Chapter-2

Performance Audit on Public-Private Partnership (PPP) Projects in Ports Sector

CHAPTER 2

Performance Audit on Public-Private Partnership (PPP) Projects in Ports Sector

Executive Summary

The State of Andhra Pradesh has a 975 km long coast line, which is the second longest in the country, and has 14 notified non-major/minor Ports. Government of Andhra Pradesh (GoAP) undertook extensive development of non-major/minor Ports in PPP (Public Private Partnership) mode along its coastline since the late 1990's.

A performance audit of the development in PPP mode of Kakinada Deep Water Port, Krishnapatnam Port, Gangavaram Port, Machilipatnam Port, and VANPIC Port (Nizampatnam - Vadarevu Port Corridor), as well as efforts towards development of Bhavanapadu, Meghavaram and Nakkapalli minor ports was undertaken with the objective to assess whether (a) the process for selection of the PPP developer and award of concessionaire was fair, transparent and competitive and risks/ rewards were optimally shared between GoAP and the developer; (b) the PPP projects and the associated Concession Agreements were effectively and properly implemented within stipulated timelines; (c) GoAP received its due share of revenue from the PPP Projects and other dues in full and in timely manner; and (d) monitoring of project implementation and operation over the concession period by GoAP and Director of Ports (DoP) was adequate and effective.

The major audit findings are summarized below:

- *There were deficiencies in the competitive bidding process for selection of developers in Gangavaram and Kakinada Deep Water Port, reflecting adversely on fairness and transparency in selection. In respect of the Machilipatnam Port and VANPIC Port Project, similar issues were reported earlier through paragraph 2.2.3 of the CAG's Audit Report for 2008-09 and paragraph 4.10 of the CAG's Audit Report on Land Allotment for 2011-12 respectively.*

- *There were post-bid/post-award changes to the terms and conditions of the project, though none of the Concession Agreements had provisions for such amendments/revisions. This resulted in undue favour to the private developers and against the financial interests of GoAP. Changes were made to the Concession Agreement to alter its basic structure, thereby vitiating the sanctity of the bidding and contracting process.*

- ***Notwithstanding the provisions of the Concession Agreements, GoAP irregularly permitted or allowed change in the shareholding pattern of the development consortium and/ or port operator in three ports (Krishnapatnam Port, Gangavaram Port and Machilipatnam Port).***
- ***There were deficiencies/deviations in revenue sharing and financial arrangements, as well as in the monitoring mechanism adopted by the Department of Ports/GoAP over the implementation of the PPP Projects and the Concession Agreements.***
- ***A key aspect of the development of ports on PPP mode has been the allotment of large amounts of land to these ports, also facilitating mortgaging of such lands by the private developers to banks and other lending institutions for obtaining huge loans for project development, leaving little risk or exposure on the part of the private parties.***
- ***Multiplicity of non-major Ports along the coastline, along with liberal grant of exclusive rights over large lengths of the coastline (well beyond Port Limits) has virtually rendered the majority of the State's coastline privatised.***

2.1 Introduction

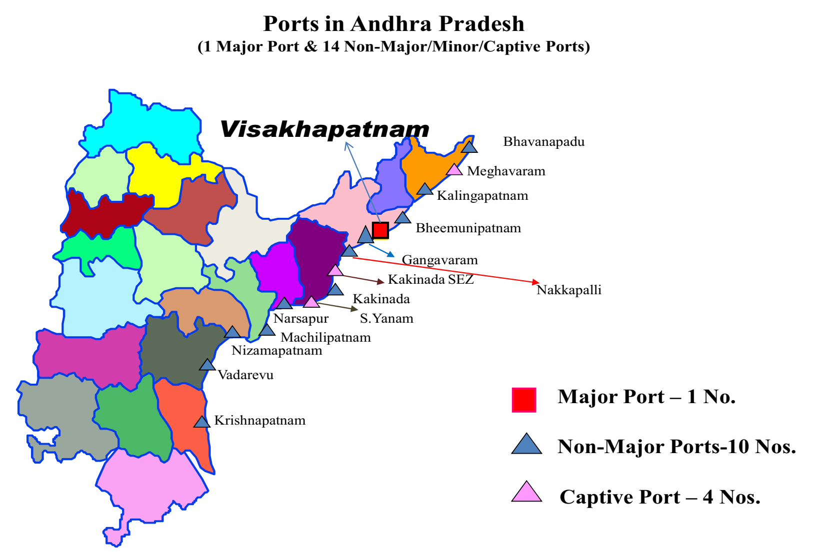
2.1.1 Background

The State of Andhra Pradesh has a 975 km long coast line, which is the second longest in the country. Indian ports fall into two categories viz.:

