

## Chapter 2 Performance Audits

This chapter contains the findings of Performance Audits on Resources and Revenue sharing arrangement in PPP model Port projects in the State (2.1), and Implementation of Integrated Action Plan in the State (2.2).

### COMMERCE AND TRANSPORT DEPARTMENT

#### 2.1 Resources and Revenue sharing arrangement in PPP model Port projects in the State

##### Executive Summary

*The Government took up five Minor Port projects (Astaranga, Chudamani, Dhamra, Gopalpur and Subarnarekha) for development through Public-Private Partnership (PPP) during 1998-2012 with a projected private sector investment of ₹ 12594.02 crore. We conducted the Performance Audit of “Resource and Revenue sharing arrangement in PPP model Port projects in the State” during May to June 2012 covering the period 1997-98 to 2011-12 and noticed several deficiencies in policy formulation, implementation, institutional arrangements, design and enforcement of the concession agreement, revenue model etc. Despite requirement under the Port Policy, Odisha Maritime Board (OMB) was not constituted to plan and act for maritime development in the State as well as to oversee the implementation of the Port projects in PPP model. Though four out of the five Port projects with project cost of each exceeding ₹ 500 crore were taken up and Concession Agreements were executed, yet approval of the High Level Clearance Authority was not obtained, that too when private promoters were selected in three cases through MoU route. Out of five Port projects, in only one case (Gopalpur) private promoter was selected on competitive bidding route. The Port policy permits adoption of International Competitive bidding route or MoU route for selection of private developers. The views of Law Department to go for competitive bidding as the same would be legally tenable, and would ensure maximum participation and fair selection process was ruled against. In case of Gopalpur, a Developer with no experience in infrastructure sector was selected and the revenue sharing was accepted at 0 to 7.5 per cent which was below the reserve percentage of five to eight per cent.*

*There was delay in obtaining environmental clearance leading to delay in completion of projects. In case of Dhamra Port, the commencement date was fixed after 13 months of due date on the ground of delay in handing over of acquired land though such delay was attributable solely to the Developer as land acquisition process in 66 villages lapsed due to non-payment of the cost of compensation in time as well as delay in taking over possession of acquired land by the Developer despite repeated requests. This led to an*

*extra expenditure of ₹ 30.86 crore. Due to delay in execution of Dhamra Port, Government was deprived of revenue share of ₹ 99.26 crore.*

*Provisions of Model Concession Agreement (MCA) prescribed in January 2008 by the Planning Commission was not followed though PPP cell of Planning and Co-ordination Department treated it as a guiding document for preparation of CAs. Concession period of three ports were allowed to be 34 years against the recommended 30 years in MCA and that too without analysing investment proposed to be made, volume of traffic trend projections, fixed and operation and maintenance costs, revenue inflow and outflow streams, return on investments, the Government share of revenue, expected breakeven period etc. This resulted in extension of undue benefit to the Developers, as handing over of the Port would be delayed by four years and the Developer would reap the benefit for this period. Contrary to the provisions of Concession Agreement, major partners exited during the lock-in-period selling their shares to other partners and other companies. Neither Independent Engineers were engaged to oversee drawing and design as well as quality parameters nor Financial and Operational Auditors were engaged by the Government to validate the gross revenue generated and Government's revenue share calculated by the Port authorities. Escrow account was not maintained by the Developer of Dhamra Port while such provision was not even included in the Concession Agreements of other Ports.*

*Fixation of tariff was left to the Developer at Dhamra Port and tariffs fixed were found to be 153 to 799 per cent higher than that prescribed by Tariff Authority for Major Ports (TAMP) and charged by Paradip Port Trust. Monitoring of implementation of PPP projects was poor as Project Monitoring Units as well as Performance Review Unit were not set up at Project and Government level. We further noticed that despite provision in the Concession Agreement for allowing inspection to Government whenever required during construction and operation stages, yet Developer of Dhamra Port did not allow joint inspection of the Ports premises by the Government representative and Audit (October 2012).*

### **2.1.1 Introduction**

In view of shortage of public funds to cover investment needs in the area of creating public infrastructure and to increase the quality and efficiency of public services, the Government of India, in early nineties, introduced Public-Private Partnerships (PPP) arrangement for development of infrastructure projects by deploying private capital through a Concession Agreement<sup>1</sup>

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<sup>1</sup> **“Concession agreement”** is an agreement with the private developer where in concession i.e. exclusive license is granted by the Concessioneing Authority to the Concessionaire for designing, engineering, financing, constructing, equipping, operating, maintaining, replacing the Project / Project Facilities and Services.

between the private entrepreneur and Government. PPP projects are aimed at providing efficient services at competitive costs and empower the concessionaire to use public assets for building infrastructure projects and also to levy and collect user charges for the use of such public assets. In such arrangement, it is equally important to protect the public exchequer from any unintended misuse or claims from concessionaires and avoid windfall profits to the private concessionaire, by exercising adequate due diligence in sharing risks associated with the project. The GoI with the above objectives prescribed the 'Guidelines for bidding process for PPP projects' in December 2007. Further, the GoI, through the Planning Commission of India, prescribed (January 2008) a Model Concession Agreement (MCA) for Port sector<sup>2</sup> containing provisions for safeguarding the interests of the Government and other stakeholders. MCA serves both as a guideline and a template document for drafting concession agreements and with certain modifications was to be applied to PPP for building new Ports on Build, Operate and Transfer (BOT) basis. Guidelines for monitoring the PPP projects were prescribed by GoI in May 2009. While Major Ports are under the jurisdiction of Central Government, Minor Ports are under the jurisdiction of concerned State Government and are governed by policy and directives of respective State Government. These Guidelines, though, mandatory for all Central Government Departments / Undertakings and statutory bodies, acts as guiding document for the States to be followed, as best practice.

In Odisha, the Planning and Co-ordination Department viewed the MCA prescribed by GoI, as a guiding document for preparation of CAs and opined that a State specific MCA for Minor Ports, was not necessary.

Odisha, a principal maritime State, has a coastline of 480 Kilometers endowed with conducive natural and strategic location for Ports. The development of these locations to Minor Ports is affected due to Government's own budgetary constraints. Therefore, to attract private investors for development of these locations as possible Minor Ports, the Government preferred the PPP route. Government took up five Minor Port projects (Astaranga, Chudamani Dhamra, Gopalpur and Subarnarekha,) for development through Public-Private Partnership (PPP) during 1998-2012 with a projected private sector investment of ₹ 12594.02 crore. MoUs were signed with four private players during March 1997 to October 2009 for developing four Ports viz. Astaranga, Chudamani, Dhamra and Subarnarekha and followed Competitive Bidding Process (CB) for selection of Developer of the other Port (Gopalpur). However, Concession Agreements (CA) were signed with four of them during April 1998 to November 2010 for developing the Ports on Build, Own, Operate, Share and Transfer (BOOST) basis. CA with the Developer of Chudamani Port proposed to be developed on Build, Own and Operate (BOO) model as per MoU, has not been signed (September 2012). Details of the Memorandum of Understanding (MoU) / Concession Agreements (CA) signed by the Government during this period are as under.

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<sup>2</sup> PPP projects in major ports, new terminals in existing ports. With some modifications, it can also be applied to PPPs for building new ports on BOT basis, as mentioned in the 'Overview of the framework on MCA'

**Table 2.1: Status of Port projects of Odisha in PPP mode as on 31 March 2012**

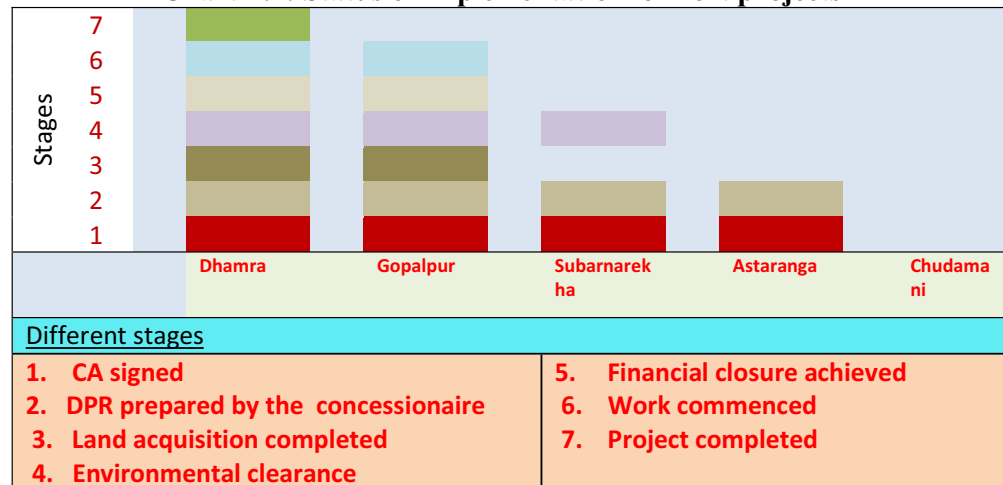
| Name of the Port (District) | Name of the Concessionaire                             | Date of signing of MoU/ Bidding    | Date of signing of CA | Estimated cost (₹ in crore) | Model of PPP | Concession period (in years)                                    |
|-----------------------------|--|------------------------------------|-----------------------|-----------------------------|--------------|---|
| Dhamra (Bhadrak)            | Dhamra Port Company Limited (DPCL)                     | 31 March 1997                      | 02 April 1998         | 2464.00                     | BOOST        | 34 (including maximum 4 years construction period)              |
| Gopalpur (Ganjam)           | Gopalpur Port Limited (GPL)                            | Bidding process on 14 August. 2003 | 14 September 2006     | 1212.55                     | BOOST        | 30 (including construction period of phase-II)                  |
| Subarnarekha (Balasore)     | Creative Port Development Private Limited (CPDP)       | 18 December 2006                   | 11 January 2008       | 2345.00                     | BOOST        | 34 (including maximum 4 years construction period)              |
| Astaranga (Puri)            | Navayuga Engineering Company limited (NEC)             | 22 December 2008                   | 22 November 2010      | 6500.00                     | BOOST        | 34 (including maximum 4 years construction period)              |
| Chudamani (Bhadrak)         | Essel Mining & Industries Limited (Aditya Birla Group) | 22 October 2009                    | Not yet signed        | 72.47 (Phase I)             | BOO          | Concession Agreement not yet signed as the matter is sub-judice |

*(Source: Commerce & Transport Department)*

On being asked about the justification for allowing BOO model for Chudamani Port, the Department stated (July 2012) that initially it was decided to develop Chudamani as a captive Port on BOO basis. It, however, assured that a time frame would be fixed for transfer of assets to the Government, at the time of signing of the CA.

As of July 2012, only Dhamra Port was made operational during May 2011. Gopalpur Port after being made operational for four years, stopped operation from October 2010 for construction of Phase-II of the Port. Construction of other two Ports (Astaranga and Subarnarekha) had not commenced (September 2012). Status of implementation of these projects as of March 2012 is depicted in the chart 2.1.

**Chart-2.1: Status of implementation of Port projects**



*(Source: Information furnished by Commerce & Transport Department)*

### **2.1.1.1 Organizational set-up**

The Principal Secretary, Commerce & Transport (C&T) Department is the overall in-charge of the development and construction of Ports in PPP mode in the State. The Secretary is assisted by Additional Secretary (Ports), one Deputy Secretary and one Under Secretary. Technical issues in environmental clearance, related studies, valuation of assets and liabilities etc. are managed by Director (Ports and Inland Water Transport) and two Executive Engineers stationed at Cuttack and Berhampur.

### **2.1.1.2 Audit Objectives**

Performance Audit was conducted to assess whether:

- the State Government had a well defined policy for development of its Port sector in PPP mode;
- Process of selection of private partner was transparent and competitive;
- Efforts were made to optimise the revenue sharing under PPP mode and due diligence was carried out while fixing the revenue share;
- ‘Concession Agreement’ was properly structured and key issues like fixing of the concession period as well as commencement date, revenue share, acquisition and leasing of land etc. were addressed in a balanced and systematic manner between the State Government and the private partner-Concessionaire;
- PPP projects were completed and operationalised in an economic, efficient and effective manner addressing the protection of environment issues;
- Monitoring mechanism was in place and was adequate and effective to provide efficient services at competitive cost.

### **2.1.1.3 Audit Criteria**

The criteria for the audit were drawn from the following documents:-

- State Port Policy 2004;
- State PPP Policy 2007;
- Model Concession Agreement prescribed by the Planning Commission for Major Ports / Port sector;
- GoI guideline on bidding process for PPP projects;
- Guidelines on monitoring of PPP projects prescribed by GoI / Planning Commission;
- Best practices in Central PPP projects;
- Concession Agreements.

#### **2.1.1.4          *Audit scope and methodology***

Performance Audit commenced with an entry conference conducted on 16 May 2012 with the Principal Secretary, C&T Department wherein the audit objectives, scope, methodology and criteria were discussed and agreed to. Performance Audit was taken up during May-June 2012 through examination of records available with the C&T Department covering the period from 1997-98 to 2011-12. Concession Agreements signed for four Port projects awarded to the private sector partners through PPP route were also examined in audit.

In the course of our Audit, we requested (September 2012) the Government to arrange for a joint physical inspection of assets and facilities available in Dhamra Port including land leased out by Government to the Port. Though the Government agreed for the same and deputed a representative for such joint inspection along with the Audit yet the Port authorities did not agree for the same. The actual creation of assets worth ₹ 3317.84 crore, being the final project cost, as claimed by the Developer of Dhamra Port as on 31 March 2012 could not, therefore, be vouchsafed in Audit.

The audit findings were discussed with the Additional Chief Secretary and Commissioner-cum-Secretary, C&T Department in an exit conference on 12 November 2012. The replies of the Department received in November 2012 were incorporated in the report at appropriate places.

### **Audit Findings**

#### **2.1.2          *Policy framework and institutional arrangements***

The State Government framed the 'Port Policy 2004' for development of Minor Ports through PPP mode with the objective of increasing the State's share in the export and import sector as well as to decongest the exiting Major Ports in the eastern coast. The said policy was placed on the Department website on 31 January 2004. One of the key strategy identified in the PPP Policy was establishing Odisha Maritime Board (OMB) through a State legislation, vesting it with the authority and power to plan and act for maritime development of State through public-private participation; identifying new Port sites for development; facilitating private participation either through International Competitive Bidding (ICB) or through Memorandum of Understanding (MoU) route. Subsequently, the Government framed and notified the PPP Policy in August 2007, which, *inter alia*, required constitution of Empowered Committee on Infrastructure (ECI) headed by the Chief Secretary with power to approve projects with investment up to ₹ 500 crore and a High Level Clearance Authority (HLCA) under the Chairmanship of Chief Minister with Ministers of Finance, Rural Development, Works, Housing, Revenue, Food supplies and Consumer Welfare, Chief Secretary, Law Secretary, Finance Secretary etc. as other members to consider and approve PPP projects with investment above ₹ 500 crore. Both the HLCA and ECI, as required under PPP Policy, were set up in September 2007.

**Odisha Maritime Board which was to plan and act for balanced and orderly maritime development in the State was not formed, though required as per the Port Policy of 2004**

**Approval of HLCA and ECI was not taken while finalising selection of Developers and signing CAs with them though the proposed investment was above ₹ 500 crore in case of four ports**

**Odisha Maritime Board (OMB) not constituted:** Audit noticed that even after nine years of framing the Port Policy, the OMB had not been constituted as of November 2012. As a result, neither Integrated Maritime Master Plan as envisaged in the policy was prepared nor fixation of tariff by the Developers was monitored. Besides, equity participation of 11 *per cent* by a statutory body in the four PPP Port projects for which CAs were signed was not ensured (September 2012), though the same was required under the said policy. Also, uniform provision in Concession Agreements in conformity with MCA was not ensured as discussed in succeeding paragraphs.

The Commissioner-cum-Secretary stated (November 2012) that draft Odisha Maritime Board Bill had been approved by the State Cabinet and the Union Ministry of Shipping but was pending before the State Legislature. The Secretary also stated that the existing institutional mechanism i.e., Directorate of Inland Water Transport with its field functionaries were responsible for Technical Reports, Detailed Project Reports (DPR) and regular monitoring of Port projects. The reply regarding monitoring by Director was not acceptable as no such monitoring report could be produced to Audit and the Director was entrusted with such monitoring only in April 2012.

**PPP Port projects not approved by HLCA/ ECI:** Both the HLCA and ECI, as required under PPP Policy, were set up in September 2007. We noticed that:

- CAs of two PPP Port projects (Astaranga and Subarnarekha), each with proposed investment above ₹ 500 crore, were signed in January 2008 and November 2010 i.e. after constitution of HLCA in September 2007. However, approval of HLCA was not sought by the C&T Department in both these cases while selecting the Developers and signing Concession Agreements with the Developers based on *suo-motu* application.
- Similarly, in case of Chudamani Port with proposed investment of ₹ 72.47 crore, approval of ECI was not taken though required under the PPP Policy and MoU was signed (October 2009) with the private Developer.
- In case of Dhamra Port with proposed investment exceeding ₹ 500 crore, though the CA was signed (April 1998) prior to constitution of HLCA but the commencement date of CA (September 2008) was after constitution of HLCA. The matter was not put up to the HLCA while fixing the commencement date as September 2008 by the C&T Department .
- In case of Gopalpur Port with proposed investment exceeding ₹ 500 crore, Developer was selected and CA was signed (September 2006) before the HLCA was constituted in September 2007 and the CA came in to effect from 30 October 2006.

As selection of Developers for Astaranga, Chudamani and Subarnarekha Ports were not routed through the HLCA / ECI, checks like due diligence in selection of Developers, uniformity in Concession Agreements, timely execution of projects, ascertaining financial soundness and capabilities of the Developers etc. were not exercised properly.



