

## CHAPTER-V

### 5. Compliance Audit Observations relating to State Public Sector Undertakings (other than Power Sector)

Important audit findings emerging from test check of transactions made by the Public Sector Undertakings other than Power Sector are included in this Chapter.

#### Transport Department

#### Uttar Pradesh State Road Transport Corporation

#### 5.1 Loss to Government due to non-levy of Service Tax: ₹ 18.31 crore

**The Corporation, in contravention to the provisions of the Service Tax Act, did not levy and collect Service Tax from passengers of AC buses which resulted in loss to the Public Exchequer amounting to ₹ 18.31 crore.**

The service of transportation of passengers by stage carriage was exempted from the Service Tax as the same was included in the Negative List. However, by amendment (1 March 2016) in the Negative List, the Government restricted the exemption to the services of transportation of passengers only by non-air-conditioned buses w.e.f. 1 June 2016. Therefore, the service of transportation of passengers by Air Conditioned (AC) buses was brought into Service Tax Act w.e.f. 1 June 2016. Accordingly, the State Transport Corporations were required to levy and collect Service Tax from the passengers of such AC buses and deposit the same with the Government.

Uttar Pradesh State Road Transport Corporation (Corporation) is engaged in the business of transportation of passengers by AC stage carriages (both its own AC buses as well as the hired AC buses) on different designated routes and was required, in light of the above amendments, to levy and collect Service Tax from passengers of such buses. On the advice of the service tax consultant of the Corporation, the Finance Controller (FC) brought (June 2016) this fact to the notice of the Chief General Manager (CGM) Operations and directed him to ensure compliance of the amended provision of the Service Tax Act. FC further reminded (December 2016) CGM Operations that as no action has been taken by the CGM Operations hence he would be personally liable for any liability arising in future.

Audit noticed that CGM Operations, despite amendment in the Service Tax Act as stated above and express directions from the FC to this effect, failed to comply with the same. The Corporation earned a total revenue of ₹ 305.23 crore from the operation of AC buses during the period from June 2016 to June 2017. Non-levy and collection of Service Tax resulted in loss to the Government exchequer amounting to ₹ 18.31 crore (15 *per cent* of 40 *per cent*<sup>1</sup> of ₹ 305.23 crore). Further, non-collection and deposit of Service Tax may also attract penal proceedings under the provisions of the Service Tax Act.

<sup>1</sup> Calculated after allowing abatement of 60 *per cent* on revenue as provided in the Government of India notification No. 26/2012- Service Tax dated 20 June 2012.

The Management accepted (June 2019) the audit observation and stated that the process of determination of liabilities of Service Tax payable and its payment has been initiated.

However, no liability has been fixed so far by the Corporation against the CGM Operations for not initiating timely action to levy and collect Service Tax.

The matter was reported to the Government (August 2018). Reply is still awaited (September 2019).

## **Housing and Urban Planning Department**

### **Uttar Pradesh Avas Evam Vikas Parishad**

#### **5.2 Avoidable payment of interest**

#### **The Parishad had to pay avoidable compensation of ₹ 11.38 crore to the allottees due to violation of tendering process.**

Uttar Pradesh Avas Evam Vikas Parishad (*Parishad*) opened registration (21 January 2011 to 5 March 2011) for allotment of flats (216 flats) in Shikhar Enclave, Vasundhara Yojna, Ghaziabad under a self-finance scheme with the expected date of completion of construction in 24 months from the date of issue of the demand notice. The eligibility draw was organised on 7 June 2011 and demand letters were issued in June 2011. Therefore, tentative date of possession of flats worked out to July 2013. The *Parishad* executed two agreements for construction of flats on 3 August 2011. As per the agreements with the Contractors, the dates of start and completion of work were 3 August 2011 and 2 February 2013 respectively.

Further, the *Parishad* had invited (21 July 2013) bids based on a two bid system for external development works at Shikhar Enclave. Technical bids of three firms were opened (29 July 2013) and all the firms were found technically qualified. Thereafter, their financial bids were opened (30 July 2013) and recommendation for award of work in favour of the lowest bidder (who was also one of the contractors for construction of the flats) was sent to the Superintending Engineer (SE) for approval. However, the SE did not approve the recommendation on the grounds of poor progress made by the contractor in the construction work of the said building. The Contractor was informed (4 September 2013) about cancellation of the bid without assigning any reason thereof. Fresh tenders were invited (12 September 2013).

