public Enterprises had himself stated during evidence that whatever arbitration clause does not find place in a contract entered into by a public undertaking, the same must be read to have been there as a matter of fact provided the private party/citizen so agrees. It was implied that the public undertaking on its own should not desist from taking recourse to arbitration. From the reply now given by Government that arbitration can be resorted to only 'with mutual consent of both parties', it appears that in the absence of a clear arbitration clause, the public undertakings at their discretion may refuse to resort to arbitration even if the other party is willing to do so. Obviously this is a reversal of the views expressed by Secretary, DPE before the Committee earlier. The Committee, therefore, reiterate their earlier recommendation that in all existing contracts where there is no arbitration clause, the same should be deemed to exist unless the other private party/individual refuses to refer the same to conciliation/negotiation or arbitration.

C. Appointment of Arbitration Through ICA

Recommendation Serial No. 11 (Para 2.17)

11. The Committee had been concerned to point out that there were instances in some Public Undertakings where persons who had dealt with the case and took adverse view against disputants, were appointed as arbitrator. While disapproving the appointment of arbitrators unilaterally,

without consulting the other party involved, the Committee had suggested that it would be to the advantage of the contracting parties if arbitrators are invariably appointed through Indian Council of Arbitration (ICA) from the panel maintained by the Council.

12. The Government in their reply have stated that since the arbitrator is appointed after obtaining the mutual consent of both the parties, resorting to appointment of arbitrator only from the panel maintained by ICA would not be necessary though every effort would be made by PSEs to use the panel.

13. The Committee do not agree with the reply of Government. As already pointed out by them in their 9th Report, there have been instances in the past where persons who had dealt with the case and took adverse view against the disputants were appointed arbitrators in the case, which cannot be termed as fair. It was in this context that the Committee had recommended appointment of arbitrators invariably through Indian Council of Arbitration from the panel maintained by the Council. The Committee, therefore, reiterate their earlier recommendation.

D. Settlement of Disputes by Financial Institutions

Recommendation Serial No. 13 (Para 2.19)

14. The Committee had noted that in 1975 while issuing directives regarding settlement of disputes in Public Undertakings, the Cabinet Secretary had desired that these directives should also be made applicable to banks and Insurance Companies. The DPE being the nodal agency for all the Public Sector Undertakings, the Committee had desired that the Deptt. should circulate the recommendations contained in their 9th Report to the PSUs and financial institutions including banks, UTI etc. for implementation within 15 days of presentation of the action taken in this regard within one month of the presentation of the Report.

15. In their reply furnished in May, 1993 the Ministry of Industry (DPE) have stated that the recommendation of the Committee was being forwarded to the Ministry of Finance which is the nodal agency for dealing with the financial institutions.

16. It is not clear from the Government's reply as to what extent the recommendations contained in their 9th Report are being or would be implemented by financial institutions. Even though the Committee had desired to be apprised of the action taken in this regard within one month, the same has not been furnished to the Committee inspite of being reminded in the matter. The Committee take a serious view of the failure of Government to furnish the required information. They expect greater attention of Government in accepting and implementing their recommendations and trust that the information in the instant case would be furnished to them soon.

CHAPTER II

RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation Serial No. 3 (Paragraph No 2.7)

The Committee find that most of the litigation cases in FACT relate to service matters relating to the employees of the company and industrial disputes. The Committee feel that such cases should have been resolved through an effective grievance redressal machinery on the lines of the Model Grievance Redressal Procedure for staff and officers in the Central Public Sector Enterprises formulated by the DPE. The Committee would urge the Public Undertakings to evolve an effective system of redressal of employees' grievances and industrial disputes within a stipulated period in order that it may conduct itself as a model employer and view the grievances of employee with sympathy and understanding. They should also make an earnest effort to see that all disputes are resolved amicably through an internal machinery/forum with a view to see that the employees and public undertakings do not take recourse to courts. The Committee would like to place on record their appreciation for the results achieved by FACT in settling of disputes through negotiations.

Reply of the Government

The recommendation is accepted. The Public Enterprises have been advised to resolve all grievances arising out of service matters within the company through an effective Grievance Redressal Machinery, on the lines of the model Grievance Redressal procedure as formulated and circulated by the DPE earlier.