The Commissioner-cum-Secretary stated (November 2012) that as the Port Policy empowers OMB to enter into MoUs and Concession Agreements with the approval of the Government in absence of OMB the Department entered in to MoUs and CAs with the Developers with the approval of Government and due vetting by Law and Finance Department. The Secretary also stated that the PPP policy and the Port Policy are meant to complement each other and did not over-ride or supersede the provisions of Port Policy 2004 and that Department adhered to the provisions of Port Policy for undertaking the development of Minor Ports in the State. The Secretary also stated that the ECI reviewed the Port projects once in December 2010.

The reply is not tenable as HLCA, the apex policy making and approving body for MoU based projects were never consulted.

### **Selection of private partner and award of project**

#### **2.1.3 Transparency and fairness in award of Port projects to Developers**

The Port Policy (2004) of the State provided for facilitating private participation either through International Competitive Bidding (ICB) or through Memorandum of Understanding (MoU). The same was placed in the official web-site on 31 January 2004. However, PPP Policy (2007) required that in case the Detailed Project Report (DPR) was to be prepared by the Project Developer, the Developer was to be selected through Competitive Bidding Process. Besides, as per MCA (Clause-11.2), the Concessionaire shall ensure that the applicant / members of the Consortium maintain management control at least until expiry of the exclusivity period (where there is no exclusive period, maximum three years from the date of commercial operation) and also maintain their equity holding in the Concessionaire such that the members of the consortium legally and beneficially hold not less than 51 *per cent* of its paid up equity capital until three years after date of commercial operation and not less than 26 *per cent* of its paid up equity capital during the balance concession period.

We examined the transparency and fairness in selection of Developers and award of Port projects of all the five minor ports and noticed several irregularities as discussed in succeeding paragraphs.

##### **2.1.3.1 Award of PPP Port projects through MoU route**

**Award of PPP Port projects through MoU route:** We noticed that while one Developer (for Gopalpur port) was selected based on Competitive Bidding process, Developers for other four PPP projects (Astaranga, Chudamani Dhamra and Subarnarekha) were entertained through MoU route based on *suo-motu* offers from these private companies. While a single *suo-motu* offer was received in each case of three ports (Chudamani, Dhamra and Subarnarekha), two offers were received for Astaranga Port. The grounds indicated by the applicants in the *suo-motu* offers were past experience in successful implementation of Minor Ports elsewhere, execution of several prestigious projects as well as being marine construction and iron ore mining

**Out of five Port projects proposed under PPP mode, in four cases the Developers were selected on MoU mode based on *suo-motu* offers despite Law Department recommending for International Competitive Bidding**



companies. The Government took the MoU route on the ground that bidding process required more time to select the Developers and initial investment in preparation of techno-economic feasibility report, bid document etc. through the consultant would be expensive. There was nothing on record in the files of the C&T Department to indicate as to whether the Department had made any effort to ascertain about other players who would be interested for these projects.

The Commissioner-cum-Secretary stated (November 2012) that the Port Policy 2004 also allows MoU route in addition to International Competitive Bidding (ICB) route and added that the Port Policy was available in public domain since January 2004 and two investor meets were also conducted at New Delhi during 2004-06, one of which was organized under the aegis of the Planning Commission, where tentative location of port sites were highlighted to invite private investment for Ports in the State. The Secretary further stated that after two and half year of advertisement of the Port Policy in web-site, only three Developers had given their proposal for development of Astaranga, Chudamani and Subarnarekha i.e. single proposal for each location and no other party came forward to develop these Port locations for which Government signed MoUs with the Developers of these Port projects.

The reply is not acceptable as these procedures are not substitute for competitive bidding. Besides, while investor meets are mechanisms for making possible bidders aware about the offer, a tender for competitive bidding expresses the intention of the Government to get into legally valid and enforceable contractual relationship. Besides, no effort was made to ascertain availability of other interested parties for these ports which can only be possible through competitive bidding process and wide publicity. In case of Gopalpur Port, 14 bidders showed their interest when ICB route was adopted. So, the Government should have gone for ICB in case of, Astaranga, Chudamani and Subarnarekha Ports excepting for Dhamra Port for which MoU was signed in March 1997, when neither Port Policy nor PPP Policy was prescribed.

### **2.1.3.2 Dhamra Port**

For developing Dhamra Port on PPP basis, the Government constituted (January 1997) a Committee<sup>3</sup> to examine the procedure followed in other maritime States and to give its recommendations on the procedure to be followed in Odisha for award of PPP Port projects. The Committee recommended (January 1997) the Government to sign the MoU with a sound internationally reputed organisation for developing the project on the ground that Competitive Bidding route though transparent, but was time consuming and expensive. Government also engaged RITES<sup>4</sup> (a Government of India Undertaking), as the Transaction Advisor in this matter. RITES also recommended (March 1997) for signing an MoU with International Sea Ports Private Limited (ISPL) for development of this Port project, which was then approved by the Cabinet. Government, thereafter, signed (31 March 1997) an

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<sup>3</sup> comprising Managing Director, Odisha Industrial Infrastructure Development Corporation and Chief Construction Engineer, Gopalpur port.

<sup>4</sup> Rail India Techno Economic Services

MoU with ISPL for development of the Port on BOOST basis. CA was also signed (2 April 1998) between the Government and ISPL. The Port started its operation on 6 May 2011. We however noticed the following irregularities:

**Exit of key partner:** As per Clause 2.4 of CA of Dhamra Port, ISPL had to promote a Special Project Company and each of the partners (SSA International Inc., Seattle, Precious Shipping Company Limited, Bangkok) and Larsen and Toubro Limited (L&T), Mumbai would hold not less than 17 *per cent* of total equity capital subscribed which was to be locked till in-operation date. Thus, no partner of the Consortium should exit within this lock-in-period. We, however, noticed that International Sea Ports Private Limited (ISPL) was a joint venture company promoted by SSA International Inc., Seattle and Precious Shipping Company Limited, Bangkok (a company of G Premjee Group) each holding 33.23 *per cent* shares in the Consortium while remaining 33.54 *per cent* was held by L&T. The main partner ISPL, who signed the CA and holding 66.46 *per cent* shares in the Consortium through its two foreign promoting companies (SSA International Inc., Seattle and Precious Shipping Company Limited) exited in 2002 from the project, that too within the lock-in-period contrary to the provisions<sup>5</sup> of CA. Due to such exit, the other partner L&T with remaining 33.54 *per cent* shares was only left paving the way for others to come in. TISCO joined in 2004 with 50 *per cent* share holding and L&T raised its shares to 50 *per cent*. The State Government approved participation of TISCO in September 2004. The Department had not taken any step to enforce the provision of the CA for maintaining the equity holding and management control by this major partner of the Consortium (ISPL) during the lock-in-period.

The Commissioner-cum-Secretary stated (November 2012) that ISPL exited due to irreconcilable difference between business partners and TATA Steel, a major industrial house joined and Dhamra Port had completed its Phase I successfully. The reply is not acceptable as exit of key partners, based on whose strength and capabilities the project was awarded to the ISPL led Consortium, that too during the lock-in-period was contrary to the provisions of the CA and Department did not enforce the provisions of CA and the project got delayed by over 13 years.

#### **Delay in acquisition of land attributable to the Developer**

As per Clause 4.13 of CA of Dhamra Port, additional tenanted land required for the project work was to be acquired and owned by the Government, the cost of which was to be initially borne by the Developer and the same was to be adjusted against payments due to Government on account of its' revenue share within 15 years from the commencement date, in annual equal installments without interest. This stipulation was later included in the Port Policy 2004 also.

We noticed that there was delay in acquisition of land due to non-depositing of the cost of compensation by the Developer in 2000 due to which land

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<sup>5</sup> As per CA of Dhamra port, lock- in-period of the Special Purpose Company (SPC) was till in-operation date i.e. 6 May 2011

acquisition (LA) proceeding for 2579.96 acres of land in 66 villages lapsed and fresh LA were initiated during 2003-06.

As against the estimated compensation of ₹ 25.89 crore demanded for 1821.16 acre land in these 64 villages based on market value of land on the date of earlier 4(1) notification (February 2000 to November 2001), the same was subsequently revised to ₹ 53.94 crore based on market value of land on the date of fresh 4(1) notification (June 2005 to August 2005 and October-November 2007) leading to extra expenditure of ₹ 30.86 crore (₹ 28.05 crore towards extra compensation and 10 *per cent* supervision charges paid to IDCO<sup>6</sup>, Government agency for land acquisition ) which was irregularly included in the cost to be adjusted from revenue share of the Government by the Developer as indicated at *paragraph 2.1.4.6*.

**Avoidable extra cost due to acquisition of excess land:** We noticed that no scale was prescribed for assessing the land requirement for Minor Ports. Whatever land the Developer requested was agreed to by the Government. We noticed that for construction of 62.5 Kms of railway corridor, the Developer requested in 1999 for 2851.65 acres of land and finally reduced the same to 2094 acres of land, which was acquired and provided to the Developer. We also found that for construction of such corridor over a length of 75 km, the Developer of Astaranga Port had requisitioned only 1696.842 acres of land. Based on the *prorata* land requirement per kilo-meter of rail corridor as required by Developer of Astaranga Port, requirement for 62.5 km of rail corridor for Dhamra Port worked out by us to 1414.035 acres<sup>7</sup> of land. This led to excess acquisition of 679.965 acres of land and extra expenditure of ₹ 28.40 crore<sup>8</sup> for acquisition thereof, which initially paid by the Developer would also be adjusted from revenue share of Government. The market value of such excess acquired land worked out to ₹ 82.47 crore<sup>9</sup>.

In reply, the Commissioner-cum-Secretary stated (November 2012) that requirement of land for rail and road corridor cannot be uniform at two different locations having different geographical condition such as soil, contour and topography, drainage requirement etc.

The reply was not tenable as land provided to Dhamra Port for rail corridor was 33 *per cent* higher than the per kilometer requirement of land for Astaranga Port and the Developer of Dhamra Port initially requiring land for 200 metre width corridor later reduced it to 125 metre. Besides, vast land was laying vacant on both sides of the rail corridor (October 2012).

### 2.1.3.3 Gopalpur Port

The C&T Department decided (August 2003) to go for competitive bidding process for selecting the private partner for Gopalpur Port and entrusted

<sup>6</sup> Odisha Industrial Infrastructure Development Corporation

<sup>7</sup> For construction of 75Km of railway line land required by Astaranga port= 1696.842 Ac. Land required for 62.5Km of railway line for Dhamra port=1696.842 Ac / 75 Km X 62.5 Km=1414.035Ac

<sup>8</sup> For acquiring 2094Ac cost involved was ₹ 87.45 crore. For 679.965 acres of excess land=₹ 87.45 crore / 2094 Ac. X 679.965 Ac=₹ 28.40 crore

<sup>9</sup> Market value of 2094 acres of acquired land ₹ 253.97 crore X excess land 679.965 acre/ 2094 acre=₹ 82.47 crore

(October 2003) the process of bid management to RITES. However, no time frame was fixed by the Department for finalisation of the process. RITES, after a lapse of two years, recommended (November 2005) Orissa Stevedores Limited (OSL) as the successful bidder. The Department fixed the reserve percentage of revenue share between five *per cent* and eight *per cent* of gross revenue but decided not to disclose the same to the bidders.

We noticed the following deficiencies in bidding process:

- ***Requisite technical parameters relaxed:*** Experience of the bidders in Port sector or construction of core infrastructure sector was not considered. Only cargo handling experience was approved (December 2004) by the Department as a pre-requisite for the private participants in the Request for Qualification (RFQ) document. Both RITES and the Department had ignored the basic fact that cargo handling experience and Port construction experience were not alike.
- ***Parties not experienced in Port construction participated:*** Relaxation of criteria in technical qualification had encouraged entities not experienced in the Port construction works to participate in the bidding process such as Consortium of ILFS & HILLI Company Limited (managing the container terminal), BHP Billiton Minerals Private Limited (operating terminals and cargo handling) and Orissa Stevedores Limited (Stevedores and Shipping agent).

We found that out of 14 firms that obtained the RFQ documents, only five responded. Among these five companies, only three companies<sup>10</sup> (BHP, IB and OSL) submitted their Request for Proposal (RFP). But two firms (BHP and IB) did not qualify in the technical evaluation on the ground of non-furnishing of bid security (BHP) and withdrawal of one member from the Consortium (IB). Therefore, the Consortium led by OSL emerged as the single qualified bidder. RITES recommended (November 2005) OSL as the successful bidder to the Department .

The Department stated (July 2012) that during 2004-05 when bid process management was undertaken, only one model bid document prepared by Infrastructure Development Finance Company (IDFC) for private sector projects in Major Ports was available. Accordingly, RFQ was prepared (March 2000) considering the said model which provided only Port operation as an eligible experience.

The reply of the Department was not tenable as the model RFQ prepared by IDFC was applicable for private sector projects in Major Ports which had existing infrastructure facilities but not in case of Gopalpur Port as the project involved construction and development of the Port in phase-II. Therefore, experience in construction of Port or in core sector was necessarily required as per the technical experience prescribed (December 2007) by the GoI in Ministry of Finance.

- ***Allowing revenue share much below the reserve price:*** While communicating the name of OSL, RITES had recommended that the

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<sup>10</sup> **BHP:** BHP Billiton minerals Pvt. Ltd, **IB:** Integrex Berhad, **OSL:** Orissa Stevedores Ltd.

offer may be accepted, if it matches with the reserve percentage share fixed by the Department or otherwise, negotiation should be made with OSL to match the reserve percentage share. The revenue percentage quoted (0 to 5.25 *per cent*) by the OSL was much less than the reserve price (5 to 8 *per cent*) and also that adopted for other Minor Ports<sup>11</sup> of the State (5 to 12 *per cent*). On negotiation, the same was only increased to 0 to 7.5 *per cent*. The Cabinet Sub- committee accepted the offer and recommended to award the project to OSL, when the Internal Rate of Return calculated on discounted cash flow basis was 15.2 *per cent* for this Port as calculated by the Developer in the Detailed Project Report. Instead of negotiating to raise the revenue share up to 15 *per cent* or at least to the reserve percentage, the offer of single bidder was accepted.

The Commissioner-cum-Secretary stated (November 2012) that as the bids were obtained through ICB, reserve price fixed by the Government was not disclosed, therefore price quoted by the Developer was based on their analysis of the project, It also stated that as the offered rate was less than the reserve percentage, Government made two rounds of negotiation and accepted the increased revenue share below the reserve percentage to avoid retender as the Port was closed for more than three years since 2003 seriously affecting employment and other economic opportunities which was a major concern of the Government. The Secretary further stated that there was no guarantee of getting higher price on re-tender.

The reply was not tenable as the fixation of reserve percentage was defeated by awarding at lower percentage.

- **Exit of lead partner:** Clause 4.1 and 4.2 of CA of Gopalpur Port signed with OSL on 14 September 2006 *inter alia* provided that paid up equity share capital to be held by the members in the Consortium should not be less than 51 *per cent* until expiry of three years from the operative date of Phase II of the project and not less than 26 *per cent* of the paid up equity share capital until expiry or termination of the CA.

We noticed that Noble Group, Hong Kong holding 33 *per cent* equity share capital departed from the consortium in April 2010 that too within the lock-in-period<sup>12</sup>, which was irregular. It appears that Noble Group confined itself only to lend the company's name to the consortium for participating in the bidding process and the consortium comprising OSL, SIL<sup>13</sup> and Noble Group was formed only with the intention to bid for the Gopalpur Port. After winning the bid, Noble Group exited (April 2010) from the consortium. The Department / RITES did not plug such action by adequate safety provisions in the RFQ for disqualification and also even did not enforce the provisions of CA, requiring no exit by any partner before three years of completion of Phase II of the Port.

The Commissioner-cum-Secretary stated (November 2012) that Noble Group wanted to exit due to delay in progress of work because of environmental clearance and business difference with other partners and the same was agreed

<sup>11</sup> Astaranga, Dhamra and Subarnarekha

<sup>12</sup> 30 October 2010

<sup>13</sup> SIL- Sara International Limited.

by the Board of Directors of Gopalpur Ports Limited and also vetted by Law and Finance Department. The Secretary also stated that in a business environment, exit of investors depending on their perception of business risk was not uncommon and such exit was not in violation of the provisions of CA.

The reply was not acceptable as such exit was contrary to the provisions of CA as the investor exited during the lock-in-period and the Department could not enforce the provisions of CA, specially when the annual turnover of Noble Group (\$ 6 billion) was taken into consideration while evaluating the RFQ document.

#### **2.1.3.4 Subarnarekha Port**

Creative Port Development Private Limited (CPDP) *suo-motu* offered (November 2005) for selection/ nomination as the Developer of Astaranga Port. Subsequently, it applied (September 2006) for Subarnarekha port. The Government allowed CPDP for developing Subarnarekha Port. The Department stated (August 2012) that since CPDP was the only company that expressed its' interest for development of this port, Government decided to award the same to CPDP on MoU basis. We further examined the matter and noticed following irregularities:

***Views of Law Department for selection of Developer through competitive bidding process over-ruled by the Government*** : On selection of Developers of this Port through MoU route and to vet the draft MoU, it was decided to obtain the views of Finance and Law Department. While Finance Department concurred the draft MoU with modifications, the Law Department while vetting the draft MoU opined (December 2006) that out of two methods of participation (Competitive Bidding and MoU), Competitive Bidding route was legally tenable as there would be maximum participation and fair selection process, keeping in view of the provision of equality envisaged under Article 14 of the Constitution of India. But, the Principal Secretary of the Department, indicating that as a single party had applied for developing this Port, there was no 'element of discrimination' and 'arbitrariness' in selection of the Developer, proposed (13 December 2006) to over-rule the views of Law Department. Based on further recommendation of the Chief Secretary, the views of Law Department for Competitive Bidding was over ruled. The Government, thereafter entered (December 2006) into an MoU with CPDP for developing the Port on BOOST basis. CA was signed in January 2008 but the construction of the Port had not commenced as of November 2012.

