



**CHAPTER III
COMPLIANCE
AUDIT**

CHAPTER III COMPLIANCE AUDIT

Compliance Audit of the Government departments, their field formations as well as that of autonomous bodies brought out several instances of lapses in management of resources and failures in the observance of the norms of regularity, propriety and economy. These have been presented sector-wise in the succeeding paragraphs.

GENERAL SECTOR

PLANNING AND DEVELOPMENT DEPARTMENT

3.1 *Excess expenditure on installation of solar street lights*

Imprudent allotment of work by the DPO, Begusarai at much higher rate resulted in excess expenditure of ₹ 1.31 crore vis-a'-vis loss to the Government to that extent.

As per Rule 126 of the Bihar Finance (Amendment) Rules (BFR), 2005, every authority delegated with financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy and transparency in matters relating to public procurement and should satisfy himself that the price of the selected offer is reasonable and consistent with the quality required.

A test check (September 2013) of records relating to purchase of solar street lights under MPLADS¹ by the District Planning Officer (DPO), Begusarai revealed that the State Government replaced (September 2012) BELTRON with BREDA² as the State Purchase Organisation (SPO) for purchase of solar equipment. The Director, BREDA also issued instructions (October 2012) to DPO, Begusarai for carrying out purchases of solar equipment from the licensed channel partners/shops³ authorised by BREDA on such rates as finalised by BREDA. This was corroborated (June 2013) by the Principal Secretary, Planning and Development Department, Government of Bihar (Department). Further, the Director, BREDA directed (July 2013) to get the work of purchase and installation of solar street lights done through tender process and proscribed purchasing the same from M/s Akshay Urja Shops which was a centre of purchase and repair of solar equipments at small scale. However, BREDA finalised (September 2013) the rate of purchase and installation of solar light⁴ as per the specification of Ministry of New and Renewable Energy (MNRE), Government of India at ₹ 61775.

It was noticed during audit that despite the above instructions the DPO, Begusarai, placed orders (September- November 2013) for installation of 278 solar lights with M/s Akshay Urja Shop, Begusarai at the higher rate of ₹ 1.75 lakh⁵ per solar street light. A total amount of ₹ 2.03 crore was paid against the

¹ Member of Parliament Local Area Development Scheme.

² Bihar Renewable Energy Development Agency.

³ M/s Akshay Urja Shop, Begusarai.

⁴ (11w×4) arms light with Lead Acid Tubular Flooded Battery.

⁵ Rate furnished by the agency (June 2013).

total cost of ₹ 4.87 crore. However, out of 278 solar lights, only 116 solar lights were installed (November 2014). Thus, non-purchase of solar equipment through tender process or on the rates finalised (September 2013) by BREDA resulted in an excess expenditure/payment of ₹ 1.31 crore (*Appendix 3.1*).

On this being pointed out, the Department forwarded (April 2014) the reply of the DPO, Begusarai on this issue. The DPO stated that on the basis of Resolution (September 2012) of the Finance Department and letter (July 2012) of the Director BREDA, declaring M/s Akshay Urja Shop, Begusarai as a licensed /channel partner of BREDA, the work of installation of solar street lights was allotted to it. The reply of the Department was not acceptable as neither did the DPO, Begusarai purchase the solar light equipment and got it installed through tender process at competitive rates nor did he do the same at the rate prescribed by BREDA.

Thus, imprudent allotment of work by the DPO, Begusarai at much higher rate to the agencies resulted in an excess expenditure of ₹ 1.31 crore and loss to the Government to that extent.

The matter had been reported to the Government (June 2014); despite reminders, their reply had not been received (November 2014).

SOCIAL SECTOR

HEALTH DEPARTMENT

3.2 Fraudulent Payment

Fraudulent payment of ₹ 53.94 lakh was made to an agency for outsourced services rendered against the non-existing Sub-divisional Hospital due to lack of proper scrutiny, assessment and circumspection on part of the Civil Surgeon-cum-Chief Medical Officer, Kishanganj.

Health Department vide Government of Bihar (GoB) declaration (April 2008 read with July 2009) upgraded Sub-divisional Hospital to Sadar Hospital with renewed sanctioned strength in 10 districts.⁶

A test check of records (November/December 2013) of District Health Society (DHS), Kishanganj revealed that DHS, Kishanganj had invited a tender (June 2009) for services⁷ in all hospitals⁸ under outsourcing arrangement. The Civil Surgeon-cum-Member Secretary, DHS, Kishanganj executed (July 2009) an agreement with the agency (Health Line, Patna), the lowest among the three tenderers, for rendering the aforesaid services in all hospitals and drew funds of ₹ 1.44 crore in dual capacities for Sadar Hospital and Sub-divisional Hospital during 2009-13. Despite the up-gradation, the CS-cum-CMO, Kishanganj paid to the agency an amount of ₹ 53.94 lakh for Sub-divisional Hospital, Kishanganj and ₹ 90.09 lakh for the Sadar Hospital by segregating the bills

⁶ Araria, Banka, Buxar, Jamui, Kaimur, Kishanganj, Lakhisarai, Sheikhpura, Sheohar and Supaul.

⁷ Cleaning, laundry, pantry (kitchen), maintenance of hospital campus and generator services from Non-Government Organisations.

⁸ Sadar Hospital, Sub-divisional Hospital, all Primary Health Centers and Referral Hospital, Chattargach.

during August 2009 to February 2013 (*Appendix 3.2*). As the Sub-divisional hospital, Kishanganj was non-existent since July 2009 and no two hospitals (Sadar and Sub-Divisional Hospital) ever worked simultaneously at any point of time, this resulted in fraudulent payment of ₹ 53.94 lakh to the agency.

On this being pointed out, the CS-cum-CMO, Kishanganj stated (December 2013) that both the units were functioning separately when the agreement was executed and payments were made on the basis of agreement. In the new agreement both the units were merged.