The Contractor moved the High Court and obtained a stay (8 October 2013) on award of work of external development through fresh tendering on the grounds that re-invited tenders would be disadvantageous to the firm. The stay could not be vacated in the next 21 months. As a result, no progress could be achieved in the matter. On the other hand, allottees were also demanding interest for the period of delay. The *Parishad* tried to settle the matter out of court with the Contractor who agreed (8 July 2015) to settle the matter provided the work was awarded in its favour at the rates quoted in the tender which was cancelled. Accordingly, the *Parishad* Board decided (8 October 2015) in favour of an out of court settlement keeping in view the delay, and the demand of interest/compensation by the allottees. The work was awarded in favour of the Contractor (02 November 2015). The High Court

dismissed the writ petition as withdrawn (21 January 2016) at the request of the petitioner.

The *Parishad*, after approval of final costing, decided 31 December 2016 as the date for physical possession which was further extended to 31 July 2017 due to slow progress of work.

Meanwhile, aggrieved by excessive delay in handing over of the flats, allottees demanded (September 2016) interest on the ground that the *Parishad* had charged interest at the rate of 13.5 *per cent* from the allottees who had defaulted in making timely payment. The *Parishad* decided (30 December 2016) to pay interest at the rate of six *per cent* to allottees after six months from the date of last deposit made by them and accordingly paid an interest amounting to ₹ 15.60 crore to 201 allottees (for 37 months).

Audit analysed the reasons for delay. While assessing records relating to the tendering process, it noticed (September 2017) that the Tender Committee had not analysed the technical bid (Pre-Qualification Bid) properly as per the requirements of the standard tendering process. The bidders were required to submit details of works satisfactorily completed by them during the last three financial years indicating the date of start of the work, the date of completion of the work, the amount of work actually completed, etc. Further, as per terms of the tender, if any ongoing work of a tenderer was running behind schedule by more than 15 *per cent* due to fault of the contractor at a stage when 50 *per cent* time period from the date of start had passed, the contractor was to be held technically disqualified and his financial-bid was not to be opened.

Though the Tender Committee analysed the details of works satisfactorily completed by the tenderer during the last three years, it ignored the status of ongoing work of the Contractor. This resulted in omission to analyse the bids on this important pre-qualification criterion. Instead the Tender Committee treated all the participants as technically qualified, and recommended for opening their price bids despite non-submission of required information regarding on-going works by the Contractor.

Later on, the SE cancelled the tender on the ground that the progress of construction of flats by the Contractor was less than 50 *per cent*. The Contractor obtained a court stay on the ground that his bid was cancelled without assigning any reason. This delayed the work for at least 27 months<sup>2</sup>. Thus, violation of the tendering process by the Tender Committee resulted in delay of 27 months and consequent payment of interest for such period amounting to ₹ 11.38 crore<sup>3</sup>.

The *Parishad* stated (January 2019) that evaluation of pre-qualification bid was correctly done as per pre-qualification condition by the Tender Committee.

The Government, however, accepted (June 2019) the contention of Audit but did not intimate about initiation of any action for fixing responsibility on the concerned officials of the Tender Committee.

<sup>2</sup> Period of stay *i.e.* 8 October 2013 to 21 January 2016 (27 Months and 14 days).

<sup>3</sup> ₹ 15.60 crore/37\*27= ₹ 11.38 crore.

### 5.3 Loss to *Parishad* due to incorrect Reserve Price

**The *Parishad* was deprived of ₹ 2.27 crore due to incorrect fixation of Reserve Price of auctioned plots.**

Para 16.1 of the Costing Guidelines (1986 as amended in 2001) of the Uttar Pradesh Awas Evam Vikas *Parishad* (*Parishad*) provides that the reserve price of the commercial plot shall be fixed at twice the prevalent land rates. It also provides that if the *Parishad* has auctioned nearby land at a rate above/below the reserve price, the auction rate of nearby land would be considered for fixation of the reserve price of the said plot. In addition to this, 12 *per cent* freehold charges and 10 *per cent* corner charges (for corner plots) shall be loaded to the cost of plot to arrive at the reserve price.