- ***Major ports*** – These fall under the jurisdiction of the Government of India (GoI)[1]; there are 13 major ports (including one corporatized port) in India. One major port (Visakhapatnam) under the control of GoI falls within the territory of Andhra Pradesh.
- ***Non-major/minor ports*** – These include ports managed by the Director of Ports, Government of Andhra Pradesh (GoAP), private ports and ports developed/ transferred under Public Private Partnership (PPP).

GoAP has 14 notified non-major/minor ports (Bhavanapadu, Meghavaram, Kalingapatnam, Bheemunipatnam, Gangavaram, Nakkapalli, Kakinada SEZ, Kakinada, S.Yanam/ Rawa, Narsapur, Machilipatnam, Nizampatnam and Vadarevu and Krishnapatnam). A map of the ports along the State's coastline is depicted below.

[1] Vide Item 27 of the Central List in the VII Schedule to the Constitution of India



Source: Director of Ports, Government of Andhra Pradesh

GoAP undertook extensive development of non-major/minor ports in PPP mode along its coastline since the late 1990s. Of these, Kakinada Deep Water Port (KDWP)[2] in East Godavari District, Krishnapatnam Port in SPS Nellore District and Gangavaram Port in Visakhapatnam District are commercially operational. A brief profile of the non-major/ minor ports developed in PPP mode is given below:

Table 2.1 – Status of PPP Port Projects in Andhra Pradesh

Name of the Port (District)	Name of the SPV	Date(s) of Concession Agreement and Supplementary/ Revised Agreement	Estimated cost (₹ in crore)	Concession period (in years)	Status
Kakinada Deep Water Port (East Godavari)	Kakinada Seaports Limited (KSPL)	19-03-1999 SA-1: 25-08-2003 SA-2: 28-01-2009	395.60	30 years + extension of 2 spells of 10 years each	Operational
Krishnapatnam (SPS Nellore)	Krishnapatnam Port Company Limited (KPCL)	04-01-1997 RA: 17-09-2004	1495.00 (Ph-I) 6000.00 (Ph-II)	30 years + extension of 2 spells of 10 years each	Operational
Gangavaram (Visakhapatnam)	Gangavaram Port Limited (GPL)	07-08-2003	1677.00	30 years + extension of 2 spells of 10 years each	Operational
Vadarevu and Nizampatnam Ports (Guntur & Prakasam)	VANPIC Ports Pvt. Ltd.	11-07-2008	16,000.00	33 years + extension of 2 spells of 11 years each	Yet to take off
Machilipatnam (Krishna)	Vajra Seaport Private Limited/ Machilipatnam Port Limited	21-04-2008 RA: 07-06-2010	1255.00 5074.03	30 years + extension of 2 spells of 10 years each	Yet to take off

Note: *SA – Supplementary Agreement; RA: Revised Concession Agreement*

Source: *Department of Ports*

[2] As distinct from the Kakinada Anchorage Port, which continues to be with GoAP

The position in respect of other minor ports is as follows:

Table 2.2 – Status of other Minor Ports in Andhra Pradesh

Port	Brief Details
Bhavanapadu Port	Proposal by East Coast Energy Pvt. Ltd. (ECEPL) for developing captive berths is under consideration of GoAP.
Meghavaram Port	This was notified in March 2008. GoAP accorded permission (January 2009) to ECEPL for constructing a dedicated captive jetty for its thermal power project. However, the project is yet to take off.
Kalingapatnam	Proposed to be developed as minor (lighterage[3]) ports
Bheemunipatnam	
Nakkapalli Port	This was notified in August 2010 by GoAP, which also accorded in-principle approval to Anrak Aluminium Ltd. for constructing a captive jetty. However, the project is yet to take off.
Kakinada SEZ	Although notified in December 2007 at the request of Kakinada SEZ Pvt. Ltd., no activity has taken place.
Kakinada Anchorage Port	This is an old minor port, with a century old history, and continues to be managed by GoAP
Rawa/ S.Yanam Port	This port, which was declared as a Minor Port in January 1996, is an off-shore Single Buoy Mooring (SBM) system for transporting oil from the Rawa Oil Field.
Narsapur	The current port does not handle cargo. This port is proposed to be developed as a greenfield minor port.