The reply was not acceptable as the contract with the agency for outsourcing the services was executed subsequent to the up-gradation of Sub-divisional Hospital into Sadar Hospital by the Department. As such, two different hospitals were never in existence on the date of execution of the agreement/contract with the outsourcing agency (July 2009). The allotment letters⁹ issued (2007-10) by the Government to hospitals also confirmed the facts. The acceptance of different claims of the agency for the services rendered to two hospitals and payments made thereagainst by the CS-cum-CMO, Kishanganj without proper scrutiny, assessment and circumspection resulted in fraudulent payment of ₹ 53.94 lakh to the outsourced agency.

The matter was referred to the Government (June 2014); despite reminders, their reply had not been received (November 2014).

3.3 Excess payment on irregular purchase of medicines

Irregular purchase of medicines in violation of State Health Society's prescribed procedures resulted in an excess payment of ₹ 1.41 crore.

In order to ensure uniformity in rate and quality of drugs all over the State, the Finance Department, Government of Bihar nominated (April 2007) State Health Society Bihar (SHSB) as 'State Purchase Organisation' for purchase of drugs in the State. The SHSB executed (August 2010 and October 2012) agreements with different agencies for supply of drugs during September 2010 to March 2014 in all districts of the State. The list of such drugs was circulated to all Superintendents of Medical Colleges and Hospitals and all Civil Surgeon-cum-Member Secretaries of District Health Societies. As per the agreements, the concerned authorities of the respective Districts were required to directly place orders to the agency in Patna and collect the delivery of items after payment.

Test check (May 2013 and August 2013) of records of two¹⁰ Civil Surgeon-cum-Chief Medical Officers (CS-cum-CMO) for the period 2010-11 to 2012-13 revealed that in 106 cases, medicines featuring in the SHSB contracted list and valued at ₹ 1.49 crore, were purchased locally on the recommendation of the District Purchase Committee (DPC) at ₹ 2.90 crore. The local purchase of medicines in violation of the prescribed procedures resulted in an excess payment of ₹ 1.41 crore (*Appendix 3.3*).

On this being pointed out (May 2013 and August 2013) the CS-cum-CMO Banka stated that due to non-supply of medicines by the approved firms of the

⁹ Letters issued by the Health Department, Government of Bihar allocating funds under Major Expenditure Head 2210, Bill Code- N2210011100013.
¹⁰ CS-cum-CMO Banka, CS-cum-CMO Ara.

SHSB in time, the medicines were purchased at the rates approved by the DPC. Later, while accepting (November 2014) the fact of non-issue of purchase orders to the authorised firms of SHSB for all types of medicines required, he added that under the 'cash and carry' mechanism, the supply of medicines were to be made only after making advance payments to the concerned firms. However, the Finance Department (FD) vide Circular (April 1998) proscribed withdrawal of advances. As such, the medicines were purchased from only those firms which had accented to supply the medicines and receive payments after passing of bills by the treasury. He also added that being the Controlling Officer of both the DHS and Civil Surgeon Office, formal correspondences between the two offices were not made. The CS-cum-CMO, Ara stated (August 2013) that only those medicines, rates of which were not approved by the SHSB, were purchased at the rate approved by the DPC as per the norms of the Health Department.

The reply of the CS-cum-CMO, Banka quoting FD's Circular (April 1998) was not tenable in this context as the medicines were to be purchased only by the respective DHSs as per the prescribed 'cash and carry' mechanism and no advance was to be given to the approved supplier firm. After supply of medicines by the respective DHS, the CS-cum-CMO was to draw bills from the treasury in the name of DHS for recoupment. The reply of the CS-cum-CMO, Ara was also not acceptable as one medicine¹¹ was purchased locally at higher rate than those approved by the SHSB.

As such, purchase of medicines in all the 106 cases, despite their inclusion in the SHSB contracted lists, were made in gross violation of the rules. The irregular purchase of medicines as per recommendation of DPC resulted in an excess payment of ₹ 1.41 crore.

The matter had been reported to the Government (May 2014); despite reminders, their reply had not been received (November 2014).

3.4 Irregularities in purchase of medicines

The Government suffered loss of ₹ 88.28 lakh due to non-observance of prescribed rules and instructions regarding purchase of medicines coupled with irregular purchase of banned medicines.

A. Unauthorised advance

The Health and Family Welfare Department, Government of Bihar, designated (July 2006) the District Health Society (DHS) as the procurement agency for purchase of medicines in the district. The concerned DHS were to procure their medical requirement from vendors approved by the State Health Society, Bihar (SHSB).

As per Clause 5.03 of terms and conditions of the SHSB, for supply of drugs by companies, the SHSB was to finalise the rate contract of the drugs as per the advertised drugs list. The purchase orders were to be placed to the supplier directly by the respective Superintendent of Medical Colleges and Hospitals/Civil Surgeons/DHS/State level Government hospitals/institutions of the respective Districts. The full indented quantity, for which proforma invoices

¹¹ Ampicilline+Cloxacilline-500mg.

were raised, was to be collected from the company's Depot-cum-Stores on "cash and carry" basis and there was no provision of advance payment. Further Clause 5.01 of the terms and conditions of the SHSB categorically stipulated that the first supply should be received within 45 days of the receipt of the first order, thereafter all subsequent supplies were to be made within 20 days of the receipt of the order.

Test check of records (July 2013 and February 2014) of four¹² DHSs revealed that a total sum of ₹ 235.54 lakh was irregularly advanced to different firms for purchase of medicines during 2010-2013. Against this, medicines valuing ₹ 165.04 lakh only were supplied/collected/adjusted by the respective DHSs. Resultantly, medicines worth ₹ 70.50 lakh were short supplied, which had not been made up for as of August 2014 (*Appendix 3.4*).

On this being pointed out, the Civil Surgeon-cum-Chief Medical Officer-cum-Member Secretary (CS-cum-CMO-cum-MS), DHS Bettiah, Saran and Muzaffarpur stated (August 2014) that the concerned firms had not supplied the medicines or refunded the amount for which letters had been issued/being issued. The CS-cum-CMO-cum-MS, DHS Purnea also accepted (September 2014) the fact of amount remaining outstanding with the supplying firm and added that the same would be adjusted from the amount payable to that firm against another supply made by the firm.