The Commissioner-cum-Secretary stated (November 2012) that as Government had not deprived / denied any person of equality before law, development of Ports through MoU route was not in violation of Article 14 of Constitution of India and hence the Government had rightly over-ruled the views of the Law Department. The Commissioner-cum-Secretary also cited the judgment dated 27 September 2012 of the Apex Court to the effect that auction was not the only permissible method for disposal of natural resources across all sectors and in all circumstances and concluded that MoU route adopted by the Government was not illegal or arbitrary.

The reply is not acceptable as the Department had neither invited bids nor made public its decision to awards this Port project under PPP route on the

e-procurement portal of the Government for wide publicity. Though one party with *suo-motu* offer was available in each case, yet bidding was not done and other parties who did not know of such award of Port projects were deprived of equal opportunity. Besides, as discussed in **paragraph 2.1.3.3**, bid for the Gopalpur Port project invited in December 2004 had attracted 14 parties, both national and international, and there was no reasonable and exceptional grounds subsequent to this event that could warrant the Department to reach a conclusion that there may not be takers for Ports whose MoUs were finalised.

Thus, decision of the Government in approving selection of Developer through MoU route over-ruling the views of the Law Department for Competitive Bidding was arbitrary and inappropriate.

**Exit of key partner for a consideration:** As per the CA, the equity base of the Developer was not to be less than 51 per cent and the lock-in-period was till the date of operation. We noticed that SREI Venture Capital Limited (SERI), the main Developer exited in August 2010 taking consideration of ₹ 52.50 crore as against equity and other investment of ₹ 2.60 crore, that too within the lock-in-period.

The Commissioner-cum-Secretary stated (November 2012) that there was dispute between partners due to default in meeting financial obligations and breach of Investment Agreement. On the matter being moved to Company Law Board (CLB), it ordered for transfer of share to other partners which was also upheld (July 2010) by the Apex Court. The Secretary also stated that despite exit of SREI, environmental clearance had been obtained and land acquisition is in advance stage of finalisation. The reply is not tenable as the Developer had not yet deposited the cost of land acquisition. Besides, Government could not enforce compliance with the provisions of CA and the Developer on whose financial strength the Consortium was selected was allowed to exit.

**Delay in land acquisition and handing over of Port land:** The MoU and CA for this Port were signed on 18 December 2006 and 11 January 2008 respectively. We noticed that the process of acquisition of private land (1593.940 Ac) and alienation of Government land (961.18 Ac) for Subarnarekha Port was under progress. The estimated cost for acquisition of land had not yet been deposited (September 2012) by the Developer of the Subarnarekha Port. Besides, Port land was also not handed over.

The Department stated (September 2012) that land acquisition was delayed due to change made in the shareholding pattern of the Developer. The reply is not tenable as despite expiry of more than four years after signing of the CA, even the cost of land acquisition had not been deposited by the Developer and the Government had not taken steps to expedite handing over of the Port land.

### **2.1.3.5 Astaranga Port**

Navayuga Engineering Company Limited (NEC) *suo-motu* offered (December 2006) for selection/ nomination as the Developer of Astaranga Port. The Government entered (December 2008) into an MoU with NEC for developing the Port on BOOST basis. CA was signed in November 2010 but construction of the Port had not been commenced. The land acquisition process for



2435.867 acres of private land was stated by the Government to be under progress (September 2012).

**2.1.3.6 Chudamani Port**

Essel Mining & Industries Limited (EMIL) *suo-motu* offered (November 2005) for selection as the Developer of Chudamani Port. The Government entered (October 2009) into an MoU with EMIL for construction of a Captive Port at Chudamani (Bhadrak District) on Build, Own and Operate (BOO) basis. However, CA has not been signed as the Finance Department declined to vet the CA as the Developer was not selected through Competitive Bidding process.

On being asked about the justification for allowing BOO model for Chudamani Port, the Department stated (July 2012) that initially it was decided to develop Chudamani as a Captive Port on BOO basis. It, however, assured that a time frame would be fixed for transfer of assets to the Government, at the time of signing of the CA.

***Finance Department opined for Competitive Bidding and did not vet the CA:***

The Principal Secretary, Finance Department observed (October 2011) that mere provision in the Port Policy is not an adequate justification to opt for MoU route instead of Competitive Bidding. He had further observed that in the matter of public procurements and award of concession by Government, Competitive Bidding is the preferred norm. He opined that in the absence of Competitive Bidding, it could not be ascertained with any degree of confidence that the State Government would not have received any better financial offer than the offer through MoU route. He had opined that the proposal to sign CA by dispensing with Competitive Bidding without proper justification would certainly violate the provisions of Rule 18 of Odisha General Financial Rules (OGFR) and so declined to vet the CA. The Finance Minister also concurred (October 2011) with the above views.

The Commissioner-cum-Secretary stated (November 2012) that Rule 18 of OGFR has not been flouted as this rule provides for general principles for guidance of authorities that have to enter in to contracts or agreements involving expenditure out of Consolidated Fund of the State and for development of Minor Ports, no expenditure is incurred by Government.

The Port policy of the Government allowing MoU route as well as award of Port projects to private Developers in potential Port sites through MoU instead of Competitive Bidding process, was challenged (2011) in the Hon'ble High Court of Odisha. The Court directed (May 2012) the State Government to proceed with MoU / Concession Agreement of Chudamani Port but not to take final decision without leave of the Court. The matter remained sub-judice (November 2012).

Thus, award of Port projects of Astaranga, Chudamani and Subarnarekha Ports to Developers entertained through MoU route was, thus irregular.

#### 2.1.4 Revenue sharing

In a PPP infrastructure project, particularly of the BOOST model, that the Government had adopted in Port sector, the sponsoring Department was required to exercise due diligence in determining an appropriate revenue model for the project, based on a mutually acceptable level of Internal Rate of Return (IRR) and fixing of minimum reserve percentage of 'revenue share' taking the total concession period into account, before going in for selection of private partners either through Competitive Bidding or through MoU route.

Attempt was made to assess whether during selection of Developers as well as construction and operation phases, the interest of the Government and its revenue has been protected. The deficiencies noticed are discussed in subsequent paragraphs.

##### 2.1.4.1 Revenue share: Absence of requisite due diligence

Revenue sharing is a major bidding parameter to ensure that the parties willing to share the highest revenue, would get selected. Audit noticed that, the Department did not exercise adequate due diligence in fixing the reserve percentage share of 'gross revenue' in respect of all Port projects awarded through MoU or Competitive Bidding route. We noticed that the Department neither prepared the Detailed Project Reports (DPRs) on its' own nor carried out any independent due diligence of the reasonableness of the Internal Rate of Return (IRRs) / Rate of Return (RORs) projected by the prospective concessionaire before entering into MoU with the Developers. We also noticed that IRR of the Ports, as assessed in the DPRs, were neither considered while fixing the revenue share nor any attempt was made by the Department to negotiate to increase the revenue sharing ratio to IRR level as DPRs containing IRR were prepared by the Developer after signing of the MoUs.

**Dhamra port:** Revenue share of Government was fixed at 5 to 12 *per cent* and no IRR was calculated. This was based on the initial revenue sharing ratio indicated in the CA of Krishnapatnam Port of Andhra Pradesh furnished by RITES.

**Gopalpur port:** Against the IRR of 15.2 *per cent* calculated by the Developer, the revenue share of Government was fixed on negotiation to 0 *per cent* in first year to 7.5 *per cent* in the last year of Concession period against the reserve price of 5 to 8 *per cent*.

**Subarnarekha port:** Though IRR of this Port was calculated in the DPR prepared by the Developer as 19.6 *per cent*, yet revenue share of Government was fixed as only five *per cent* in first year to 12 *per cent* in the last year of concession period.

**Astaranga port:** The IRR of this Port was 12.67 *per cent* as per information furnished by the Government. However, revenue share of Government was fixed as only 5 *per cent* in first year to 12 *per cent* in the last year of Concession period similar to that of Dhamra and Subarnarekha.

Thus, adequate due diligence was not carried out while fixing the revenue sharing ratio.

The Principal Secretary accepted (July 2012) that IRR for Dhamra Port was not calculated as there was no such guideline available at that time and that the IRR for Gopalpur, Subarnarekha and Astaranga Ports were 15.2 *per cent*, 19.6 *per cent* and 12.67 *per cent* respectively. However, the Commissioner-cum-Secretary stated (November 2012) that as no grant/ incentive was given by the Government and the DPR was prepared by the concessionaire after determining the revenue share, which, as a percentage of gross revenue of the Port, was independent of whether the Port made net profit or loss, the IRR considered for project viability and feasibility, was of no relevance to the Government but to the Developer.

The reply is not acceptable in audit as the IRR indicates the cash flow to the Concessionaire during the entire concession period, thereby reflecting the profitability of the project and the profit being allowed to the concessionaire. IRR was also to be used as a tool to negotiate with the Concessionaire for increase in revenue sharing.

**2.1.4.2 *Absence of requisite due diligence for fixing minimum revenue sharing with Government***

The Model Concession Agreement (MCA) envisaged guaranteed annual cargo handling by the Concessionaire for ensuring guaranteed revenue share.

**Provisions relating to minimum guaranteed cargo handling was absent in the CAs though the same was required under MCA**

We noticed that in the CA of four Ports signed up to March 2012, there was no provision regarding minimum guaranteed cargo. Department could not ensure optimum revenue sharing for the State, considering the fact that there was no Competitive Bidding for these Port projects.

In reply, the Department stated (April 2012) that for Dhamra Port, they had appointed RITES as a consultant and that the relevant clauses of the Concession Agreement were genuine and authentic. The reply was not tenable, as neither the Government nor RITES had included the above provisions of MCA in the CA of concerned Ports. Besides, there was nothing on Department records to indicate the inputs and data that were considered before arriving at the figure of five to 12 *per cent* as revenue share.

**2.1.4.3 *Fixation of high tariffs by the Concessionaire due to delegation of absolute power to fix tariff***

**As OMB was not formed, fixation of tariff was left to the Developer of Dhamra Port who charged 153 *per cent* to 799 *per cent* higher tariff than that prescribed by TAMP and followed by Paradip Port Trust**

The user charges for the facilities provided by an infrastructure port project under the PPP arrangement should be regulated by an independent authority like the NHAI (for National Highway projects), TAMP (Tariff Authority for Major Ports) or by the Government Department under the relevant statute.

**Non-constitution of Tariff regulatory body:** In Odisha, the Port Policy 2004 requires to vest the OMB with powers to impose, review and modify the existing Port charges in the Minor Ports, with the approval of Government. However, OMB has not yet been constituted due to which such Port charges and tariff were fixed by the concerned Developers.

**Full freedom to Developers for fixing and revising tariff:** We noticed that the CAs of four ports (Astaranga, Dhamra, Gopalpur and Subarnarekha) provided that the Developers would be free to fix the tariff of their own and full freedom would be given to the Developer for fixation and revision of tariff.

Thus, the Department had given away (March 1998) this right to the private partner (Developer of Dhamra Port) through the CAs for fixing and revising tariff for all Port related services, though Port Policy requires imposition and modification of Port related charges by the Government through OMB.

**Recommendations of the Empowered committee ignored:** MoU for development of Dhamra Port was signed in March 1997 when neither the Port Policy nor PPP Policy was framed. The Government set up an Empowered Committee<sup>14</sup> for framing the CA of Dhamra Port. The Committee suggested (October 1997) that Government should retain the power for notification of Port related tariff as and when required and also drafted the required clause for CA as “ ISPL shall have right to levy charges for port services on Port premises and ISPL shall also have full freedom of fixing and revising of tariff for various port services on the premises. Notification, as required for the purpose will be done by the Government, as and when required”. But, when the opinion of the Developer was invited (March 1998), the Developer insisted for non-inclusion of the suggestions of the Empowered Committee and of the sentence “Notification, as required for the purpose will be done by the Government, as and when required” in the final CA. However, the Law Department on being requested to give its’ views, suggested not to include this provision in the CA, as the Government had committed in the MoU already accepted (March 1998), to give full freedom to the Developer for fixing and revising tariff for all Port related services. Such a view was expressed despite the Joint Secretary, Law Department being a member of the Empowered Committee that had recommended otherwise. Therefore, the private partners got the absolute power to fix user charges and tariff. In absence of any regulatory mechanism in place for fixation of tariff, Developer of Dhamra Port fixed exorbitant user charges for its vessel and cargo related charges.

**Charging higher tariff:** A comparison of user charges fixed by TAMP and that fixed by the Developer of Dhamra Port during 2011-12 revealed that Dhamra Port was charging user charges at 153 *per cent* to 799 *per cent* (**Appendix 2.1.1**) more than the rates prescribed by TAMP and followed by Paradip Port Trust in the State under various heads / areas. In case of cargo related charges also, Dhamra Port charged ₹ 230 to ₹ 320 per tonne whereas tariff of cargo handled at Paradip Port was ₹ 135.79 per tonne only between 2008-09 to 2010-11. Due to this huge difference, Developer of Dhamra Port collected ₹ 84.67 crore<sup>15</sup> extra in handling 60.82 lakh tonnes of cargo during May 2011 to May 2012.

**Escalated project cost attracting higher tariff:** We also noticed that the project cost of Dhamra Port was escalated from originally estimated ₹ 2464 crore to ₹ 3317.84 crore in 2011-12. The possibility of higher tariffs due to the escalated cost cannot be ruled out. Thus, one of the intended purposes of the PPP infrastructure Port project in the State which was to provide better quality services and facilities at a reasonable and affordable price, is diluted. In case

<sup>14</sup> Comprising of: Additional Secretary, Commerce, Addl. Secy, Finance and Joint Secretary, Law Department .

<sup>15</sup> Excess charge per ton=Average ₹ 275 less ₹ 135.79=₹ 139.21 per tone, Extra payment= ₹ 139.21 X 60.82 lakh ton= ₹ 84.67 crore

of Gopalpur Port, the project cost of ₹ 720 crore was also escalated to ₹ 1212.55 crore by April 2010. In case of Subarnarekha and Astaranga Ports, as the construction work had not been started, there is possibility of cost escalation and recovery of the escalated cost through higher tariff.

The Commissioner-cum-Secretary stated (November 2012) that as per the provisions of CA, tariff is to be fixed by the Developer depending upon market conditions. He also stated that Major Ports incur not only Port charges but also many other expenditure like stevedoring, intra-port transaction etc. which are over and above the Port tariff where as Dhamra Port charge a comprehensive tariff for host of all services. The Department also stated that there was increased cost to Dhamra for maintaining deeper drafts and mechanised handling which resulted in increased benefit to the users in terms of larger ships and lesser dwell time of ships. The Department contended that it was only after finding that total logistic cost per ton in Dhamra was lesser than in other Ports that a user would come to Dhamra.

The reply was not tenable as the Port Policy 2004 required that OMB would be vested with powers to impose, review and modify the existing Port charges in Minor Ports subject to approval of Government. Besides, 'Overview of the framework of MCA' provided that tariff shall be based on the rates to be notified by the Government. Unless the tariff is regulated, there is a possibility of the Concessionaire getting more returns on its investment than what is projected in the DPRs. Also, Government itself considered the highest revenue per tonne of Paradip Port Trust for projecting tariff of Chudamani Port (not yet operational) after comparing per tonne revenue of last three years of Paradip Port, Visakhapatnam Port and Chennai Port.

#### ***2.1.4.4 Undue favour to Developer and loss of ₹19.50 crore due to lower rate of revenue sharing***

**Due to fixing lower revenue sharing ratio in Gopalpur Port than that of Dhamra port, there was a projected loss of ₹ 19.50 crore**

Developer of Gopalpur Port, after negotiation, agreed for a revenue share between 0 to 7.5 *per cent* against the reserve share of five to eight *per cent* fixed by the Government and the revenue share agreed to for Astaranga, Dhamra and Subarnarekha Ports, which ranged from five to 12 *per cent*. Acceptance of lower rate of revenue share offered by the Developer of Gopalpur Port compared to the reserve percentage share led the Department to forgo additional revenue share of ₹ 5.13 crore (*Appendix 2.1.2*) for the total Concession period (30 years) based on the gross revenue earned during the first four years of Port operation assuming that there is no increase in revenue. Compared to the revenue sharing ratio adopted for Astaranga, Dhamra and Subarnarekha Ports, the Government had to forgo a share of ₹ 19.50 crore (*Appendix 2.1.3*) by adopting a different rate for Gopalpur Port. Besides, undue favour was also extended to the Developer of Gopalpur Port by same amount.

In reply, the Department stated (July 2012 and November 2012) that as the price in percentage quoted by OSL (for GPL) was less than the percentage of reserve price fixed by the Government and the price obtained was market determined, so should not be compared with price agreed to by Developers through MoU route. The Secretary also stated that the Government had no option but to negotiate with the bidder as re-tendering would have delayed the

entire process of development. The reply of the Department is not tenable as a greenfield ports like Astaranga, Dhamra and Subarnarekha offered revenue share between five to 12 *per cent* and a different rate was adopted for Gopalpur Port, where facilities and infrastructure were partly available.