Audit noticed (January 2017) that the *Parishad* auctioned (April 2016) a commercial plot (16/com-4) measuring 450.00 sqm at Sector 16 of the Vrindavan Yojna, Lucknow at the rate of ₹ 59,500 per sqm (Reserve Price ₹ 35,840 per sqm). The *Parishad*, however, without considering the auctioned rate of the plot (16/com-4), fixed the reserve price of nearby commercial plots (Plot No. 16/com-5,6 and 7) at the rate of ₹ 35,840 per sqm, fixed at twice the prevalent sector rates of ₹ 16,000 *plus* 12 *per cent* free hold charges, and auctioned these plots (on 22 July 2016). Moreover, the *Parishad* did not record any reason for not considering auctioned price of the nearby plot (16/com-4).

Thus, the *Parishad* was deprived of ₹ 2.27 crore due to incorrect fixation of reserve price (*Appendix-5.1*).

Audit further noticed that there was no system in existence in the *Parishad* to ensure that the reserve price had been fixed correctly as per the extant guidelines/rules framed by it. The fact that nearby commercial plot had been auctioned at a much higher rate, was not factored into the fixing of reserve price of the plots in question. This indicates that the MIS at *Parishad* was deficient.

The *Parishad* stated (January 2019) that as the areas of plot no 16/com-5 and 16/com-6 were slightly less than that of plot no 16/com-4; hence, there was a possibility of getting of lower bids. No reply in respect of plot no. 16/com-7 was furnished.

The Government accepted (June 2019) the contention of Audit that specific reasons for not considering auction price of nearby plots for fixation of reserve price should have been recorded.

### 5.4 Undue favour extended to the Contractor

**The *Parishad* suffered a loss of interest amounting to ₹ 1.50 crore due to release of mobilisation advance of ₹ 40.86 crore to the contractor against the provision of Financial Hand Book and before the necessary Environmental Clearance was received.**

Para 456 of Volume VI of the Financial Hand Book (FHB) of the Government of Uttar Pradesh provided that advances to contractors are not allowed except for secured advances not exceeding 75 *per cent* of the value of material brought to the site. Further, Para 457 of FHB provided for advance payment

for the work actually executed. As per Government of India (GoI) notification (September 2006) also, no activity related to Building and Construction projects can be undertaken by the Project Management except for securing of the land prior to obtaining the necessary environmental clearance (EC) from the State Level Environment Impact Assessment Authority (SEIAA), where required. Moreover, as per the Central Vigilance Commission (CVC) guidelines (April 2007), Mobilisation Advance (MA) extended to a contractor should essentially be need based and its recovery should be time based and not linked with the progress of work.

The Construction Division-15 (Division), Lucknow of the Uttar Pradesh Avas Evam Vikas Parishad (*Parishad*) entered into an agreement (January 2016) with a contractor for construction of 1,680 multistoried flats in the Samajwadi Avas Yojna, and 448 multistoried residential flats under the self-financed scheme in Sector-8, Avadh Vihar Yojna, Lucknow for a total consideration of ₹ 408.63 crore. The scheduled dates of start of work and its completion were 27 January 2016 and 26 July 2018 respectively. The *Parishad* could obtain the necessary EC for construction of the above projects only on 2 September 2016 from the SEIAA, Uttar Pradesh. As per the clauses of the agreement, 10 *per cent* interest free MA was to be provided to the contractor and its recovery was to be commenced after completion of 20 *per cent* of the work. Accordingly, *Parishad* provided an MA of ₹ 40.86 crore<sup>4</sup> to the contractor in three instalments from February 2016 to May 2016.

Scrutiny of the records in view of the extant provision of FHB, GoI notification for obtaining EC, and the CVC guidelines revealed (July 2017) following irregularities:

- The FHB prohibited any advances to contractor except secured advance against material and advance against the work actually executed. Further, the *Parishad* has no documented policy for providing MA. It has also not obtained any approval or exceptions from FHB provisions from the State Government for providing MAs to contractors. Thus, providing MA of ₹ 40.86 crore to the Contractor was not covered under General Financial Rules applicable in the State.
- The *Parishad* had fixed the date of start of work as 27 January 2016 without obtaining the necessary EC. The *Parishad* had released ₹ 40.86 crore MA to the Contractor in three instalments from February 2016 to May 2016 despite being aware of the fact that the necessary EC had not been received, and that no work could possibly be initiated by the Contractor before the EC was received. Audit observed that the *Parishad* had also released the second and the third instalments of the MA (March 2016 and May 2016) without obtaining the utilisation certificate for the earlier instalments. It was verified by Audit from the records of the *Parishad* that the Contractor had not commenced any work till 2 September 2016, being date of approval of EC, on the grounds of non-receipt of the EC. Thus, grant of MA not only resulted in extending an undue favour to the Contractor but also of loss of interest, amounting to ₹ 1.50 crore (*Appendix-5.2*).