Thus the advance payment to the suppliers by the CS-Cum-CMO-cum-MSs of the respective DHSs, in violation of the prescribed directions of the Government, led to short supply of medicines amounting to ₹ 70.50 lakh apart from undue financial aid to the suppliers and loss to the Government to that extent.

B. Purchase of banned medicines

The Government of India, Ministry of Health and Family Welfare (MOH&FW), prohibited¹³ (March 2011) the manufacture, sale and distribution of the drugs, namely Gatifloxacin and Tegaserod and their formulations in the country in public interest, as the use of these drugs was likely to involve risk to human beings and safer alternatives to these drugs were available.

However, a test check of records (August 2013) of the Civil Surgeon (CS), Bettiah, disclosed that the CS had placed an order (27 and 28 March 2011) with a local supplier¹⁴ to procure nine lakh Gatifloxacin-200 mg tablets and paid (March 2011) ₹ 17.78 lakh to the agency. The medicines, received and taken into stock (April 2011), were later seized (June 2011) by the Drug Inspector, Bettiah which had expired in February 2013.

On this being pointed out, the CS-cum-CMO, Bettiah accepted (August 2013) that the purchase of banned medicines was grossly irregular requiring departmental enquiry. He further added (August 2014) that the concerned firm had not refunded the amount for which legal action would be taken against it.

¹² Bettiah, Muzaffarpur, Purnea and Saran (Chapra).

¹³ Gazette Notification No. GSR 218 (E) dated 16 March 2011.

¹⁴ M/s S.N. Supplier Agency, Motihari.

Thus, due to non-observance of prescribed rules and instructions regarding purchase of medicines coupled with irregular purchase of banned medicines, the Government suffered loss to the tune of ₹ 88.28 lakh.

The matter was referred to the Government (June 2014); despite reminders, their reply had not been received (November 2014).

EDUCATION DEPARTMENT

3.5 Defalcation of Sarva Shiksha Abhiyan funds

The failure of District Programme Officer to initiate action for refund of the amount released under Sarva Shiksha Abhiyan from the Head Master resulted in defalcation of ₹ 20.11 lakh.

Rule 9 of the Bihar Financial Rules, 2005 envisaged that every Government Servant, incurring or authorising expenditure from public funds, should be guided by high standards of financial propriety. Further, as per the Bihar Elementary School Education Committee Act, 2011, the accounts of Vidyalaya Shiksha Samiti Development Fund in which amount received from all legal sources were to be deposited, had to be operated jointly by the Secretary and the Head Master/Head Teacher of the school. Each withdrawal from these funds had to be confirmed in the forthcoming meeting of the Committee, otherwise there would not be any further withdrawal from this funds.

Test check of records of the District Programme Officer (DPO), Sarva Shiksha Abhiyan (SSA), Katihar disclosed (December 2013) that ₹ 20.06 lakh¹⁵ was released to the Head Master (HM), Upgraded Madhya Vidyalaya, Pagalbari, Manihari, Katihar for construction of six additional class rooms (ACRs) in the school under SSA during 2011-12.

However, instead of crediting the amount to the bank account¹⁶ of the Vidyalaya Shiksha Samiti (VSS), the DPO Katihar transferred the amount of ₹ 20.06 lakh to a new joint account¹⁷ of the HM and the Secretary, VSS, being operated (since October 2011) in the name of the said school. Worth mentioning that the details of new account in Punjab National Bank, Katihar was made available to the DPO, SSA, Katihar by the then Executive Engineer¹⁸ along with the list of schools and Bank Advice file. The DPO did not scrutinise the VSS's bank account number list or cross-checked it with the originally reported list of bank account numbers of VSSs under his jurisdiction. It was further noticed that the joint account was opened by the then in-charge HM, who was also the self introducer of the account, though no recommendation by any official for the same was on record as asserted (June 2014) by the successor HM. Even the Block Education Officer (BEO), Manihari, Katihar on the other hand, stated (June 2014) that he was unaware of opening of any such new VSS account.

Further, scrutiny of the records revealed (December 2013) that the HM had withdrawn (between November 2011 and October 2012) the entire amount of

¹⁵ Rupees 6,68,675 (14 November 2011) by DD No. 819P, ₹ 13,37,350 (30 December 2011) through transfer.

¹⁶ Account no.-1007701010000884 of Uttar Bihar Gramin Bank, Manihari, Katihar.

¹⁷ Punjab National Bank, Katihar Account No.-0282000100271775.

¹⁸ Shri Anil Kumar.

₹ 20.06 lakh earmarked for construction of ACRs. Neither any expenditure was incurred on construction of school nor were there any books of accounts viz. cash book, Bank Statement etc. maintained. This was also confirmed from the Joint Physical Verification Report conducted by the audit and the Department. Glaringly, of the total withdrawn interest amount of ₹ 4983¹⁹, ₹ 478 was withdrawn by the then HM after his superannuation (July 2012). The other joint account holder i.e. the Secretary of VSS (December 2013) denied signing any withdrawal jointly with the then HM. Even the District Education Officer (DEO) stated (September 2014) that as the bank account was being operated only by the HM, no action was warranted against the Secretary of VSS.

On this being pointed out (December 2013), the DPO, Katihar replied (January 2014) that an FIR would be lodged and intimated to the audit. Later, the BEO, Manihari, Katihar lodged (February 2014) an FIR for fraudulently opening the bank account, withdrawing ₹ 20.06 lakh and defalcating the same. A certificate case was also initiated (August 2014) against the erring HM of the school. The State Project Director, Bihar Education Project confirmed (November 2014) defalcation of SSA funds of ₹ 20.06 lakh which emerged from the investigation conducted by a separate team of an Executive Engineer and a Senior Auditor of the Department. However, this does not absolve the DPO, Katihar of his responsibility of detecting/scrutinising the changed/new VSS bank account number of a particular school, to whom the transfer of funds facilitated the defalcation.

Thus, the failure of the DPO, Katihar in checking an unauthorised opening of VSS account and fraudulently withdrawing from the same by the HM resulted in defalcation of ₹ 20.11 lakh.

