

**MADRAS PORT TRUST**

**MINISTRY OF SURFACE TRANSPORT**

**PUBLIC ACCOUNTS  
COMMITTEE  
1991-92**

**TENTH LOK SABHA**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**SIXTH REPORT**  
**PUBLIC ACCOUNTS COMMITTEE**  
**(1991-92)**

**(TENTH LOK SABHA)**

**MADRAS PORT TRUST**

**MINISTRY OF SURFACE TRANSPORT**



*Presented in Lok Sabha on 20 December, 1991*  
*Laid in Rajya Sabha on 20 December, 1991*

**LOK SABHA SECRETARIAT**  
**NEW DELHI**

*December, 1991/Agrahayana, 1913 (Saka)*

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(1991-92)

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## INTRODUCTION

1. I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf, this Sixth Report on Paragraphs 21-23 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1988 (No. 9 of 1989), Union Government (Other Autonomous Bodies) relation to Madras Port Trust.

2. The Report of the Comptroller and Auditor General of India for the year ended 31 March, 1988 (No. 9 of 1989), Union Government (Other Autonomous Bodies) was laid on the Table of the House on 10 May, 1989.

3. In this Report, the Committee have taken a serious view of the manner in which the tenders for the work of construction of an outer protection arm for Bharathi Dock in Madras Port were floated, evaluated and the work awarded to a particular firm. The Committee have deprecated that inspite of past experience and the adverse comments of the PAC, the work was awarded to the same firm and large concessions amounting to more than Rs. 200 lakhs extended to it in the same manner as in the earlier contract. The Committee have observed that the award of the work to the firm was unjustified and was guided by consideration other than safeguarding the financial interests of Government.

4. Taking note of the inordinate delay of 55 months in completion of the work, the Committee have deprecated that instead of taking action against the contractor for failure to adhere to the original time schedule and to recover liquidated damages etc., for the delay in construction, the contractor was allowed several concession and reliefs which were not provided in the original agreement but were extended through a supplemental agreement executed in 1981 and again on the recommendations of the High Level Technical Committee constituted in November, 1983. The Committee have considered the extra contractual reliefs and concessions allowed to the contractor amounting to over Rs. 200 lakhs as unusual and lacking justification. In the opinion of the Committee the gravity of the lapses mentioned in this Report indicate either collusion or negligence on the part of the officials concerned. The Committee have, therefore, recommended that these lapses should be thoroughly investigated and action taken against all those who are found guilty of failure to safeguard the financial interests of Government during the various stages of the execution of the project.

5. The Audit Paragraphs under report were examined by the Public Accounts Committee (1989-90) at their sittings held on 1 and 7 September, 1989 and the Public Accounts Committee (1990-91) at their sitting

held on 22 October, 1990. The Committee considered and finalised this Report at their sitting held on 13 December, 1991. Minutes of sittings form Part II\* of the Report.

6. For facility of reference 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 of the Report.

7. The Committee would like to express their thanks to the Public accounts Committee (1989-90 and 1990-91) for taking evidence on Paragraphs 21-23 and obtaining information thereon.

8. The Committee would also like to express their thanks to the Officers of the Ministry of Surface Transport for the cooperation extended to them in giving information to the Committee.

9. The Committee 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;

17 December, 1991

26 Agrahayana, 1913(Saka)

ATAL BIHARI VAJPAYEE

*Chairman,*

*Public Accounts Committee.*

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\*. Not Printed (one cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library).



## CHAPTER I

### REPORT

#### *Construction of Outer Protection Arm to Bharathi Dock*

1.1 This Report deals with the issues highlighted in Paragraphs 21-23 of the Report of the Comptroller and Auditor General of India for the year ended 31st March, 1988 (No. 9 of 1989), Union Government (Other Autonomous Bodies). These Paragraphs relate to the construction of outer protection arm to Bharathi Dock of Madras Port Trust (MPT) and to certain aspects of the working of the (MPT) and are reproduced at Appendix I to this Report.

#### *Award of Work*

1.2 The project for construction of a break water as an outer protection arm for the Bharathi Dock in Madras was sanctioned by the Government in September, 1976 at an estimated cost of Rs. 7.7 crores. The construction of this arm was considered necessary for providing tranquility conditions in the approach channel and turning circle area so that the draught of 46 feet was available to ships throughout the year and the constraint of reducing that draught to 38 feet in the rough sea conditions during the north-east monsoon months of October—January every year, could be removed.

1.3 The tenders for this work were invited by MPT in January, 1977 on an all-India basis. The tenderers were given an option to quote either for the departmental design or for their own alternative design. Of the seven firms which submitted their tenders, four tendered for alternative designs also. These tenders were opened on 24th March, 1977 and were scrutinised by a Tender Committee constituted by the MPT on 12th April, 1977, with the approval of the Government. The Tender Committee consisted of Deputy Development Adviser (Ports), Director (Finance), and the Deputy Secretary (Ports Development) of the Ministry and the Chief Engineer and the Financial Adviser & Chief Accounts Officer of the MPT.

1.4 Out of the original 7 tenders received, offers of 2 firms were not considered as their rates were found too high. The three lowest offers, as per the evaluated cost, were as follows:—

Firm	(Rs. in lakhs)		
	Quoted rates	Cost of material & other conditions	Total Evaluated cost
M/s. ESSAR Constructions (To be called firm 'A')	646.4	71.4	717.8
M/s. Andhra Civil Constructions Co. (To be called firm 'B')	500.06	294.70	794.76
M/s. Ariff Krishna Constructions Co. (To be called firm 'C')	621.15	203.60	824.75

The evaluated offer of firm 'A' for their alternative design was found to be the lowest by the Tender Committee and they recommended the award of contract to firm 'A'. Thereafter, MPT Board also approved the recommendations of the Tender Committee and sent the Report to Government on 24th June, 1977 seeking their sanction.

1.5 After the Tender Committee had finalised its report, firm 'B' in their letter dated 6th June, 1977 addressed to MPT offered to withdraw certain conditions relating to bonus and escalation in return for payment of premium of Rs. 80 lakhs. The letter was not considered by the MPT Board as it had been received after the finalisation of the recommendations made by the Tender Committee. While the proposal of the MPT was being examined in the Ministry, the firm made a number of representations to the Ministry of Shipping & Transport and the Ministry of Finance against the non-acceptance of their tender. Representations were also received from two Members of Parliament. Firm 'C' and another firm also represented to the Government. The proposal was examined by the Ministry of Shipping & Transport in detail and the following main points were considered:

- (i) The escalation provision given by firm 'B' provided for 100% neutralisation whereas that given by firm 'A' provided for 1% neutralisation. This made evaluated offer highly sensitive to the rate of escalation. If rate of escalation fell below a certain percentage, one party became lower whereas if it was higher, other party became lower.

- (ii) Firm 'B' had given a bonus clause but while evaluating the offer, the Tender Committee had not evaluated the offer on a comparative basis.
- (iii) The Tender Committee had not critically examined the capacity and experience of the firms to execute the work.

#### *Constitution of a High Level Committee*

1.6 In the wake of the shortcomings in the evaluation made by the Tender Committee and the representations received in the Ministry, a High Level Committee (HLC) was appointed by the Ministry in November, 1977 with the approval of the Minister of Shipping and Transport and Finance Minister to go into the whole question and to re-negotiate with the concerned parties called for negotiations by the Tender Committee after standardising all the conditions having financial implications.

1.7 The need for constituting the HLC its composition and terms of reference have been summarised in the Report of the HLC as follows:

“Ordinarily, unless there are sufficient reasons, Government would not like to upset the recommendations of the MPT Board made to them. In the evaluation of the tenders by the Tender Committee, an escalation rate of 18% per annum had been assumed by the Tender Committee on the basis of movement of wholesale price index between March 1976 and August 1976. The rate of escalation became a vital and critical point in the tender evaluation as the escalation clauses quoted by the two lower tenderers, viz., M/s. (Firm 'B') and M/s...(Firm 'A') were different. The former had asked for 100% neutralisation and the latter had asked for only 1% neutralisation. Any change in the rate of escalation would have a vital bearing on the relative position of the tenderers. In fact, if the escalation fell below a certain level, M/s...(Firm 'A')'s offer no longer remained lowest and that of M/s...(Firm 'B') became the lowest. While the case was under examination in the Ministry, the figures of 1971-72 series of consumer price index became available. In the one year period ending July 1977, the escalation rate worked out to only 6%. This brought M/s...(Firm 'B')'s offer within zone of consideration. However, the Tender Committee appointed by the MPT had not commented in their minutes on the technical capability of M/s.... (Firm 'B'). The Ministry had also in the meanwhile received several representations. The matter was considered at length by the Government and it was decided that a High Level Committee consisting of Development Adviser (Ports), Financial Adviser of Ministry of Shipping and Transport, Joint Secretary (Ports), Ministry of Shipping and Transport and the Chairman, MPT be appointed to go into the tenders. The Committee was also directed to invite the parties concerned for negotiations so that the work be allotted to the lowest tenderer and the possibility of distribution of work to the parties to

facilitate early completion be also considered. It was also decided that the recommendations of this Committee would be submitted to MPT Board who would thereafter consider the same and make such recommendations as they consider necessary, to the Government."

1.8 The HLC noted that out of the original 7 tenders received, the Tender Committee appointed by the Chairman, MPT had considered 5 offers leaving out the other 2 which were very high. Out of these 5 offers, only the following 3 firms Firm 'A', Firm 'B', and Firm 'C' had extended the validity of their offers upto January, 1978.

1.9 Asked whether all the tenderers were approached in time for extension of validity period, the representative of the Ministry of Surface Transport informed the Committee during evidence:

"They were all approached at the same time through the Madras Port Trust. Only four agreed. Then, further extension was asked when the High Level Committee was set up and ultimately three have agreed."

1.10 The HLC after due deliberations decided to negotiate with Firm 'A' and 'B' after eliminating the indeterminate clause relating to price escalation and exclude Firm 'C' as it did not have the experience of executing work of this magnitude and complexity. The relevant extracts from the Report of the HLC are reproduced below:

"The Committee then considered whether it would be better to invite fresh short dated tenders or negotiate with only two firms left in the field, viz. M/s. Andhra Civil Construction Co. and M/s. ESSAR Constructions limited on the basis of their existing offers. The Committee, however, noted that the two firms have in their letters dated 8th November, 1977 to the Madras Port Trust and indicated that they are prepared to pool their resources and do the work jointly. Since both the parties proposed to join together, the element of competition is likely to be removed if there is a retender. This may, in fact, lead the contractors to quote higher prices rather than lower their rates, on the palpable ground that substantial time has elapsed since their original offers were made. The Committee, therefore, felt that it would be advantageous to the Government, to negotiate with both the firms on the basis of their revised offers, either individually or for working together but after removing indeterminate clause regarding price escalation i.e., quote on a fixed price basis. This should be possible as M/s. ESSAR Constructions Ltd. had provided for only 1% escalation in their offer and M/s. Andhra Civil Construction Co. Ltd. had at one time indicated that they were prepared to withdraw their price escalation clause in lieu of a lumpsum increase of Rs. 40 lakhs in the contract price."

1.11 After various rounds of negotiations by the HLC, the final evaluated costs of the two firms were as follows:

Firm 'B' (Alternative I all rouble mound)	Rs. 6,48,30,000.00
Firm 'A' (Alternative design)	Rs. 6,81,83,200.00

1.12. The HLC in their Report, *inter-alia* observed as follows:

“Originally, when the recommendations of Madras Port Trust were received, the differing escalation clauses and the uncertainty about changes in consumer price index over the extended contract period of 33 months made evaluation or relative position of the two tenderers not only difficult but also uncertain. The offer which was lower at a certain rate of annual increase in consumer price index could become higher if the rates of increase in Consumer Price Index went below a particular point. Further, the position of a bonus clause by M/s. (Firm 'B') for early completion of work added another uncertain factor in the total evaluation of contract costs. The Committee's subsequent negotiations have, however, eliminated these uncertain factors and indeterminate conditions and both M/s. (Firm 'B' and 'A') have now quoted firm prices for the contract period and identical construction period of 33 months, assessed to be reasonable by the Port Trust. Thus, there is now no uncertainty in the relative position and ranking of evaluated tender costs. On the basis of this evaluation, M/s. Andhra Civil Construction Co. (Firm 'B') are Rs. 33,53,200 lower than M/s. ESSAR Constructions as per their final offer to the Committee.”

1.13. According to the High Level Committee, some of the salient features of the rates quoted by the two firms after the negotiations were as follows:

“(a) Firm 'B' furnished revised rates for various items after removing the escalation clause totally. This firm also withdraw its bonus clause altogether and offered to complete the work in 33 months.

(b) Firm 'A' also withdraw the escalation clause and also quoted for completion of the work within 33 months.

The Committee are convinced that the escalation clause of both the firms and the bonus clause of M/s. Andhra Civil Construction Co. had big potential for future disputes during the execution of the contract. The Committee accordingly persuaded the two contractors to withdraw these clauses.”