<sup>4</sup> ₹ 24.52 crore on 17 February 2016, ₹ 14.30 crore on 30 March 2016 and ₹ 2.04 crore on 19 May 2016.

- MA provided to the Contractor was not in consonance with the CVC guidelines (April 2007) also which stated that MA to Contractors should essentially be need based and its recovery should be time based and not linked with the progress of work. The *Parishad* had delayed in adoption of the CVC guidelines by nine years in May 2016. However, the CVC guidelines without being adopted, do serve as best practices and should have been considered in the extant case too.

The Management stated (February 2019) that the MA was released as per terms of agreement for construction of boundary wall, leveling of site, construction of store, arrangement of labour, construction of labour hut and installation of batching plant etc.

The Government accepted (June 2019) the contention of Audit but it did not indicate action with respect to fixing the responsibility of the concerned officials.

### **Infrastructure and Industrial Development Department**

#### **Uttar Pradesh State Industrial Development Corporation Limited**

Uttar Pradesh State Industrial Development Corporation Limited, Kanpur (Company) for achievement of its objective of planned industrial development, acquires land from landowners. The acquisition proposals are based on availability of finances, developmental cost of the industrial area and demand of industrial land in the particular area. The Land Acquisition Act, 1894 (LAA) empowers the company to do so.

The Land Acquisition Act, 1894 (LAA) read with the Government of Uttar Pradesh (GoUP) order (December 1995) prescribes the process of acquisition of land through District Authorities and system of payment of compensation for the same. The District Authorities additionally charge 10 *per cent* of the estimated compensation as acquisition charges. Further, as per GoUP Order (December 2005) in case the proposal of acquisition of land is withdrawn at a certain stage or gets lapsed, a certain percentage of acquisition charges is deducted by the District Authorities depending on the stage of acquisition process completed. The extant provisions are summarised as below:

<b>Stage of Land Acquisition Process</b>	<b>Time frame for issue of notifications/ declaration of award</b>	<b>Per cent of compensation amount required to be deposited before proceeding to the next stage</b>	<b>Per cent of deduction of acquisition charges if the process is withdrawn/lapsed at various stages</b>
1. Checking of proposal of land acquisition by District Authorities and conducting of preliminary inspection.	-	20 (including 10 <i>per cent</i> as acquisition charges)	25
2. Issue of preliminary notification u/s 4 of LAA informing that land in any locality is needed for public purposes.	No time frame as preliminary stage	70	35
3. Issue of notification u/s 6 of LAA declaring that land is needed for public purposes after hearing objections, if any, of land owner u/s 5A.	within one year of the issue of notification u/s 4 of LAA	20	50
4. Declaration of award u/s 11 of LAA	within two years of the issue of notification u/s 6 of LAA		100

With the reference to the above provision of Land Acquisition Act, 1894 the compliance audit of the Company revealed a loss of ₹ 9.41 crore as discussed below:

### 5.5 Loss to the Company due to unprofessional approach

**The Company initiated the land acquisition proposal without entering an agreement with the Bharat Electronics Limited and consequently suffered a loss of ₹ 6.49 crore on account of cancellation of the acquisition process.**

As per Section 39 of the LAA, an agreement is required to be executed by the proposing agency in case land is to be acquired for a company.