A copy of the instructions issued is enclosed (Appendix-II).

[Ministry of Industry (Department of Public enterprises) O.M. No. 2/3/92 PMA dated 17.5.93]

Recommendations Serial No. 4, 6, 7, 8 (Paragraphs No. 2.8, 2.10, 2.11, 2.12, 2.13 and 2.14)

The Committee note that MMTC has incurred disproportionately large amount of expenditure on some of the court cases. One of the glaring cases is that of MMTC-Vs-V.V. Acharya in which despite the fact that the company has been pursuing since 1966 the matter relating to loan for purchase of trucks in the High Court and the Supreme Court, a recovery of only Rs. 1031.74 was granted against a claim of Rs. 1,10,314.74 yet in another case of M/s. Wood Stock Engg. Inc-Vs-MMTC case, the company

has so far incurred an expenditure of more than Rs. 3 crores. The Committee take a serious view in this regard and are of the opinion that efforts should have been made to settle these cases through negotiation by utilising the services of an arbitration body like Indian Council of Arbitration failing which the matter should have been referred to Arbitration through the Council.

Conciliation/negotiation services as a quick means for sorting out differences or disputes which may arise during the period of implementation of a contract. Besides, cost being nominal or almost nil, settlement of disputes through negotiation help to restore mutual trust and goodwill between the contracting parties. The Committee are pleased to note that nearly 50% of the complaints referred to the Indian Council of Arbitration are sorted out through conciliating to the mutual satisfaction of the parties concerned. The Chairman, SCOPE and Secretary, Ministry of Steel also remarked that every Public Sector Undertaking in matters of any dispute where a sister undertaking or any private individual is concerned, should make all efforts initially to get such issues settled through discussion, negotiation and find out ways and means of settling the issue amicably.

The concept of arbitration is known in this country from time immemorial. In the Panchayat System which existed in the country before the British Judicial System was introduced, all disputes arising between members of the community were and to certain extent are even now referred to the Panchayat, where the Panches, decide them the basic advantages of arbitration are simplicity of procedure, low cost and cordial atmosphere. The arbitral system is preferred to litigation because it not only ensures expeditious disposal but is also helpful in building up cordial trade relations and goodwill.

It needs no roiteration that money, time and energy spent on litigation is not commensurate with the results. In view of the futility of pursuing litigations, there are no options left. but to make a concerted and wilful effort to liquidate such cases. The Committee recommend that all litigation cases and disputes pending in Public Undertakings should be reviewed with a view to settling them first through negotiation for out-of-court settlement failing which the same should be referred to arbitration. The Committee suggest that Public Undertakings should utilise the services of Indian Council of Arbitration for settling the case through negotiation/arbitration. They also suggest that the time frame for settling any dispute through negotiation should be fixed as three months and for arbitration the same should be fixed between six months to nine months from the date of receipt of the claim/dispute.

The Committee are unhappy to note that inspite of guidelines issued by the PBE as early as in 1975 that all disputes should be resolved amicably by mutual consultation or through arbitration and recourse to litigation

should be eliminated, Public Undertakings have been resorting to litigation without arbitration. The Committee deprecate that tendency on the part of Public Undertakings to flout guidelines laid down by Government. The Committee are of the view that the respective administrative Ministries should have monitored the implementation of the Government directives by the Undertakings and taken corrective steps.

The Committee note that the Indian Council of Arbitration (ICA) sponsored and partly funded by the Ministry of Commerce, Government of India, for promoting the use of commercial arbitration has sufficient infrastructure and expertise to cater to the needs of Public Undertakings. Besides being economical and arbitration facilities available with ICA provide institutionalised arbitration which should be preferred to ad-hoc arbitration. However, the Secretary, ICA stated in evidence: "Presently our set-up is not being fully utilised. This is the paradox. On the one hand there are cases where the courts are full and pending for over 10 years. On the other hand, not many cases come to us. Moreover, the expenditure is a mere fraction when compared to that of courts". In Committee's view it is really unfortunate that in spite of the enormous advantages in the utilisation of the services of ICA, the same are not being utilised. They, therefore, recommend that Public Undertakings should gainfully avail of the facility provided by the Council.