1.14. In reply to a question, the Ministry have however, stated in their written note that a provision of Rs. 40 lakhs was made in the revised price offered by the Firm 'B' in lieu of the withdrawal of escalation clause. As

regards the details of the bonus clause quoted by Firm 'B' in their original tender, the Secretary, Ministry of Surface Transport informed the Committee during evidence as follows:

"At the time of the consideration of the offer by the MPT the contractor who got the contract had put a condition saying that if he could complete it earlier than the scheduled time, then he should be given Rs. 30,000 as bonus per day, if he completed it within 24 months instead of 33 months. The amount of bonus was Rs. 81 lakhs."

1.15. As regards the reasonableness of the revised rates quoted by Firm 'A', the High Level Committee in its Report observed as follows:

"The reasonableness of the rates quoted by M/s. Andhra Civil Construction Co. has to be checked not only to make sure that they are not too high but also to make sure that they are not unworkable. The latter is important in view of the experience in Tuticorin where the contractor after making some progress of the work got into financial difficulties and had to come to Government for exgratia relief etc. The total cost of the tender as per rates quoted by M/s. Andhra Civil Construction Co. is broadly close to the estimated of Madras Port Trust for this particular design viz. Alternative I—all rubble mound design. The MPT estimated cost works out to Rs. 6.50 crores as against Rs. 6.48 crores of M/s Andhra Civil Construction Co.'s tender. This would seem to indicate that the rates are reasonable workable."

1.16. Asked to explain the system that was followed in making estimates of cost of the project, the Secretary, Ministry of Surface Transport deposed:

".....In this particular case, the estimates of the project were made by MPT based upon 1974 schedule of rates. That is, what was the prevailing schedule of rates in 1974 was accepted as the basis of making the estimate which was approved by Government in 1976 and on the basis of which, the contract was awarded later.

I may also submit to the Committee that under the system that we follow in the Govt. of India, there is no provision for including in the estimate, the possible cost escalation. That is, even if the life of a scheme is 33 months, in this case, as was originally envisaged, we did not add a factor for cost escalation. The estimate was made on the basis of the 1974 schedule of rates. Two or three percent may be provided for contingencies but there is no provision being made for cost escalation during the life of the project....."

1.17. In reply to certain observations by the Audit, the Ministry of Surface Transport informed as follows:

“A rational escalation clause is now-a-days being prescribed in all major tenders.”

1.18. After considering the various factors relating to technical competence of both the Firms ‘A’ and ‘B’ and the adverse comments made by PAC in their 208th Report (5th LS) against Firm ‘B’, the HLC recommended the award of contract to Firm ‘B’ at a total evaluated cost of Rs. 6.48.30.000 (including materials and implications of conditions) subject to certain safeguards mentioned in their Report. The relevant extract from the Report is reproduced below:

“.....while both the firms with their past experience are considered to be technically competent to handle the present job, their performance particularly in mobilising financial resources and in adhering to completion dates has been none too happy. However, the fact that the other offers (though subsequently withdrawn) were very much higher does not leave much choice to go outside the offers of the two firms viz. M/s.....(Firm A & B). Between these two firms, the Committee have no option but to recommend the acceptance of M/s.....(Firm ‘B’) at a total evaluated cost of Rs. 6,48,30,000. The Committee are, however, conscious of the adverse comments of the Public Accounts Committee on the performance of this firm and would like to emphasise the need for strict vigilance and monitoring of progress of works during its execution. For this purpose, the Committee also strongly recommends that the port should exercise a strict control over the grant and utilisation of advances to the firm through the contractor’s bankers to ensure that the mobilisation fee, mobilisation advance and hypothecation advance on plant and equipment are utilised for the specific purposes for which they are granted and are not diverted for any other purpose. The firm has confirmed that in their letter of 18th April, 1978 that they are agreeable to every time furnish a certificate from their bankers to the effect that all the previous advances given by the port have been utilised exclusively for the specific purpose for which they have been released. It is also necessary that hypothecation advance on plant and equipment is released only after the plant and equipment are physically received in the port premises and hypothecation documents are in the custody of the Port Trust. They have also confirmed that in case of disputes, they will not stop the work nor go far arbitration until completion of work. The Committee feel that with the successful completion of their Rs. 200 lakh Porbander contract the firm should be in a comparatively better financial position and could be reasonably expected to provide financial inputs in addition to

approximately Rs. 36 lakh worth of old plant and equipment available with them at Tuticorin and with a vigilant monitoring and control, they should be able to successfully complete this contract."

1.19 The HLC submitted their Report on 1.5.1978. The recommendation of the HLC was approved by the MPT Board and the Government sanctioned the award of contract to Firm 'B' at a total cost of Rs. 5,52,50,400 *vide* sanction letter No. DCM/16/77-PD, dated 20.10.1978 after obtaining the approval of the Minister of the Shipping and Transport and the Finance Minister.

1.20 During evidence, the Committee desired to know as to why did the Government issue sanction for award of the contract at a cost of Rs. 5.52 crores while the HLC had recommended the award of contract at a cost of Rs. 6.48 crores. The Secretary, Ministry of Surface Transport stated in reply as follows:

"The difference is because one is the total project cost and the other is the mount payable to the contractor. In addition to the contract amount, as part of the tender conditions, the Port Trust will have to issue him cement, steel, etc. When Port Trust approach the Government for approval we give the total cost of the project including the amount that is attributable to cement etc. which is given by the Port Trust. That is the reason why the amount of Rs. 5.52 crores, which the hon. Member has mentioned, is the amount payable to the contractor."

1.21 With a view to providing tranquility condition in the approach channel and turning circle area in Madras harbour so as to permit handling of deep-draughted vessels even during the north-east monsoon months when the draught had to be reduced due to rough and choppy sea conditions, the Government sanctioned in September, 1976 an estimate for Rs. 7.74 crores for construction of an outer protection arm for Bharathi Dock, the outer harbour of Madras Port Trust (MPT).

1.22 The Committee find that out of 7 tenders received, for the work, the evaluated offer of firm 'A' was found to be the lowest and his name was recommended in June, 1977 by MPT to the Ministry for according sanction for award of the contract. However, instead of accepting the recommendation of MPT, the Government on receipt of some representations, appointed a High Level Committee to go into the question of award of the contract. The Committee negotiated with the two main competitors namely Firm 'A' and Firm 'B' obtained revised quotations from them and decided in May 1978 (nearly one year after the proposal was received from the MPT) to award the work to Firm 'B' whose revised offer of Rs. 6.48 crores was found to be the lowest. The reasons advanced for awarding the contract to the firm 'B' were that tender documents did not include a definite formula for payments to the contractors on account of cost escalation during the execution of the project. Consequently, the tenderers quoted different



escalation rates in their respective tenders. The Tender Committee constituted by MPT evaluated these tenders by assuming an escalation rate of 18%. On the other hand, when the case for award of contract was under examination in the Ministry of Shipping and Transport, the escalation rate on the basis of the trend of price index then made available worked out to only 6%. This made the comparative evaluation of the tenders by the Tender Committee and their recommendation for award of Work to Firm 'A' being the lowest, a disputable issue since decline in escalation rate beyond a certain point made the offer of Firm 'B' lower than that of firm 'A'. The High Level Committee, therefore, negotiated with the two main competitors to withdraw their respective escalation clauses ostensibly on the ground that these clauses quoted by the two firms had big potential for future disputes during the execution of the project and then awarded the work to firm 'B' on the basis of revised offer.

1.23 The Committee take a serious view of the manner in which the tenders for the work were floated, evaluated and the work was awarded to the firm 'B'. It is regrettable that the tender documents did not contain a rational formula for calculation of cost escalation during the period of contract although, as admitted by the Secretary of the Ministry, during evidence, a rational escalation clause was now-a-days being prescribed in all major tenders. The Committee also feel that instead of asking the tenderers to withdraw their escalation clause, they should have been asked to accept a rational escalation formula. Such a course of action would have not only rectified the initial error of not stipulating an escalation formula in the tender documents but would have also saved the Govt. from making heavy escalation payments to the contractors to the tune of Rs 166.12 lakhs during the course of the execution of the project as brought out subsequently in this Report.

1.24 The Committee also note that the work was awarded to the Firm 'B' inspite of bad experience of the execution of the work by it in the past which was also commented upon by the PAC in their Two Hundred and Eighth Report (1975-76) and Thirty-ninth Report (1977-78). In respect of the work awarded to this contractor in Tuticorin Port, The Committee had observed that "It appears to be another typical case when a private contractor deliberately quotes, to begin with, a lower rate in order to gain contract and after making some progress slackens the pace of work in order to extract lucrative concessions from Government. The Committee feel that if the authorities are vigilant particularly in the matter of ascertaining the experience, performance and standing of competing contractors they would not find themselves in a 'jam' as they confessedly did in the present case." The Committee deprecate that inspite of past experience and the adverse comments of the PAC, the work was awarded to the same firm 'B' and large concessions amounting to more than Rs 200 lakhs extended to the contractor in the same manner as in the earlier contract as brought out later in this Report. In the circumstances, the Committee cannot help

**observing that the award of the work to the Firm 'B' was un-justified and was guided by considerations other than safeguarding the financial interests of Government.**

*Delay in execution of work*

1.25 It is seen from Audit Paragraph that this work was originally scheduled to be completed by August, 1981. However, extension of time for completion of work was granted from time to time upto March, 1986 when the work was actually completed.

1.26 On a query as to when the work was actually completed, the representative of the Ministry of Surface Transport stated during evidence:

“As far as the run-off level is concerned it is in October, 1985 and in all respects by 31st March, 1986.”

1.27 To a related question as to whether the time scheduled of 33 months was based on past experience, it was stated:

“The time-limit of 33 months was a realistic one. It was based on the calculations and the quantum of work which was to be executed in the transportation of the stones from the quarry to the port etc. All these were taken into account for calculation and the Port came to the conclusion that 33 months were adequate to complete the work . . . . .”

Elaborating further, the Ministry clarified,

“If you do not fix the time, then we cannot, at a later stage, take any action against the contractor, if he fails to complete within the time.”

1.28 Accounting the main reasons for the inordinate delay in execution of the work, the Ministry stated :

“Whereas the contract was awarded on 15.11.1978, the work at site began only on 15.3.1979. During the course of execution of the work, the contractor represented that he was experiencing poor cash flow due to steep escalation in prices, especially in respect of items directly related to the work such as diesel, tyres, auto parts, explosives, consequent to which they were finding it difficult to improve the progress of the work. The quarry was also not yielding stones of the requisite specifications. The progress of the work was very poor and as such alternative measures to get the work completed in time were considered but it was eventually decided to continue with the same contractor.”

1.29 In reply to a specific query regarding the financial capability of Firm 'B' before awarding of the contract, the representative of the Ministry stated :

“It was also examined. The Ministry before finally accepting the recommendation of the HLC wanted their financial viability to be examined and it was found to be viable.”

1.30 At the instance of the Committee, the Ministry also furnished

a note on the alternatives considered for timely completion of the project and the same is reproduced as Appendix II to this Report.

1.31 During evidence, the Committee desired to know about the monitoring mechanism devised for reviewing the progress of the projects with Surface Transport stated :

“The machinery for monitoring the projects primarily exists at the port level which is the executing agency of all these projects. There is a very close monitoring of the progress of the projects at the field level, i.e. at the Chief Engineer’s level which is done on a weekly basis. There is also a fortnightly review which is being conducted by the Heads of Departments. Because the progress of the projects depends upon all the inputs not only from one Department but also from other Departments. Then, the Chairman takes at least a monthly meeting to review projects underway in the Port. In addition, as and when there are problems which impede the progress of the projects, more frequent meetings are held. If monitoring would have solved the problems of things particular project, then there would have been no problem because till about 1981, as many as 33 meetings were held and during 1981-83, 27 meetings were held with contractors. A number of notices were issued. It is not because of the lack of monitoring that this particular project suffered or for that matter the other projects have suffered but because of inherent problems that exist in a particular project. In this particular project the inherent problem was that there was the inability of the contractor to give the necessary inputs and the fact that he agreed to a rate without any cost escalation. There were certain periods even during the 33 months period of the contract when in one year, there was about 18 per cent to 20 per cent inflation. All these put pressure on his resources with the result, he slowed down and this is one of the factors which impeded the progress.

1.32 In their subsequent note on monitoring the Ministry stated:

“ . . . . In case of very important projects special reports are called for from the ports and exclusively monitored in the monitoring cell and outer protection arm was one such project. The progress of Outer protection Arm was reviewed with port officials by Development Adviser/Dy. Development Advisor during their visits to the port.

Based on the review of Development Adviser, Secretary (SPT) had also taken meeting with port officials to sort out the problems affecting the progress of Outer-protection-Arm.

In connection with construction of Outer Arm at Madras Port a total of 152 meetings were conducted to review the progress of the work including the meetings conducted by Ministry officials, Chairman, Chief Engineer and Superintending Engineer of Madras Port Trust. .

1.33 In this connection, the following extracts from the observations, on the inspection of work, recorded as early as November, 1979 by the then Deputy Development Adviser, Ministry of Shipping & Transport, are pertinent :

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“ . . . . . As on date less than 5% of the work has been physically completed even though one year has passed. The progress is unsatisfactory and CE has been taking regular weekly meetings in order to expedite the progress. But unfortunately, there has been no response from the contractor as judged from these results.