Bharat Electronics Limited (BEL) intimated (April 2012) its requirement<sup>5</sup> of 200 acres of land and requested Company to initiate the process for the same. BEL had also categorically asked Company for certain information such as location of land, approximate cost involved, time to be taken etc. before commencing the acquisition process. The Company, however, initiated the acquisition process for 394.32 acres of land in three villages (Dehra, Rawli and Udayrampur) located in the Industrial Area of Masoorie-Gulawati in district Ghaziabad without furnishing the required details to BEL. This proposal was in fact a revival of an earlier proposal which was modified to include the requirements of BEL. An acquisition proposal was accordingly sent (April 2013) to the District Authorities, Ghaziabad. The Company also requested (October 2013) the District Authorities to adjust an amount of ₹ 37.10 crore which was deposited by the Company towards its previous land acquisition proposals that could not materialise, towards meeting out the 10 *per cent* acquisition charges and 10 *per cent* compensation (₹ 18.55 crore each) pertaining to the BEL proposal. The notification u/s 4(1)/16<sup>6</sup> of the LAA was published on 28 December 2013.

The District Authorities further demanded (June 2014) ₹ 203.04 crore<sup>7</sup> for the issue of notification u/s 6/16 of the LAA. The Company raised a demand notice with BEL (July 2014) for a total amount of ₹ 305.11 crore<sup>8</sup>. BEL however refused (December 2014) to provide the necessary funds to the Company stating that the rates were very high. In the interregnum, as the notification u/s 6/16<sup>9</sup> could not be issued within one year after the date of publication of the notification u/s 4(1)/16 of the LAA, the acquisition proposal lapsed (22 January 2015) as per section 6(1)(ii) of the LAA. In between, since no decision could be reached, the Company had also decided (January 2015) to drop the proposal.

Audit noticed (April 2018) that the Company had initiated the land acquisition process without entering into an agreement with BEL as required under LAA. The Company had also failed to address the concerns raised by BEL before

<sup>5</sup> For setting up an additional infrastructure facility of their unit in order to meet the heavy demand for Radar and Antenna for the three Armed Forces.

<sup>6</sup> Preliminary notification that land in any locality is needed or is likely to be needed for any public purpose.

<sup>7</sup> 70 *per cent* of the estimated cost of acquisition of 394.32 acres.

<sup>8</sup> On account of 10 *per cent* acquisition charges (₹ 27.35 crore), Rehabilitation charges (₹ 25.00 crore), 80 *per cent* of estimated compensation (₹ 218.86 crore) and its overhead @ 12.5 *per cent* (₹ 33.90 crore).

<sup>9</sup> The notification issued under Section 6/16 of the Act is the declaration that land is required for a public purpose after considering the report under section 5A.

proceeding ahead with the acquisition process. Further, against the due amount of ₹ 137.07 crore<sup>10</sup>, the Company had raised a demand for ₹ 305.11 crore which was in excess of BEL's portion. As a result, the BEL expressed (December 2014) its unwillingness to proceed ahead with the land acquisition process citing budget constraints and the high cost of land acquisition.

As the proposal lapsed before the notification under Section 6/16 of the LAA could be issued, the Company suffered a loss of ₹ 6.49 crore<sup>11</sup>. This loss has to be borne by the Company as it had not entered an agreement.

The Management stated (March 2019) that the Company is a commercial entity, and that in anticipation of potential loss in acquisition of a particular land, the proceedings were withdrawn by it. The fact remains that the Company had to suffer loss as it failed to execute an agreement with BEL as per the provisions of LAA before initiating land acquisition process. Execution of such an agreement would have addressed BEL's concerns on viability of the proposal and also safeguarded Company's financial interests.

The matter was reported to the Government (December 2018). Reply is still awaited (September 2019).

#### **5.6 Loss due to selection of unsuitable land**

**The Company selected unsuitable land and ignored revised high rates of compensation due to applicability of the new Land Acquisition Act which resulted in loss to the extent of ₹ 2.92 crore.**

The Company forwarded (November 2013) a proposal to the District Authorities, Firozabad for acquisition of 170.537 hectare of land for development of an IT Park and an Industrial Area at Shikohabad<sup>12</sup>, Firozabad, and paid ₹ 18.81 crore<sup>13</sup> to the District Authorities, Firozabad. Notifications were issued under Section 4/16 (for 170.537 hectare) in December 2013 and u/s 6/16 (for 167.578 hectare) in December 2014. The final notification u/s 6(i)/16 on site<sup>14</sup> of the Land Acquisition Act (LAA) was published in the Gazette in May 2015.