#### **2.1.4.5 Non-payment of ₹ 1.44 crore to the ex-chequer due to suspension of Port operation by Gopalpur Port limited**

**Port operation at Gopalpur remained suspended during construction of Phase II**

The Gopalpur Port suspended its anchorage Port operation for construction of phase-II of the project since October 2010 and failed to remit any revenue share to the Government from the fifth year onwards. The Department issued (May 2012) a demand notice of ₹ 72.14 lakh towards revenue share for 2010-11 which accumulated to ₹ 1.44 crore during 2011-12. The same was not realised as of September 2012. We are of the view that the Department did not foresee such a common and routine eventuality and failed to include a penalty or minimum guaranteed revenue share or minimum guaranteed cargo in the CA similar to Clause 7(xii) of MCA, to safeguard the interests of the Government. Due to suspension of Port operation by the Concessionaire, the State exchequer could not realise ₹ 1.44 crore towards its revenue share for fifth and sixth year based on revenue share of fourth year.

On this being pointed out, the Commissioner-cum-Secretary stated (November 2012) that stringent punitive action against the Developer had already been initiated in October 2012.

#### **2.1.4.6 Revenue share from the Developer of Dhamra port**

Mention was made at paragraph 2.1.5.1 of Audit Report (Civil) for the year ended 31 March 2011 regarding extension of undue favour of ₹ 14.30 crore to the Developer of Dhamra Port due to application of Industrial Policy Resolution (IPR) retrospectively superseding the provisions of CA and payment of lease charges for Government land at concessional rate instead of at fair market value as required under Clause 7.2 of the CA.

As per Clause 4.13 of CA of Dhamra Port signed in April 1998, additional tenanted land required for the project work was to be acquired and owned by the Government, the cost of which is to be initially borne by the Developers and the same was to be adjusted against payments due to Government on account of its revenue share within 15 years from the commencement date, in annual equal installments without interest. This stipulation was later included in the Port Policy 2004 also. Besides, Clause 11.4 of CA of Dhamra Port confers on Government the right to conduct or get conducted, operational and financial audit of the Port to ensure accuracy of the income to the Developer of which it gets a share. Operational audit would also check upon compliance with the approved and agreed plans for development and operation of the Port and maintenance of the Port facilities and assets.

**Excess adjustment towards cost of acquisition:** We noticed that the Profit and Loss Account of Dhamra Port for the year 2011-12 showed a gross revenue of ₹ 197.80 crore. Against a revenue share of ₹ 9.75 crore payable to the Government at the rate of five *per cent* (Clause 7.3), the Port authorities had provided a liability for ₹ 4.11 crore (excess by ₹ 19 lakh) after deducting ₹ 5.83 crore being one fifteenth of the cost of acquisition (₹ 87.45 crore) paid

by it on land acquisition, which was to be adjusted annually in 15 years. As discussed in paragraph 2.1.3.2 due to fault of the Developer, extra expenditure of ₹ 30.86 crore was incurred on acquisition of land for which no clause safeguarding the interest of the Government was included in the CA. The extra cost of ₹ 30.86 crore is being reimbursed, which could have been avoided had a suitable clause for recovering the same from the Developer been included in the CA and only ₹ 56.59 crore (₹ 87.45 crore less ₹ 30.86 crore ) would have been adjusted from revenue share of Government in next 15 years at ₹ 3.77 crore per annum. As a result, ₹ 2.06 crore was adjusted in excess during 2011-12 and it would have a recurring impact on revenue share of Government for 15 years.

**Independent Auditor was not appointed to audit the correctness of gross revenue reported by DPCL**

**Non-conducting financial and operational Audit:** The Government had not engaged any Auditor to validate the gross revenue generated by the Dhamra Port during 2011-12 but relied on the report of the Statutory Auditor. The Department had also not carried out any operational audit as required under Clause 5.8 of CA as of September 2012.

The Commissioner-cum-Secretary stated (November 2012) to have initiated action for appointment of Independent Auditor after due vetting by the Finance Department and that verification of assets created under Phase I had already been conducted by the Director (P&IWT). However, audit by Independent Auditor and Operational Audit were awaited (November 2012). Though the Department stated that assets were verified by the Director, P&IWT, yet no documentary evidence in support of such asset verification could be furnished to audit. In absence of an Independent Engineer, it was not understood how these assets were valued and their quality was certified.

#### **2.1.4.7 Bank Guarantee for revenue sharing not insisted upon**

As per Clause 7.5 of the Concession Agreement, Developer of Dhamra Port was required to submit bank guarantee equal to 1.5 times of the annual revenue share on assessment after one year of completion of Port operation as a security. It was observed that though one year operation period was over in May 2012, there was no recorded evidence regarding realisation or even raising the demand by the Department for deposit of Bank Guarantee (BG) amounting to ₹ 16.17 crore<sup>16</sup> from the Developer.

The Department accepted the audit observation and stated (July 2012) that the Developer had been directed (June 2012) to furnish Bank Guarantee for ₹ 16.17 crore. The Commissioner-cum-Secretary stated (November 2012) that Developer had already given a Bank Guarantee for ₹ five crore and additional Bank Guarantee for ₹ 88 lakh was under process. The Secretary also stated that the quantum of BG to be furnished by the Developer was under examination at Law and Finance Department and after the final amount is decided, the Developer would be asked to pay the same.

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<sup>16</sup> Revenue share for first year = ₹197.80 X 12 /11 X5% =₹ 10.78 crore  
Bank Guarantee required= ₹ 10.78 crore X 1.5 =₹ 16.17 crore



### 2.1.4.8 Detailed Project Report

Detailed Project Report (DPR) is an important document as it indicates the financial viability and feasibility of the project, expected revenue earning, profitability of the project, IRR and ROR as well milestone for construction and operation of the Port project. We found that preparation of the DPRs was left to the private partner in case of development of all the five PPP Port projects and DPRs were prepared by the Developers much after signing of the MoU and CA. These DPRs were approved by Government in a routine manner without exercising due diligence on the IRR and ROR allowed to the Developers, to optimise the revenue share of Government. Besides, as these reports were prepared much after signing of the CA, IRR and RORs were not considered for fixing the revenue share of the Government, especially when Port projects were awarded in four out of five cases through MoU route.

The Commissioner-cum-Secretary stated (November 2012) that since development of Ports was undertaken through private participation and MoU route, the DPRs of the Port projects were prepared by the Developers and approved by the Government after scrutiny.

The reply is not acceptable as no due diligence was exercised while approving the DPRs and as in case of two Ports, same revenue sharing ratio (five to 12 *per cent*) was agreed to when IRR was 12.67 *per cent* (Astaranga) and 19.6 *per cent* (Subarnarekha).

## Structure of Concession Agreement

### 2.1.5 Concession Agreement

In PPP arrangements, Concession Agreements (CAs) indicating the concession period, rights of the Developer, revenue share of Government, force majeure, auditing and inspection arrangements etc plays a vital role. It should be well drafted as in such arrangement, it is equally important to protect the public exchequer from any unintended misuse or claims from Concessionaires by exercising adequate due diligence in sharing risks associated with the project. Besides, the five critical elements that were to be considered while drafting such Concession Agreement under PPP are expected cargo to be handled, tariffs, commencement date, concession period and capital costs. Considering all these aspects, the Planning Commission had also prescribed (January 2008) a Model Concession Agreement for major Ports, which was to be referred as a standard document while drafting CAs. Audit examined the Concession Agreements of Dhamra (April 1998), Gopalpur (September 2006), Subarnarekha (January 2008) and Astaranga (November 2010) Ports and noticed that though CA of Astaranga Port was signed (November 2010) much after the MCA was prescribed (January 2008) by GoI; yet provisions of MCA were not incorporated.

The Commissioner-cum-Secretary stated (November 2012) that provisions of MCA were not applicable for greenfield Ports and so were not incorporated.

The reply is not tenable as MCA at Chapter “Overview of the framework” indicated that the MCA ‘can also be applied to PPPs for building of new Ports on BOT basis’ with some modifications. Besides, on being enquired in Audit, about non-preparation of a State specific MCA, the P&C Department stated

**Though CA of Astaranga Port was signed much after the MCA was prescribed by the GoI, yet provisions of MCA were not included in the CA to safeguard the interest of the Government and stakeholders**

(June 2012) that as the secretariat for infrastructure of Planning Commission has published a MCA document for Ports, there was no requirement for preparation of a State specific MCA document for Minor Ports by the Department to avoid unnecessary duplication.

On comparison of the CAs of these four Ports, we noticed wide variations which are discussed in succeeding paragraphs.

**2.1.5.1 Commencement dates not uniform in the Concession Agreements (CA)**

**Commencement date was not uniform in all the CAs signed and all differed from MCA**

As per Clause 2.2 of MCA, the commencement date of CA should be from the date of award of concession during which the Concessionaire is authorised and obliged to implement the Project and to provide Project Facilities and Services in accordance with the provisions thereof. However, following deviations were noticed.

**Astaranga Port:** Though CA of Astaranga Port was signed on 22 November 2010 i.e. after the MCA was prescribed, yet the commencement date was indicated in Clause 2.1 of CA as “the date on which the physical possession of land of Port premises and land required for the economic corridor including road and rail facilities and way side amenities would be given by the Government”. As per MCA, commencement date should have been from the date of award. As a result, the Developer delayed depositing funds for land acquisition and delayed the project. We also noticed that the acquisition process for 2435.867 acres of private land is under progress (September 2012) though CA was signed in November 2010. As land had not been handed over, the CA was actually in an inoperative stage (October 2012). It would have subsequent impact on cost escalation of the project which would *interalia* result in fixing higher tariff to recover the said extra cost.

**Dhamra port**

**Developer reaping the benefit of Commencement date clause as the same was inserted ignoring the views of Law Department:** CA of Dhamra Port was signed on 2 April 1998, which at Clause 2.1 described the ‘commencement date’ as “the date on which the physical possession of land of port premises and land required for the economic corridor including road and rail facilities and way side amenities would be given by the Government”. We noticed that the Developer (ISPL) insisted for inclusion of commencement date clause during the process of finalisation of Concession Agreement. We also noticed that the Law Department advised (November 1997) not to include the commencement date clause, as the same would unnecessarily delay the project. However, it was agreed (November 1997) to include the same clause (Clause 2.1) in the agreement. We further noticed that after signing of the Concession Agreement in April 1998, the Developer took complete benefit of this commencement date allowed by the Department to be 30 September 2008 when land for rail corridor was ready for handing over during June to November 2007 and Port land was handed over in January 2004. Consequently, the Developer got over 10 years to arrange fund, make financial closure and developing the port, while being in custody of the Port site all these years.

**Commencement date was fixed as September 2008 irregularly:** We also noticed that the delay in land acquisition was due to failure of the Developer in depositing the cost of compensation in time for which the acquisition proceeding for 2579.96 acres of land in 66 villages lapsed in 2000 and were initiated afresh in 2003-06 after three years with an extra cost of ₹ 30.86 crore<sup>17</sup> and about 13 months delay in taking over possession of the acquired land despite request (September 2007) of the Collector, Bhadrak and the requisitioning officer (IDCO) that land was ready for handing over in September 2007. Deed of agreement for 2027.63 acres of acquired land was signed between IDCO and the Collector during June to November 2007. Thus, it is evident that land was ready by September 2007 and delay in taking over was attributable to the Developer for which there was no justification for fixing the commencement date till September 2008 i.e. 13 months after the due date which was irregular.

In reply, the Commissioner-cum-Secretary while admitting (November 2012) that during 2000-2004, the company went on restructuring which involved exit of foreign partner and entry of TATA Steel also stated that the delay was due to reduction of land requirement for which a re-notification was made in 2005. The Secretary further stated that the last batch of acquired land was handed over to the Developer in January 2010.

The reply is not tenable in audit as the records of Special Land Acquisition Officer, Bhadrak revealed that due to non-depositing the cost of acquisition, acquisition proceeding already initiated for 2579.96 acres of land in 66 villages lapsed as the award could not be passed within two years of notification due to this reason. Besides, while Port land was handed over in 2004, acquired land was ready for handing over by September 2007, but the Developer did not respond to the request of the Collector and IDCO and delayed taking over of land.

**Loss of revenue share to Government due to delay in execution and fixing commencement date arbitrarily:** The CA for Dhamra Port was signed in April 1998 and the scheduled commencement was the date of actual handing over of all land. The commercial operation of the Port started only from 6 May 2012. As per the Project Implementation Schedule attached to CA, one year was required for land acquisition and four years was for construction of the Port. Allowing this time limit of five years for land acquisition and construction of the Port, there was eight years (April 2003 to April 2011) delay in making the Port operational. As a result, Government was deprived of earning revenue share of ₹ 99.26 crore<sup>18</sup>, calculated at its revenue share percentage on the gross revenue of ₹ 197.80 crore earned during the 11 month period of May 2011 to March 2012 as Internal Rate of Return for this Port was not calculated by the Department / Developer. Besides, such delay had also impact on revenue share of Government as it would start earning the revenue only from 2011-12 to 2016-17 at five *per cent* and so on against seven *per cent*, but for the delayed execution of the Port. This also indicated that though the concessionaire was responsible for the delay in land acquisition, yet they got advantage due to one-sided commencement clause in the CA in favour of the Concessionaires.

<sup>17</sup> Total cost of compensation paid ₹ 87.45 crore less ₹ 56.59 crore required earlier

<sup>18</sup> (5 per cent of ₹ 197.80 crore X 12/11 x 5 years) plus (7 per cent of ₹ 197.80 crore X 12/11 x 3 years) = ₹ 53.95 crore + ₹ 45.31 = ₹ 99.26 crore

In reply, the Principal Secretary stated (May 2012) that the commencement date was 30 September 2008. The Department also stated (April 2012) that Dhamra Port project involved acquisition of land from 74 villages which was a herculean task in the present day circumstances and that the Government had monitored the progress of the work of the Port project, as a result of which the Port had completed the phase-I development of the Port which was appreciable.

The reply of the Department is not tenable as besides delay over nine years, this had also adverse impact on the revenue share to the Government. Further, decision of fixing the commencement date to 30 September 2008 was taken hurriedly in the review meeting (April 2012) ignoring the fact that major portion of acquired land ( 2027.63 acre) was ready for handing over by June 2007 to November 2007 and further delay in taking over was attributable to the Developer.

**Gopalpur Port:** Clause 2 of CA of Gopalpur Port provided that “commencement date was the later of date on which the Government hand over the physical possession of assets already created”. Assets like jetties, ware houses, cranes, buildings etc. earlier created by Government was handed over to GPL on 30 October 2006 and the commencement date was treated as 30 October 2006.

**Subarnarekha Port:** Para 2.1 of CA of Subarnarekha Ports provided that “commencement date would be the date on which the physical possession of land of port premises and land required for the economic corridor including road and rail facilities and way side amenities would be given by the Government”. We also noticed that the process of acquisition of private land (1593.940 Ac) and alienation of Government land (961.18 Ac) for Subarnarekha Port was under progress (September 2012). The estimated cost for acquisition of land had not yet been deposited (September 2012) by the Developer and the Department had not pursued the matter. As a result, the Developer delayed the execution of project after signed the CA in January 2008.

**Astaranga port:** The commencement date of CA of this Port signed on 22 November 2010 is similar to that of Subarnarekha port. In this case also, acquisition of private land of 2435.867 acre was under progress and so the CA is in inoperative stage.

Thus, commencement date was not made uniform in all CAs, thereby giving scope for delayed construction of projects due to delay in land acquisition etc. and even depositing the land acquisition cost. Also, due to insertion of such Clause, not only the execution of the projects (Subarnarekha and Astaranga) are getting delayed with cost over-run but also had subsequent impact on the revenue share of the Government.

**2.1.5.2 *Undue favour due to grant of longer Concession period than that prescribed in MCA without adequate due diligence***

The Model Concession Agreement (MCA) in its ‘Overview of the framework’ stipulated that “the guiding principle for determining project specific concession period should normally be the capacity of respective Port terminal

to handle the expected cargo at the end of the proposed concession period”. Therefore, the tenure of the concession period would be dependent upon the investment proposed to be made, volume of traffic trend projections, fixed and operation and maintenance (O&M) costs, revenue inflow and outflow streams, return on investments, the Government share of revenue, and expected break-even period, amongst other technical and financial parameters. All these factors should be captured in the matrix of Internal Rate of Return (IRRs) or Return on Investment (ROI) calculated for each of these Port projects in the DPRs. However, the Department could not provide to Audit any evidence which would indicate that these project specific inputs were considered and evaluated by the Department while fixing the concession period. The very fact that the Government approved the DPRs with varying IRRs and Rate of Return (RORs) for the three projects (Astaranga: 16.67 per cent, Gopalpur: 15.2 per cent and Subarnarekha: 19.60 per cent) indicated that the Department did not carry out the requisite due diligence to allow only a reasonable rate of return on investment to the Concessionaire. It thus, allowed uniform tenure of 34 years to all the MoU partners where as it would have been different had a reasonable ROR been fixed for these concessionaires.

The MCA had also prescribed (January 2008) that unless there are reasons for making an exception, the Concession Period (CP) should normally be fixed at 30 years. This was inclusive of the construction period. We noticed that while concession period of 30 years was allowed in the CA of Gopalpur Port, yet the same was allowed to be 34 years ( including maximum four years construction period) in the CAs of three other Ports (Astaranga, Dhamra and Subarnarekha). In such cases, the Ports would be handed over to the Government after 34 years and the Developer would be benefited by retaining the net revenue that would be earned during these extra four year period.

On examination of discounted net cash flow, arrived by the Developers of Astaranga and Subarnarekha Ports in the DPRs for calculation of IRR which were furnished to Audit by the Department, the gross revenue projected by the Concessionaires to be earned during last four years (thirty-first to thirty fourth year of the Concession period, O&M expenses, net cash flow, revenue share of Government projected to be paid and net return to be received by the Concessionaire are indicated in the table below.