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- viii) Considering the present rate of progress, the inputs that are provided by the contractor and the slippages that have already occurred, I am not sure whether it will at all be possible for the contractor to adhere to the schedule as per the agreement. The slippages that have occurred appear to be more or less irrevocable.
- ix) The contractor has to eliminate all the deficiencies that have been mentioned above to achieve a reasonable level of quarry production and transportation. He should be given notice to come up with concrete and comprehensive proposals for tackling the job. Any delay in the completion of the work will mean a heavy burden on the contractor himself on account of the present rate of inflation. This in turn will undermine the efforts of the contractor for providing more inputs. Therefore more the delay, the contractor is likely to get into serious financial problems which would ultimately undermine his capacity for completing the work.
- x) While all assistance would be extended to the contractor to enable him to complete his job, for any concessions given to him, he should give an assurance of achieving better results. On the other hand if concessions are given before the progress is achieved it is likely that after availing the concessions the contractor may still slide back. For any concessions given, there has to be corresponding improvement of work and output to be shown by the contractor.
- xi) The monsoon season is almost over and from December onwards the contractor has to pull himself up from boat straps, if at all effective progress has to be achieved. Unfortunately, during my visit, senior partner and also the senior engineer of the Company were not available. However an indication was given to me by the representative that they expect that availability of funds would improve from December onwards. A meeting may be held and the contractor bound over for a realistic programme without the port getting committed to condoning the delays.”

1.34 In response to a question about the steps taken by the Government from time to time to reduce the delay in the instant case, the Ministry stated:

“Since the progress of the work was very poor and the contractor was slipping up, a show cause notice for termination was issued to the contractors by the Madras Port Trust on 28.1.1981. Simultaneously, the possibility of executing atleast a portion of the work by other agency was also examined indepth by inviting open tenders. It was assessed by the MPT that if the contract was awarded to another contractor, overall cost of the estimate was likely to go up to Rs. 15 crores.

As regards exploring the possibility of getting work depart mentally, it may be stated that Port was not equipped with necessary equipments or trained people to accomplish this type of job themselves. As such it was not found financially and technically suitable to do the job departmentally. After detailed examinations in the Ministry, when several alternatives were considered, it was decided to allow the contractor (B) to complete the work by giving financial relief/concessions. Accordingly a supplemental agreement was entered into.

Since the progress of the work continued to be unsatisfactory even after giving financial relief/concessions after supplemental agreement, another show cause notice was issued for the termination of contract in January, 1982. The contractors appealed to the Government against the show cause notice and requested for the appointment of High Power Committee to go into question of compensation payable to him. Another show cause notice was issued to the contractor on 4.6.83. The subject was discussed in detail by the MPT Board and Board recommended the Government for constitution of High Level Committee. The Government suggested the constitution of High Level Technical Committee and also its Terms of Reference. The HLTC was constituted by MPT in November, 1983. The HLTC felt that there was little prospect of work being completed in the near future unless some relief was given to the contractor. On the recommendations of HLTC certain concessions/reliefs were extended to the contractor and also modifications was done in the design to replace part of armour stones with concrete blocks in the best interest of the work for early completion.”

*Grant of extra-contractual concessions to contractor*

1.35 It has been brought out in audit that after the agreement was executed with the contractor stipulating August 1981 as the date for

completion of work and the work was started, following concessions which were not provided in the original agreement were subsequently allowed to the contractor:

- i) payment for escalation in prices,
- ii) reduction in hire charges for crane,
- iii) extra payment for rehandling of stones stacked in harbour,
- iv) increase in hypothecation advance from Rs.77 lakhs to 117 lakhs and reduction in the rate of recovery of the advance.

1.36 These extra-contractual concessions were extended to the contractor on the basis of the supplemental agreement entered by the Government in September, 1981 and again on the recommendation made by a High Level Technical Committee constituted by MPT in November, 1983.

1.37 When asked about the reasons for entering into supplemental agreement, the Ministry stated:

“During the course of the work, the progress was not satisfactory in spite of closely monitoring the project. During one such periodical review meeting held in September 1980, the Contractor had represented for escalation consideration due to escalated prices of the materials directly involved in the work. As the progress was continuously unsatisfactory, a show cause notice was issued by MPT to the contractor on 28.1.1981 calling for explanation for the poor progress. Simultaneously, the possibility of carrying out the portion of the work through another agency was also examined. It was thought best to let the balance work be done by M/s Andhra Civil Construction Co. by giving financial relief because.

- (a) the other alternatives of getting the work done through other agency would lead to delay as well as additional expenditure.
- (b) the alternative of getting the work done through M/s. Andhra Civil Construction Co. even with the proposed escalation would be to the advantage of the MPT.

In the circumstances, supplement agreement was entered into.”

1.38 In reply to a specific query of the Committee as to whether it was not a fact that unsatisfactory progress of execution of the work was mainly due to the intentional go-slow tactics adopted by the contractor to extract additional benefits, the Ministry stated:

“It will be difficult to say that the unsatisfactory progress of the execution of the work was mainly because the contractor was wanting

to extract additional concessions / benefits. Additional concessions / benefits were extended to the contractor in the overall interest of the work after analysing the pros and cons of other alternative proposals.”

1.39 As regards the various safeguards provided in the agreement to avoid unsatisfactory execution of the project, the Ministry stated:

“The safeguards such as forfeiture of Security Deposit on slow progress, Levy of liquidated damages for non-compliance of scheduled dates, termination of contract and carrying out the work through other agencies at the risk and cost of the contractor for unsatisfactory progress were all provided in the main agreement.

Under the Supplemental agreement, encashment of Bank Guarantee and right to recover the escalation paid and no escalation payment beyond a particular date were provided.”

1.40 On the issue of penal provisions provided in the supplemental agreement, the Ministry stated :

“Clause 5 of the supplemental agreement stipulates that the Bank Guarantee shall be encashed by MPT in the month in which the cumulative short-fall in the performance of the contractor is more than the target fixed for the month.

Clause 6 provides that simultaneous with the encashment of Bank Guarantee / Guarantees, the contract may be terminated and the balance of the work got executed by another agency at the risk and cost of the contractor.”

1.41 At the meeting of the MPT Board held on 29.1.1982, the Board was fully apprised of the slow progress of the execution of the work by the contractor and his failure to submit bank guarantee for Rs. 30 lakhs within the stipulated period after the supplemental agreement. The Committee desired to know as to what action was then taken in the light of the penal provisions of the supplemental agreement. The Ministry, in their reply, have indicated:

“The Board was apprised of the situation during the meeting held on 29.1.1982. After detailed discussion and analysing the facts of the

case, the Trustees were by and large of the view that in the circumstances existing and if need be trust can take action for terminating the contract after obtaining sanction of the Central Government. They also expressed the view that the aspect whether the work could be done departmentally or through other agencies could be a seriously examined and a report be submitted. Accordingly, a show cause notice was issued on 6.2.1982 by the MPT to the contractors invoking clauses 5 & 6 of the supplemental agreement. The matter was discussed in detail in the Ministry wherein the pros and cons of termination were discussed and it was felt by the MPT that there may be difficulty in getting another suitable contractor to do the balance work left incomplete by the present contractor. During the MPT Board Meeting in March, 1982 it was decided to give 3 months time to the contractor to establish his bonafides and his ability to complete the work. Once again the matter was discussed during the Board meeting held in June, 1982 and it was decided to closely follow the progress of the work. Discussions were also held by the Port Trust with the contractors on the alternative proposals submitted by them. The Board in its meeting held in July, 1982 resolved after discussion that the contractor be allowed to continue upto April, 1983 to complete the work upto run out level and to review the progress in April, 1983 and also to keep all the penal clauses in abeyance till April, 1983."

1.42 Explaining the events after supplemental agreement, the representative of the Ministry informed the Committee during evidence:

"After the first supplemental agreement was entered into after some hesitation, he (Contractor) had given a commitment of completing the run out level by October, 1982 and completing the entire work by October, 1983. We found again after sometime that he was not going according to schedule. Again he began asking for further financial reliefs and concessions. At this time he based his demand for relief and concession on certain technical parameters."

1.43 The contractor persisted with the complaint that they were not getting sufficient quantity of stones and at the request of the contractor, their revised design incorporating a new category of armour stones—B1 was agreed to by the MPT. In spite of the above concessions extended, progress of work was not as per scheduled and one of the main reasons attributed by the contractor was the failure of the Port Trust quarry which was geophysically inadequate to make the requirement of the Outer arm in terms of quantity as well as quality of stones. The contractors had requested the Port authority as well as the Ministry to constitute an independent Committee to look into these technical aspects. MPT, in consultation with the Ministry constituted a High Level Technical



Committee (HLTC) In November, 1983 to examine certain issues relating to the contract for the construction of the Outer Protection Arm to Bharathi Dock. The composition of HLTC included a geologist, a mining expert, the Secretary of the Transport Department of the Government of Tamil Nadu and the Development Adviser, Ports. The terms of reference related to the adequate availability of quality stones in the required quantity from the Port Trust quarry and allied issues and admissibility of reliefs if called for. The technical aspects were examined by the HLTC which recommended that:

“Certain concessions should be given. They also kept in view, the fact that at this stage when the work is almost 50 to 55% complete, we cannot risk changing to another contractor. They were of the view that if the work has to be completed, it has to be probably, done by the same contractor, with further relief, by way of concessions, on the hire charges on the crane, quarry rates for the rehandling of stone by the Port. That was of course, the last one.”

1.44 During evidence, the Committee also pointed out that earlier the PAC had in their 208th Report (5th Lok Sabha) on New Port at Tuticorin, made certain adverse comments against this particular contractor. The Committee had in their Report *inter-alia*, observed as follows :

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.....it appears to be another typical case when a private contractor deliberately quotes, to begin with, a lower rate in order to gain the contract, and after making some progress slackens the pace of work in order to extract lucrative concessions from Government. The Committee feel that if the authorities are vigilant, particularly in the matter of ascertaining the experience, performance and standing of competing contractors, they would not find themselves in a “jam” as they confessedly did in the present case. The Secretary (Transport) was constrained to note in March, 1973, that a stage had been reached where they had somehow to get the project completed. The Committee are convinced that the Ministry of Shipping and Transport must reaccept full responsibility for allowing such a state of affairs to come to pass. It is strange that the contractor’s demands for *ex-gratia* payments had to be conceded without even making reasonably sure that the project would be completed without further up setting the time schedule.”

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1.45 In the light of the observations made by the PAC in their 208th Report (5th Lok Sabha), the Committee desired to know as to why the

same contractor had been engaged. The Secretary, Ministry of Surface Transport stated:

“My submission is, it is true that this particular contractor did not perform well in the contract for the construction of break waters of Tuticorin and it drew the adverse notice of the PAC. The same contractor had another contract in the Tuticorin. He was able to finish the work one month in advance. The contractor was given a contract in Madras which is the current subject matter and which the Committee is looking into. It is observed by the Committee that he was able to get a number of extra contractual concessions from the Government. We are trying to explain the reasons why he was given those concessions. We tried to re-tender. In fact, we have actually re-tendered a part of the work. Government was faced with a very difficult choice as to what to do with a contract which has gone quarter-way through or half way through. If we re-tender, the ultimate cost of the entire project will be much more than what will be the cost if we give some concession to the contractor. The estimate made at that time was that it would cost about Rs. 15 crores for completion of the work if the work was to be terminated and the present contractor expelled from the site. This was done on the basis of a tender which was actually called for doing the work of about 168 metres of the outer arm. Secondly, there would have been possible legal delay on account of this contractor going to the court, getting a stay and therefore, this particular project which was considered essential would have been delayed. We really had a difficult problem. So, we took a decision that we would have a bad choice either way. If we terminated the contract it was also felt that we would run into a lot of difficulties, run into much more cost. If we do not terminate the contract, we will have to come to some sort of a compromise. Government, after considering all these aspects, decided that it would be better to come to an understanding and a compromise with the contractor and give him some concession.

1.46 On being asked whether contractor would have taken even more than five years in completing the project had the Ministry not conceded any concessions, the Secretary, Ministry of Surface Transport informed the Committee that:

“At that time we had a serious apprehension that if we terminated the contract and awarded it to another party at the risk and cost of the old contractor, he may go to a court if it was fairly certain and then that might have impeded the work. Secondly in the retender the work would have been tendered at a much higher rate because it would have included an escalation clause and any party who submitted his tender would have included the cost of escalation also in it. Therefore, the Government decided that it is proper that they

allow the very same contractor to work for which some concessions will have to be given, even though they are not governed by the contractual term. An overall view was taken like that."

1.47 In reply to a specific query of the Committee as to whether any legal opinion was sought by the Ministry, the Secretary, replied in the negative.