The matter was referred to the Government (July 2014); despite reminders their reply had not been received (November 2014).

PUBLIC HEALTH ENGINEERING DEPARTMENT

3.6 Loss to the Government

The benefit of Central Excise Duty exemption on pipes supplied for Water Supply Project could not be availed of due to non-insertion of specific clause by the PHED regarding refund of Central Excise Duty in the contract in certain cases or non-pursuation of the same in other cases, resulting in loss of ₹ 12.58 crore to the Government.

As per Government of India Circular/Notifications²⁰, pipes needed for delivery of water from its source to the plant (including the clear treated water reservoir) and from there to the first storage point and pipes of outer diameter exceeding 20 cm (10 cm with effect from December 2009), being integral part of the water supply projects, were exempted from payment of Central Excise Duty (CED).

In order to avail the benefit of exemption on CED, a specific clause was to be inserted in the contract document and the executing agency was required to get the extended exemption on CED in respect of Water Treatment Project and

¹⁹ Rupees 4,505 on 8 March 2012 and ₹ 478 on 6 September 2012 : Total ₹ 4,983.

²⁰ No. 659/50/2002-CX dated 6 September 2002, Notification No. 6/2006 of 1 March 2006 and 6/2007 of 1 March 2007.

refund to the concerned Executive Engineer (EE). The rates, being provided to the agency under the contract for different items of works including supply of materials, were based on prevalent Schedule of Rates (SoR) which included, among others, the CED leviable on items (Pipes) supplied for utilisation in water supply projects.

A test check of 20 water supply schemes (*Appendix 3.5*) in rural and urban areas pertaining to eight²¹ Public Health (PH) Divisions, however, revealed the following discrepancies:-

(A) Non-insertion of CED exemption clause in the executed contracts

- (i) It was observed that due to non-insertion of CED exemption clause in the contracts executed by three²² PH Divisions with the respective agencies (*Appendix 3.6*), those agencies were allowed to retain the benefit of CED exemption amounting to ₹ 7.61 crore against supply of various categories of pipes.
- (ii) In Darbhanga Division the issue of certificate for CED exemption was delayed by the Division which resulted in avoidable payment of CED of ₹ 0.55 crore for pipes used for the Darbhanga Water Supply Scheme (II).

(B) Non-compliance of CED exemption clause in the contract documents

- (i) In 14 cases (*Appendix 3.7*) under five²³ PH Divisions, though the CED exemption clause was inserted in the contract documents executed with the agencies by the respective PH Divisions, the concerned EEs failed to ensure the compliance of CED clause as they did not apply to the Collector/District Magistrate (DM) for issuance of necessary certificates, for claiming exemption of CED on supplied pipes. This resulted in non-refund of ₹ 1.23 crore by the concerned agencies to the respective Divisions leading to loss to the Government to that extent.
- (ii) In four cases (*Appendix 3.8*) under three²⁴ PH Divisions, the exemption certificates were duly issued by the Collector/DM concerned at the request of respective EEs. However, due to non-refund of availed CED benefits to the respective PH Divisions by the concerned agencies, the Government suffered a loss of ₹ 3.19 crore.

On this being pointed out in audit, five²⁵ out of eight Divisions stated that the matter had been noted for future guidance. However, the EEs, PH Divisions, Patna (West), Darbhanga and Hajipur (one case out of two) shifted the onus of responsibility on PH Headquarters stating that tenders were finalised at Headquarter level. However, the EE, PHD, Hajipur stated (July 2014) that as the deduction of CED had already been made from the technically sanctioned cost of work, the benefit of excise exemption availed of by the agency was not a loss to the Government. The Government, in context of water supply scheme

²¹ Public Health Division: Ara, Aurangabad, Darbhanga, Hajipur, Kishanganj, Patna (West), Purnea and Sasaram.

²² Public Health Divisions: Darbhanga, Hajipur and Patna (West).

²³ Public Health Divisions, Ara, Aurangabad, Hajipur, Purnea and Sasaram.

²⁴ Public Health Divisions, Ara, Kishanganj and Purnea.

²⁵ Public Health Divisions, Ara, Aurangabad, Kishanganj, Purnea and Sasaram.

relating to Arsenic affected villages of Bidupur, Hajipur, Sahdeibujurg and Desari Block of Vaishali district, stated (September 2014) that the main reason for difference in the tender amount and the technical sanction amount was deduction of CED on the different diameter of pipes in the tender amount. As such the benefit of the excise exemption taken by the agencies was not a loss to the Government.

While the replies of the EEs were in itself the corroboration of the fact that non-insertion of CED exemption clause in the contract document led to the loss to the Government, the replies of EE, PHD, Hajipur and that of the Government were factually wrong and not acceptable as the reduction in tender amount (₹ 124.40 crore) as compared to technical sanctioned amount (₹ 139.79 crore) was due to reduction in quantum of materials (pipes) and not due to reduction in rates of pipe through deduction of CED.

Thus, the benefit of CED exemption on pipes supplied for water supply projects could not be availed of due to non-insertion of specific clause by the PHED regarding refund of CED in the contract in certain cases and non-pursuation of the same in other cases, which led to the loss of ₹ 12.58 crore to the Government.

URBAN DEVELOPMENT AND HOUSING DEPARTMENT

3.7 Idle expenditure

Injudicious procurement of cast iron pipes by the Bihar Rajya Jal Parshad for execution of water supply works without ensuring availability of land for the work resulted in idle expenditure of ₹ 3.03 crore.

As per provisions contained in para 7.5 read with para 4.5 of Resolution (July 1986) of the Cabinet Secretariat and Co-ordination Department contained in Bihar Public Works Account (BPWA) Code, availability of land for the project and allotment of funds were to be ensured before inviting tender for awarding the work and the estimate for acquisition of land should be prepared and sanctioned in first phase of the project where the land was required.