Reply of the Government

The recommendations are accepted. The Public Enterprises have already been informed of the recommendations of COPU for settling the disputed cases through negotiations by utilising the services of Indian Council of Arbitration.

A copy of the instructions issued to the enterprises is enclosed (Appendix-III).

[Ministry of Industry (Department of Public Enterprises) O.M. No. 2/3/
92-PMA dated 17.5.1993]

[Recommendation Serial No. 5 (Paragraph No. 2.9)]

IDBI has 76 pending cases of litigation relating to recovery of dues amounting to Rs. 393.31 crores. The Company has so far incurred a total expenditure of Rs. 89,90,251 for litigation since 1980. The Committee express their deep concern over the magnitude of the amount involved in such cases.

Action Taken

IDBI has reported that as on June 1, 1992 it has 76 pending cases in various Courts against borrowers for recovery of the dues. The total amount involved in all the above cases was Rs. 370.96 crores and not Rs. 393.71 crores as mentioned in the report as on March 31, 1992, of which the principal component was Rs. 157.65 crores and interest and other charges worked out to Rs. 213.31 crores. IDBI are reviewing the

above Court cases periodically and taking necessary steps for expediting the matters. IDBI is also trying for one-time settlement of these cases, wherever possible.

[Ministry of Finance Deptt. of Economic Affairs (Banking Division) OM No. 16 (28)/93. IF-II dated 19-4-94]

Recommendation Serial No. 10 (Paragraph No. 2.16)

The Committee also regret to note that inspite of arbitration clause having been included in the contract, in some cases Public Undertakings had not acceded to the request of private parties for arbitration, but resorted to litigation. "The Committee are of the firm view that in case of a dispute, if the party concerned makes a demand for arbitration, the Public Undertaking should not refuse to enter into arbitration. They also suggest use of arbitration clause recommended by ICA in the contracts entered into by public undertakings."

Reply of the Government

The Government accepted the view and necessary instruction has already been issued to the Public Enterprises as referred to in reply to recommendation Sl. No. 8, para 2.14.)

[Ministry of Industry (Deptt. of Public Enterprises) OM No. 2/3/92
PMA dated 17-5-93]

Recommendation Serial No. 12 (Paragraph No. 2.18)

The Committee are of the firm view that disputes should be referred to litigation only after other channels like negotiation and arbitration have been exhausted. They desire that the Committee of Secretaries appointed by Government in pursuance of Supreme Court order dated 11.10.91 for deciding case of disputes should function as another effective machinery for eliminating recourse to litigation by public undertakings.

Reply of the Government

The Committee of Secretaries appointed by the Government for deciding the case of disputes is already functioning as a machinery for eliminating recourse to litigations between public enterprises and Government Departments.

[Ministry of Industry (Deptt. of Public Enterprises) O.M. No 2392-
PMA dated 17.5.1993]

CHAPTER III

**RECOMMENDATIONS WHICH THE COMMITTEE DO NOT
DESIRE TO PURSUE IN VIEW OF GOVERNMENT'S REPLIES**

-NIL-

CHAPTER IV

RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE

Recommendation Serial No. 1 & 2 (Paragraphs No. 2.1 to 2.6)

The Public Sector occupies a key role in the country's strategy of planned economic growth. For efficient and smooth functioning of a Public Undertaking, it is imperative that the enterprises should operate in a peaceful atmosphere of goodwill and cordial relationship and invest the scarce resources in productive activities. Disputes and disagreements, be those between Public Undertakings *inter se*, Public Undertakings and Government Departments or public Undertakings and private parties/individuals, unless settled amicably and in time, tend to jeopardise the working of the enterprises. It is in this backdrop that wasteful and protracted litigations resulting in unproductive expenditure and wastage of time and energy attains significance.

The malady of resorting to futile and avoidable litigation by the Public Undertakings has been engaging the attention of the Committee for quite some time. It is in this context that the Committee selected the subject "Litigations pending for settlement in Public Undertakings" for horizontal study with a view to laying down certain effective guidelines on the subject. Although the process of detailed examination of litigation cases pending in Public Undertakings is still in progress, the Committee felt the urgency to recommend the following guidelines without further loss of time to enable the PSUs to initiate speedy action for eliminating of unnecessary and avoidable litigation.