*Payment for escalation in prices*

1.48 As stated earlier in the Report, the escalation clause was withdrawn by the Contractor during negotiations with the HLC and a provision of Rs. 40 lakhs was made in the revised price offered by the Contractor 'B' in lieu of the withdrawal of escalation clause. However, the contractor represented in September 1980 that, due to runaway inflation, it would not be possible for him to continue to work without compensation for escalation in cost. In September, 1981 a supplemental agreement was entered into providing for escalation payment from 1st January, 1981 onwards upto 31st October, 1983 i.e., the revised date of completion. The maximum limit for escalation payable was Rs. 167.25 lakhs.

1.49 During evidence, the Committee desired to know the quantum of work completed by the contractor when the matter for escalation payments was being considered. The Secretary, Ministry of Surface Transport stated:

"When this matter was actively under consideration, the quantum of work performed by the contractor was about 15 per cent as against the targeted quantum of about 70 to 77 per cent."

1.50 On being asked as to why the situation for escalation arose, in the instant case, the Secretary, Ministry of Surface Transport stated:

"As audit has correctly said, we tried to delete the escalation clause. At the time of issuing the notice inviting tenders, there was no provision for escalation. But now, when we invite tenders, we provide for an escalation formula. That is, if the labour cost, during the period, goes up, this provision will be for neutralisation, if material cost goes up, this provision will be for neutralisation. So, during this period of contract, if the cost of the inputs goes up, he is allowed to ask for escalation. In this case, at that time, there was no such principle followed by the Government. Absolutely, there was no mention made about the escalation. One person quoted 100% neutralisation and another quoted 1% neutralisation. It has become a very crucial issue..... But the basic problem was that there was no provision for escalation "

1.51 Reacting to Committee's observation that the contractor had raised his rates by Rs. 40 lakhs in the revised offer only to cover the possible escalation, the Secretary, Ministry of Surface Transport clarified:

"I have got the figures showing the movement of prices at that time. If you look at that you will see that there was an increase of as much as 2% per month, on an average. So what he quoted was not sufficient....."

1.52 On being pointed out that the contractor had been paid more than what he wanted in the first tender, the representative of the Ministry of Surface Transport deposed:

"That is correct. That is admitted ultimately, in the actual execution, it proved more costly. One however, presumes that the conditions which are set out for completion at the time of the award of the contract would be adhered to."

1.53 On an enquiry as to whether the delay would become an incentive as in this case, the representative stated:

"That question would be difficult to answer. But the fact remains that the progress of the work of execution had very slow pace....."

1.54 In reply to the observation of the Committee on the inordinate delay of the one year in considering the representation of the contractor for enhanced payments on account of escalation in costs, the representative informed that:

"The delay was for the reason that nobody would have liked to recommend further financial relief to a defaulting contractor. The same hesitation was there in the Ministry as well as in the MPT that here is a contractor who has defaulted, he is asking for financial relief and is it worthwhile giving him financial relief. So we had to consult the Ministry of Finance on this. This did take time and you will agree that if we are giving concessions to anybody which are extra-contractual, it takes time for deliberations and to find out if there is adequate justifications as to whether it is really worthwhile giving it."

1.55 The Committee desired to know why the Government did not adopt one of the alternatives that was before them to continue the contract at the same rates, to which the representative stated that:

"By this method it was found that the period of completion could not be reasonably estimated. This may result in the outer protections arm not being available in time for handling larger iron ore carriers and also for putting up the container handling facilities. This may result in an estimated loss of over Rs. 2 crores per annum affecting the economy of the country. As it is the existing contractor have repeatedly made clear to the Port Trust that their financial position

does not permit them to speed up the work. This alternative may therefore, result in a stalemate by which the contract may not have been completed by October, 1982. This was the view at that time on this alternative. This is why there was delay. We finally agreed on this supplemental agreement.”

1.56 The audit paragraph mentions that while the supplemental agreement provided for cost escalations upto 31st October, 1983 MPT continued the escalation payments amounting to Rs. 166.12 lakhs till completion of work in March, 1986. The Committee however, find that the High Level Technical Committee appointed in 1983 had also made certain recommendatory reliefs relating to escalation payments. The relevant extract from that Report is reproduced below:

*“Escalation:* The escalation at the moment is being paid on the basis of the index as in April, 1983. The Committee recommends that the escalation as per the existing formula be paid based on the index of the corresponding calendar month subject to the condition that no escalation would become payable after 31.10.1985. The total escalation shall not exceed the estimated escalation of Rs. 1.67 crores.”

*Reduction in hire charges for Lima crane*

1.57 According to the original agreement, MPT was to make available to the contractor a Lima crane on payment of hire charges at the rate of Rs 1.30 lakhs per month for the period of the contract. The Lima crane costing Rs. 36.64 lakhs was purchased in January, 1977 from Visakhapatnam Port Trust.

1.58 According to the Ministry, this crane was purchased exclusively for this project as it was felt that a project of this nature would necessitate a heavy crane like the Lima crane and it would not be possible for any contractor to procure such a heavy crane. The hiring charge of Rs. 1.30 lakhs is stated to have been worked out based on the capital cost and the life of the plant.

1.59 The audit paragraph mentions that the hire charges of Rs. 1.30 lakhs per month during the period of the contract were reduced to Rs. 0.65 lakh per month from January, 1982 and gain to Rs 11,400 per month from November, 1982 which also resulted in a refund of Rs 10.18 lakhs to the contractor. The reasons for reducing the hire charges for Lima crane have been explained by the Ministry in their written note as follows:

“There was representation from the Contractor requesting for financial relief to enable him to achieve satisfactory progress of the work. This was processed by the MPT. One of the recommendations of the MPT related to reduction of Lima crane Hire Charges. This recommendation was approved by the MPT Board and the Government and was included in the Supplemental Agreement, finalised subsequently. As per the Supplemental Agreement, Lima crane Hire

Charges were to be reduced after 30.11.1981 as mutually agreed upon between the trust and the Contractor. During the contract period of 33 months, the hire charges at the rate of Rs 1.30 lakhs had been recovered fully. In addition Rs 17 lakhs had been released by way of Hire charges from the Mangalore Port for sparing the crane from February, 1977 to March, 1978. Taking into consideration the total hire charges recovered for this crane and the residual value of the crane and keeping in view the representation of the contractor for financial relief on this item, it was considered reasonable to reduce the hire charges of the crane from Rs 1.30 lakhs per month to Rs 65,000 per month.

Subsequently, under one of the representations made in their Memorandum to the HLTC, the contractors had requested for sparing the crane free of cost from 1.1.1984 to 31.10.1985 and also to reimburse the loss incurred. The Committee considering the recoveries made from them as provided for in the original and supplemental agreement was of the opinion that the monthly recoveries may be limited to provide 15% return on the residual capital value of the equipment from 1.11.1982 till the completion of the work. This came to Rs 11,400/- per month.

1.60 On being asked as to whether it was a fact that hire charges to the tune of Rs 10.18 lakhs were subsequently refunded to the contractor, the Ministry replied as follows:

“As per the recommendation of the HLTC for providing relief to the contractor, the hire charges based on the calculations were refunded to the contractor from the date of the recommendation of the HLTC i.e. from 1.1.1983 which worked out to Rs 11,78,633/-.”

1.61 The justification for making this refund has been spelt out by the Ministry as given below:

“Considering the recoveries of hire charges already made as provided for in the original and supplemental agreements, the Committee was of the opinion that the monthly recovery of hire charges may be limited to provide for a 15% return on the residual value of the equipment from 1.11.1982 till the completion of the work.”

1.62 The rent on the residual value of the crane, Secretary explained related to rent after depreciation. The relevant extract from the Report of the HLTC recommending relief on Lima crane hire charges is reproduced below:

“After the recovery at the rate of Rs 1.30 lakhs/month has been effected for the full contract period of 33 months, recovery at the rate of Rs 65,000/- is being effected from 1.1.1982. According to the supplemental agreement, the runout level was to have been completed by 31.10.1982. Considering the recoveries already made as

provided for in the original and supplemental agreements, the monthly recovery may be limited to provide for a 15% return on residual capital value of the equipment from 1.11.1982 till the completion of the work. The Port Trust indicated the residual value as Rs 7.6 lakhs. During the monsoon months, when the crane is not at all being used, no recovery need be made as at present. This will result in a refund of Rs 6.44 lakhs towards hire charges already recovered till February 1984. The hire charges for the extension boom should continue to be recovered as hitherto."

1.63 When asked whether this principle is being adopted by the Government for charging rent on equipment and how such a decision came to be taken be clarified:

"It is not so, sir. This was done mainly to give relief to the contractor. This came as a part of the package reliefs recommended by the Technical Committee."

1.64 Replying to a specific query of the Committee as to whether such a decision on rent was right, the Secretary, Ministry of Transport stated:

"Taken in isolation, the residual value as a basis of charging is wrong."

*Payment for rehandling of stones*

1.65 The audit para has highlighted that, the original agreement stipulated that payment for stone quarries would be made only after they were dumped in breakwater and that no part payment was to be made at any intermediate stage. However, the agreement was amended in November, 1979 and the contractor was allowed part payment of Rs. 48.73 lakhs at 60 per cent of the agreement rate for the stones stacked at the harbour during monsoon months to enable him to have better cash flow and to maximise the dumping at the site after the monsoon months. The MPT agreed for this part payment on the condition that the contractor would not claim any extra charge for rehandling the stones from the stacked piles. However, rehandling charges were also allowed subsequently on the recommendation of the HLTC and payments amounting to Rs. 22.59 lakhs were made on this account.

1.66 When asked about the circumstances under which rehandling charges on stones were allowed subsequently to the contractor, the Ministry in their written note have stated:

"The contractors had been transporting and building up stock pile of stones in the harbour during north-east monsoon months so as to maximise the dumping at the breakwater site after the work resumed at the close of the monsoon. They requested part payment for the stockpiling operations, the balance being paid after the material was dumped at the breakwater site after monsoon. This was agreed to by

the Port on the condition that no claim for double handling of the material from the stockpile would be agreed to at a later date. One of the representations made by the Contractor to the HLTC in their memorandum submitted was that they may be paid re-handling charges in respect of stones re-handled from the stock developed by them. This aspect was examined by the HLTC and after detailed discussions the HLTC was of the opinion that the material in the stockpile had to be re-handled and dumped at the breakwater site and it involved additional work and consequently expenses. Considering that this stockpiling was resorted to, to expedite the work at site and the nature of work of dumping stones brought from the quarry either directly to the breakwater or at the stockyard is more or less the same, the HLTC felt that a case existed for considering payment for this additional item of work."

Accordingly, HLTC recommended relief for rehandling of stones in the following words:

"Considering all the aspects and the need to get the work going, the HLTC felt it would be not unreasonable to pay the contractor for the above quantity rehandled and for the quantity requiring rehandling in future at 50% of the rate already approved by the Madras Port Trust for such rehandling work. Based on these quantities rehandled so far and the HLTC proposal above, it is expected that the contractor would be able to get a sum of about Rs. 15 lakhs for the actual rehandling of stones done by him during the monsoon months so far. The Committee recommends that payment for rehandling should be strictly confined only to the North East monsoon months when work on the breakwater site does not become possible."

1.67 On being asked as to whether the entire amount of the rehandling charges on stones was strictly confined to the North-east monsoon months, the Ministry stated as follows:

"The rehandling charges as recommended by the High Level Technical Committee and approved by Board/Government paid to the tune of Rs. 22.59 lakhs were for the stocks built up during North-east monsoons only and rehandled subsequently."

***Hypothecation advance:***

1.68 It is mentioned in the audit paragraph that as per the original agreement, hypothecation advance was payable subject to a ceiling of Rs. 77 lakhs. This ceiling was however, raised to Rs. 117 lakhs in the supplemental agreement executed in September, 1981.

1.69 While the pro-rata recoveries of these advances were to be effected on an out turn of 82,000 tonnes per month promised by the contractor, the MPT from April, 1982, restricted this recovery to a notional out turn of 40,000 tonnes or actuals whichever was higher. The MPT further reduced



the recovery on the basis of actual turn over during monsoon months from November, 1982 and during all months from October, 1983.

1.70 In their reply, MPT have stated (Feb., 1988) that it was only an advance recoverable with interest and the mode of recovery was regulated with a view "to have cash flow to the contractor" and all the advances have been fully recovered.

*Replacement of Armour stones with concrete Blocks:*

1.71 According to audit sub-para 21.3, one of the reasons given by the contractor for the delay was the failure of the MPT's quarry at Pallavaram to yield the required quantity of stones with the result that MPT substituted, on the recommendation of the HLTC, a part of the armour stones with concrete blocks with a view to completing the work by 31st October, 1985.

1.72 When enquired about the reasons for using concrete blocks in place of armour stones involving an additional expenditure of Rs. 61.03 lakhs, the Ministry stated:

"Considering the rate of production of armour stones, it was felt that the work would likely to get dragged on for a further period of few more years. The High Level Technical Committee recommended that the replacement of the stones by concrete blocks could be considered and that the MPT could bear, with appropriate sanction, the additional cost due to change in the design in the overall interest of the work."

1.73 In reply to another question as to why the provision of concrete blocks could not be contemplated originally, the Ministry stated:

"Armour stones weighing 5 tonnes and above were contemplated originally. Due to production difficulties of this type of stones, alternative such as concrete blocks was thought of for completing the balance work early."