**Table 2.2: Table showing cash inflow to Developers during last four years of Concession period**  
(₹ in crore)

| <i>Name of the port</i> | <i>Total cash inflow projected in the DPR (Gross revenue)</i> | <i>Cash out flow on O&amp;M Expenses</i> | <i>Cash outflow other expenses</i> | <i>Net cash inflow (Net revenue)</i> | <i>Government revenue share on gross revenue to be paid, as projected</i> | <i>Net cash flow that the Concessionaire would get after payment of revenue share</i> | <i>IRR</i> |
|-------------------------|---|--|------------------------------------|--------------------------------------|---|---|------------|
| Astaranga               | 18150.38  | 3940.77                                  | 3731.99                            | 10477.62                             | 2199.40   | 8278.22   | 12.67      |
| Subarnarekha            | 6820.00   | 843.20                                   | 0.00                               | 5976.80                              | 818.40  | 5158.40   | 19.60      |
| <b>Total</b>            | <b>24970.38</b>   | <b>4783.97</b>                           | <b>3731.99</b>                     | <b>16454.42</b>                      | <b>3017.80</b>  | <b>13436.62</b>   |            |

(Source: DPR of the Ports prepared by the concessionaires and furnished by the Department to Audit)

However, in case of Dhamra port, as the IRR as well as discounted cash flow for the Concession period has not been calculated in the DPR, we are unable to ascertain the net benefit that the Concessionaire would get during the last four years of CP.

In reply, the Principal Secretary stated (May 2012) that the Concession period of 34 years included maximum of four years for construction. He further stated that as the construction of Dhamra Port being completed on 5 May 2011 and put to commercial operation from 6 May 2011, the agreement would be valid for only 30 years from the date of operation i.e. up to 31 May 2041. The reply is not tenable as the total Concession period mentioned in the CA is 34 years and no documentary evidence could be shown about the modification / amendment of the CA.

Besides, the Commissioner-cum-Secretary stated (November 2012) that non-compliance with the provisions of MCA suggested by Planning Commission was not tenable as in the MCA at Chapter 'Overview of the framework', it was stated that "the same is applicable for building and operating of Port terminals on BOT basis". The Secretary further contended that MCA was applicable only for PPP projects for creating additional infrastructure in the existing Major Ports, where risk factor was less where as in case of green field projects, the Developer had to establish the whole Port. The Secretary further stated that the development of a terminal in a Major Port was an one time project where as development of a greenfield project was a multi-phased project and therefore concession periods for the two could not be the same. The Secretary added that as legislative stipulation did not exist for non-major ports, hence a maximum period of four years for development and construction plus a period of 30 years of concession was provided by the Government in the CAs of greenfield port projects and cited four ports of Andhra Pradesh, Pondichery and Kerala where concession period allowed was 50 years.

The reply is not tenable as MCA at Chapter "Overview of the framework" indicated that the MCA 'can also be applied to PPPs for building of new ports on BOT basis with some modifications'. Besides, on being enquired in Audit about non-preparation of a State specific MCA, the P&C Department stated (June 2012) that as the secretariat for infrastructure of Planning Commission had published a MCA document for port sector, hence there was no requirement for preparation of a State specific MCA document by the P&C Department to avoid unnecessary duplication and that MCA of the Planning Commission could be followed as a guiding document. In the absence of any State specific policy or Model Concession Agreement prepared by the Department, Audit had to rely on the MCA and its 'Overview of the framework' which overwhelmingly prescribed a maximum period of 30 years for such CAs. In case of greenfield projects, though different type of clearance and land acquisition and rehabilitation issues were involved, yet the same were to have been factored in while preparing the DPRs while at the same time, keeping the time schedule.

Though legislative stipulation did not exist for non-Major Ports to restrict the concession period to 30 years, yet the Department allowed the concession

period as 34 years including maximum four year construction period without carrying out adequate due diligence regarding the extent of Concession period required based on technical and financial parameters such as traffic projection and trend, expected breakeven period, reasonable return on investment / IRR etc. The contention of the Government that 30 year Concession period plus four year construction period was provided in the CA is not correct, as a total Concession period of 34 years was mentioned in the CA en-block and is therefore, legally enforceable. Further, no documentary evidence could be shown to Audit about the Developers agreeing to 30 year concession from the date of operation.

### 2.1.5.3 Non-uniformity in Performance Guarantee

Against the requirement of providing 5 per cent of the estimated cost of construction of the project towards Performance Guarantee as per MCA, only one to 1.65 per cent was provided in the CAs

MCA at Clause 4.1 prescribed for Performance Guarantee (PG) equivalent to five *per cent* of the estimated project cost to be given by the concessionaire to the Concessioneing Authority during the construction phase. We, however noticed that the CA of Astaranga Port provided for PG of one *per cent* of the estimated project cost against five *per cent* required as per MCA. CAs of Astaranga, Dhamra and Subarnarekha provided for PG at one *per cent* of the estimated project cost, during the construction phase. In case of Gopalpur Port, the Department had realised PG of ₹ 20 crore which constituted 1.65 *per cent* of estimated project cost of ₹ 1213 crore. As of September 2012, against ₹ 133.09 crore due towards Performance Guarantee as per CA by four Ports, only ₹ 44.64 crore was given by two Ports resulting in short-deposit of Performance Guarantee by ₹ 88.45 crore as indicated in table below.

Table 2.3: Table showing less Performance Guarantee (PG) claimed

(₹ in crore)

| Name of the Port | Project cost | PG to be given as per MCA as percentage of project cost | PG to be given as per CA as percentage of project cost | PG as per MCA | PG due as per CA | PG actually given | Shortfall from PG due as per MCA |
|------------------|--------------|---|--|---------------|------------------|-------------------|----------------------------------|
| Astaranga        | 6500         | 5 per cent  | 1 per cent   | 325.00        | 65.00            | 0.00              | 260.00                           |
| Dhamra           | 2464         | 5 per cent  | 1 per cent   | 123.20        | 24.64            | 24.64             | 98.56                            |
| Gopalpur         | 1212.55      | 5 per cent  | ₹ 20 crore   | 60.63         | 20.00            | 20.00             | 40.63                            |
| Subarnarekha     | 2345         | 5 per cent  | 1 per cent   | 117.25        | 23.45            | 0.00              | 93.80                            |
| <b>Total</b>     |              |   |  | <b>626.08</b> | <b>133.09</b>    | <b>44.64</b>      | <b>492.99</b>                    |

(Source: Records of C&T Department)

As per MCA, ₹ 626.08 crore was payable, while the same as per CA worked out to ₹ 133.09 crore which was ₹ 492.99 crore less.

The Commissioner-cum-Secretary stated (November 2012) that whether Performance Guarantee (PG) for five *per cent* would be reasonable or one *per cent* would be reasonable would depend on the size of the project and other circumstances. The Secretary further stated that in case of a greenfield port where investment and risks were much higher in order, less PG was agreed in the CAs.



The reply is not acceptable as adequate PG is required for providing safeguard against inefficient and improper performance including during the construction phase. Besides, gross amount of PG can be different depending on the size of the project and investments made, but not percentage value which should be uniform as per the MCA.

#### **2.1.5.4 Non-opening of Escrow Accounts**

**Neither the CA provided for the Escrow Account nor the same was opened for any project.**

MCA at Clause 9.5 provided for opening of an escrow account in a bank by the private Developer by entering into Escrow agreement with the financiers. All the cash flow of the project was to be accounted for in it. No such provision was available in all the four CAs signed by the Department with the Concessionaires. In the absence of an Escrow Account, the Department was not aware of the amount of equity and debt inflow into the project and expenditure made there from and also booking of the expenditure of the project by the Concessionaire of all the four ports. Thus, the chances of less accounting of the gross revenues, a part of it was to be shared with Government, was high. The Government did nothing to insulate itself against such an eventuality.

In reply, the Department stated (July 2012) that the Government was examining the issue for providing Escrow Account mechanism in the Concession Agreements. Subsequently, the Commissioner-cum-Secretary stated (November 2012) that Escrow Account is not required as the revenue share of the Government is protected through Bank Guarantee.

The reply is not acceptable as Escrow Account was a safety mechanism for the Government to ensure that the first charge on the revenues of the Port was the States' own revenue share irrespective of whether the Port made a profit or not. In the absence of Independent Engineers and Independent Auditor by Government, this was all the more necessary.

### **Completion of PPP projects**

#### **2.1.6 Independent Engineers not appointed**

**In CA of two out of five ports, there is no provision for appointment of Independent Engineer, which is contrary to the provisions of MCA**

MCA at Clause 5.1 required selection of an 'Independent Engineer (IE)' following a tender process, in order to exercise oversight on the Master Development Plan of the port, design and construction activity and to assure the quality of construction through tests. The IE was to be engaged from the date of award of CA to six months of the commercial operation. The cost and expenses of the IE was to be shared by both the parties. As per the GoI 'Guidelines for monitoring of PPP projects', the IE was to submit monthly / quarterly report of construction activity to the Government and certify the date of commencement and in-operation date of the Port.

The Concession Agreement signed with Creative Port Development Private Limited (Subarnarekha port) and Navayuga Engineering Company (Astaranga Port) did not provide for appointment of IE at all, though such provision was to be made for Astaranga Port whose CA was signed much after the MCA was prescribed. Though the Concession Agreements signed with the Developer of Dhamra Port and Gopalpur Port provided for appointment of IE, but the

method of appointment was not made on Competitive Bidding Process. As per the CAs, the facility agent was to appoint the IE for Dhamra Port in consultation with the Department and Developer, whereas in case of Gopalpur Port, the panel of firms would have to be provided by the Developer and Government in turn to appoint the IE. Thus, no uniformity was noticed in appointment of IE. Despite provision in the Concession Agreement, IE was not appointed in respect of Dhamra Port as of September 2012. In Gopalpur Port, though, IIT, Chennai was engaged ( November 2011) as the IE, yet terms of reference /agreement is under finalisation (November 2012). Though the Dhamra Port started operation in May 2011, the Department was in dark as to the design and quality of construction due to non-engagement of IE. The Department had thus not assured itself about the quality of the construction undertaken by the private Concessionaire and actual status in the operation and maintenance of the Ports. Actual project cost of Dhamra Port was also not certified by any independent body / consultant.

The Department stated (June 2012, November 2012) that IIT Madras was informally carrying out the responsibility of IE, in case of Gopalpur Port while in Dhamra actual project cost was certified by the IE of the Lender (Consortium of eight banks led by IDBI). It also stated that in respect of Subarnarekha and Astaranga Ports, action would be taken for signing of supplementary agreement with the Developers for engagement of IE as per MCA.

### Environment protection issues

#### 2.1.7 Delays in obtaining environmental clearances by the Concessionaires and non-fulfilling the conditions imposed

The responsibility and risk of obtaining environmental clearance lay with the private partners in respect of four ports for which Concession Agreements were signed. The present status of obtaining environmental clearance for five ports under PPP mode was indicated in table below.

Table 2.4 : Status of environmental clearance by ports under PPP mode

| Name of the Project | Date of signing of CA | Date of applying for environment clearance | Response of MoEF    | Date of MoEF approval                             | Present status of compliance         |
|---------------------|-----------------------|--|---------------------|---|--------------------------------------|
| Dhamra              | 2 April 1998          | Not available                              | 2 April 1998 (MoST) | Approval from MoST <sup>19</sup> (4 January 2000) | Complied by Dhamra Port.             |
| Gopalpur            | 14 September 2006     | 21 May 2007                                | 14 October 2009     | 30 March 2011                                     | Data not available in the Department |
| Subarnarekha        | 11 January 2008       | 9 April 2007                               | April-December 2011 | 21 March 2012                                     | Data not available in the Department |
| Astaranga           | 22 November 2010      | Not yet applied                            | Not applicable      | Not applicable                                    | Not applicable                       |

(Source: Records of Commerce and Transport Department)

There was delay ranging from 46 to 59 months in getting environmental clearances by two PPP Port projects

<sup>19</sup> Ministry of Surface Transport

As may be seen from the above table, there was delay of 46 months and 59 months in getting environmental clearances in respect of two Ports viz Gopalpur and Subarnarekha respectively. Due to delay in getting environmental clearance, Government was compelled to grant two years extension for operative date of the phase-II of the Gopalpur Port project. The phase-II of the project though was to be completed by 30 October 2010 as per Clause 6.4 (B) of the CA, yet due to grant of such extension, the scheduled date of completion of the project shifted to 29 March 2013 indicating a delay of 29 months for completion of the project.

**Conditions laid down by GoI while issue of environmental clearance was not complied by two Ports viz Gopalpur and Subarnarekha**

Besides, environmental clearance by the Ministry of Surface Transport (MoST) and Ministry of Environment and Forest (MoEF), the guidelines, stipulated, *inter alia*, creation of an environmental cell in each Port and maintenance of green belt. The Subarnarekha Port had not complied with the same.

The Department, stated (July 2012) that the Gopalpur Port applied for environmental clearance to MoEF and to Odisha State Coastal Zone Management Authority (OSZMA) in May 2007 and June 2008 respectively which was recommended to the MoEF (October 2009) for consideration and delay in obtaining environmental clearance is not attributable to the project proponent. The reply is not acceptable as the Developer applied to MoEF and OSCZMA after a delay of eight to 21 months. The Commissioner-cum-Secretary assured (November 2012) that the Developer of Subarnarekha Port would be asked to comply to the environment conditions laid by MoEF.

### **2.1.8 Inadequate and ineffective monitoring**

#### **2.1.8.1 Inadequate monitoring**

**Project Monitoring Unit (PMU) at the project level and Performance Review Unit (PRU) at Government level**

Planning Commission in the 'Guidelines for monitoring of PPP projects' prescribed in 2009, recommended a two-tier PPP monitoring and reporting structure, i.e. establishment of PPP Project Monitoring Unit (PMU) at the project level with an officer at least of the rank of Director / Deputy Secretary/ Superintending Engineer as the head of the PMU and a Performance Review Unit (PRU) at Government level. PMU was to regularly submit monthly reports to the next higher tier on key project parameters in formats specified. PRUs were to review all PPP projects within its jurisdiction. PPP PRU was to be headed by an officer not below the rank of Joint Secretary of the State Government. The PRU could also hire consultants, wherever necessary.

Neither the PMU at the project level nor the PRU at the Department level were constituted to monitor the Port projects in PPP mode. PPP cell was constituted in February 2012 in the Department headed by Director of Ports and Inland Water Transport instead of the Joint Secretary of the Department. Monthly / quarterly reports on progress of construction were not received by the Department for any Port.

The Commissioner-cum-Secretary stated (November 2012) that Government is monitoring the development of Port projects through the Director, P&IWT, as and when asked for. The reply is not acceptable as no such record could be

produced to audit and neither PMU nor PRU were set up in Port project / Department level (November 2012).

### 2.1.8.2 *Right to Inspection*

**Despite the CA providing for right to inspection to Government, joint inspection of assets by the Government and Audit was not allowed by the Developer of Dhamra Port**

Clause 4.5 of the CAs signed with Concessionaires of Dhamra, Subarnarekha and Astaranga provided that Government would reserve the right to inspect the project work including the implementation of all construction work and monitor compliance against the approved design. This was very important considering that the ownership of all these projects would stand transferred to Government after the expiry of the concession period of 34 years. In the absence of a Government appointed Independent Engineer, the quality of construction, compliance with approved design and type of technology used remained unmonitored. This indicated failure on the part of the Department to exercise adequate oversight over the Concessionaires. We tried to conduct a Joint inspection of assets along with the Government representative, but did not succeed as the Port authorities did not agree for the same.

In reply, the Department stated (August 2012) that an Independent Engineer had already been appointed for Gopalpur Port and steps were being taken to engage Independent Engineers for Subarnarekha and Astaranga Ports which would be in place before starting of construction activity.

In respect of Dhamra Port, the Department stated (April 2012) that the concerned authorities of Railways and Director General, Shipping were in a better position to assess the quality and fitness of the installations meant for rail and Port operation and that there was no reason to assume that the IE appointed by the financier having direct interest in ensuring that the loan was properly utilised, was unreliable.

This reply of the Department is not acceptable as in the absence of an IE and PMU at the project level, monthly and quarterly reports on the progress and quality of construction and adherence to the approved design could not be reviewed at the Department level effectively. Besides as per Clause 4.5 of CA, Government has the right to conduct inspection of the Port assets / operation at any time. Audit requested (September 2012) Government for joint verification of assets and land allotted by Government for the project which the Department acceded (October 2012) but the Port authorities did not allow such joint verification. This being irregular and a breach of CA, Government needs to take stringent action on the Port authorities.

The Director P& IWT had been authorised (April 2012) to conduct monitoring meetings after completion of Dhamra Port project. Reports of the engineer appointed by the financiers could not be relied upon as they may look at the short term viability and efficiency of the project i.e. till recovery of their loan fully but IE appointed by the Department would have look, beyond the completion of the contract period to the long-term health of the project. Besides, if every aspect of monitoring was to be left to the Concessionaire, there would be no need to incorporate such provisions in the CA at all. Even the guidelines framed by the GoI had not prescribed such a mechanism. In such case, the Government should have made clear to the Concessionaire that they (the Concessionaires) would be held squarely responsible for occurrence

of any grave untoward incident during the period of construction and even thereafter.