On a random study of information received from Public Undertakings, the Committee are perturbed to find a large number of litigations pending for settlement involving expenditure on fees, etc. and wastage of public time notwithstanding repeated Government instructions to the contrary from time to time. What further agitates the Committee is the number of pending litigations relating to trivial matters or petty claims, some of which have been hanging fire for more than fifteen years. It hardly needs mention that in many such cases money spent on litigation is far in excess of the stakes involved besides wasting valuable time and energy of the concerned parties as well as the Court.

The Committee are distressed to note that as many as 787 cases of litigation were pending in STC out of which the value of the claim in

17 cases was less than Rs. 10,000 and in 74 cases the claim ranged between Rs. 10,000 and Rs. 1 lakh. Surprisingly, 188 cases related to pre-1981 period.

One of the most glittering cases the Committee came across during examination is that of M/s. Photovision-Vs-STC in which the private party had to resort to litigation for recovery of two bank guarantees for Rs. 500 and Rs. 442 from STC. Although the case related to 1977-78, no single attempt was made by the Company to settle the disputes prior to November, 1990. In spite of a clear direction given by the Board of Directors in their meeting held on 14 September, 1990 to the effect that the Company should review all the pending cases and put up report with recommendation for out-of-court settlement, it is highly disappointing to find that the Company has been dragging their feet in this matter. No effort worth the name was made by the Company to hold negotiations with M/s. Photovision for out-of court settlement of the cases. Equally astonishing is the fact that no progress has been made in the review of other cases pending in the Company for settlement.

It is frustrating to find that the Chief Executive of a leading trading organisation in the country like STC fumbled and expressed helplessness before the committee for want of information on a vital aspect of the working of the Corporation. The argument given by the CMD, STC that discussion has to be held between parties namely trading, law and finance divisions and it is difficult to resolve any dispute till all these three concur is far from convincing. It further dismays the Committee to find that the CMD, STC could not come to a decision by himself considering the merits and demerits of each case. In Committee's view it is only in the event of such disagreement that a CMD being the head of an organisation should not only step in and take an overall view but should also be instrumental in expeditious disposal of pending claims/disputes. The Committee however cannot but deprecate such irresponsible and lackadaisical approach on the part of a CMD towards an important matter having much bearing on the efficient functioning of the Company. Taking into consideration a large number of cases which are pending in STC, the Committee recommend that the same should be reviewed immediately and the Ministry should also monitor the same regularly. In all such cases where inordinate delay has been involved due to the negligent attitude of officers including CMD, the responsibility be fixed. The Committee would like to be appraised of the action taken in this regard within a period of one month from the presentation of this Report. They also urge that besides making a conscientious effort for review of all litigation cases as

already suggested, effort should also be made for settling these out of court through conciliation/negotiation or arbitration except those for which there are compelling and convincing reasons. They also recommend that a time bound programme for the same should be drawn up.

Reply of the Government

The Government agree with the views expressed by the Committee.

The recommendation of the Committee is accepted. The Government have already issued instructions to the enterprises to fix responsibilities in case of inordinate delay involved due to the negligent attitude of any officer of any rank. In settling the various litigations in the public enterprises, the administrative Ministries have also been advised suitably to monitor the litigation cases in the enterprises under their administrative control from time to time, as also to make efforts to settle such litigations out of court. Copy of the instructions issued to the enterprises is enclosed. (Appendix IV) Regarding STC, the observations of the Committee are being communicated to the Administrative Ministry concerned.

[Ministry of Industry (Department of Public Enterprises) O.M. No. 2.3.92-PMA dated 17.5.1993]

Comments of the Committee

(Please see paragraph No. 7 of Chapter I of Report)

Recommendation Serial No. 9 (Paragraph No. 2.15)