1.74 The HLTC which was constituted in 1983 and has been spelt out earlier in the Report had the following specific terms of reference:

- i) The extent to which the MPT Quarry has impeded the progress of the work as claimed by the contractors;
- ii) Whether full exploitation of the quarry was made by the contractor;
- iii) Whether the contractor had fully mobilised the support facilities needed to handle the materials from the quarry as per targets indicated and them; and
- iv) Whether any relief is called for as a consequence of (i) above and if so the quantum of such relief.

1.75 The HLTC in their Report *inter-alia*, summarised the background to the issues in the following words:

In the tender documents issued to the prospective tenderors, they were advised to inspect the MPT quarry at Pallavaram (which was to be given to them free of cost for quarrying different categories of stones and stonemetal required for the work as specified in the schedules) and satisfy themselves regarding its adequacy etc. before tendering.

The contractors M/s Andhra Civil Construction Company in their letter dated 9th August, 1978 to the Chief Engineer had indicated that they were satisfied and that the quarry would yield the required quantities of stone confident for the construction of the outer Arm in the stipulated time. However, to be on the safe side, they would like to have another quarry yet to be identified by them as a stand by to supplement the production of the Port Trust quarry and would approach the Port at the appropriate time for necessary recommendatory assistance only to procure the said standby quarry. M/s Andhra Civil Construction Company had also agreed that it become necessary to procure stones from quarries other than Part Turst's quarry, they shall do so without claiming any extra payment on this account and this had been incorporated in the agreement with them.

At the request of the contractors, another quarry at Pammal (Near Pallavaram) was also taken on lease by the MPT from the Tamil Nadu Government and handed over to the contractors for exploitation from 1.8.79 to 2.6.80 Recommendatory assistance for leasing other quarries was also extended to them whenever they requested for the same.

The contractors were, however, notable to produce the stones required in proportion as required in the contract for the efficient progress of the work, with the result the work was always lagging behind.

Since the contractors were representing that due to run-away inflation and monthly recoveries from their bills, their cash flow was seriously affected, they were extended certain financial concessions/reliefs by the Port to help them to step up the progress of work and a Supplemental Agreement was also entered in September 81. The salient features of the supplemental agreement were as under:—

- i) Payment of escalation from 1.1.81, estimated to be around Rs. 167.25 lakhs.
- ii) Increase in limit of hypothecation advance from Rs 77 lakhs to Rs. 117 lakhs; and
- iii) Reduction of the Lima crane hire charges from Rs. 1,30,000 to Rs. 65,000/- P.M.

In consideration of the above, the contractors had agreed in the Supplemental agreement to complete the entire work at runout level by 30.10.82 and in all respects by 31.10.83 as per the revised programme given by them.

Due to the contractor's persistent complaint that they were not getting sufficient quantity of stones and at the request of the contractors, their revised design incorporating a new category of armour stones—B1 was agreed to by the MPT. In spite of the above concession extended, the contractors were not able to progress with the work as per the schedule given by them under supplemental agreement.

One of the main reasons attributed by the contractors for the inadequate progress was the failure of the Port Trust Quarry to yield the required quantity of stones for the work. They reiterated that the Trust's Pallavaram Quarry was geophysically inadequate to match the requirement of the Outer Arm in terms of quantity as well as quality of stones. Due to numerous horizontal and vertical fissures/joints in the quarry faces they were unable to get the required proportion of Armour stones due to over fragmentation if they adopted wagon drilling and shovel loading as planned by them at the time of tendering for this work. The quarry operations were also limited due to the presence of residential houses within the blasting range. In view of the above, according to the contractors, they were compelled to revert to conventional method of Jack hammer Drilling and Manual loading of stones by which method it was not possible to produce more than 1,000 tonnes per day as against their daily requirement of 2,000 tonnes per day. According to them, this failure of the quarry was beyond their control and the same should be treated as force majeure situation. They were therefore legitimately entitled to reimbursement of all the consequential losses sustained by them.

1.76 The HLTC in their Report, also *inter-alia* observed:

It is normal practice to have a feasibility report and pre-production planning where such large quantity of stones of specified size-matrix have to be removed and the entire contract costing about Rs. 5.3 crores will entirely depend on the supply of such stones. But the contractors did not take any scientific steps in this direction except bringing one-ex-employee of an explosive company and a consulting geologist for a casual visit, that too, in 1981, almost when they realised that the deficiency of planning and of procuring 'A' category stones after two years after start of the work.

They should have engaged some reputed consulting firm in mining to estimate reserve of quarry, prepare detailed bench layout, at different phases of operation to assess machinery requirement, to carry out some trial blasting to arrive at required size mix of boulder, in the very beginning. The quarrying has however progressed on a

short term *ad hoc* basis. As a result, most of the working faces has almost reached a vertical height 30 to 35 M. In such steep working, safety precautions have to be adopted.

The formation of systematic and proper benches was more important and necessary from the view point of productive faces.

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On a perusal of the performance, it was observed that the maximum production was during the year 1982 both in terms of the total quantity as well as armour stones. This would approximate to a total production of 1,300 tonnes/day not withstanding the partial availability of machinery and transport equipment. With systematic advance development, modified beach layout and propertial blastings it would have been possible for a sustained production of 1,500 tonnes a day.

There would still be limitations on the production of armour stones particularly the Grade 'A' stones consequent on the limitations in the quarry. 9.3% of the total requirement of stones represents 'A' grade stones. Trial blasting has showed that quarry can produce 10 to 12% of grade 'A' stones. Though the contractors maintained that these trial blastings were not fully representative having been done on harden portions of the quarry, neither the contractors nor the port carried out further trials to prove or disprove the same. The contractors production of this type has however been only 5.8% of the total material quarried by them. To what extent improvements would have been possible in this regard by systematic development of the quarry, better methods of quarrying, improved cash flow etc. would be rather difficult to assess at this stage. While it may be possible to produce all the required armour stones of this type from the quarry, due to the nature of the quarry, the total quantity to be quarred would be considerably more than the requirement for the work and it would not be economically a feasible proposition for the contractors to do the quarrying unless they were permitted to sell the surplus material. Therefore the Committee is of the view that the contractor should now be permitted to sell surplus stones generated from the quarry and not required for the work.

A close scrutiny of the equipment availability at the quarry and deployment of transport vehicles for the conveyance of the material over the period indicate that availability of the latter had been throughout short of requirement to the extent of 50% and even more in the years till 1981 and even in the early part of 1982. If transport to site can be taken as an indication of production, production had been considerably below target till almost the beginning of 1982 whereas the contract was awarded on 15.11.1978 and work at site began on 15.3.79. It has already been brought out that the quarry development and exploitation had not been done on a systematic

basis. The contractor had often cash flow problems and production had started picking up after the supplemental agreement. This appears to have largely affected the progress of the work. At this point of time it is rather difficult to say which has been the single cause for the problem, though a combination of all these have resulted in a situation where there is little prospect of the work being completed in the near future unless some relief is given to the contractor. Such a relief, the committee feel is justified consequent on the quarry not being in a position to economically produce beyond a limit the requirements of category 'A' stones in particular.

1.77 While recommending relief to the contractor on various items, the HLTC also made its recommendation for replacement of category 'A', Armour stones in the following words:

*Replacement of Armour stones (Category 'A' Partly)*

“The contractors have asked for extension of time till 31.10.1985 to complete the work in their memorandum. The Madras Port Trust emphasised the need for early completion of the work which has been referred to earlier. Considering the balance 'A' stones needed for the work, the rate at which the contractors have been producing them including other armour stones, the Chief Engineer of the Port felt that the contractors would not be able to, in their assessment, complete the work by 31.10.1985, but the work would drag on possible for two more years. Considering the escalations that would become payable to the contractors in the extended period, the loss of revenue suffered by the Nation in having to restrict the size of vessels pending full completion of the Outer Arm and the commitment in this regard to the Japanese Steel Mills as part of the memorandum of understanding between them and M.M.T.C., for the export of ore through Madras, the Port Trust felt that replacement of part of the stones by concrete blocks should be considered. The committee agrees with this and considering the overall advantages in the light of the limitations of the quarry in producing economically this type of stones in the required quantities, recommend that the Port could bear with appropriate sactions, the additional cost due to the change in the design. The committee also recommend due examination of other areas such as copping, where armour stones could be replaced, with advantage, by concrete blocks.”

1.78 During evidence, the Committee desired to know whether any responsibility had been fixed on the than Chief Engineer who entered into that contract having a clause that 'MPT's quarry would yield requisite stones.

The Secretary, Ministry of Surface Transport stated:

“We have not fixed responsibility on any-one.”

1.79 Regarding the responsibility of the Chief Engineer in the matter, Secretary clarified "on technical matters, I will say yes" but he however added "It would not be quite correct to fix responsibility on one person."

*Project cost escalation*

1.80 It has been brought out in audit paragraph that the original estimate of the project cost of Rs. 774 lakhs sanctioned in September, 1976 was revised to Rs. 919 lakhs in July, 1981 and again to Rs. 1142 lakhs against which the actual expenditure on the work up to March, 1987 was Rs. 1103 lakhs.

1.81 Replying to a question on the cost over-run in the instant case, the Secretary, Ministry of Surface Transport stated during evidence:

"The initial evaluated value of the contract was Rs. 6.48 crores and finally the contract ended at cost of Rs. 11.03 crores. In the evaluated price of Rs. 6.48 crores, the amount payable to the contractor was Rs. 5.52 crores and the rest was the material cost which the Port Trust was to give. As per the contract, items like cement, steel had to be supplied by the Port Trust to the Contractor. Port Trust would give Rs. 5.52 crores as a contract price plus the cost of the material as the conditions of the contract. Out of the final amount of Rs. 11.03 crores, the amount which the contractor got was Rs. 7.26 crores instead of Rs. 5.52 crores which is an increase of 31 per cent over the original bid which was accepted."

1.82 He further stated

"I would in this connection deal with the question which the Hon. Member raised, that is, has the contract been properly formulated! Why it is that in spite of the contract, we have to give more money! There is nothing wrong with the contract as a document in the sense that none of these payments were envisaged or provided for. The Committee which went into all these questions like whether we would not give them re-handling charges, escalation charges etc., clearly stated that these are extra contractual things. The HLTC had said, these have to be considered as an *ex gratia* payment....."

1.83 On being pointed out that *ex gratia* payments could be only in a limited way, the secretary stated)

"It is a question of judgement. We can take a view that nothing additional should be paid. If we take this view, we will have to terminate the contract and give it to somebody else."

1.84 The Committee enquired whether the enforcement of the contract was not the responsibility of the party concerned and if the contractor could simply disassociate himself on account of cost escalation. In reply he stated:

"In 1983, the HLTC has pointed out that it is rather difficult to say which has been the single cause of the delay."

1.85 Enquired about the reasons for that finding of the HLTC, the secretary deposed:

“I would like to bring to the notice of the Committee the more important part of their report which says that there is little possibility of work being completed in future unless some relief is given to the contractor.”

1.86 The Committee regret to note that the progress of execution of the project was extremely slow from the very beginning. While the contract to Firm 'B' was awarded on 15 November, 1978, the work at site could commence only on 15 March, 1979. As against the total contract period of 33 months, hardly 5 per cent of work was completed in November, 1979 i.e. one year after the award of contract. Although the work was originally scheduled to be completed by August, 1981, it was actually completed by March, 1986 i.e. after the delay of 55 months. The Committee find that the Deputy Development Adviser (Ministry of Shipping and Transport) after the inspection of the work in November, 1979 stated that he was not sure whether it would at all be possible for the contractor to adhere to the time schedule as the slippages that had occurred could hardly be made up; that any delay in the completion of the work would mean a heavy burden on the contractor on account of the prevailing rate of inflation which in turn would undermine the efforts of the contractor for providing more inputs; that the contractor might further retard the pace of work concessions were given before achieving progress; and that the contractor be bound over for a realistic programme without the MPT itself getting committed to condone the delays. The Committee, however, find no evidence to suggest that these observations were duly taken note of and acted upon. This lapse becomes all the more serious and significant in the light of the fact that even the High Level Committee while recommending award of work to the contractor had emphasised the need for strict vigilance and monitoring of progress of work. Although regular meetings are stated to have been conducted by the officials with the contractor, the Committee are unhappy to observe that such meetings failed to serve any purpose.

1.87 The Committee deprecate that instead of taking action against the contractor for failure to adhere to the original time schedule and to recover liquidated damages etc. for the inordinate delay in construction, the contractor was allowed several concessions and reliefs amounting to more than Rs. 200 lakhs. These concessions and reliefs which were not provided in the original agreement were extended through a supplemental agreement executed in 1981 and on the recommendation of High Level Technical Committee constituted by MPT in November 1983. The concessions allowed to the contractor included (i) payment for cost escalation in prices (Rs. 166.12 lakhs), (ii) reduction in hire charges for crane resulting in refund of Rs. 11.79 lakhs and (iii) extra payment of rehandling of stones stacked in the harbour (Rs. 22.59 lakhs) as detailed in the following paragraphs.