A test check (August 2013) of records of the Bihar Rajya Jal Parshad (BRJP) under the Urban Development and Housing Department (Department), Government of Bihar (GoB) revealed that the Department released (July 2006 to February 2010) a sum of ₹ 51.66 crore under XII Finance Commission to the BRJP through the Patna Municipal Corporation (PMC), which included ₹ 2.49 crore and ₹ 2.83 crore for execution of Indrapuri and Patel Nagar Water Supply Schemes respectively. A total quantity of 16,536 meter Cast Iron (CI) pipes costing ₹ 3.32 crore was procured by the BRJP (February and March 2009), out of which 1,365.30 meter pipes were transferred to different water supply schemes. Contracts for civil works required for laying the pipes under the schemes were awarded (April 2009) to two agencies for completion by September 2009. The Chief Engineer, BRJP, after a lapse of more than four years, cancelled (August 2013) the agreement for executing the civil works for the schemes. The Civil works could not be started and the balance 15,170.70 meter²⁶ pipes costing ₹ 3.03 crore remained idle as the works of Indrapuri and Patel Nagar Water Supply Schemes could not commence due to allotment

²⁶ 16536 meter - 1365.30 meter = 15170.70 meter.

(August 2010 and November 2009) of disputed/encroached land by the Government (**Appendix 3.9**).

Thus, the BRJP, in violation of the provisions of BPWA Code, did not ensure the availability of land prior to the initiation of tendering process. Resultantly, the water supply schemes could not be started and the pipes procured worth ₹ 3.03 crore remained unutilised leading to idle expenditure to that extent.

On this being pointed out, the Managing Director (MD), BRJP accepted the audit contention and replied (March 2014) that the tender was published with the impression that site/land would be finalised within the period involved in finalisation of tender and award of work. But, sites were not made available by the Department or their local bodies despite sincere efforts and the work could not be commenced. Further, it was replied (November 2014) by the MD that excess pipes purchased would be utilised in other schemes and proportionate funds would be credited to Patel Nagar and Indrapuri Water Supply Schemes.

Reply was not acceptable since ensuring the availability of hindrance-free land was essential for implementation of project before inviting tender as envisaged in BPWA Code. But, the BRJP had no hindrance-free land on the date of inviting tender for the project.

Thus, the decision of the BRJP to procure CI pipes and finalisation of tender for civil works without ensuring the availability of land for the schemes was imprudent and resulted in idle expenditure of ₹ 3.03 crore. Also, the damage to the pipes left in open to the vagaries of nature could not be ruled out.

The matter was referred to the Government (June 2014); despite reminders their reply had not been received (November 2014).

ECONOMIC SECTOR

WATER RESOURCES DEPARTMENT

3.8 *Misappropriation of Government money*

The failure of Divisional Officer (EE) in complying with the process, procedures and verification of amount reportedly remitted into the treasury facilitated misappropriation of Government money of ₹ 8.37 lakh.

As per Rule 18 of Bihar Public Works Account Code (BPWA) read with Rules 21, 22 (ii), 527 *ibid.* the Divisional Officer, as the primary disbursing officer of the Division, shall be responsible not only for the financial regularity of the transactions of the whole division but also for the maintenance of the accounts of the transactions correctly and in accordance with the rules in force. In discharge of his responsibilities he will be duly assisted by a Divisional Accountant, who as primary auditor would be charged with the responsibility of applying certain preliminary checks to the initial accounts, vouchers, etc, apart from monthly settlement with all treasuries in respect of the transactions of the entire division with them.

A test check of records (November-December 2013) of the Office of the Executive Engineer (EE), Head Works Division, Valmiki Nagar, West Champaran revealed that an amount of ₹ 10.45 lakh was shown as remitted into the treasury through 15 challans during June 2010 to October 2013. However, during treasury verification (Bagha Treasury), it was noticed that eight challans worth ₹ 2.08 lakh had only been remitted into the treasury. The rest seven challans totalling ₹ 8.37 lakh (*Appendix 3.10*) were neither remitted into the treasury nor credited into Government accounts. This was also confirmed (December 2013) by the Sub-Treasury Officer, Bagha and the State Bank of India (SBI), Bagha Branch. The audit observation was further confirmed by the fact that revised Form 51²⁷ for the period from March 2012 to February 2013, issued to the Accountant General (A&E), Bihar bore fake signatures of Sub-Treasury Officer, Bagha and Executive Engineer of the Division, which was duly confirmed by those officers.

Thus, the failure of Divisional Officer (EE) and Divisional Accountant in complying with the process and procedures and verifying the amount reportedly remitted into the treasury, as stipulated in BPWA Code, led to misappropriation of ₹ 8.37 lakh.

On this being pointed out, the EE accepted (December 2013) the audit observation and stated that the amount had not been remitted into the treasury by the then cashier which would be reported to the higher authority for action. The Government also accepted (August 2014) the facts and figures of the audit observation and forwarded (November 2014) the reply of the EE which stated (September 2014) that an FIR for defalcation of ₹ 7,70,377 had been lodged (September 2014) against the then cashier while the FIR for ₹ 66,343 had already been lodged against the erring official in December 2013.

²⁷ *Schedule of Monthly Settlement with Treasuries, Form 51 (Schedule, XLV-Form No. 162) (with supporting Consolidated Treasury Receipts and Certificate of Issues, signed by the Treasury Officers).*

3.9 Loss to the Government due to short deduction of royalty

Non-adherence to the Bihar Minor Mineral Concession Rules and Special Conditions of Contract led to short deduction of royalty to the tune of ₹ 12.28 crore and loss to the Government to that extent.

Rule 26 (5) of the Bihar Minor Mineral Concession Rules (BMMCR), 1972 stipulates that the State Government may, enhance or reduce the rate at which rents/royalties shall be payable in respect of any minor mineral²⁸ with effect from the date of publication of the notification. Further, Section 5 of the Special Conditions of Contract stipulates that the bills of the contractors will be cleared only after submission of the clearance certificate for payment of royalties for minor minerals from the competent authority failing which the same will be deducted from the contractor's bills at the current rates approved by the Mining Department.

As per notification issued (January 2012) by the Mines and Mineral Department, Government of Bihar, the rate of royalty on earth was revised from ₹ 15 to ₹ 22 per cum. The revised rate was effective from the date of issue of Gazette Notification.