The Committee note that the Commerce Secretary was in agreement with them on the issue that Public Undertakings should agree for arbitration in case of a dispute irrespective of the fact whether the dispute was between a Public Undertaking and another, Public Undertakings and Government Department and Public Undertaking on the one side and private party/individual on the other. In a note submitted to the Committee he suggested the following guidelines settlement of disputes through arbitration between PSUs and private parties (i) the contract should provide for a suitable arbitration clause for the settlement of disputes between the parties unless there are special and substantial reasons for not including such a clause (2) if the contract provides for arbitration and if the party requests for settlement of a dispute by arbitration, the PSU should not refuse to enter into arbitration unless there are compelling reasons and (3) even if a contract does not provide for arbitration but the other party seeks arbitration for resolution of a dispute, the PSU should consider favourably the request for arbitration unless there are compelling reasons. The Secretary, DPE had also made the matter sufficiently clear when he stated: "But, in any given case, where willingly or unwillingly, arbitration clause does not find place in a contract entered into by a Public Undertaking with a private individual/party/ citizen, the same must be read to have been there as a matter of fact and the disputes referred to arbitration; provided, of course, the private party/citizen so

agrees". The views of the Commerce Secretary and the Secretary, DPE were inconsonance with the BPE guidelines issued in 1976 that "Public enterprises which enter into commercial and other agreements should make a provision for arbitration by a single arbitrator in their conditions of contract". The Committee are in full agreement with the views expressed by the Secretary, Ministry of Commerce and the Secretary, DPE. They are of the firm opinion that in all future contracts/agreements a clause for arbitration must be included unless there are strong and compelling reasons for not including the same. Besides they also recommend that in all existing contracts/agreements where there is no clause for arbitration, the arbitration clause should be deemed to exist unless the other private party/individual refuses to refer the same to conciliation/negotiation or arbitration.

It is also recommended that in all such cases the dispute should be referred to Indian Council of Arbitration for conciliation/negotiation within a period of one month; failing which the same be referred to arbitration by Indian Council of Arbitration for making an award within a period of six to nine months unless the contract/agreement expressly prohibits recourse to conciliation or arbitration.

Reply of the Government

There is already an instruction from the Department of Public Enterprises to the enterprises for inclusion of an Arbitration Clause, in all contracts. The public enterprises shall be advised to implement the Government decisions.

The Government feel that for settlement of disputes through arbitration, it is necessary that there is an arbitration agreement between the parties to refer the disputes to the arbitrator. Thus, in contracts/agreements where there is no arbitration clause, the arbitration clause cannot be deemed to exist. However, with mutual consent of both parties arbitration can be resorted to.

[Ministry of Industry (Department of Public Enterprises) O.M. No. 2/3/92-PMA dated 17.5.1993]

Comments of the Committee

(Please see Paragraph No. 10 of Chapter I of Report)

Recommendation Serial No. 11 (Paragraph No: 2.17)

The Committee note with concern that there were instances in some Public Undertakings where persons who had dealt with the case and took adverse view against disputants, were appointed arbitrators in the same case. It is equally unfair to appoint an officer of the same undertaking as arbitrator. The Committee do not approve of appointment of arbitrators unilaterally, without consulting the other party involved. They feel that it would be to the advantage of the contracting parties if arbitrators are

invariably appointed through ICA from the panel maintained by the Council.

Reply of the Government

The Government feels that since the arbitrator is appointed after obtaining the mutual consents of both-the-parties, resorting to appointment of arbitrator only from that panel maintained by ICA would not be necessary though every effort would be made by PSEs to use the panel.

[Ministry of Industry (Department of Public Enterprises) O.M. No. 2/3/
92-PMA dated 17.5.1993]

Comments of the Committee

(Please see Paragraph No. 13 of Chapter I of Report.)

CHAPTER V

RECOMMENDATIONS IN RESPECT OF WHICH FINAL REPLIES OF GOVERNMENT ARE STILL AWAITED

Recommendation Serial No. 13 (Paragraph No. 2.19)

The Committee note that in 1975 while issuing directives regarding settlement of disputes in Public Undertakings, the Cabinet Secretary had desired that those directives should also be made applicable to banks and insurance companies. The DPE being the nodal agency for all the Public Sector Undertakings, the Committee desire that the Dept. should circulate the recommendations contained in this Report to the PSUs and financial institutions including banks, UTI, etc. for implementation within 15 days of presentation of the Report. The Committee would like to be appraised of the action taken in this regard within one month.

Reply of the Government

The recommendation of the Committee is being forwarded to the Ministry of Finance which is the nodal agency for dealing with the financial institutions.