1.88 The Committee note that during negotiations the contractor had withdrawn his escalation clause in consideration of a lumpsum addition of

Rs. 40 lakhs in the revised offer made by him. In spite of it, he represented in September, 1980 that due to runaway inflation it would not be possible for him to continue the work without compensation for escalation in cost. The Committee find it rather intriguing that Government instead of pressing the contractor to expedite the work, allowed him heavy extra contractual payment by way of escalation amounting to Rs. 166.12 lakhs by entering into a supplemental agreement with him on the fallacious plea that in view of the financial position of the contractor this would have resulted in further delay in the execution of work. It is pertinent to note that the heavy slippages in work continued even thereafter and the work was actually completed in March, 1986 i.e. after the delay of 55 months as against the original schedule. The Committee also found no justification for the payment of escalation to the contractor till the completion of the project in March, 1986 in spite of a specific stipulation by the High Level Technical Committee for making such payments only upto 31 October, 1985.

1.89 The Committee note that as per original contract hire charges at the rate of Rs. 1.30 lakhs per month for the lima crane were to be recovered from the contractor during the period of the contract. Strangely enough, these hire charges were reduced to Rs. 0.65 lakhs per month from January, 1982 as per the supplemental agreement in 1981. Again on representation from the contractor the HLTC recommended that monthly recoveries be limited to 15 per cent return on the residual capital value of the equipment from 1 November, 1982 till the completion of the work. This resulted in refund of Rs. 11,78,633 to the contractor. During evidence, the Secretary, Ministry of Surface Transport admitted that the basis of charging 15 per cent return on the residual value of the crane was wrong. The Committee are of the considered view that this recommendation of the HLTC was of an unusual nature and lacked any justification.

1.90 The Committee also find that the contractor was allowed 60 per cent of the agreed rate for the stones stacked at the harbour during the monsoon months to enable him to have a better cash flow. This was agreed to by MPT on the specific condition that the contractor would not claim any extra charge for rehandling the stones from the stacked piles. Despite this, it is incomprehensible to the Committee as to how the HLTC recommended for payments to the contractor on account of rehandling of the stones also with the result that he gained as much as Rs. 22.59 lakhs on this count alone.

1.91 The Committee note that the original project report contemplated use of armour stones weighing 5 tonnes and above for execution of the project. The armour stones were to be brought to port site from the MPT's quarry at Pallavaram and the prospective tenderers were required to satisfy themselves regarding the adequacy of stones. The MPT, at the request of the contractor, had also taken on lease another quarry at Pammal (near Pallavaram) and handed it over to the contractor for exploitation. As the contractor was unable to produce the stones of requisite size required for the efficient progress of work, MPT had even agreed for use of armour



stones of another size. The Committee are distressed to find that inspite of this concession, the contractor was not able to progress with the work as per schedule and the HLTC recommended replacement of armour stones by concrete slabs without imposing any penalty on the contractor for his failure to extract and transport required quality and quantity of stones.

1.92 The above mentioned extra contractual reliefs and concessions allowed to the contractor amounting to over Rs. 200 lakhs, which were unusual and lacked justification clearly indicated that undue favours were shown to the contractor with scant regard to financial interest of Government. The gravity of the lapses mentioned in this Report indicate either collusion or gross negligence on the part of the officials concerned. The Committee recommend that these lapses should be thoroughly investigated and action taken against all those who are found guilty of failure to safeguard the financial interests of the Government during the various stages of the execution of this project. The Committee be apprised of the outcome within six months of the presentation of the Report.

## CHAPTER—II

### *Short levy of gantry crane hire charges, (Para-22)*

2.1 Under Section 52 of the Major Port Trust Act, 1963, every scale of rates and every statement of conditions framed by a Board should be submitted to Central Government for sanction and with have effect when so sanctioned and published in the official gazette. In the instant case, Audit has pointed out that MPT Board decided on 27th January, 1984 to reduce the gantry Crane hire charges from Rs. 600 to Rs. 450 percontainer and the reduced rates were made effective from 27th January 1984 itself. In February, 1984, the MPT sought approval of Government for the reduction in hire charges under Section 52 of the Major Port Trust Act, 1963. However, Government rejected the proposal in April 1985 and the Port Trust restored the rate to the original level of Rs. 600 per container with effect from 2 April, 1985.

2.2 When enquired about the authority under which the Port Trust Board implemented the decision to reduce gantry crane hire charges even before the sanction the Government of India could be obtained, the Ministry of Surface Transport stated in their written note as follows:

“Madras Port Trust felt that under section 53 of the Major Port Trusts Act (reproduced below), they are competent to reduce the rates prescribed in the Scale of Rates:

“A Board may, in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods or vessels or class of goods of vessels from the payment of any rate or of any charge feivable in respect thereof according to any scale in force under this Act or remit the whole or any portion of such rate or charge so levied.”

However when the Government turned down the proposal, they started recovering the original rates.

2.3 In reply to a question whether the representative of Government of India was also present in the meeting when the decision for downward revision of gantry crane hire charges was taken, the Ministry of Surface Transport stated:

“In the meeting of Board of Trustees held on 27.1.1984 when the decision for downward revision was taken, the Trustee representing Ministry of Shipping & Transport was not present.”

2.4 In a subsequent note, the Ministry of Surface Transport also stated:

“From the records available it appear that notice for the meeting was sent by the Port Trust Board *vide* its letter dated 4.1.1984. As per information supplied by the Board the Tustee had expressed his inability to attend the meeting. As per records of the Port Trust, the minutes of the meeting was sent to the Ministry’s representative on 3.2.1984. As the Ministry’s representative has since retired from service, it is not possible to indicate the action taken in the matter.”

2.5 In reply to a question as to why the Government of India took more than one year to convey its decision in this case, the Ministry stated:

“The proposal of MPT to reduce the rates for use of Gantry Crane was received in the Ministry on 13 February, 1984. Under the existing procedure, the proposal was required to be examined by the various wings in the Ministry before a decision on the proposal was conveyed. After initial examination in the Ministry MPT was asked on 27 June, 1984 to indicate the cost based rates for services for comparison with the proposed rates. The Port Trust MPT was also asked to work out the Financial implications of the proposed reduction. A reply to this was received from MPT on 9 July, 1984. The reply was examined and the queries raised were communicated to MPT for clarification an 31st August, 1984. A reply to this was received on 31 October, 1984. In the light of the clarification received, the proposal was further examined. It was felt in the Ministry that even the existing rates were below the cost based rates and therefore, further reduction was not advisable. These views were communicated to Madrás Port Trust on 25.2.1985. A reply was received from MPT on 13.3.1985 reiterating their proposal. The proposal was further examined and the MPT was informed on 2.4.1985., that their proposal for reduction in the charges was not acceptable to the Government. It may be seen from above, that the delay of more than one year occurred in conveying Government’s decision as the matter was under correspondence between MPT and Central Government and a number of points were required to be clarified.”

2.6 In reply to audit observations on the inability of the Government of India to take a quick decision in relation to tariff revisions for over one year, the Ministry stated:

“The procedure regarding considering the rate revision proposals from the Port Trusts and conveying the approval of the Government has since been simplified in the Ministry. A Committee of officers has also been constituted in the Ministry, which meet periodically to examine the pending tariff proposals, and process the cases for obtaining the approval of the Governments. The

approval is now being normally communicated within a period of 8 to 12 weeks.

2.7 As regards the steps taken by Government to regularise the loss of Rs. 7.27 lakhs that was incurred in this case by operating a rate that had not been authorised, the Ministry informed the Committee as follows:

“Government in their letter No. PW/PGR-15/84 dated 5th November, 1986 had communicated the ‘expost facto’ approval for the reduced charges levied by the Board for the period 27.1.1984 to 1.4.1985.”

2.8 It was however, pointed out in Audit in April 1987 that Central Government did not have power under Section 52 or any other Section of the Major, Port Trust Act, 1963 to regularise the rate charged from 27.1.1984 to 1.4.1985. Ministry replied (July 1987) that the grant of expost facto approval for the reduction of charges under Section 52 of the Act was given in consultation with the Ministry of Law was given in consultation with the Ministry of Law on the ground that the reduction had become a *fait accompli*.

2.9 On being asked as to what was the interpretation of these particular Sections of Major Port Trust Act, the Secretary, Ministry of Surface Transport stated during Evidence:

“Any variation in the dates requires the approval of the Government of India. The Madras Port Trust thought that Section 53 is there under which you can give the remission. After consulting the Law Ministry we issued instructions to all Port Trusts saying that any reduction cannot be done without prior approval of the Government. So this was a sort of aberration committed by the Madras Port Trust.”

*Unauthorised revision of Hire charges (Para 23)*

2.10 The Board of Trustees of the Madras Port Trust decided to reduce the hire charges for providing referplug points with effect from 1st October, 1984. The Government of India, however, accorded sanction to the proposal in June, 1985. Audit has pointed out that as the revision of scales of rate could be given effect to only from the date of notification of the rates in the official gazette i.e., 4th September, 1985 in the instant case, the irregularity in having given effect to the revised rates of hire charges from 1st October, 1984 i.e. the date prior to its notification in the gazette, is in contravention of the provision of Section 52 of the Major Port Trust Act, 1963.

2.11 In reply to a question about the reason for charging lower rates from 1st October, 1984, the Ministry stated:

“Charges for reefer plug arrangement were fixed initially at the rate of Rs. 200 per 20’ container and Rs. 250 per 40’ container as per the approval of Government vide letter No. PW/PGR-59/82 dated 19.2.1983.

When the above charges were proposed to Government, in working out the rate, *inter-alia* the cost of a stand by generator set used for the entire container berth operations was taken in full as part of the capital cost.

After implementation of the said rates, user represented to the Port Trust against the abnormal high rate and requested for reduction. Hence the charges were reviewed by MPT and revised taking only a part of the capital cost of the stand by generator set. At that time the container terminal was in the initial stages of commissioning, facing stiff competition from Colombo Port and the Port was wanting more containers to come to the Port.

The reduced rates were implemented before notification in the Gazette since during the period it was felt that this can be done under section 53 of the Major Port Trusts Act, 1963.”

2.12 It is learnt from Audit that the actual rate of hire charges worked out by Madras Port Trust Board was Rs. 96 whereas the rate was fixed ultimately at Rs. 120. When asked to explain the rationale behind this 25 per cent increase in the revised rate, the Ministry stated as under:

“The rate of Rs. 96/- was worked out taking into account 15% for interest and return on capital and a unit rate of 45 paise for electricity consumption.

Based on the revised tariff rate on power cost and interest and return on capital at 18% the revised rate was fixed at Rs. 120/- per shift.”

2.13 Asked about the measures taken by the Ministry to regularise the loss arising out of reduction in hire charges during 1st October, 1984 to 3rd September, 1985 and to avoid the recurrence of such irregularity in future, the Ministry stated:

“Since the rate worked out and implemented from 1.10.1984 is a cost based rate there is no actual loss and could be deemed only as a national loss because it has not been sanctioned by the Government and the Board implemented the same in advance since at that time it believed it has powers under Section 53 of the Act.

To avoid such recurrence the Ministry, after obtaining the legal opinion of Ministry of Law and Justice have already informed all

the major ports vide letter No. PW/PGR-15/84 dated 18th September 1987 that the Boards powers of exemption from payment of port charges and remission of charges provided in section 53 of Major Port Trusts Act, 1963 do not include powers of reduction in the prescribed charges. The port were advised that any reduction in the prescribed rates will amount to prescribing a separate rate under sections 48 to 51 of the Act and prior approval of Central Government will be necessary under section 52 of the Major Port Trusts Act, before such rates can be brought into operation. the Ministry had also issued instructions vide letter No. PR-14012-10/87-PG dated 5 January, 1988 that under no circumstances, sections 48 to 50 of Major Port Trusts Act shall become effective without the prior approval of the Government under section 52 of the Major Port Trusts Act and its publication by the Board in the Officials Gazette.”