### **2.1.9 Conclusion**

The State Government commenced award of Port projects in PPP mode in 1997 without working out any effective modalities and without any plan or framing of any Port and PPP policies. Projects were largely awarded through MoU route based on single *suo-motu* offer instead of Competitive Bidding route which raised issues of arbitrariness, lack of competitiveness and optimal value for money. Due diligence exercise on the revenue model before award of each project to the private partners was largely non-existent. Key partners of the Consortiums were allowed to exit during the lock-in-period contrary to the provisions of CA. Longer concession period was allowed than that prescribed in MCA. Commencement date of one Port was unduly postponed on ground of delay in land acquisition and also incurring of extra cost despite the fact that the Concessionaire was fully responsible for the same. Excess land was allotted beyond requirement. Performance Guarantee fixed was not adequate to ensure timely completion of the projects. Effective safeguards were not incorporated in the agreements against closure of Port operation after commissioning. Environmental issues such as setting up of Environment Cell and green belt were not enforced by the Department. Monitoring of execution of the projects by the Department was virtually non-existent. The Department extended undue benefit to the Concessionaires by fixing the Concession period to be 34 years. The Government suffered a loss of ₹ 159.96 crore due to deficiencies in the Concession Agreements.

### **2.1.10 Recommendations**

- Odisha Maritime Board may be constituted immediately to plan, direct and implement maritime development in the State with private sector participation in an orderly fashion.
- Due diligence needs to be enforced, if necessary, with the help of reputed consultants, in strategic planning, revenue and expenditure estimations of Port projects in the PPP model.
- Land being a scarce resource, excess land alienated beyond requirement should be resumed by the Government / Department.
- The advice of the Law Department in selection of private partner through Competitive bidding needs to be given due cognizance.
- Prescribed institutional mechanism for monitoring should be strengthened and enhanced to fully safeguard the interest of the Government, particularly after expiry of the agreement period with the Concessionaires.

## PLANNING AND CO-ORDINATION DEPARTMENT

### 2.2 Implementation of Integrated Action Plan (IAP) in the State

#### Executive Summary

*The programme 'Integrated Action Plan' was implemented in 60 identified tribal and backward districts of the Country including 15 districts of Odisha from December 2010, with the objective to bring about perceptible improvement in infrastructure and other facilities in these districts. It also aimed to create appropriate livelihood programmes for the young people in these regions, so that they are weaned away from Left Wing Extremism (LWE) activities common in these areas. The programme was extended to three more districts of the State during 2011-12. The Government of Odisha received ₹ 915 crore from the Government of India for implementation of programme of which ₹ 564.75 crore (62 per cent) was utilised by these districts up to 31 March 2012.*

*Though the District Level Committee headed by the Collector had the flexibility to spend the funds according to need assessed by it, the fund was utilised like any untied fund. Proposals sent by the District and Block level officers of different line Departments were approved without pre-evaluating the intended outcomes. Shelf of projects were prepared without identifying critical gaps in infrastructure and services in these areas / regions. Bottom up as well as participatory planning approach for identification of projects and assessment of need was totally absent. Performance indicators / outcomes of the programme were also not clearly spelt out. Effective Programme implementation was marred by abandonment of projects after partial execution, non-implementation of skill development and livelihood programmes for unemployed youths and non-prioritisation of LWE-affected areas in allocation of resources. Though periodic monitoring of the programme was being made by Planning Commission and the State Government, physical inspection of the work sites by the State-level officers was inadequate.*

#### 2.2.1 Introduction

The programme 'Integrated Action Plan (IAP)' was launched (December 2010) by the Government of India (GoI) as a component of 'Backward Regions Grant Fund (BRGF)' in 60 identified tribal and backward districts of the Country including 15 districts<sup>20</sup> of Odisha. The programme was extended to another three districts (Ganjam, Jajpur and Nayagarh) during 2011-12.

<sup>20</sup> Bolangir, Deogarh, Gajapati, Kalahandi, Kandhamal, Keonjhar, Koraput, Malkangiri, Mayurbhanj, Nawarangpur, Nuapada, Rayagada, Sambalpur, Subarnapur and Sundargarh

The main objective of the programme was to create need based projects that can show result in the short term and bring about perceptible improvement in public infrastructure and services in the inaccessible pockets of the identified districts. It was also intended to formulate appropriate livelihood programmes with skill development and skill up-gradation training options for young people in naxal affected districts so as to ensure that youngsters in these regions are weaned away from left-wing extremism.

To implement the programme in the selected districts, the Government of Odisha (GoO) received ₹ 915 crore<sup>21</sup> during 2010-12 from the GoI under IAP out of which ₹ 564.75 crore (62 per cent) was utilised during the said period.

**2.2.1.1 Why we conducted this audit?**

Even after implementation of IAP in the State, Left Wing Extremism (LWE) activities were increasing as brought out in our Performance Audit on “Modernisation of Police Forces<sup>22</sup>” in Audit Report (Civil) for the year ending March 2011. Besides, the low pace of utilisation and misutilisation of fund figured in the public domain and was a cause of concern triggering the need for a Performance Audit on implementation of the IAP programme.

**2.2.1.2 Organisational set up**

The Planning and Co-ordination (P&C) Department headed by the Development Commissioner-cum-Additional Chief Secretary is the nodal authority and responsible for scrutiny of the expenditure and monitoring of the scheme in the State. As per the guidelines, the programme at the district level is implemented by a District Level Committee (DLC) headed by the District Collector with the Superintendent of Police (SP) and Divisional Forest Officers (DFO) of the district as the members. The Collector is assisted by the Deputy Director (Planning) / Project Director, DRDA of concerned districts in preparation of planning, management of funds and implementation of the programme through different line Department executing agencies in the district. The organisational chart is given below.



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<sup>21</sup> ₹ 915 crore= ₹ 25 crore X 15 districts (2010-11)+ ₹ 30 crore X 18 districts (2011-12)

<sup>22</sup> Paragraph 2.2.1 at page 49 of Audit Report (Civil) on Government of Odisha which was laid in the State Legislature on 29 March 2012



### 2.2.1.3 *Audit objectives*

The Audit objectives were to examine whether:

- Planning was timely, adequate, effective, bottom up as envisaged in the guidelines and took into account the needs of LWE affected blocks / Gram Panchayats / areas within a district;
- Selection of projects was need based and designed to show results in the short term;
- Fund management was efficient and effective;
- Programme management was economic, efficient, effective and geared towards deriving intended benefits by obtaining convergence of different schemes / projects within a district;
- Inspection, monitoring and evaluation mechanism was in place, adequate and effective and that results of such inspection / meetings / evaluation were used to bring out necessary mid-course corrections;
- Performance indicators were fixed and outcome of the programme was evaluated

### 2.2.1.4 *Audit criteria*

The Audit Criteria were drawn from:

- Guidelines issued by the Planning Commission / GoI;
- Instructions issued by the GoI / Planning Commission / State Government from time to time;
- Odisha General Financial Rules, Odisha Treasury Code, Odisha Public Works Department Code, Odisha Analysis of Rates and Schedule of Rates and related Indian Standards (IS-456:2000);
- Prescribed monitoring mechanism.

### 2.2.1.5 *Scope and methodology of Audit*

Out of 15 districts covered under the programme during 2010-11, four (25 per cent) districts (Koraput, Rayagada, Subarnapur and Sundargarh) were selected on the basis of Stratified Random Sampling Without Replacement (SRSWOR) method based on Human Development Index<sup>23</sup> as the size measure. Apart from above, four more districts (Gajapati, Kalahandi, Malkangiri and Nuapada) were selected as additional samples based on our risk perception<sup>24</sup> (growing left wing extremism (LWE) activities) as many of the blocks in the above districts were largely affected by LWE. We conducted audit of Planning and Co-ordination Department, eight district level offices (PD DRDA / Deputy Director Planning) and 19 executing agencies (*Appendix 2.2.1*) between October 2011 and March 2012 and during July 2012 covering the

<sup>23</sup> Human Development report 2004 of the Government of Odisha

<sup>24</sup> Growing left wing extremism activities, low human development index :Gajapati (28), Malkangiri (30) and spending efficiency as on March 2011 Kalahandi being the lowest (00) and Nuapada the highest (₹17.43 crore )

period 2010-12. We also conducted joint physical inspection of 154 assets<sup>25</sup> and took photographs where considered necessary.

#### **2.2.1.6 Entry and Exit Conference**

The audit objectives, criteria, scope and methodology were discussed in an entry conference held on 10 April 2012 with the Officer on Special Duty, Planning & Coordination Department and Director-cum-Additional Secretary of the Department. Audit findings were also discussed with the Departmental Officers in an exit conference held on 31 July 2012. The reply of the Department on the draft report was received (November 2012) and the same was suitably incorporated in this report.

### **Audit Findings**

#### **2.2.2. Planning**

As per the guidelines, the district was to consider concrete proposals for public infrastructure services like school buildings, Anganwadi Centres (AWCs), Primary Health Centres (PHCs), drinking water supply, village roads, electric lights in public places etc. which should show results in short term. However, we observed that planning was inadequate and deficient as bottom up planning through participation of locals was not made, the need of the people was not assessed taking into account ground realities, critical gaps in infrastructure were not assessed, convergence of other schemes was not obtained and inclusion of livelihood programmes were not emphasised in planning as discussed in subsequent paragraphs.

##### **2.2.2.1 Absence of bottom up approach and need assessment in planning**

It was insisted (January 2011) by the Planning Commission to ensure participatory planning with bottom up approach in consultation with the villagers and other stakeholders to finalise the plans in the districts covered under this programme. It was also instructed to formulate action plans on assessment of ground realities to achieve the desired outcome.

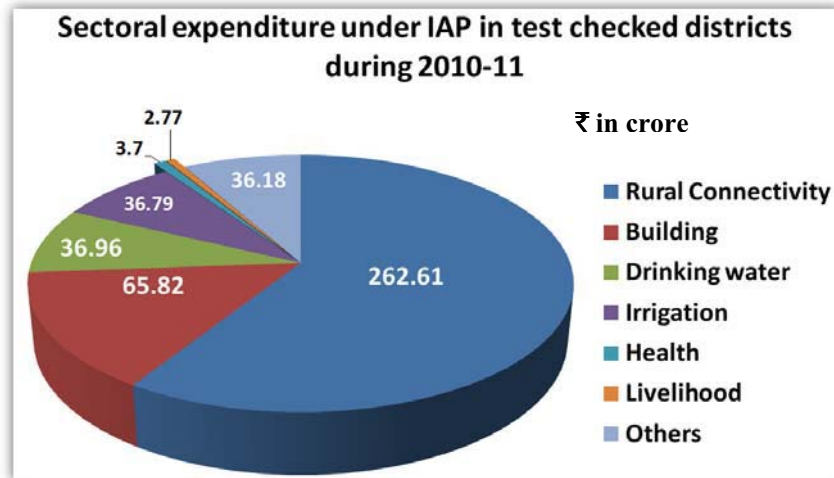
In eight test checked districts, 8040 projects were sanctioned under the programme at an estimated cost of ₹ 444.83 crore<sup>26</sup> during 2010-12. The sector-wise allocation of funds is given in the Chart 2.2:

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<sup>25</sup> Assets 24 (Gajapati), 28(Kalahandi), 37 (Koraput), 13(Malkangiri) 21 (Nuapada), 16 (Rayagada), 6 (Subarnapur) and 9(Sundargarh)

<sup>26</sup> Though the eight DLCs received ₹440 crore from GoI, the sanctioned amounts for projects was ₹444.83 crore

Chart 2.2



**Projects were approved without need assessment**

We found that none of the DLCs in the test checked districts conducted any need assessment to identify the projects in consultation with the villagers in preparation of plans. The projects were selected in consultation with line Departments and local MPs and MLAs without taking any input from Gram Panchayat level institutions such as Gram Sabhas / Palli Sabhas. The projects finalised, thus, were not based on the felt need of the common people of the locality. This was fraught with the risk of such projects remaining unused and becoming wasteful after their completion.

The Department stated (November 2012) that the District Magistrates involved in planning process were well aware of the needs of the district through field visits and feedbacks received from the field officers. The reply was not acceptable as the Gram Sabhas / Palli Sabhas at the grass root level were not consulted to spell out their needs though the same was required under 'Manual of Integrated District Planning' prescribed by the Planning Commission.

#### **2.2.2.2 Convergence of different schemes / projects not obtained**

In the video conference of January 2011, the Member Secretary, Planning Commission instructed to take up only those projects for which funding was not forthcoming from other ongoing schemes. So, while taking up a project, it should be ensured by the DLC that the said project was not covered under other normal / flagship schemes. For this, co-ordination with other line Departments and convergence with other schemes / programmes was necessary.

We noticed that convergence of IAP funds with other schemes / programme funds was taken up in Koraput district. Execution of projects which are usually covered under other ongoing schemes, duplication of projects and cancellation of projects due to duplication were discussed in succeeding paragraphs.

The Department stated (November 2012) that each scheme had its own set of guidelines which do not permit the desired design, quality and facilities of a

project for convergence as per the need. The converging / dovetailing of IAP funds with other schemes was neither normally desirable nor advisable though Koraput and Subarnapur districts had taken up some bridge works with convergence of funds. The reply was not acceptable as Planning Commission has instructed for utilisation of IAP funds to fill the critical gaps which are beyond normal schemes.

### **2.2.2.3 Critical gaps not properly assessed**

The Member Secretary, Planning Commission in the video conference (January 2011) clarified to the concerned Collectors, that IAP funds should be utilised optimally to fill the critical gaps which are beyond normal schemes and those projects should be taken up under IAP which are not admissible under different on-going schemes.

**Critical gaps in infrastructure and services were not identified**

Audit scrutiny revealed that, four<sup>27</sup> out of eight test checked districts incurred expenditure of ₹ 3.13 crore on purchase of movable assets like hospital beds, medical equipment, weighing machines, dual desks, library books etc. based on proposals from district level officers, though these movable assets were usually being supplied under GoI flagship schemes like National Rural Health Mission (NRHM), Sarva Sikshya Abhiyan (SSA) and other non-plan schemes under education and health sectors. Consequently, the programme funds were used as a kind of viability gap fund to substitute State / other scheme funds instead of giving immediate benefit to rural people. Critical gaps, thus, were not properly assessed due to lack of convergence approach.

The Department stated (November 2012) that adequate funds were not provided under other regular / departmental schemes in time for which critical gaps were covered under special schemes like IAP as per felt need of the people / area. Further, the ultimate decision on assessment of critical gaps lies with the DLC as per the clarification made by Planning Commission (October 2011). The replies were not convincing since the critical gaps of concerned districts were not assessed and above purchases were of routine nature which could have been met from other ongoing schemes.

### **2.2.2.4 Improper planning**

The Chief Secretary, Odisha instructed (December 2010) the DLCs to prepare Annual Action Plan (AAP) for 2010-11 and to ensure preparatory action by the Executing Agencies (EAs) for quick implementation of the projects.

We found that, though the test checked districts prepared the AAPs/shelf of projects during 2010-12, the projects were finalised without proper examination of their feasibility and ground reality due to which many projects proposed/taken up were subsequently cancelled. In all the test checked districts, the DLCs cancelled 249 projects with an estimated cost of ₹ 35.18 crore (*Appendix 2.2.2*) due to lack of feasibility for execution (109 projects), anticipating future coverage under Thirteenth Finance Commission and other scheme (29), local problems (73), execution of more need based projects (8) and other (30). Thus, the planning for projects were made without any survey

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<sup>27</sup> Rayagada (₹158.41 lakh), Nuapada (₹50 lakh), Koraput (₹78.65 lakh) and Malkangiri(₹25.52 lakh)

and in consultation with the villagers which were finally cancelled rendering the planning process largely confined to paper work only.

The Department stated (November 2012) that the projects were selected in consultation with the stakeholders and some projects could not be taken up due to binding constraints. The reply was not tenable as the DLCs approved projects, some of which were less need based and were not feasible which were to be cancelled later.

#### **2.2.2.5 Key Performance Indicators not prescribed**

For any scheme to be successful and to enable monitoring the outcome, it is desirable that Key Performance Indicators (KPIs) / bench marks should be prescribed.

**Key Performance Indicators not prescribed and funds were treated almost as untied funds**

Audit noticed that while planning was limited to preparation of AAPs / shelf of projects, even these looked more like annual construction wish-lists. Neither long term goals and benchmarks were spelt out in any form in these Plans nor pre-defined KPIs like all weather road connectivity to all villages, projects to be completed per month per executing agency, unemployed youths to be trained and provided livelihood support per month/per annum etc. were prescribed.

In the absence of such indicators and benchmarks, monitoring and control of the scheme was not possible / feasible any time even at a later stage. Programme funds were being treated as untied funds which could be spent for any purpose as per the direction of the DLC.

The Department stated (November 2012) that no such performance indicators for assessing the critical gaps had been envisaged in the guidelines for implementation of IAP. The reply does not address the issue raised by audit. Such KPI could have been fixed by the State Government as an internal monitoring mechanism.

#### **2.2.2.6 Non-inclusion of livelihood programmes in the plans for creation of self-employment opportunities**

The State Government instructed (December 2010) the District Collectors to devise and implement appropriate livelihood projects under IAP to bring substantial improvement in household income of marginalised households particularly of ST and SC community. Besides, Member Secretary, Planning Commission also instructed (January 2011) to formulate appropriate livelihood programmes with skill development and skill up-gradation training options for young people in naxal infested areas, so that youngsters are weaned away from extremism.

**Self employment opportunities and livelihood programmes were not identified and incorporated in the AAPs**

We found that, all test checked districts excepting Koraput had not included any livelihood projects though ₹ 440 crore was received by eight districts and 8040 projects were approved for execution during 2010-12. Only the DLC, Koraput planned for 44 livelihood projects with an estimated cost of ₹ 2.77 crore on the projects like tailoring centres, gunny bag preparation, spice / curry

powder unit, lemon grass, fly ash brick, paper carry bags, detergent making, atta besan, leaf plate making, honey processing etc. which constituted only 0.6 per cent of the total projects finalised under IAP. Even 44 livelihood projects though sanctioned in October 2011, 42 projects were not started by July 2012 after a lapse of nine months. The remaining 7996 projects related to construction of buildings (1162), road connectivity (3252), drinking water (1773), irrigation (587), health (203) and others (1019). This clearly indicated that the DLCs did not lay emphasis on livelihood projects.