Test check of records (August 2013 to July 2014) of seven agreements²⁹ under three divisions³⁰ revealed that against provision of 2,32,06,927.53 cum of earth in filling of embankment, 1,75,45,475.00 cum of earth was filled by the Divisions during March 2012 to March 2014 and deducted royalty at the rate of ₹ 15 per cum instead of applicable rate of ₹ 22 per cum. This resulted in short deduction of royalty of ₹ 12.28 crore as detailed in *Appendix 3.11*.

The Department (September 2014) accepted the audit findings and stated that the recovery of the differential amount of royalty would be made from contractors.

Thus, non-adherence to the provisions of the BMMCR and non-deduction of royalties at appropriate rates prevalent at the time of execution of work as per the Special Conditions of Contract resulted in short deduction of royalty of ₹ 12.28 crore as of March 2014 and loss to the Government to that extent.

²⁸ Ordinary earth used for filling or levelling purpose in construction of embankment, roads, railways and buildings.

²⁹ Four Agreements of Bagmati Division no. 1; Sitamarhi (1SBD/12-13; 22SBD/12-13; 23SBD/12-13; 17SBD/10-11, two agreements of Irrigation Division, Bhagalpur (13 SBD/2011-12; 01 SBD/2012-13) and one Agreement of FCD, Darbhanga (1SBD/12-13).

³⁰ Bagmati Division No-1 Sitamarhi, Irrigation Division, Bhagalpur and Flood Control Division, Darbhanga.

3.10 Excess payment

Injudicious adoption of incorrect formula for calculation of bills pertaining to royalty of earth by the Department against the provisions of Standard Bidding Document and without the sanction of the Finance Department led to an excess payment of ₹ 3.57 crore and undue financial advantage to contractors.

As per Standard Bidding Document (SBD) clause 4A (Section 3.3 of General Conditions of Contract), in case of percentage rate tender, if for any special reasons, the contract provides for the payments for work done to be made at a specified percentage below or above the rates entered in the sanctioned estimate of the work (or the Schedule of Rates), it should be stated in clear terms in the contract that the deductions or additions, as the case may be, of the percentage would be calculated on the gross, and not on the net amounts of the bills for the work done and in fixing the percentage, it should be clearly borne in mind that calculation would be made accordingly. Further, Rule 35 of Rules of Executive Business, 1979 (16 January 1979) also stipulates that the Finance Department should be duly consulted before issue of orders upon all proposals which affect the finances of the State.

Test check (August 2013-September 2014) of records under four Divisions³¹ revealed that 11 agreements valuing ₹ 190.48 crore were executed, each 15 *per cent* below the Bill of quantity (BOQ), during 2009-12 with the agencies for 'raising and strengthening of embankments and extension, renovation and maintenance (ERM) works' against respective dates of completion as detailed in *Appendix 3.12*.

Further, scrutiny of records revealed that the contractors had executed total works of ₹ 185.49 crore as of September 2014 which included 1,57,92,153.11 cubic metre of earth work. The royalty deducted from the bills at the rate of ₹ 15 per m³ for the earth work amounted to ₹ 23.69 crore. It was, however, observed that in violation of the clause, the calculation was done by deducting 15 *per cent* value from the net amount arrived at by deducting the amount of royalty from the gross value of work, and then re-adding the amount of royalty on the resultant value. However, as per clause 4A of SBD, the calculation should have been done on gross amount by deducting the rate *per cent* agreed upon over the BOQ rate (15 *per cent*) followed by deduction of the royalty (*Appendix 3.12*). Thus, the erroneous calculation method adopted by the Divisions resulted in undue financial advantage of ₹ 3.57 crore to the contractors.

The Water Resources Department (WRD) replied (August 2014) that as per the suggestion of the Finance Department (FD), an opinion was sought from the Road Construction Department (RCD). As no opinion was provided by the RCD, the WRD issued a notification (June 2011). The WRD further stated that since royalty is added after the addition of overhead charges and contractor's profit, the amount of payment to contractor must not be influenced by the rate quoted by him as percentage above or below the schedule of rate by including the amount of royalty. The WRD further added that the procedure adopted for

³¹ Flood Control Division (FCD), Darbhanga; Waterways Division, Ekangarsarai; Irrigation Division, Raghapur; Flood Control Division No. 2, Jhanjharpur.

bill of payment was in consonance with the schedule of rate adopted for the work and in accordance with the letter and spirit of SBD.

The replies were not acceptable as the letter issued for the calculation of bills was not in consonance with the SBD clause, which in clear terms prescribed for all additions or deductions of percentage, on gross, and not on net amounts of the bills for the work done. Further issue of a notification affecting the Finances of the State without consulting the FD was irregular. It is also pertinent to mention that the calculation method adopted by other Departments³² of the Government including the RCD was in accordance with the audit observation only.

3.11 Wasteful expenditure

Two anti-erosion works on which an expenditure of ₹ 91.35 lakh was incurred failed to protect the river banks from floods which resulted in wasteful expenditure to that extent.

Para 4.9 of Flood Management Rules, 2003 envisaged that every year, the field offices shall make a list of the flood protection works to be done before the next flood season on the basis of river behaviour in the antecedent flood period and experience gained during the period. For this purpose, every Chief Engineer (CE) of the Water Resource Department (WRD) shall constitute an Anti Erosion Committee (AEC) for flood prone areas of his jurisdiction. Based on recommendation of the AEC, the field officers shall prepare the estimate and put up before the State Technical Advisory Committee (TAC). The field officers of the WRD shall submit again the revised schemes based on the recommendation of the TAC to the Departmental Scheme Review Committee (SRC). The SRC shall prioritise and select the most essential schemes.