[Ministry of Industry (Department of Public Enterprises) O.M.No. 2/3/92-
PMA dated 17.5.1993]

Comments of the Committee

(Please see Paragraph No. 16 of Chapter I of Report.)

NEW DELHI;
March 7, 1994
Phalguna 16, 1915 (Saka)

VILAS MUTTEMWER,
Chairman,
Committee on Public Undertakings.

APPENDIX I

Minutes of the 20th Sitting of the Committee on Public Undertakings held on 27th January, 1994.

/ The Committee sat from 11.15 hrs to 13.00 hrs.

PRESENT

Shri Basudeb Acharia — *in the Chair*

MEMBERS

2. Shri Chetan P.S. Chauhan
3. Shri Ram Sunder Dass
4. Smt. Saroj Dubey
5. Prof. M. Kamson
6. Dr. C. Silvera
7. Km. Pushpa Devi Singh
8. Shri Pius Tirkey
9. Shri M.A. Baby

SECRETARIAT

1. Smt. P.K. Sandhu — *Deputy Secretary*
2. Shri P.K. Grover — *Under Secretary*

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The Committee considered the following Action Taken Reports, as approved by the Action Taken Sub-Committee and adopted the same:

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* * * *

- (ii) Action Taken Report on 9th Report (10th L.S.) of C.P.U. (1992-93) on Litigations pending for settlement in Public Undertakings.

The Committee authorised the Chairman to finalise the Reports on the basis of factual verification by Ministries/Undertakings concerned and Audit and to present the same to Parliament.

* * * *

The Committee then adjourned.

APPENDIX II

Copy of Ministry of Industry (Deptt. of Public Enterprises) OM No. DPE/2/3/92-PMA-II dt. 13th May, 1993 addressed to All Chief Executives of Public Enterprises and Secretaries of all Administrative Ministries.

(Vide Reply to recommendation Sl. No. 3 in Chapter II of the Report.)

SUBJECT:—*Litigations Pending for Settlement in Public Undertakings—Redressal of Employees' grievances and industrial disputes through internal Machinery/forum.*

The Committee on Public Undertakings, during its study on the pending litigations and settlement thereof in the public sector undertakings came to know about various service matters relating to the employees of respective companies that are pending for quite long time leading ultimately to industrial disputes. While appreciating the initiatives taken by some of the enterprises in dealing with such industrial disputes arising out of service matters, the Committee has viewed that there is an urgent need for the public enterprises in evolving an effective system of redressal of employees grievances and industrial disputes within a stipulated period. In order that such enterprise may conduct itself as model employers and view the grievances of employees with sympathy and understandings. The Committee has urged that such disputes are resolved amicably through an internal machinery/forum and not to allow recourse to courts.

2. The Government has accepted the general recommendation of the Committee and urge upon the public enterprises to evolve a grievance redressal procedure for the staff and officers, a model of which was formulated earlier by the Deptt. of Public Enterprises and circulated to all the public sector undertakings vide O.M.No. 16(84)/82-GM dated 5.9.85 (copy enclosed). The managements are thus requested to take immediate action in evolving such a grievance redressal procedure.

Sd.

(T.S. NARASIMHAN)

Joint Secretary to the Govt. of India

To

1. All the Chief Executives of Public Enterprises and Secretaries of all Administrative Ministries.

APPENDIX-III

Copy of Ministry of Industry (Deptt. of Public Enterprises) OM No. DPE/2/3/92-PMA-II dt. 13th May, 1993 addressed to All Chief Executives of PSUs and Secretaries of All Administrative Ministries.

(Vide Reply to recommendations Sl. No. 4,6,7 & 8 in Chapter-II of the Report)

SUBJECT:— *Litigations Pending for Settlement in Public Undertakings—
Utilisation of the services of Indian Council of Arbitration.*

The undersigned is directed to refer to the above subject and to state that the Committee on Public Undertakings, after reviewing of various cases of litigations in various public enterprises have come to the conclusions that in some of the cases of disputes, some of the public enterprises have incurred disproportionately large amount of expenditure on Court cases which have been persued for more than a decade in the Courts. Some of these cases have been with the private commercial enterprises which came in contact with the public enterprises as suppliers or purchasers of raw-materials/finished products. The Committee has taken a serious view in this regard and is of the opinion that in such cases efforts should have been made to settle the cases through negotiations by utilising the services of an Arbitration body like Indian Council of Arbitration failing which the matter should have been referred to the arbitration through the Council.