The Department stated (November 2012) that creation of self-employment opportunities and livelihood programmes was not in the guidelines but was subsequently suggested. It further stated that 1140 projects were taken up with ₹ 89.44 crore constituting 10% of the total allocation of ₹ 915 crore in 15 districts. The reply was not convincing as most of the projects (out of list of 1140 projects furnished by the Department) related to minor irrigation which were not generating any livelihood through skill development.

Thus, the main objective of ensuring that youngsters are employed in some gainful occupations that provides succour and livelihood support to them and, therefore, stay away from extremism remained, largely unfulfilled.

#### **2.2.2.7 *LWE affected areas were not given priority***

The Planning Commission in January 2011 and the Chief Minister, Odisha in April 2011 specifically instructed the District Authorities to take up all projects in LWE affected Gram Panchayats (GPs) of the identified district.

We observed that during 2010-12 altogether 8040 projects were approved by the eight test checked DLCs for execution, of which 5698 projects related to LWE areas of the districts. While the DLCs of four districts (Gajapati, Koraput, Malkangiri and Sundergarh) sanctioned projects in LWE affected / disturbed areas which ranged from 74 to 100 per cent, in other four districts (Kalahandi, Nuapada, Rayagada and Subarnapur), the sanctioned projects ranged from 21 to 64 per cent involving estimated outlay of 27 to 60 per cent only for LWE areas as indicated in the table 2.5.

*Table 2.5: Execution of projects in LWE affected areas in test checked districts*

(Amount: ₹ in crore)

| Name of the District | Total projects sanctioned (2010-12) | Estimated cost | Number of projects sanctioned for LWE areas (per cent) | Cost of the projects (per cent) |
|----------------------|-------------------------------------|----------------|--|---------------------------------|
| Gajapati             | 865                                 | 53.93          | 865(100)   | 53.93 (100)                     |
| Kalahandi            | 1414                                | 55.00          | 292(21)  | 14.51 (27)                      |
| Koraput              | 1124                                | 55.00          | 963(86)  | 40.18 (73)                      |
| Malkangiri           | 1968                                | 55.00          | 1968(100)  | 55.00 (100)                     |
| Nuapada              | 566                                 | 55.10          | 304(54)  | 30.35 (55)                      |
| Rayagada             | 977                                 | 54.71          | 630(64)  | 32.79 (60)                      |
| Subarnapur           | 517                                 | 59.28          | 225(43)  | 22.76 (38)                      |
| Sundargarh           | 609                                 | 56.81          | 451(74)  | 39.37 (69)                      |
| <b>Total</b>         | <b>8040</b>                         | <b>444.83</b>  | <b>5698</b>  | <b>288.89</b>                   |

*(Source: Approved project list furnished by the Collectors of the test checked districts)*

It could be seen that the DLCs of Kalahandi and Subarnapur sanctioned insignificant number of projects in the LWE affected areas. The number of

projects sanctioned in the non- LWE affected areas ranged between 79 and 57 *per cent* respectively of the total number of projects sanctioned by the DLCs.

The Department stated (November 2012) that it might be too ambitious to treat the development funds under IAP as security related expenditure for reduction of LWE activities.

The reply was not acceptable in view of instructions of Planning Commission (January 2011) to take up all projects in LWE affected Gram Panchayats (GPs) of the identified district which was followed by similar instruction from the Chief Minister in April 2011. Besides, 66 works undertaken under Nuapada district were stopped (May 2011) as these works were taken up in non-LWE areas as discussed in *Paragraph 2.2.4.3.*

#### **2.2.2.8 Incorrect planning leading to duplication of projects**

The GoI guidelines provided that expenditure under the projects was to be over and above the expenditure being incurred under regular State / Central, Centrally Sponsored Schemes and the DLCs should ensure that there was no duplication of expenditure on the same project.

It was noticed that some proposals for construction of Anganwadi Centre (AWC) buildings, construction of ghat portion and roads were included based on proposals submitted by district level officers of three test checked districts (Gajapati, Kalahandi and Koraput), though funds for these works were placed under GoI and State Government schemes. This led to duplication of same projects (29) from different sources whereof in 10 cases, a part expenditure has already been incurred as indicated below:

- One IAP project viz. “Improvement of ghat portion and repair and renovation of road from Serengo to Nuagada” with estimated cost of ₹35 lakh under Gajapati district was stopped after incurring an expenditure of ₹ five lakh as the said project had already been included in the list of projects to be developed by the Ministry of Road Transport and Highways.
- Similarly, in Nuagada block under Gajapati district, eight roads for black topping (BT) were cancelled after utilisation of IAP fund of ₹ 67 lakh as the projects were included under Pradhan Mantri Gram Sadak Yojana (PMGSY).
- The DLC, Koraput sanctioned one IAP project (Construction of forest road from Kandulbeda to Mathapada) at an estimated cost of ₹ 2.67 crore, though a portion of the road i.e. from Kandulbeda to Sribeda was already sanctioned under PMGSY and executed by Rural Works Department. The project was cancelled (April 2012).

The above instances indicated that the P&C Department being the nodal Department of the IAP failed to put suitable mechanism in place for preventing duplication of same projects from different sources.

The Department while stating (November 2012) that no such cases of duplication and switching between funds from two different sources for the same / similar kind of projects had come to its' notice, assured to examine for validating the proposals by the concerned Administrative Departments. The reply was not acceptable as Planning Commission had already instructed (January 2011) to utilise IAP funds to fill up critical gaps which were beyond normal schemes and as the Department had not taken any step for non-recurrence of such duplication even after the same was pointed out in Audit in July 2012.

**2.2.2.9 Deficient planning through inclusion of inadmissible projects**

As per guidelines and instructions issued from time to time, the DLCs should draw up plans to take up projects on public infrastructure and services such as AWCs, Primary Health Centers, drinking water supply, village roads, electric lights in public places etc. During the video conferences conducted (December 2010) by the Chief Minister and the Development Commissioner (April 2011), the Collectors were instructed not to take up lift irrigation projects, renovation of water bodies and drawing up of low tension electric lines or their up gradation under IAP.

Audit scrutiny revealed that 602 projects with estimated cost of ₹ 20.90 crore were taken up by the eight test checked DLCs (*Appendix 2.2.3*) which was not admissible under IAP. Out of the above estimated cost, ₹ 13.86 crore was already spent on inadmissible projects as of March 2012. These projects included installation of lift irrigation projects, installation of electricity lines, construction of boundary walls and residential quarters, organisation of health camps, installation of high mast light, augmentation of transformer, renovation of water bodies and development of college etc. It was evident from the above that the DLCs mooted whatever proposals received from line Departments without any scrutiny and due diligence, thereby reducing IAP fund meant for utilisation in core activities under IAP.

The Department stated (November 2012) that considering the flexibility given to the DLCs, all other projects pointed out by audit except staff and residential quarters were admissible as they were neither individual beneficiary oriented scheme nor provided to meet the recurring expenditure. It also stated that construction of staff and residential quarters might have been taken prior to Planning Commission's video conference held on 18 January 2012 when it declared these works as inadmissible. The replies were not tenable as in the video conference held in September 2011, the Planning Commission had instructed to take up staff quarters for Health and other workers under other schemes and not under IAP. Besides, the actions of the DLCs were contrary to the instructions (December 2010 and April 2011) of the Chief Minister and the Development Commissioner. Further, there was every doubt about whether the projects were at all need based since the same were sanctioned basing on the proposals of the line Department / executing agencies.

**2.2.3 Financial Management and Reporting**

Under the programme, the GoI released ₹ 915 crore during 2010-12 of which the DLCs of all the 18 LWE affected districts of the State utilised



₹ 564.75 crore (62 per cent) leaving unspent funds of ₹ 350.25 crore as of March 2012. So also, the expenditure in eight test checked districts was 70 per cent (₹ 306.45 crore) against the allocation of ₹ 440 crore to the said districts during the above period. Review of management of funds under the programme revealed the following deficiencies:

### 2.2.3.1 Low spending efficiency

The overall spending efficiency of the programme in the State while remained at 62 per cent, the same remained between 50 (Gajapati) to 82 per cent (Nuapada) in eight test checked districts during 2010-12 as indicated in table below:

**Table 2.6: Spending efficiency in test checked districts**

(₹ in crore)

| District     | Projects sanctioned during 2010-12 | Fund received during 2010-12 | Expenditure incurred during 2010-12 | Spending efficiency (in per cent) |
|--------------|------------------------------------|------------------------------|-------------------------------------|-----------------------------------|
| Gajapati     | 865                                | 55.00                        | 27.35                               | 50                                |
| Kalahandi    | 1414                               | 55.00                        | 39.51                               | 72                                |
| Koraput      | 1124                               | 55.00                        | 41.50                               | 75                                |
| Malkangiri   | 1968                               | 55.00                        | 41.18                               | 75                                |
| Nuapada      | 566                                | 55.00                        | 45.06                               | 82                                |
| Rayagada     | 977                                | 55.00                        | 30.76                               | 56                                |
| Subarnapur   | 517                                | 55.00                        | 40.33                               | 73                                |
| Sundargarh   | 609                                | 55.00                        | 40.76                               | 74                                |
| <b>Total</b> | <b>8040</b>                        | <b>440.00</b>                | <b>306.45</b>                       | <b>70</b>                         |

(Source: MPRs collected from DLCs)

We observed that Gajapati district, the most LWE affected one in with its' all seven blocks, was the lowest performer with utilisation of 50 per cent of total receipt under the programme.

The Department stated (November 2012) that the ground realities and binding constraints like operation of Model Code of Conduct for Panchayat Election affected the spending efficiency. The reply was not tenable as funds were received prior to December 2011 and schedule of Panchayat Election (February 2012) was known.

### 2.2.3.2 Irregular payment of advance

As per provisions of Orissa Treasury Code (OTC) and instruction of Finance Department (December 1986 and January 2006), advances paid to Government officers for Departmental and allied purposes were required to be adjusted within a month from the date of sanction of advance through submission of vouchers and refund of remaining unspent funds failing which the advance was to be recovered from the salary of concerned officers.

Audit scrutiny revealed that one executing agency i.e. District Programme Coordinator, Sarva Siksha Abhiyan (DPC, SSA), Koraput paid advance of ₹ 3.67 crore to 14 Departmental officials (Technical Consultants) and two other agencies during 2010-12 (2010-11 : ₹ 72.50 lakh and 2011-12 : ₹ 294.06 lakh) for construction of additional class rooms, toilet complexes and library building in primary schools etc. Out of the above amount, ₹ 2.50 lakh was adjusted in May 2011 and the remaining advance was not adjusted as of

July 2012. Neither the DLC nor the DPC could exercise any control for submission of vouchers / accounts by the Departmental officers for early adjustment of advance or recovery of the same.

The Department (November 2012) assured to enquire and take appropriate action in the matter.

### **2.2.3.3 Submission of Utilisation Certificates**

Odisha General Financial Rules<sup>28</sup> (OGFR) provides that the grantee institution should submit Utilisation Certificate so as to reach the Administrative Department by 1 June of the succeeding year. Through the instrument of utilisation certificate, the grantor obtains assurance about non-diversion and proper utilisation of the funds placed at the disposal of the grantee. It was also insisted in IAP guidelines that the Collector should furnish the UCs in a prescribed format certifying that physical and financial performance was achieved as prescribed in the guidelines and the utilisation of the fund resulted in achievement of desired outcomes and outputs in verifiable and measurable terms.

We found in case of four (Gajapati, Kalahandi, Rayagada and Subarnapur) out of eight test checked districts that the P&C Department furnished UCs to GoI for the entire amount of grants received (2010-11) for ₹ 100 crore on 16 March 2012 though the Department received UC for only ₹ 48.11 crore from the concerned Collectors by the said date. This led to submission of excess UCs for ₹ 51.89 crore *{Appendix 2.2.4 (A)}* than actual utilisation. In respect of Koraput district, the GoO did not submit UCs to the GoI though the same had been received from the District Collector as of March 2012.

Similarly, we also noticed in course of test check of records of 19 EAs that, five EAs submitted UCs for ₹ 13.26 crore against actual utilisation of ₹ 10.16 crore, which resulted in submission of inflated UCs for ₹ 3.10 crore *{Appendix 2.2.4 (B)}*. These UCs were submitted by the EAs incorrectly even though funds (₹ 5.07 crore) were available in the cash books and bank account of the concerned executing agencies.

UCs were, thus, submitted fictitiously without verifying actual expenditure and achievement required to be found in measurable terms. It was further noticed that status of utilisation of funds and timely submission of UCs was not being monitored effectively by the District Collectors and P&C Department.

The Department assured (November 2012) to take appropriate action. On non submission of UCs, the Government stated that steps would be taken for submission of the balance UCs as expeditiously as possible.

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<sup>28</sup> Rule 173 of OGFR

### 2.2.4 Programme implementation

As of March 2012, out of 8040 projects sanctioned in eight test checked districts with an estimated cost of ₹ 444.83 crore during 2010-12, 5784 (72 per cent) were completed and 2087 projects were under various stages of execution and ₹ 306.45 crore was utilised as of March 2012. The deficiencies noticed in implementation of the programme are discussed in the succeeding paragraphs.

#### 2.2.4.1 Irregular execution of projects

The Member Secretary, Planning Commission instructed (January 2011) that funds under the programme should be optimally utilised to fill the critical gaps which were not available under normal schemes.

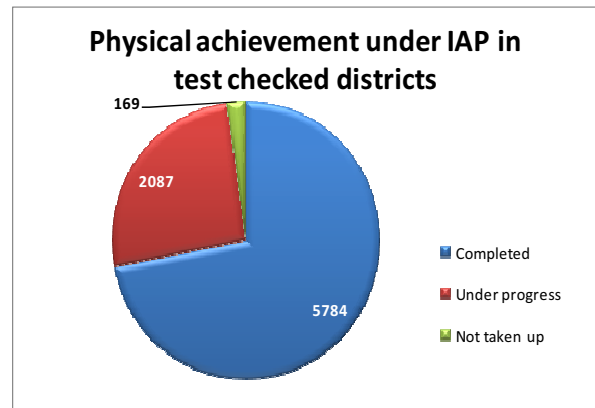
We noticed in three<sup>29</sup> out of 19 tests checked executing agencies that, three projects which were under execution out of State / Central schemes, were subsequently taken up midway from IAP funds. The construction of Kasturba Gandhi Balika Vidyalaya (KGBV) at Koraput from Sarvasiksha Abhiyan (SSA), Repair to Gunupur-Padmapur Road (MDR) from Flood Damaged Repair (FDR) fund and Silikudar to Hatidhar bridge from GoI Special Central Assistance (SCA), after incurring expenditure of ₹ 2.58 lakh (**Appendix 2.2.5**) were later taken up under the IAP programme and ₹ 64.76 lakh was utilised for the above projects.

In reply, the Department stated (November 2012) that the concerned DLCs might have assessed these projects as important for completion for deriving the desired results which would otherwise been remained incomplete, waste of funds and unfruitful for lack of required amount from the respective programmes and this might be a case of convergence of funds from different schemes to optimise the benefits from idle investments. The replies were not tenable since DLCs used IAP funds as a substitute for State / other scheme funds, which was patently irregular and as these projects were planned and sanctioned under other schemes.

#### 2.2.4.2 Incomplete works resulting in poor immediate visibility to Government's interventions in the LWE-affected districts

GoI guidelines read with orders of Planning Commission (December 2010) stipulated that the IAP works should be completed within a period of four to six months to provide benefit to the people in short time.

As could be seen from the pie chart, of the total 8040 projects sanctioned



<sup>29</sup> (i) Executive Engineer, R&B, Rayagada, (ii) DPC, SSA, Koraput and (iii) PA, ITDA, Sundargarh

in the test checked districts, 2256 projects (28 per cent) were not completed by March 2012. The incomplete works included 592 projects<sup>30</sup> which were sanctioned during 2010-11 and not completed after lapse of one year.

We conducted joint physical inspection of 154 works out of 1219 works executed by 19 test checked EAs under test checked districts which found that 57 works (37 per cent) like roads (25), AWC buildings (five), schools (five), irrigation (four) and others (18) sanctioned during 2010-11 and taken up during 2010-11 and 2011-12 were found to be incomplete.

The Department stated (November 2012) that only 170 projects (2 per cent) could not be taken up due to completion of formalities, sanction of projects at the end of the reported months and other unavoidable constraints etc. It would not be appropriate to view that the programme did not give intended visibility of Government intervention in Tribal and Backward areas. The reply was not tenable as the scheme objective was to give short term result, which was not achieved.

#### **2.2.4.3 Cancellation of partly executed projects in non-LWE areas**

The Planning Commission instruction (January 2011) and subsequent decisions (May 2011) of the Government of Odisha stipulated that all the projects under IAP should be taken up only in LWE affected GPs.

Audit found that 66 projects on road and minor irrigation with an estimated value of ₹ 8.21 crore were taken up in non-LWE affected GPs under four blocks of Nuapada district. The Revenue Divisional Commissioner (RDC) took a serious view on this as such works were in the nature of road improvement only and not taken up in LWE affected areas in contravention to IAP guidelines. In consequence to the above, the Collector, Nuapada instructed (May 2011) all BDOs to stop the works after measurement check for which, nine projects with estimated cost of ₹ one crore were not started, 29 projects with estimated cost of ₹ 3.52 crore were left incomplete after incurring an expenditure of ₹ 1.85 crore and 28 projects with an estimated cost of ₹ 3.70 crore was completed after incurring an expenditure of ₹ 2.96 crore. However, joint physical inspection of seven out of above 28 projects by Audit in presence of the Departmental officers revealed that the projects remained incomplete at different stages after utilising ₹ 76 lakh against the estimated cost of ₹ 1.15 crore. Thus, entire expenditure of ₹ 2.61 crore incurred on these 36 works were rendered unfruitful.