Source: Department of Ports

2.1.2 Organisational set up

The Director of Ports (DoP), under the control of the Principal Secretary, Infrastructure and Investment Department, GoAP, is the Head of the Port Department and the Marine Adviser to the GoAP. He is assisted by two Port Officers at Kakinada and Machilipatnam and a Superintending Engineer (Marine), who heads the Engineering Wing of the Department, and is, in turn, assisted by three Executive Engineers.

2.1.3 Governing Framework

GoAP does not have a separate formal policy for development of non-major/minor ports on PPP basis. However, a Task Force, headed by the Chief Secretary, was constituted in June 2000 to provide a cross-sectoral perspective to infrastructure development and co-ordination among the stakeholders. Subsequently, the Andhra Pradesh Infrastructure Policy, which was notified in December 2000, provides for guidelines for attracting and facilitating private investments in the infrastructure sector; minor ports and harbours are among the 21 infrastructure sectors covered by the Policy. The Policy also spelt out the executive functions of the Task Force.

[3] Lighterage is the process of transferring cargo from larger vessels (too big to enter the port) into smaller vessels for offloading

Further, the Andhra Pradesh Infrastructure Development Enabling Act, 2001 (APIDE Act) was enacted to provide rapid development of physical and social infrastructure in the State and attract private sector participation in design, finance, construction, operation and maintenance of infrastructure projects in the State. The AP Infrastructure Authority (APIA) was constituted in accordance with this Act.

In order to tap the advisory technical assistance of the Asian Development Bank (ADB) in mainstreaming PPP projects through capacity enhancement and utilizing public and potential private resources for infrastructure development, GoAP entered into an Memorandum of Understanding (MoU) (April 2007) with GoI and ADB, and a PPP Cell in the Finance (PMU) Department was created.

2.2 Audit approach

2.2.1 Audit Objectives

The objectives of the performance audit were to assess whether:

- The process for selection of the PPP developer and award of the concession was fair, transparent, and competitive, and risks/rewards were optimally shared between GoAP and the PPP developer;
- The PPP projects and the associated Concession Agreements were effectively and properly implemented within stipulated timelines;
- GoAP received its due share of revenue from the PPP Projects and other dues (on account of land cost, lease rentals etc) in full and in timely manner; and
- Monitoring of project implementation and operation over the concession period by GoAP and DoP was adequate and effective.

2.2.2 Audit Scope

The Performance Audit covered the privatization/development in PPP mode of (i) Kakinada Deep Water Port, (ii) Krishnapatnam Port, (iii) Gangavaram Port, (iv) Machilipatnam Port, and (v) Vadarevu and Nizampatnam Ports (Vadarevu, Nizampatnam Port & Industrial Corridor - VANPIC), as well as efforts towards development of Bhavanapadu, Meghavaram and Nakkapalli minor ports in captive mode.

2.2.3 Sources of Audit Criteria

The main sources of audit criteria adopted for the performance audit were:

- State Government's Policy on Infrastructure, 2000;
- Andhra Pradesh Infrastructure Development Enabling Act, 2001;
- Terms of Concession Agreements, State Support Agreements and other contractual documents; and
- Technical and financial estimates as per the Detailed Project Reports (DPRs) and other project documents.

2.3 Audit Methodology

An entry conference was held with the Principal Secretary, Infrastructure & Investment Department and the Director of Ports (DoP) in March 2012, wherein the audit approach was outlined and discussed.

Audit scrutiny of records at various offices, as well as joint site visits to the test-checked ports, was conducted between December 2011 and March 2012; these covered the Infrastructure and Investment Department; PPP Cell of Finance Department; APIA and AP Industrial Infrastructure Corporation (APIIC); DoP, and Port Officers at Kakinada and Machilipatnam; Offices of District Collectors of Krishna, SPS Nellore and Visakhapatnam; Customs Department offices at Kakinada, Nellore and Visakhapatnam; and Registrar of Companies – Hyderabad.

The draft audit findings were issued to GoAP in November 2012, requesting their response and also requesting the conduct of an Exit Conference. Despite the issue of a reminder (December 2012), the response of GoAP has not been received, nor could an Exit Conference be held (December 2012).