2. The views of the Committee are reproduced below:

The Committee recommend that all litigation cases and dispute pending in public undertakings should be reviewed with a view to settling them first through negotiation for out-of-court settlement failing which the same should be referred to arbitration. The Committee suggests that Public Undertakings should utilise the services of Indian Council of Arbitration for settling the case through negotiation/arbitration. They also suggest that the time frame for settling any dispute through negotiation should be fixed as three months and for arbitration the same should be fixed between six months to nine months from the date of receipt of the claim/dispute.

The Committee are of the firm opinion that in all future contracts/agreements a clause for arbitration must be included unless there are strong and compelling reasons for not including the same.

The Committee are of the firm view that in case of a dispute, if the party concerned makes a demand for arbitration, the Public

Undertaking should not refuse to enter into arbitration. They also suggest use of arbitration clause recommended by ICA in the contracts entered into by public undertakings.

3. The Government have accepted the recommendation of the Committee. It is urged upon the public enterprises that in cases where such disputes arise in dealing with the private sector companies or individuals, instead of resorting to court proceedings sincere efforts should be made to settle such cases through negotiations by utilising the services of Indian Council of Arbitration or through an Arbitrator mutually agreed upon. There are distinct advantage in the utilisation of the services of the Indian Council of Arbitration which has sufficient infrastructure and expertise cater to the needs of public undertakings. The public enterprises may gainfully avail the facilities provided by the Council. It may be appreciated that resorting to negotiations is better when a dispute arises between Central Government and a private citizen. However, where the parties them selves do not wish to resort to arbitration in accordance with the contracts, it may not be desirable to force the parties to resolve their disputes through arbitration. In such an event of bilateral understanding the sanctity of the contractual terms needs to be ensured.

4. The Public Enterprises are advised to note this recommendation of the COPU and initiate actions in respective cases to avoid litigations in the different Courts.

Sd.

(T.S. NARASIMHAN)

Joint Secretary to the Govt. of India.

To

1. All Chief Executives of PSUs.
2. Secretaries of all Administrative Ministries.

APPENDIX-IV

(Copy of Ministry of Industry (Deptt. of Enterprises) O.M. No. DPE/2/3/92-PMA (II) dated 13th May, 1993 addressed to All Chief Executives of PSUs and Secretaries of all Administrative Ministries.

(Vide Reply to recommendations Sl. No. 1 & 2 in Chapter IV).

SUBJECT:—*Litigations Pending for Settlement in Public Undertakings-Fixing of responsibility on the negligent officers and settlement of disputes through conciliation/negotiations/arbitration.*

The undersigned is directed to refer to the above subject and to state that the Committee on Public Undertakings, after reviewing of various cases of litigations in various public enterprises have come to the conclusions that there have been inordinate delay in settling the cases in public enterprises due to the negligent attitude of the officers at various levels. The Committee also viewed that some of the enterprises lacked initiative in settling the cases outside the court through conciliation/negotiations or arbitrations even in trivial matters involving as small an amount as Rs. 500/- etc. which are pending for more than 10 years. The Committee has recommended that the public enterprises should fix responsibilities in all such cases where delay has occurred due to the negligent attitude of officers of whatever rank it may be and time-bound programme should be drawn in settling such cases outside the court through conciliation/negotiations and arbitrations.

2. The Government has accepted the recommendations of the Committee and would like to urge upon the enterprises that immediate action be initiated by the management to settle such cases to minimise the number of litigated cases as far as possible. The Government have also decided that the administrative Ministries should take actions to monitor the actions taken by the enterprises under their control in settling such cases. The administrative Ministries may please take suitable actions and issue necessary instructions to the enterprises under their control.

Sd.

(T.S. NARASIMHAN)

Joint Secretary to the Govt. of India.