Audit noticed (April 2018) that the demand for estimated compensation and acquisition charges amounting to ₹ 46.11 crore was raised by the District Authorities (17 December 2015) so that award under Section 11 could be declared and land might be handed over to the Company. The Management of the Company, however, did not deposit the compensation due to its assessment of weaker marketing prospects given the high input cost (due to revised high rates of compensation under the new LAA effective from 1 January 2014 and the high development cost of uneven land). The Company forwarded *Karar patra* with land owners in respect of only 6.859 hectare of land out of total 167.578 hectare of land to the District Authorities for which award was declared and compensation amounting to ₹ 1.65 crore was

<sup>10</sup> Pro rata for 200 acres - ₹ 240.14 crore (₹ 37.10 crore + ₹ 203.04)/394.32 acres\*200 acres = ₹ 121.84 crore, plus ₹ 15.23 crore (₹ 121.84 crore \* 12.5 per cent) towards overhead.

<sup>11</sup> 35 per cent of the total acquisition charges of ₹ 18.55 crore.

<sup>12</sup> Village Gurhsan, Fatehpur Nasirpur and Patna Karkhain, tehsil Shikohabad.

<sup>13</sup> 10 per cent each towards acquisition charges and estimated compensation ₹ 1.79 crore + ₹ 1.79 crore (December 2013), for Rehabilitation ₹ 3.81 crore (October 2014) and for Annuity ₹ 11.42 crore (October 2014).

<sup>14</sup> In the locality in which the land is situated.

disbursed. As a result, the land acquisition proceedings in respect of 160.719 hectare of land lapsed after two years of publication of notification at site i.e. on 31 May 2017. The District Authorities deducted (November 2017) ₹ 89.38 lakh as 50 *per cent* of acquisition charges of ₹ 1.79 crore.

Thus, the Company suffered a loss of ₹ 2.92 crore being acquisition charges of ₹ 85.73 lakh<sup>15</sup> and interest amounting to ₹ 2.06 crore<sup>16</sup> on the total amount of ₹ 17.46 crore blocked with the district authorities for acquisition of land.

Audit noticed that the Company was well aware since September/October 2013 that though the land in question could be easily acquired at lower rates, however, it was highly uneven and not suitable for acquisition and onward development/disposal. Later on, by November 2013, the Company was also aware of the fact that the amount of compensation would increase up to three times<sup>17</sup> (approximately) due to applicability of new Land Acquisition Act which was also brought to the notice of the Company by the District Authorities through their initial demand letter dated 30 November 2013. Despite above, the Company did not stop the process of land acquisition in time. The Company had paid ₹ 18.81 crore to District Authorities during the period December 2013 to October 2014, but did not make any further payments, as the new rates were four times that of the D.M. circle rates considered at the time of issue of notification u/s 4/16. Thus, by selection of unsuitable land in the first instance and by not taking cognizance of the higher rates of compensation due to applicability of the new Land Acquisition Act, the Company ended up suffering a loss to the extent of ₹ 2.92 crore.

The Management stated (March 2019) that the Company decided to quash the process of land acquisition as prospects of its marketing had weakened after determination of the market value of land at new acquisition rates under the new Rules. It also stated that the Board had subsequently increased the land allotment rates by an additional ₹ 300 per sqm in all of its existing industrial areas to recoup the expenditure incurred on such acquisition.

The reply of the Management is not acceptable as the Company has shifted the incidence of the cost of its inefficiency upon new allottees for no fault of theirs.

The matter was reported to the Government (December 2018). Reply of the Government is still awaited (September 2019).

<sup>15</sup> Loss of acquisition charges calculated on the area 160.719 hectare for which award was not declared and proposal was lapsed.

<sup>16</sup> Calculated at the rate of four *per cent* per annum, simple interest on ₹ 17.16 crore (₹ 18.81 crore - ₹ 1.65 crore paid for compensation) for 3 years (November 2014 to October 2017).

<sup>17</sup> Expected new compensation as per D.M. circle rate was ₹ 53.38 crore as compared to ₹ 17.88 crore as per old rates).

**Urban Development Department**

**Uttar Pradesh Jal Nigam**

**5.7 Award of higher rates of extra item of work to the Contractor**

**Execution of extra items of work of timbering at higher rate resulted in undue benefit to the Contractor to the extent of ₹ 4.05 crore.**

Uttar Pradesh Jal Nigam<sup>18</sup> (UPJN) entered (December 2010) into a contract with a contractor for survey, design, supply of all materials, labour, T&P (tools and plant) in the work related to the construction of branch, lateral, and main trunk sewer lines and appurtenant works for Bijnor sewerage scheme on turnkey basis at a cost of ₹ 70.09 crore. Audit noticed (November 2017) following irregularities in the execution of the contract.