In reply, the Department stated (November 2012) that the instruction of the Chief Minister in the video conference of April 2011 was to focus and accord required priority to these areas. The reply was not tenable as LWE affected areas should have been given priority as per the instructions of the Planning Commission in January 2011. Abandoning projects at different stages of execution rendered the expenditure unfruitful and is against financial prudence.

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<sup>30</sup> 592=2256 incomplete projects-1664 projects (8040-projects taken by March 2012 less 6376 projects taken up by March 2011) addition during 2011-12

#### 2.2.4.4 *Unfruitful expenditure due to abandonment of projects*

As per the Planning Commission instruction (January 2011) the ground realities should be taken into consideration in formulating action plans for implementation so as to achieve the expected outcomes.

We observed that in three out of 19 test checked executing agencies and the Collectorate, Gajapati, 28 projects with total estimated cost of ₹ 7.35 crore were left incomplete after incurring expenditure of ₹ 1.47 crore. The incomplete projects included construction of 13 schools and hostel buildings under Project Administrator, Integrated Tribal Development Agency (ITDA), Parlakhemundi due to abandonment of works by contractors, six incomplete road works by Special Officer Chokotia Bhunjia Development Agency, Nuapada district for want of forest clearance, eight road projects in Nuagada Block under Gajapati district with already covered under PMGSY and one overlapped project as detailed in *Appendix 2.2.6*. Consequently, the entire expenditure of ₹ 1.47 crore incurred on these projects was rendered unfruitful. It is, thus, evident that the projects were approved by the DLCs without thoroughly examining their admissibility and technical feasibility.

In reply, the Department assured (November 2012) to advise the concerned Collectors to make enquiry into the matter and take appropriate action.

#### 2.2.4.5 *Irregular utilisation of programme funds*

Instruction of Planning Commission (January / February 2011) reiterated by the State Government in January 2012 provided that administrative and recurring expenses including security expenses were not admissible under IAP.

Audit scrutiny revealed that three out of 19 test checked EAs irregularly utilised ₹ 2.91 lakh on administrative and recurring expenditure such as security charges (₹ 2.04 lakh) by the DFO, Subarnapur district, publication and advertisement (₹ 0.15 lakh) by the BDO, Gosani and fuel charges (₹ 0.72 lakh) by the Executive Engineer (RWS&S), Parlakhemundi. Since, such expenditure was required to be incurred from the normal grant of the departments, the expenditure met out of IAP funds were not only irregular but also restricted the scope of works under the programme.

In reply, the Department assured (November 2012) to advise the concerned Collectors to look into the matter and take appropriate action.

#### 2.2.4.6 *Irregular execution of works through contractors in the guise of departmental execution*

Planning Commission instructed (January 2011 and March 2011) that works were to be executed through open tender process and in case of non-availability of contractors; departmental execution of works could be resorted to. The procedure for departmental execution of works *inter alia* provided for maintenance of proper accounts in respect of advances availed, invitation of tender / quotation for procurement of stores and materials, maintenance of

Works were executed through outsiders, without inviting tender, by camouflaging the same as departmental execution

material at site accounts, release of payment through account payee cheques etc.

We noticed that three executing agencies<sup>31</sup> under four test checked districts, executed 14 projects (*Appendix 2.2.7*) departmentally through Junior Engineers (JEs) / Gram Panchayat Extension Officers (GPEOs) and incurred expenditure of ₹ 1.67 crore (March 2012) against estimated cost of ₹ 1.88 crore. In none of the cases, advances were availed by the departmental officers for procurement of material and payment of wages to labourers and the expenditure was incurred by these officers out of their own resources in cash only. Payments were released by the BDOs to these officers on submission of work bills and after deduction of security deposits in the same manner as applicable to contractors. Though unskilled labourers in rural areas were receiving their wages under Mahatma Gandhi National Rural employment Guarantee Scheme (MGNREGS) through their savings bank accounts with banks and post offices, yet under IAP, wage was not disbursed through bank / postal SB accounts of the labourers and was shown to have been paid in cash.

These strongly indicated that the works were executed through contractor in the guise of departmental execution to avoid tendering process. This arrangement was thus unfair and lacked transparency in execution. This not only deprived eligible youth / tribal people / village committees of the locality from participating in tender process but also provided scopes to encourage LWE activities in these regions.

In reply, the Department assured (November 2012) to take appropriate action in the matter.

#### **2.2.4.7 *Doubtful procurement of road metal and other construction material***

As per the codal provisions, construction materials for works should be procured through invitation of tender / quotation from the registered dealers and the payments in excess of ₹ 500 only should be made through account payee cheques.

Audit noticed that in eight out of 19 test checked EAs, 169 projects like CC road, hostel buildings of schools, bridges, check dams, Minor Irrigation Projects (MIPs), Cross Drainage (CD) works etc. at total estimated cost of ₹16.76 crore were executed departmentally by the concerned JEs/GPEOs. These officials had shown to have spent ₹ 3.46 crore (*Appendix 2.2.8*) towards procurement of road metal, stone products and other construction material for use in works from unregistered dealers / private individuals on hand receipts (each ranging from ₹ 0.02 lakh to ₹ 3.13 lakh) showing payment in cash. However, stone products, being chargeable under Value Added Tax (VAT) could be sold by registered dealers only. Due to non-observance of codal provisions relating to procurement process and purchase of materials on hand receipts, the actual purchase and utilisation in the work, specially where site account registers were not maintained, could not be vouchsafed. Besides, no quality test of these materials was conducted by the authorities to ensure

**Road metal and construction material were purchased from private individuals on hand receipts**

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<sup>31</sup> BDO, Subarnapur, Nuapada and Gosani

utilisation of materials of approved quality. Thus, failure to adhere codal provisions indicated slack supervision of the executed works at the executing agency and DLC level.

In reply, the Department assured (November 2012) to take appropriate action in the matter.

#### **2.2.4.8 Irregular splitting up of works worth ₹17.87 crore**

Provisions of Odisha Public Works Department (OPWD) code prescribed the financial limits for Executive Engineer (EE), Superintending Engineer and Chief Engineer (CE) to accord technical sanction of the estimates<sup>32</sup>. The code along with GoO instructions (October 2005) prohibited splitting up of works to various reaches to avoid sanction of higher authorities and to avoid wide publicity. It also prescribes various procedures for giving wide publicity to tenders like publication of tender notices for works exceeding ₹ 50000 in two local Odia dailies, posting tenders for works costing ₹ 10 lakh or more in Government web-site, e-tendering of works exceeding ₹ 50 lakh, publication of tender notice of work costing ₹ one crore and above in one English daily in addition to one local Odia daily.

62 projects with estimated cost of ₹12.18 crore were split up to 219 reaches to avoid sanction of higher authorities and to avoid open tender process

Scrutiny of estimates, tender files and other records in five out of 19 test checked EAs revealed that 18 projects like renovation of training centre, improvement of roads, construction of side drain etc. (*Appendix 2.2.9*) with total estimated cost of ₹ 17.87 crore were split up by these executing agencies into 71 reaches involving amount from ₹ five lakh to ₹ 50 lakh to avoid sanction of higher authorities.

This vitiated the sanctity of the tender process which led to execution of works of poor quality and also deprived the local unemployed youth from participating in the process of creation of assets.

In reply, the Department assured (November 2012) to take appropriate action in the matter.

#### **2.2.4.9 Utilisation of cement in excess of that prescribed by BIS appears doubtful in absence of quality control test reports**

Bureau of Indian Standards (BIS) at IS 456:2000 prescribed for plain cement concrete (PCC) and reinforced cement concrete (RCC), the minimum cement content (CC) in 1:2:4 / M-15 per cubic meter (cum) as 280 Kg and for M 20 standard as 300 Kg of cement to achieve the required compressive strength in works. This standard was also reaffirmed by BIS in 2005.

We noticed that 124 works at an estimated cost of ₹13.41 crore involving PCC and RCC items like construction of cement concrete roads, additional class room, AWC buildings etc. were taken up in eight out of 19 test checked EAs. The estimates of these works were prepared by the EAs as per local schedule of rates with the provision of 323 Kg per cum for PCC (1:2:4) / M15 and 347 Kg per cum of RCC (1:1.5:3) / RCC (1: 2: 4) which was more than the BIS

<sup>32</sup> EE upto ₹50 lakh, SE above ₹50 lakh and upto ₹3 crore and CE above ₹3 crore

limit by 43 Kg and 47 Kg per cum of CC work respectively. Thus, in execution of 6728.69 cum of RCC items in these works, 291.45 MT of cement was allowed in excess of the prescribed limit (1894.62 MT) which led to incurring avoidable expenditure of ₹14.13 lakh. No quality control tests were ever carried out in support of actual utilisation of cement in these works even on a sample basis and so utilisation of such excess cement could not be vouchsafed.

In reply, the Department assured (November 2012) to take appropriate action in the matter

**2.2.4.10 Irregular charging of prorata charges of ₹ 35.15 lakh on works executed under IAP**

The P & C Department directed (December 2010) that provision for prorata/supervision charges were not to be made in execution of departmental works. Such charges were abolished by the State Government from April 2011 for all works where funds were routed through the budgetary mechanism.

We noticed in one (Subarnapur) out of eight test checked districts that such provision for *prorata* charges of ₹ 1.11 crore at 16 to 17 *per cent*<sup>33</sup> were provided by the Executive Engineers, Rural Works Division and Rural Water Supply and Sanitation Division in the estimates of 40 works with an estimated cost of ₹ 8 crore. As of March 2012, out of total expenditure of ₹ 2.40 crore incurred on these works, *prorata* charges of ₹ 35.15 lakh had already been recovered. Since, the *prorata* charges were ultimately to be deposited into State Government's account, action of the EEs resulted in diversion of IAP fund of ₹ 35.15 lakh to the State exchequer with consequential depletion of the resources under the programme.

In reply, the Department assured (November 2012) to take appropriate action in the matter.

**2.2.4.11 Irregular payment of ₹ 32.93 lakh for execution of earth works without level section measurement**

Panchayati Raj Department instructed (August 2008) all the BDOs that in all cases of earth work in excavation executed by the BDOs, initial and final levels must be recorded and volume of excavation of earth is to be computed there from, failing which the same was to be treated as misappropriation of funds.

We noticed that in one (BDO, Nuapada) out of 19 test checked executing agencies, three MI tank works were executed departmentally and ₹ 32.93 lakh was paid (March 2011 to December 2011) for 44,188.84 cum of earthwork on the basis of pit measurement instead of level section measurement. In absence of initial and final level, actual quantities of earth excavated could not be ascertained in audit.

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<sup>33</sup> *Prorata* charges of 16 *per cent* charged by Rural Water Supply & Sanitation Divisions and 17 *per cent* charged by Rural Development Department



In reply, the Department assured (November 2012) to take appropriate action in the matter

#### **2.2.4.12 Unfruitful expenditure due to idling of stores and buses**

As per the provision of Odisha General Financial Rules, procurements should be made in accordance with the definite requirement of the public service. Audit noticed in three<sup>34</sup> out of 19 test checked EAs that, pipes, generator sets, pump sets, buses worth ₹ 43 lakh were procured but not put to use leading to idling of stores and assets. In RWSS, Parlakhemundi, pipes procured (May 2011) at a cost of ₹ 7.36 lakh for five Rural Piped Water Supply (RPWS) projects under three blocks could not be put to use (July 2012) as the projects had already been taken up by one Non Government Organisation (Gram Vikash) in the said areas. The EE stated that the material would be utilised in a new scheme.

The Special Officer, CBDA, Nuapada purchased (March 2011) pump sets (three), Generators (three) and other accessories at cost of ₹ 8.25 lakh for piped water supply project in Sunabeda GP (Nuapada district) which were not put to use. The Special officer replied that the project could not be completed due to Maoist activities.

Another EA (the DPC, SSA, Koraput) incurred expenditure of ₹ 27.18 lakh on purchase of two buses including accessories like computer, LCD TV<sup>35</sup>, generator set etc during January- May 2012 to use them as Mobile Education Buses in the district to provide education to the drop out students in rural areas at their door steps. The programme was not operationalised due to non- engagement of drivers, instructors and technicians (July 2012) resulting in idling of stores / assets of ₹ 42.79 lakh.



**Buses kent idle in DPC, SSA, Koranut**

In reply, the Department assured (November 2012) to take appropriate action in the matter.

#### **2.2.4.13 Non-maintenance of Asset Register**

The Planning Commission insisted (November 2011) on maintenance of Block wise Asset Registers identifying each asset created with a unique code for transferring assets to GPs / Departments for proper use and maintenance at their level.

Out of 19 test checked EAs, 16 EAs had not maintained any asset register though 1134 assets were already created at a cost of ₹ 40.28 crore as of March 2012. The Collectors had also not maintained the same at their level. The assets were neither handed over to Panchayat Raj Institutions nor to user

<sup>34</sup> (i) DPC, SSA, Koraput (ii) EE, RWS&S Division Parlakhemundi, and (iii) SO, CBDA, Nuapada

<sup>35</sup> LCD TV: Liquefied Cristal Display Television

associations for operation and maintenance (July 2012). Thus, projects were left without any provision for maintenance. In the absence of Asset Register and clear assignment of ownership, future maintenance would pose serious problems leading to gradual erosion not only in their money value but also depletion in their capacity to provide the intended level of service to the beneficiaries of such assets.

In reply, the Department stated (November 2012) that all the IAP districts had been advised several times to assign unique identification code to assets and transfer the same to the concerned GP / Panchayat Samiti / Department as per the activity mapping to ensure proper use and maintenance of the assets created. It also assured to check and ensure it on priority.

## **2.2.5            *Inspection and Monitoring***

### **2.2.5.1            *Inadequate monitoring by DC and DLC***

As per guidelines, the Development Commissioner (DC) was to monitor the implementation of the scheme in the State. Besides, the P&C Department with a view to ensuring expeditious implementation, proper co-ordination and regular monitoring directed (November 2011) six senior State level officers to visit the districts regularly, at least once in a quarter to review the progress of implementation of the programme and to suggest the measures for further improvement, if any. In the district level, the Collectors were to work out a system of quality checks, monitoring and evaluation including physical inspection of works to ensure quality of assets created.

- However, our examination at district level revealed that the DLCs of three test check districts (Kalahandi, Gajapati and Nuapada) constituted committees for monitoring and physical inspection of assets while that of two districts (Koraput and Sundergarh) assigned the responsibilities to the district level officers.
- In case of remaining three districts, no such committees were formed or entrustment made. This indicated the casualness with which such an important scheme of GoI meant for LWE affected and backward regions of the country was being dealt with by the respective Collectors of the three districts.
- We further noticed that the committee at Nuapada known as ‘District Level Vigilance Squad’ verified (March 2011) 13 projects out of which six projects were not conforming to prescribed standards due to use of low quality of materials and poor quality of execution. In Sundargarh district, the committee conducted (August 2011) physical inspection of 70 assets of which in two cases substandard quality of material were found to be used. Similar comments were given by the committee formed by DLC, Kalahandi.
- DLCs of Gajapati and Koraput though constituted committees, no physical inspection report was available with the DLCs. These

indicated that the works were not executed as per specification due to absence of proper monitoring and supervision.

In reply the Department stated (November 2012) that the IAP scheme was intensively and closely monitored by the State Government through meetings / video conferences (30) where the Chief Minister along with Chief Secretary, other departmental secretaries, Collectors and concerned officers of the districts had participated. It further stated that the Development Commissioner-cum-Additional Chief Secretary had visited Keonjhar and Gajapati (test checked) districts out of 18 districts in spite of his pre-occupation and busy schedules and it was not humanly possible on his part to physically visit all the IAP districts.

The reply was not tenable as none of the identified officers in eight test checked districts had visited their respective districts excepting Kalahandi and that too only once (March 2012). After a lapse of more than one year of implementation of the IAP Scheme, the Government instructed (January 2012) to set fortnightly targets among the district level officers. Further, the DC directed (November 2011) that the State level officers should visit IAP districts regularly at least once in a quarter to review the progress of IAP which was not done and monitoring was restricted to video conference.

#### **2.2.6 Conclusion**

Planning was deficient and missed bottom up approach. Needs of LWE affected areas were neither assessed by discussing with villagers/stakeholders through Gram Sabhas / Palli Sabhas. As a result, many projects had to be cancelled and abandoned due to lack of feasibility and overlapping of projects etc. There was no convergence of different projects taken up within a district to avoid duplication of projects. Many projects remained incomplete and did not give return in short term though this was one of the avowed objectives of the programme, differentiating it from any other normal Government's intervention / scheme. Projects were executed ignoring instructions of Government / Planning Commission in haste to spend the funds. Main objective of development of infrastructure and self employment opportunities in LWE affected areas of the district remained unfulfilled. Also, no KPIs were prescribed to measure the output / outcome of these individual projects or the programme as a whole. Transparency in execution of projects as well as quality control was not ensured. Implementation and monitoring of the programme was finance-centric rather than deliverable specific.

**2.2.7 Recommendations**

The following recommendations are made.

- Critical gaps for development of LWE affected areas of IAP districts may be identified on priority through a rigorous bottom up approach and adequate stakeholder consultation process and included in the AAPs to fill up these gaps in a time bound manner;
- Emphasis may be given for skill development of unemployed youth of LWE areas and their self-employment through innovative livelihood programme;
- Monitoring of implementation of the programme by the DC may be strengthened and norm for inspection of IAP projects by State Level officers may be prescribed and enforced.
- Performance indicators may be prescribed for the programme and impact assessment may be conducted to assess whether expected outcome was achieved.