A test check of records (January 2013) of the Executive Engineer (EE), Sone Flood Protection Division, Bihta (EE) revealed that anti-erosion work of Ramnagar tola, Village- Haldi Chhapra, Maner on the right bank of river Ganga, administratively approved (AA) (February 2011) for ₹ 62.29 lakh and technically sanctioned (TS) (February 2011) for ₹ 62.05 lakh, was awarded (February 2011) to an agency³³ for completion of work by May 2011 at a total cost of ₹ 52.22 lakh. It was however observed that contrary to the proposal of field offices to do boulder work for anti-erosion, the Department laid porcupines on the recommendation of the TAC (January 2011) and the SRC (January 2011). The work started (March 2011) and completed (June 2011) by the agency and the payment of ₹ 51.11 lakh was made to it but the executed work failed to sustain the heavy current of river Ganga and 85 per cent of porcupines were washed away during flood 2011.

Scrutiny further revealed that the AEC again recommended (September 2011), for execution of the protection work before Flood 2012, after observing the past experience of failure of porcupines. But the TAC again recommended (October 2011) for laying of porcupines filled with Jhanki which was approved (November 2011) by the SRC. The work, administratively approved (November

³² Building Construction Department, Public Health and Engineering Department, Road Construction Department, Rural Works Department.

³³ Sri Jitendra Kumar Singh, Saran.

2011) for ₹ 55.40 lakh and technically sanctioned (November 2011) for ₹ 48.50 lakh was awarded (January 2012) by the Division to an agency³⁴ for ₹ 40.81 lakh. The work, executed and completed (May 2012) with an expenditure of ₹ 40.24 lakh, again did not sustain during Flood 2012. Thus, despite spending ₹ 91.35 lakh on anti-erosion works during 2011 and 2012, the Department failed to prevent erosion in Ramnagar tola.

Subsequently, before Flood 2013, the TAC again recommended (October 2012) laying of porcupine filled with Jhanki at an estimated cost of ₹ 16.28 lakh. The work, recommended by the SRC, could not be started due to strong protest by villagers.

The Department replied (July 2014) that during Flood 2011, new shoal formation started near the site that changed the direction of current causing heavy pressure at the site. This started displacement and toppling of porcupines. Further in Flood 2012, the porcupine work served satisfactorily.

The reply was not acceptable as the Department failed to learn lessons from two previous failed attempts to stop erosion by using porcupines. The attempt to use the same method a third time during 2013, indicated the lack of seriousness on the part of the Department to prevent the erosion threatening the life and property of people living in the vicinity of embankment.

ROAD CONSTRUCTION DEPARTMENT

3.12 Additional burden on State exchequer due to non-recovery of risk and cost amount

The Department invoked the risk and cost clause but failed to recover the differential amount needed for completing the balance work which resulted in creation of additional burden of ₹ 2.18 crore on the State exchequer.

Clause 14 of the Standard Bidding Document (SBD) provides that in case of cancellation of a contract, the incomplete work shall be carried out at the risk and cost of the contractor. Any excess expenditure incurred or to be incurred by Government in completing the works or excess loss or damages suffered by the Government shall be recovered from the moneys due to the contractor on any account or from the contractor himself in accordance with the provisions of the contract and clause 3 of the SBD provides that upon rescission of a contract, the earnest money deposits, Security Deposits (SDs) and performance guarantees shall be forfeited.

Further, Section-1, Instructions to Bidder, clause 4.5 (A) of the SBD provides that to qualify for award of the contract, the bidder should have, in the last five years satisfactorily completed volume of construction work of at least the amount equal to the 50 *per cent* of estimated cost of work for which the bid has been invited. As per clause 4.3 (b) *ibid*, the bidder was required to furnish the total monetary value of construction work performed for each of the last five years.

³⁴ Sri Chandeshwar Roy, Patna.

Test check of records (September 2013) of the Executive Engineer (EE), Road Division (RD), Gopalganj revealed that the work of widening and strengthening in Km 28 to 38 (P) of Mirganj-Bhagipatti-Samaur road, including construction cost of drainage and culverts in Gopalganj district, was administratively approved (August 2007) by the Department for ₹ 8.16 crore and was technically sanctioned (November 2007) for ₹ 8.01 crore. The work was awarded (April 2008) to an agency³⁵ for ₹ 8.45 crore on the basis of single tender as only one bidder was technically qualified by the Departmental Tender Committee. The period of completion was 12 months (March 2009). It was, however, observed that the work was awarded to the agency without fulfilment of minimum requirement as required under clause 4.3 (b) and 4.5 (A) of the SBD. The bidder submitted the values of works performed during the year 2005-06 and 2006-07 only against the required norms of five years. The total monetary values of works performed in 2005-06 and 2006-07 were ₹ 54.56 lakh and ₹ 1.34 crore respectively which were much less than the required value of work of ₹ 4.05 crore (50 *per cent* of ₹ 8.10 crore). Despite the above deficiencies, the work was awarded to the contractor.

Scrutiny further revealed that the contractor failed to carry out the above work and executed only 24 *per cent* of the work. The EE, RD also issued instructions (July and September 2009) to the contractor to bring progress in the work. But the contractor did not take notice of the above instructions. The Department, due to slow and tardy progress of work and after execution of the work valuing ₹ 2.01 crore, decided (December 2009) to rescind the contract under Clause 14 of SBD invoking risk and cost clause. The Department further decided (March 2010) to execute the balance work through Bihar Rajya Pul Nirman Nigam Pvt. Ltd. (BRPNNL), Patna. The BRPNNL, to execute the balance work of ₹ 6.44 crore, entered (September 2010) into a fresh agreement for ₹ 8.49 crore with M/s Baibhaw Construction Pvt. Ltd. The work was completed at ₹ 8.89 crore, which led to an additional cost of ₹ 2.18 crore (*Appendix 3.13*).

On this being pointed out, the EE, RD stated (September 2013) that the tender was finalised by the Departmental Tender Committee. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department (RCD), GoB stated (November 2014) that the balance risk and cost value of ₹ 2.18 crore is being recovered.

3.13 Unfruitful expenditure on idle plant and equipment

The imprudent decision of the Department to purchase plants and equipment without ensuring their utilisation led to unfruitful expenditure on idle plants amounting to ₹ 1.34 crore.