(i) As per Schedule-H “Additional Items Rates” of the contract, all extra or additional work done shall be valued at the rates and price set out in the contract. If the contract does not contain any rates or prices applicable to the extra or additional work, then the rates shall be minimum of the rate derived from (a) the tendered/contract rates of the contract of similar class of work, (b) the UP Jal Nigam schedule of rates of the year in which the work actually done for Bijnor district.

The contract executed with the Contractor contained rates of “close timbering 3 to 6.0 m<sup>19</sup>” and “close timbering > 6.0 m left in trench” at ₹ 170 per Sqm and ₹ 910 per Sqm respectively. Notwithstanding the above rates in the contract, UPJN paid to the Contractor higher rates of ₹ 482 per Sqm for “close timbering 0 to 3.0 m”, ₹ 1,206 per Sqm for “close timbering 0 to 3.0 m left in trench” and ₹ 1,981 per Sqm for “close timbering 3 to 6.0 m left in trench” as extra items. The higher rates allowed were based on the UPJN Schedule of Rate (SoR) 2011-12. As the rates of similar class of work with higher specification were available in the contract itself, the UPJN should have paid the same rate for extra items of work as per the provisions of the Schedule H of the contract. Thus, violation of the contract, resulted into undue favour to the Contractor and excess payment of ₹ 2.42 crore (*Appendix-5.3*).

(ii) As per the terms and conditions of the contract, the timber to be used in the shuttering works was to be from the heart of a sound tree of natural growth with the sapwood being entirely removed. It was to be uniform in substance, straight in fiber, free from large, loose and dead knots, flaws, shakes, decay, rot, fungi, insect attacks and from any other damages of harmful nature which may affect the strength, durability, appearance or its usefulness. The colour was to be uniform as far as possible. The timber was to comply with other requirements of PWD specifications as well.

There was no mention either in the contract or in the Manual on Sewerage and Sewage Treatment regarding use of unused timber for the purpose of timbering. Besides, the Bill of Quantity also did not mention the type of

<sup>18</sup> Circle-8, U.P. Jal Nigam, Moradabad.

<sup>19</sup> Meter.

timber (*i.e.* used or unused)<sup>20</sup> to be used in timbering. Further, as per general conditions of the tender document, the Contractor was required to quote the rates, item wise, for every item including supply of all materials, labour, T&P required for proper completion of work, whether clearly mentioned in the tender or not. No extra claims were to be entertained on this ground.

Scrutiny of the records related to sewer and appurtenant work revealed that an item providing all material, labour and T&P etc. for fixing of close timbering 0 to 3.0 m and 3 to 6.0 m depth with unused timber (left in trench) was got executed by the UPJN at the rate of ₹ 2,975 per sqm and ₹ 3,690 per sqm respectively based on UPJN SoR 2011-12 as extra items under the above contract. However, rate quoted by the Contractor for similar class of work was ₹ 910 per sqm only. As timber of only the specified quality was to be used as per contract terms, execution of work using unused timber as an extra item at higher rates was unjustified which resulted in avoidable expenditure of ₹ 1.63 crore incurred by UPJN as detailed in the **Appendix-5.4**.

The Management stated (May 2019) that Contractor had expressed unwillingness to execute the extra item of the work on the basis of rate derived from similar type of work and agreed to work only on current SoR rate. Since, it was not possible to deploy any other agency for the balance work at that stage, hence the higher rates were allowed. It was further stated that it was difficult to get used timber of specified quality and specification in the market.

The reply of the Management is not acceptable as the Contractor executed agreement with UPJN based upon the rates quoted by him. Therefore, it was binding upon the Contractor to execute the work as per the terms and condition of the contract.

The matter was reported to the Government (December 2018). Reply is still awaited (September 2019).