**2.14 In terms of Section 52 of the Major Port Trust Act, 1963, every scale of rates and every statement of conditions framed by a Board should be submitted to Central Government for sanction and will have effect when so sanctioned and published in the official gazette. The Committee, however, find that MPT Board decided on 27 January, 1984, to reduce the gantry crane hire charges and the reduced rates were made effective from that date itself in contravention of the said Section. While MPT Board sought approval of the Central Government for the reduction in hire charges in February, 1984, the Central Government rejected the proposal in April, 1985 and the rates were restored to the original level by MPT with effect from 2 April, 1985. In yet another case, MPT Board decided to reduce the hire charges for providing reefer plug points with effect from 1 October, 1984 despite the fact that the sanction for reduced rates was accorded by Central Government in June, 1985 and the rates were notified in the official gazette only on 4 September, 1985.**

**2.15 The Committee express their unhappiness over the manner in which MPT authorities in contravention of Section 52 of the Major Port Trust Act, 1963, gave effect to their proposals for reducing the rates prescribed in the scale of rates without seeking prior sanction of the Central Government and also before publishing the same in the official gazette. Considering the plea of the Secretary, Ministry of Surface Transport that “this was a sort of aberration committed by the MPT”, the Committee feel that the cases under examination reveal a need for a very close coordination and understanding between the Ministry of Surface Transport and Port Trusts’ authorities so that the various provisions of the Act are not only interpreted in right perspective but also followed scrupulously. Although instructions to all Port Trusts saying that any reduction in the rates cannot be done without prior approval of the Government, are stated to have been issued by the Ministry, the Committee would like to emphasise strict compliance of the same to avoid such occurrences in the future.**

**2.16 The Committee deplore the dismal picture that has emerged in regard to the unduly long time taken by the Ministry in conveying their decision on the rate revision proposals forwarded by Madras Port Trust in both the cases under examination of the Committee. Apparently, the Ministry have neither evolved any clear cut policy on the subject nor issued proper guidelines to the Port Trusts for formulating their rate revision proposals with the result that considerable time is lost by the Ministry in seeking clarifications. However, the Committee have now been informed that the procedure for considering the rate revision proposals from the Port Trust have since been simplified in the Ministry and the approval of the Government "is now being normally communicated within a period of 8 to 12 weeks." While welcoming this belated but essential step, the Committee consider it desirable that suitable guidelines for formulating rate revision proposals should be issued to all Port Trusts so that valuable time is not lost in conveying the decision. Keeping in view the fact that rate revisions have a vital bearing on the economy of the Port Trusts, the Committee would like the Government to further gear up their decision making machinery so that their decision on such proposals is communicated within the shortest possible time.**

NEW DELHI;  
17 December, 1991  
26 Agrahayana, 1913 (S)

ATAL BIHARI VAJPAYEE  
*Chairman,*  
*Public Accounts Committee*

## APPENDIX—I

(Vide Para 1.1. of the Report)

Paragraphs 21—23 of the Report of the C&AG of India for the year ended 31 March, 1988 (No. 9 of 1989), Union Government (Other Autonomous Bodies).

### Madras Port Trust

#### 21. Construction of outer protection arm to Bharathi Dock

21.1 The outer harbour of Madras Port Trust, (MPT) named Bharathi dock, comprises an oil berth, a fully mechanised iron ore berth and a container berth. As the draft of 46 feet available in this dock was getting lowered to 38 feet during north-east monsoon (October—January) causing inconvenience to vessels, Government sanctioned in September 1976 an estimate for Rs. 774 lakhs for construction of an outer protection arm for a length of 1005 metres from the existing arm of the main harbour.

#### 21.2 Award of work

Tenders were invited in January 1977 for this work for both departmental design and for contractor's own alternative design. Seven firms tendered of which four tendered for alternative designs also. The lowest offer was from firm 'A' for its alternative design for Rs. 6.46 crores and next lowest was from firm 'B'. A High Level Committee appointed to go into the tenders, decided in May 1978 to award the contract to firm 'B' on the basis of revised offers of Rs. 6.82 crores and Rs. 6.48 crores obtained from firm 'A' and 'B' respectively. This was accepted by government in October 1978. A contract was entered into with firm 'B' in December 1978 stipulating August 1981 as the date for completion of work. After the agreement was executed and the work was started, the following concessions were granted to the contractor, which were neither originally contemplated at the time of calling for tenders, nor provided in the original agreement.

(i) *Payment for escalation in Prices* : Though the contractor had withdrawn the escalation clause at the time of negotiation, he represented in September 1980 that, due to runaway inflation, it would not be possible for him to continue the work without compensation for escalation in cost. In September 1981, a supplemental agreement was entered into providing for escalation payment (with the cost index as on 18th April 1978 as the base) from 1st January 1981 onwards upto 31st October 1983 (revised date of completion) subject to a maximum limit of Rs. 167.25 lakhs. The progress of work was however, very much behind schedule and MPT continued the escalation payment totalling Rs. 166.12 lakhs in all, based on monthly indices till completion of work in March 1986.



(ii) *Hire charges for Lime crane* : According to the original agreement, MPT was to make available to the Contractor Lime crane on payment of hire charges at the rate of Rs. 1.30 lakhs per month for the period of contract. The Lime crane purchased at a cost of Rs. 36.64 lakhs was hired to the contract from March 1979. On the contractor's plea in April 1981 for reduction of the hire charges, a supplemental agreement was executed in September 1981, reducing the hire charges to Rs. 0.65 lakh per month from January 1982 and again to Rs. 11,400 per month from November 1982 on the ground that the value of the crane had been recovered. This resulted in a refund of Rs. 10.18 lakhs.

MPT stated in February 1988 that the hire charges were revised to give relief under the package deal under the supplemental agreement.

(iii) *Payment for rehandling of stones* : The original agreement stipulated that payment for stones quarried would be made only after they were dumped in the breakwater and that no part payment was to be made at any intermediate stage. However, in November 1979, the agreement was amended and the contractor was allowed part payment amounting Rs. 48.73 lakhs at 60 per cent of the agreement rate for the stones quarried, transported and stacked at the harbour during monsoon months to enable him to have better cash flow and to maximise the dumping at the site after the monsoon months.

MPT agreed for part payment on the condition that the contractor would not claim any extra charge for rehandling the stones from the stacked piles. But rehandling charges were allowed subsequently on the recommendation of the High Level technical Committee constituted by MPT in November 1983 with the approval of Government. MPT made payments aggregating Rs. 22.59 lakhs for the total quantity of stones rehandled till completion of work.

(iv) *Hypothecation advance* : As per the original agreement, hypothecation advance was payable subject to a ceiling of Rs. 77 lakhs. In a supplemental agreement executed in September 1981, this ceiling was raised to Rs. 117 lakhs. Actually a total advance of Rs. 116.89 lakhs had been paid besides a mobilisation advance of Rs. 21 lakhs in November 1978.

Pro-rata recoveries of these advances were to be effected on an outturn of 82,000 tonnes per month promised by the contractor. However, from April 1982, MPT restricted the recovery to a national outturn of 40,000 tonnes or actuals whichever was higher. It further reduced the recovery on the basis of actual turnover during monsoon months from November 1982 and during all months from October 1983.

MPT stated in February 1988 that it was only an advance recoverable with interest and mode of recoveries was regulated with a view

“to have cash-flow to the contractor” and all the advances have been fully recovered.

### *21.3 Delay in execution of work*

The work was originally scheduled for completion by August 1981. In December 1983, considering the slow progress, the escalation charges payable to the contractor for the extended period and the commitment for export of iron ore, MPT substituted, on the recommendation of the High Level Committee, a part of the armour stones with concrete blocks with a view to completing the work by 31st October 1985 and this involved an additional cost of Rs. 61.03 lakhs. Extension of time for completion of work was granted by MPT from time to time and finally upto March 1986 when the work was actually completed. One of the reasons given by the contractor for the delay was the failure of MPT's quarry at Pallavaram to yield the required quantity of stones. A High Level Committee constituted in November 1983 had observed that the availability of transport was short of requirement to the extent of 50 per cent or more and production of stones was considerably below the target, that the quarry exploitation by the contractor was not done on a systematic basis and that the contractor had often cash flow problems.

### *21.4 Increase in project cost*

The original estimate for Rs. 774 lakhs sanctioned in September 1976 was revised in July 1981 to Rs. 919 lakhs due to delay in execution and the estimated was again revised to Rs. 1142 lakhs on account of increase in the cost of cement, payment for rehandling of stones, substitution of concrete blocks for armour stones and capitalised interest on borrowed funds. The total actual expenditure on the work upto March 1987 was Rs. 1103 lakhs.

### *21.5 To conclude*

Concessions which were not provided in the original agreement were subsequently allowed to the contractor by way of (i) payment for escalation in prices (Rs. 166.12 lakhs), (ii) reduction in hire charges for crane resulting in a refund of Rs. 10.18 lakhs, (iii) extra payment for rehandling of stones stacked in the harbour (Rs. 22.59 lakhs), (iv) increase in hypothecation advance from Rs. 77 lakhs to Rs. 117 lakhs and reduction in the rate of recovery of the advance. Concrete blocks were used in place of armour stones to some extent, involving extra expenditure of Rs. 61.03 lakhs on the ground that this would avoid further delay in completion of work.

There was increase in project cost from Rs. 774 lakhs to Rs. 1103 lakhs. The work expected to be completed by August 1981 was actually completed in March 1986.

Ministry endorsed, in April 1988, the reply given by MPT.

## 22. Short levy of crane hire charges

Under Section 52 of the Major Port Trust Act, 1963, every scale of rates and every statement of conditions framed by a Board should be submitted to Central Government for sanction and will have effect when so sanctioned and published in the official gazette. The Board of Trustees of Madras Port Trust decided on 27th January 1984 to reduce the hire charges for the use of gantry crane for loading or unloading inland container depot (ICD) containers from Rs. 600 to Rs. 450 per container of size upto 20 feet and the reduced rates were made effective from 27th January 1984 itself without prior approval of Central Government. In February 1984, the Port Trust sought the approval of Government for the reduction in hire charges under Section 52 of the Major Port Trust Act 1963. However, in April 1985, Government rejected the proposal on the ground that the present rate of Rs. 600 was itself below the assessed cost. Thereupon, the Port Trust restored the original rate of Rs. 600 per container with effect from 2nd April 1985. In November 1986, Government accorded *ex-post-facto* approval for the levy of handling charges at the reduced rate of Rs. 450 per container for the period from 27th January 1984 to 1st April 1985.

It was pointed out in Audit in April 1987 that Central Government did not have power under Section 52 or any other Section of the Major Port Trust Act, 1963 to regularise the rate charged from 27th January 1984 to 1st April 1985. Ministry replied in July 1987 that the grant of *ex-post-facto* approval for the reduction of charges under Section 52 of the Act was given in consultation with the Ministry of Law on the ground that the reduction had become a *fait accompli* and that the reduction had been beneficial to users and it might not be successfully challenged by anyone. The reduction of handling charges at Rs. 150 per container from 4849 containers handled during the above period amounted to a loss of revenue of Rs. 7.27 lakhs.

Based on the Audit observation, Ministry issued in January 1988 instructions reiterating that revision of rates become effective only after approval by Government and publication in the official gazette and that any revision of rates shall be given effect to only after complying with the above legal requirements.

## 23. Unauthorised revision of hire charges

The Board of Trustees of the Madras Port Trust decided to reduce the hire charges for providing reefer plug points from Rs. 200 to Rs. 120 per 20 feet container per shift or part thereof and from Rs. 250 to Rs. 160 per container above 20 feet and up to 40 feet per shift or part thereof with effect from 1st October 1984.

In June 1985, Government of India accorded sanction to the proposal contained in the Board's resolution. As the revision of scale of rates could be given effect to only from the date of notification of the rates in the

official gazette (4th September 1985), the irregularity in having given effect to the revised rates of hire charges from a date (1st October 1984) prior to its notification in the gazette, in contravention of the provisions of Section 52 of the Major Port Trust Act, was brought to the notice of the Port Trust and Government in December 1985.

In January 1988, Government agreed with the stand taken by Audit and issued necessary instructions to the Port Trust not to implement the approved rates before the date of their publication in the gazette.

The Port Trust stated, in July 1988, that the instruction issued by Government, in January 1988, were to be complied with for prospective implementation only. As Government's instructions were only to reiterate the provisions of Section 52 of the Major Port Trust Act, 1963 to the attention of the major Port Trusts, the revision of hire charges for the reefer plug points, prior to approval of the revision by Government and its publication in the gazette was not in order.

The short levy of hire charges during 1st October 1984 to 3rd September 1985 prior to the date of publication of Government's approval in official gazette amounted to Rs. 3.96 lakhs (approximately.)

**APPENDIX-II**  
**(Vide Para 1.30)**

*Alternatives considered for timely completion of the project.*

1. Since the progress of the work was very poor and the contractor was slipping up, a show cause notice for termination was issued to the contractors by the Madras Port Trust on 28.1.1981. Simultaneously the possibility of executing at least a portion of the work by other agency was also examined in depth by inviting open tenders. A detailed analysis of the tenders revealed that the alternative of terminating the contract or the alternative of having one-third portion of the work done by other agency involved 100% increase in cost.

2. The contract could have been rescinded as per the terms of the contract and the work could have been get executed at the risk and cost of the contractor. But this was likely to lead to the legal as well as financial implications.

3. The legal implication was that the contractor might have gone to the Court and brought a stay order on account of various reasons which had led him to the present situation. While it was possible to get the stay order vacated, it was not possible to avoid delay in re-commencing the work. The execution of the work at the risk and cost of the contractor would have also led to litigation and it might have been difficult to recover the additional charges that would have been paid to the new contractors.

4. The financial implications were that if the contract was awarded to another contractor, the overall cost of the estimate was likely to go up to Rs. 15 crores, as assessed by the Port. Further, the present contractor might have also gone to arbitration and might have got some compensation. In any case the work would have further been delayed.

5. This alternative was also examined by Madras Port Trust by calling tenders for 'island' as well as 'end-on' method of construction. After careful examination it was assessed that it would be difficult to execute the same work with 2 contractor at different rates and eventually the present contractor was likely to go to arbitration and get the same rates as given to the new contractor. There were other operational difficulties in the execution of the work which were against inducting another contractor for the same work.