The Planning Authorisation Committee³⁶ of the Road Construction Department (Department) accorded (October 2006) administrative approval for purchasing two sets of Hot Mix Plants (HMPs) and two Wet Mix-macadam Plants (WMPs)

³⁵ M/s Rabindra Kumar Dubey, Siwan.

³⁶ Comprising of Commissioner-cum-Secretary, Road Construction Department, Bihar; Additional Finance Commissioner, Bihar; Secretary, Planning and Development Department, Bihar; Development Commissioner, Bihar.

for ₹ 10.84 crore as the number³⁷ of HMPs in the State is meagre when compared with the length of roads in the State and the height of road side flanks increases waterlogging of roads and flank cutting and dressing are essential to increase the lifespan of roads.

Test check of records of National Highways (Mechanical) Planning Division, Sheikhpura, Patna revealed (November 2013) that the supply orders (July 2008 and March 2007) for both HMPs and WMPs were given by the Chief Engineer (Mechanical), RCD, Bihar, Patna.

Scrutiny further revealed the following:

- The HMP purchased (August 2008) at the cost of ₹ 39 lakh, located at Batamore, Mokama was not commissioned due to non-availability of work/material in the Division. Therefore the plant was transferred to the Executive Engineer (M), Mechanical Division, RCD, Bhagalpur in March 2013 and was commissioned in June 2014. However, the guarantee period of the HMP expired (February 2010) and the plant remained idle for more than six years.
- The HMP at Gaighat, Patna was commissioned in June 2009. The agency was paid (December 2008) full amount of ₹ 39 lakh. However, its utilisation ranged from 0.68 *per cent* (2009-10) to 23 *per cent* (as of September 2013) of its full capacity (55000 MT in a year) during 2009-13. Besides, due to non-conforming to the emission norms set by the Bihar State Pollution Control Board (BSPCB), the operation of HMP was stopped (September 2013) by the BSPCB.
- The WMP located at Gaighat was commissioned in October 2008 without load test due to non-availability of work/material in the Division and remained idle since then. Its guarantee period also expired (October 2009) and the full payment of ₹ 27.82 lakh was made to the agency in August 2012.
- The WMP located at Baijnathpur, Saharsa was commissioned in March 2010 without load test as no work was made available by the Division and remained idle since then. The full payment of ₹ 27.82 lakh was also made to the agency in August 2012.

The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, RCD, Bihar replied (November 2013) that machines were purchased to meet the requirement and final decision to install them at various places was taken by the Department. He further added (November 2014) that as the contractors had their own plants, the departmental plants could not be utilised to its rated capacity. Now steps have been taken to ensure its utilisation.

Thus, the HMPs/WMPs purchased to meet the paucity of plants and to increase the life span of roads remained idle/under-utilised for over six years. The imprudent decision of the Planning Authorisation Committee without ensuring the utilisation of machines resulted in unfruitful expenditure of ₹ 1.34 crore.

³⁷ Total 13nos. (10 under State ownership and three under Central ownership).

INDUSTRY DEPARTMENT

3.14 Creation of additional liability due to non-imposition of risk and cost amount

The Infrastructure Development Authority, Patna failed to invoke risk and cost clause which resulted in imposition of additional burden of ₹ 2.22 crore on the State exchequer.

Clause 14 of the Standard Bidding Document (SBD) Published by the Road Construction Department, Bihar, Patna provides that if the contractor defaults in proceeding with the work with due diligence, the competent authority shall cancel the contract and the incomplete work shall be carried out at the risk and cost of the contractor. Any excess expenditure incurred or to be incurred by Government in completing the works or excess loss or damages suffered by the Government shall be recovered from the moneys due to the contractor on any account or from the contractor himself in accordance with the provisions of the contract.

Test check of records (October 2013) of the Infrastructure Development Authority (IDA), Patna revealed that the work for construction of Laboratory, Principal Residence and Hostel for Girls and Boys etc. for Nalanda College of Engineering at Chandi was administratively approved (June 2008) by the State Government for ₹ 39.84 crore and was technically sanctioned (September 2010) for ₹ 29.34 crore, which was revised for ₹ 31.13 crore (October 2011). The IDA, Patna was made the executing agency for the work. The IDA executed an agreement with M/s IVRCL Infrastructure and Projects Limited (October 2010) for ₹ 31.66 crore for completion of work by June 2012.

Scrutiny further revealed that despite reminders (January 2011 to August 2011) the contractor failed to carry out the work as per time schedule. The IDA, Patna owing to slow and tardy progress of the works and gross negligence of the contractor in completing the works, decided (September 2011) to rescind the contract after execution of the works valuing ₹ 1.15 crore and forfeited the Security Deposit of ₹ 72.50 lakh³⁸. However the IDA, Patna did not invoke the risk and cost clause as stipulated in Clause 14 of SBD and entered into fresh agreement (December 2011) for ₹ 33.46 crore with another contractor to execute the balance work of ₹ 30.51 crore in November 2011. Thus, the failure of the IDA to invoke the risk and cost clause resulted in imposition of additional burden worth ₹ 2.22 crore³⁹ on the State exchequer.

On this being pointed out (October 2013), the Chief Consultant, IDA Patna stated that due to slow progress of work, the agreement was rescinded after forfeiting Security Deposit of ₹ 72.50 lakh and noted the audit observation for

³⁸ Earnest Money: ₹ 63,50,000+ Security Deposit: ₹ 9,00,619= ₹ 72,50,619, i.e. ₹ 72.50 lakh.

³⁹ Rupees 33.46 crore - ₹ 30.51 crore - ₹ 0.73 crore = ₹ 2.22 crore.

future guidance but did not specify the reasons for not invoking risk and cost clause against the contractor.

The reply of the Chief Consultant, IDA Patna was not acceptable as the IDA should have invoked the risk and cost clause against the contractor for gross negligence in completing the works which resulted in putting extra burden on the state exchequer. Besides, the students of Nalanda College of Engineering at Chandi were also deprived of the facilities.

The matter had been reported to the Government (May 2014); despite reminders, their reply had not been received (November 2014).

Patna
The



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Countersigned



New Delhi
The

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