### **5.8 Undue favour to the Contractor**

#### **The Uttar Pradesh Jal Nigam extended undue favour to the Contractor by allowing inadmissible escalation resulting in loss to the GoUP of ₹ 4.09 crore.**

The Department of Technical Education, Government of Uttar Pradesh (GoUP), awarded (March 2009) the work of construction of Dr. Bhim Rao Ambedkar Engineering College of Information and Technology (College) at Banda to the Construction and Design Wing (C&DS) of the Uttar Pradesh Jal Nigam (UPJN) as a deposit work at an estimated cost of ₹ 126.05 crore as approved (February 2009) by the Expenditure Finance Committee (EFC)<sup>21</sup>. However, due to standardisation of the design of the work, the GoUP revised (January 2010) the cost of the work downwards to ₹ 62.13 crore which was also approved (December 2009) by the EFC.

The C&DS, after inviting (March 2010) the tenders, awarded (July 2010) the above work to M/s Ultra Homes Construction Private Limited (Contractor) at a cost of ₹ 54.76 crore (5.8 per cent below the schedule of rates). The scheduled dates of the start and completion of the work were fixed as 14 July 2010 and 13 July 2012 respectively. The work was completed in June 2014.

<sup>20</sup> Timber being used first time is *unused timber* & timber being used after being used once is designated as *used timber*.

<sup>21</sup> A committee of GoUP.

As per Clause 44 of the Agreement (July 2010), no price escalation, for whatsoever reason, was payable to the Contractor.

The C&DS prepared the detailed estimates on the basis of Bill of Quantity of the work and accorded the Technical Sanction in June 2010. The detailed estimates inter-alia included the work of 300 mm dia Pile work at the analysed<sup>22</sup> rate of ₹ 5,569 per pile.

Audit noticed (February 2016) that the C&DS had paid an amount of ₹ 1.89 crore for the item “300 mm dia Pile work” to the contractor for 3,595 pile works at the rate of ₹ 5,569 per pile less 5.8 *per cent* through the first and the second running bills (October 2010 and January 2011).

Due to revision of the rates and inclusion of some extra items, the C&DS subsequently submitted (October 2012) a revised estimate of the work to the GoUP totaling ₹ 81.49 crore which was approved (January 2013) by the GoUP for ₹ 80.08 crore as also approved by the EFC (October 2012). As required by the GoUP, the C&DS also submitted detailed estimates along with the revised estimates. The detailed estimates were prepared on the basis of ‘Work Done’ and ‘Work to be Done’. Audit further noticed that although the works of ‘300 mm dia Pile work’ were already executed and paid for at the rate of ₹ 5,569 per pile, however, the C&DS had depicted the above works as executed at the rates of ₹ 17,650 per pile (increase of 217 *per cent*) in the detailed estimates submitted to the EFC. The discrepancy was not noticed by either the EFC or by the Department.

After approval by the GoUP, the C&DS paid (March 2013) the Contractor the difference between the rates already paid and the new rates. This resulted in an inadmissible payment of ₹ 4.09 crore<sup>23</sup> to the Contractor. Therefore, by submitting highly inflated rates for a work which had been already executed and paid for, the C&DS not only submitted incorrect information to the GoUP, it also paid the difference between the rates paid and the rates subsequently approved to the Contractor, thereby allowing him an undue advantage of ₹ 4.09 crore.

The Management stated (July 2019) that the value of the contract (₹ 54.76 crore) made with the Contractor was *ad hoc* as C&DS could not get sufficient time to estimate the value of the contract in view of GoUP Order dated 27 January 2010. The contractor was paid on tentative basis. The revised rates for the above works were recommended by Project Formulation and Appraisal Division (PFAD) and approved by the EFC and no incorrect information was given to Government.

The reply is not acceptable as there is no condition in the contract showing its value as *ad hoc*. The pile works were already executed and paid for at the agreed rate (₹ 5,569 per pile). The C&DS, however, had depicted the works as executed at the rate ₹ 17,650 per pile in the detailed revised estimates submitted to the EFC which clearly shows that the subsequent EFC’s approval was based on the incorrect information submitted to them by the C&DS. Moreover, as per the agreement, no price escalation was admissible to the contractor.

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<sup>22</sup> Analysed on the basis of the market rate.

<sup>23</sup> 3,595 nos. piling work (1,835 nos. academic block + 704 nos. Girls Hostel + 1,056 nos. boys and girls hostel) X (₹ 17,650- ₹ 5,569) less 5.8 *per cent*.

The matter was reported to the Government (March 2019). Reply is still awaited (September 2019).