6. As regards exploring the possibility of getting the work done departmentally, it may be stated that the Port is not equipped with necessary equipments or trained people to accomplish this type of job

themselves. As such it was not found financially and technically suitable to do the job departmentally.

7. After detailed examinations in the Ministry when several alternatives were considered, it was decided to allow the existing contractors, M/s. Andhra Civil Construction Company to complete the work by giving financial relief/concession and allowing escalation from 1.1.1981 at 85% based on the All India Wholesale General Commodity Price Index. Accordingly, payment of escalation for the work done from 1.1.1981 onwards and also enhanced hypothecation advance were extended. It was also decided to extend the contract period upto 31st October, 1983. A supplementary agreement was entered into with a specific condition that the contractors withdraw the arbitration clause.

## APPENDIX - III

### *Statement of Observations/Recommendations*

Sl. No.	Para No.	Ministry concerned	Observations/Recommendations
1	2	3	4
1	1.21	Min. of Surface Transport	With a view to providing tranquility condition in the approach channel and turning circle area in Madras harbour so as to permit handling of deep-draughted vessels even during the north-east monsoon months when the draught had to be reduced due to rough and choppy sea conditions, the Government sanctioned in September, 1976 an estimate for Rs. 7.74 crores for construction of an outer protection arm for Bharathi Dock, the outer harbour of Madras Port Trust (MPT).
2	1.22	-Do-	The Committee find that out of 7 tenders received, for the work, the evaluated offer of firm 'A' was found to be the lowest and his name was recommended in June, 1977 by MPT to the Ministry for according sanction for award of the contract. However, instead of accepting the recommendation of MPT, the Government on receipt of some representations, appointed a High Level Committee to go into the question of award of the contract. The Committee negotiated with two main competitors namely Firm 'A' and Firm 'B' obtained revised quotations from them and decided in May 1978 (nearly one year after the proposal was received from the MPT) to award the work to Firm 'B' whose revised offer of Rs 6.48 crores was found to be the lowest. The reasons

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advanced for awarding the contract to the firm 'B' were that tender documents did not include a definite formula for payments to the contractors on account of cost escalation during the execution of the project. Consequently, the tenderers quoted different escalation rates in their respective tenders. The Tender Committee constituted by MPT evaluated these tenders by assuming an escalation rate of 18%. On the other hand, when the case for award of contract was under examination in the Ministry of Shipping and Transport, the escalation rate on the basis of the trend of price index then made available worked out to only 6%. This made the comparative evaluation of the tenders by the Tender Committee and their recommendation for award of work to Firm 'A' being the lowest, a disputable issue since decline in escalation rate beyond a certain point made the offer of Firm 'B' lower than that of firm 'A'. The High Level Committee, therefore, negotiated with the two main competitors to withdraw their respective escalation clauses ostensibly on the ground that these clauses quoted by the two firms had big potential for future disputes during the execution of the project and then awarded the work to firm 'B' on the basis of revised offer.

3 1.23 Min. of Surface  
Transport

The Committee take a serious view of the manner in which the tenders for the work were floated, evaluated and the work was awarded to the firm 'B'. It is regrettable that the tender documents did not contain a rational formula for calculation of cost escalation during the period of



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contract although, as admitted by the Secretary of the Ministry during evidence, a rational escalation clause was now-a-days being prescribed in all major tenders. The Committee also feel that instead of asking the tenderers to withdraw their escalation clause, they should have been asked to accept a rational escalation formula. Such a course of action would have not only rectified the initial error of not stipulating an escalation formula in the tender documents but would have also saved the Govt. from making heavy escalation payments to the contractors to the tune of Rs 166.12 lakhs during the course of the execution of the project as brought out subsequently in this Report.

4 1.24 Min. of Surface  
Transport

The Committee also note that the work was awarded to the Firm 'B' inspite of bad experience of the execution of the work by it in the past which was also commented upon by the PAC in their two hundred and eighth Report (1975-76) and Thirty ninth Report (1977-78). In respect of the work awarded to this contractor in Tuticorin Port, the Committee had observed that "It appears to be another typical case when a private contractor deliberately quotes, to begin with, a lower rate in order to gain contract and after making some progress slackens the pace of work in order to extract lucrative concessions from Government. The Committee feel that if the authorities are vigilant particularly in the matter of ascertaining the experience, performance and standing of competing contractors they would not find themselves in a 'jam' as they confessedly did in the present case." The Committee deprecate that inspite of past experience and the adverse comments of the PAC, the work was awarded to the same

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firm 'B' and large concessions amounting to more than Rs 200 lakhs extended to the contractor in the same manner as in the earlier contract as brought out later in this Report. In the circumstances, the Committee cannot help observing that the award of the work to the Firm 'B' was unjustified and was guided by considerations other than safeguarding the financial interests of Government,

5      1.86 Min. of Surface  
Transport

The Committee regret to note that the progress of execution of the project was extremely slow from the very beginning. While the contract to Firm 'B' was awarded on 15 November, 1978, the work at site could commence only on 15 March, 1979. As against the total contract period of 33 months hardly 5 per cent of work was completed in November, 1979 *i.e.* one year after the award of contract. Although the work was originally scheduled to be completed by August, 1981, it was actually completed by March, 1986 *i.e.* after the delay of 55 months. The Committee find that the Deputy Development Adviser (Ministry of Shipping and Transport) after the inspection of the work in November, 1979 stated that he was not sure whether it would at all be possible for the contractor to adhere to the time-schedule as the slippages that had occurred could hardly be made up; that any delay in the completion of the work would mean a heavy burden on the contractor on account of the prevailing rate of inflation which in turn would undermine the efforts of the contractor for providing more inputs; that the contractor might further retard the pace of work if concessions were given before achieving progress; and that the contractor be bound over for a realistic programme without the MPT itself

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getting committed to condone the delays. The Committee, however, find no evidence to suggest that these observations were duly taken note of and acted upon. This lapse becomes all the more serious and significant in the light of the fact that even the High Level Committee while recommending award of work to the contractor had emphasised the need for strict vigilance and monitoring of progress of work. Although regular meetings are stated to have been conducted by the officials with the contractors, the Committee are unhappy to observe that such meetings failed to serve any purpose.

6. 1.87 Min. of Surface  
Transport

The Committee deprecate that instead of taking action against the contractor for failure to adhere to the original time schedule and to recover liquidated damages etc. for the inordinate delay in construction, the contractor was allowed several concessions and reliefs amounting to more than Rs. 200 lakhs. These concessions and reliefs which were not provided in the original agreement were extended through a supplemental agreement executed in 1981 and on the recommendations of High Level Technical Committee constituted by MPT in November 1983. The concessions allowed to the contractor included (i) payment for cost escalation in prices (Rs. 166.12 lakhs), (ii) reduction in hire charges for crane resulting in refund of Rs. 11.79 lakhs and (iii) extra payment of rehandling of stones stacked in the harbour (Rs. 22.59 lakhs) as detailed in the following paragraphs.

7. 1.88 —Do—

The Committee note that during negotiations the contractor had withdrawn his escalation clause in consideration of a lumpsum addition of Rs. 40 lakhs in the revised offer made by him. In spite of

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it, he represented in September, 1980 that due to runaway inflation it would not be possible for him to continue the work without compensation for escalation in cost. The Committee find it rather intriguing that Government instead of pressing the contractor to expedite the work, allowed him heavy extra contractual payment by way of escalation amounting to Rs. 166.12 lakhs by entering into a supplemental agreement with him on the fallacious plea that in view of the financial position of the contractor this would have resulted in further delay in the execution of work. It is pertinent to note that the heavy slippages in work continued even thereafter and the work was actually completed in March, 1986 *i.e.* after the delay of 55 months as against the original schedule. The Committee also found no justification for the payment of escalation to the contractor till the completion of the project in March, 1986 in spite of a specific stipulation by the High Level Technical Committee for making such payments only upto 31 October, 1985.

**8. 1.89 Min. of Surface Transport**

The Committee note that as per original contract hire charges at the rate of Rs. 1.30 lakhs per month for the Lima crane were to be recovered from the contractor during the period of the contract. Strangely enough, these hire charges were reduced to Rs. 0.65 lakhs per month from January, 1982 as per the supplemental agreement in 1981. Again on representation from the contractor the HLTC recommended that monthly recoveries be limited to 15 per cent return on the residual capital value of the equipment from 1 November, 1982 till the completion of the work. This resulted in refund of Rs. 11,78,633 to the contractor. During evi

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dence, the Secretary, Ministry of Surface Transport admitted that the basis of charging 15 per cent return on the residual value of the crane was wrong. The Committee are of the considered view that this recommendation of the HLTC was of an unusual nature and lacked any justification.

9. 1.90 Min. of Surface Transport

The Committee also find that the contractor was allowed 60 per cent of the agreed rate for the stones stacked at the harbour during the monsoon months to enable him to have a better cash flow. This was agreed to by MPT on the specific condition that the contractor would not claim any extra charge for rehandling the stones from the stacked piles. Despite this, it is incomprehensible to the Committee as to how the HLTC recommended for payments to the contractor on account of rehandling of the stones also with the result that he gained as much as Rs. 22.59 lakhs on this count alone.

10. 1.91 —Do—

The Committee note that the original project report contemplated use of armour stones weighing 5 tonnes and above for execution of the project. The armour stones were to be brought to port site from the MPT's quarry at Pallavaram and the prospective tenderers were required to satisfy themselves regarding the adequacy of stones. The MPT, at the request of the contractor, had also taken on lease another quarry at Pammal (near Pallavaram) and handed it over to the contractor for exploitation. As the contractor was unable to produce the stones of requisite size required for the efficient progress of work, MPT had even agreed for use of armour stones of another size. The Committee are distressed to find that in spite of this concession, the contractor was

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not able to progress with the work as per schedule and the HLTC recommended replacement of armour stones by concrete slabs without imposing any penalty on the contractor for his failure to extract and transport required quality and quantity of stones.

11 1.92 Min. of Surface  
Transport

The above mentioned extra contractual of reliefs and concessions allowed to the Contractor amounting to over Rs. 200 lakhs, which were unusual and lacked justification clearly indicate that undue favours were shown to the contractor with scant regard to financial interest of Government. The gravity of the lapses mentioned in this Report indicate ~~either~~ collusion or gross negligence on the part of the officials concerned. The Committee recommend that these lapses should be thoroughly investigated and action taken against all those who are found guilty of failure to safeguard the financial interests of the Government during the various stages of the execution of this project. The Committee be apprised of the outcome within six months of the presentation of the Report.

12. 2.14 —Do—

In terms of Section 52 of the Major Port Trust Act, 1963 every scale of rates and every statement of conditions framed by a Board should be submitted to Central Government for sanction and will have effect when so sanctioned and published in the official gazette. The Committee, however, find the MPT Board decided on 27 January, 1984, to reduce the gantry crane hire charges and the reduced rates were made effective from that date itself in contravention of the said Section. While MPT Board sought approval of the Central Government for the reduction in hire charges in February, 1984, the Central

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Government rejected the proposal in April, 1985 and the rates were restored to the original level by MPT with effect from 2 April, 1985. In yet another case, MPT Board decided to reduce the hire charges for providing reefer plug points with effect from 1 October, 1984 despite the fact that the sanction for reduced rates was accorded by Central Government in June, 1985 and the rates were notified in the official gazette only on 4 September, 1985.

13. 2.15 **Min. of Surface Transport**

The Committee express their unhappiness over the manner in which MPT authorities in contravention of Section 52 of the Major Port Trust Act, 1963, gave effect to their proposals for reducing the rates prescribed in the scale of rates without seeking prior sanction of the Central Government and also before publishing the same in the official gazette. Considering the plea of the Secretary, Ministry of Surface Transport that "this was a sort of aberration committed by the MPT", the Committee feel that the cases under examination reveal a need for a very close coordination and understanding between the Ministry of Surface Transport and Port Trusts' authorities so that the various provisions of the Act are not only interpreted in right perspective but also followed scrupulously. Although instructions to all Port Trusts saying that any reduction in the rates cannot be done without prior approval of the Government, are stated to have been issued by the Ministry, the Committee would like to emphasise strict compliance of the same to avoid such occurrences in the future.

14. 2.16 —Do—

The Committee deplore the dismal picture that has emerged in regard to the unduly long time taken by the Ministry in conveying their decision on the rate

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revision proposals forwarded by Madras Port Trust in both the cases under examination of the Committee. Apparently, the Ministry have neither evolved any clear cut policy on the subject nor issued proper guidelines to the Port Trusts for formulating their rate revision proposals with the result that considerable time is lost by the Ministry in seeking clarifications. However, the Committee have now been informed that the procedure for considering the rate revision proposals from the Port Trust have since been simplified in the Ministry and the approval of the Government "is now being normally communicated within a period of 8 to 12 weeks." While welcoming this belated but essential step, the Committee consider it desirable that suitable guidelines for formulating rate revision proposals should be issued to all Port Trusts so that valuable time is not lost in conveying the decision. Keeping in view the fact that rate revisions have a vital bearing on the economy of the Port Trusts, the Committee would like the Government to further gear up their decision making machinery so that their decision on such proposals is communicated within the shortest possible time.

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