To

1. All Chief Executives of PSUs.
2. Secretaries of all administrative Ministries.

APPENDIX-V

Analysis of the Action Taken by Government on the recommendations contained in 9th Report of the Committee on Public Undertakings (10th Lok Sabha) on Litigations Pending for Settlement in Public Undertakings.

I. Total number of recommendations	13
II. Recommendations that have been accepted by the Government (<i>Vide</i> recommendation at Sl. No. 3, 4, 5, 6, 7, 8, 10 and 12)	8
Percentage to total	61.54
III. Recommendations which the Committee do not desire to pursue in view of Government's replies (<i>Vide</i> recommendations at Sl. No. NIL)	NIL
Percentage to total	0
IV. Recommendations in respect of which reply of Government have not been accepted by the Committee (<i>Vide</i> recommendation at Sl. No. 1, 2, 9 & 11)	4
Percentage to total	30.77
V. Recommendations in respect of which final replies of the Government are still awaited (<i>Vide</i> recommendation at Sl. No. 13)	1
Percentage to total	7.69

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

Sl. No.	Name of Agent	Sl. No.	Name of Agent
ANDHRA PRADESH		WEST BENGAL	
1.	M/s. Vijay Book Agency, 11-1-477, Mylargadda, Secunderabad-500361.	13.	M/s. Manimala, Buys & Sells, 123, Bow Bazar Street, Calcutta-1.
BIHAR		DELHI	
2.	M/s. Crown Book Depot, Upper Bazar, Ranchi (Bihar).	14.	M/s. Jain Book Agency, C-9, Connaught Place, New Delhi. (T. No. 351663 & 350806).
GUJARAT		15.	M/s. J. M. Jaina & Brothers, P. Box 1020, Mori Gate, Delhi- 110006. (T. No. 2915064 & 230936).
3.	The New Order Book Company, Ellis Bridge, Ahmedabad-380006. (T. No. 79065).	16.	M/s. Oxford Book & Stationery Co., Scindia House, Connaught Place, New Delhi-110001. (T. No. 3315308 & 45896).
MADHYA PRADESH		17.	M/s. Bookwell, 2/72, Sant Niran- kari Colony, Kingsway Camp, Delhi-110009. (T. No. 7112309).
4.	Modern Book House, Shiv Vilas Palace, Indore City. (T. No. 35289).	18.	M/s. Rajendra Book Agency IV-DR59, Lajpat Nagar, Old, Double Storey, New Delhi- 110024. (T. No. 6412362 & 6412131).
MAHARASHTRA		19.	M/s. Ashok Book Agency, BH-82, Poorvi Shalimar Bagh, Delhi-110033.
5.	M/s. Sunderdas Gian Chand, 601, Girgaum Road, Near Princes Street, Bombay-400002.	20.	M/s. Venus Enterprises, B-2/85, Phase-II, Ashok Vihar, Delhi.
6.	The International Book Service, Deccen Gymkhana, Poona-4.	21.	M/s. Central News Agency Pvt. Ltd., 23/90, Connaught Circus New Delhi-110001. (T. No. 344448, 322705, 344478 & 344508).
7.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400001.	22.	M/s. Amrit Book Co. N-21, Connaught Circus, New Delhi.
8.	M/s. Usha Book Depot, 'Law Book Seller and Publishers' Agents Govt. Publications 585, Chira Bazar Khan House, Bombay-400002.	23.	M/s. Books India Corporation Publishers, Importers & Expor- ters, L-27, Shastri Nagar, Delhi-110052. (T. No. 269631 & 714465).
9.	M&J Services, Publishers, Repre- sentative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor 68, Jyotiba Fuele Road, Nalgaum-Dadar, Bombay-400014.	24.	M/s. Sangam Book Depot, 4378/4B, Murari Lal Street, Ansari Road, Darya Ganj, New Delhi-110002.
10.	Subscribers Subscription Services India, 21, Raghunath Dadaji Street, 2nd Floor, Bombay-400001.		
TAMIL NADU			
11.	M/s. M. M. Subscription Agen- cies, 14th Murali Street, (1st floor) Mahalingapuram, Nungam- bakkam, Madras-600034. (T. No. 476558).		
UTTAR PRADESH			
12.	Law Publishers, Sardar Patel Marg, P. B. No. 77, Allahabad, U.P.		