Audit Findings

2.4 Non-constitution of AP Maritime Board

GoI had advised GoAP to establish a Maritime Board[4] to provide one-stop solution to entrepreneurs and also act as a regulator for the minor ports in the State for the rapid development of port sector. GoAP stated in the Outcome Budget for 2007-08 that it had issued orders (October 2005) for establishment of AP Maritime Board, and that the AP Maritime Board Act was under preparation. Subsequently, in response to an audit enquiry, GoAP stated (December 2011) that after detailed examination with GoI and also after obtaining legal advice, the AP Maritime Board Bill, 2010 was introduced in the AP Legislative Assembly in December 2010 and added that necessary further action would be taken after the approval of Legislature.

The fact remains that the Act for the establishment of the AP Maritime Board had not been enacted even as of December 2012, leaving the development and regulation of 14 non-major/ captive ports without a full-fledged regulator.

2.5 Port Specific Findings - Kakinada Deep Water Port (KDWP)[5]

2.5.1 Introduction

Kakinada Deep Water Port (KDWP), located in East Godavari District and comprising three berths and other related infrastructure, was developed by GoAP

[4] Maritime Boards had already been constituted in the states of Gujarat, Maharashtra and Tamil Nadu; these Boards have been functioning exclusively for overseeing the development of minor ports, which includes regulating their functioning and fixing tariff for privatised ports.

[5] Kakinada Port comprises of Kakinada Anchorage Port and Kakinada Fishing Harbour (managed departmentally by the Director of Ports), and Kakinada Deep Water Port (developed by GoAP and handed over in PPP mode to a private developer).

between 1993 and 1996 at a cost of ₹321 crore (including a loan of ₹246 crore from the ADB).

In view of the additional investment required for optimum utilisation of the facilities created so far, the huge potentiality that exists for Kakinada Port and the paucity of funds for making further investment, GoAP decided to develop Kakinada Port through the private sector. The advertisement issued in July 1994 for privatisation of Kakinada and other minor ports was not successful. Tender notices were again issued (October to December 1996) for only Kakinada Deep Water Port in three packages – (a) Package I – container terminal; Package II – operation & maintenance of three berths and construction of fourth berth; and Package III – construction and operation of six new offshore berths. While Packages I and III were not successful[6], Package-II culminated in the award of 3 + 1 berths at KDWP to the International Seaports Pte Limited, Singapore (ISPL) consortium, led by Larsen & Toubro (India) Ltd., on Operate, Maintain, Share and Transfer (OMST –for three berths)/Build Operate, Share and Transfer (BOST- for fourth berth) basis. The successful consortium floated (December 1998) a special purpose vehicle called Cocanada Port Company Limited (KSPL-SPV)[7] to operate KDWP. In March 1999, GoAP signed the Concession Agreement (CA) with the SPV and handed over the project facilities.

Port operations were started by the KSPL-SPV in April 1999. The fourth berth was commissioned in March 2008. Further, two additional berths (fifth and sixth berths) were commissioned in 2011-12.

2.5.2 Selection of developer for 3+1 berth at KDWP

As per the "White Paper on Privatisation of 3+1 Berths at KDWP" of September 1998 of the erstwhile Transport, Roads & Buildings (Ports) Department of GoAP, the package for 3 + 1 berths at KDWP was advertised in December 1996 and 14 parties were shortlisted by the consultant (RITES) engaged by GoAP. Detailed bids were received from four parties in September 1997; technical bids were opened in September 1997 and financial bids[8] were opened in October 1997.

RITES evaluated the proposals of three parties in two stages **–** (a) **Stage 1** – based on clearing specified hurdle criteria; and (b) **Stage 2** – evaluating project pre-tax IRR[9] for viability, and giving weightage to three factors – minimum guaranteed share of income (50 marks), percentage share of income quoted to be paid to GoAP (30 marks) and investment planned in Phase-I development (20 marks). RITES proposed rejection of the offer of one party, and evaluated the offers of the remaining two consortia - KPB and ISPL, awarding 99 marks to the KPB consortium and 96 marks to the ISPL consortium. According to the white paper, RITES stated that KPB and ISPL had scored nearly equal marks and recommended that both parties were equally

[6] 10 and 8 proposals were shortlisted for the packages for the container terminal at Kakinada and construction and operation of six new off-shore berths, but no party submitted detailed proposals.
[7] Later renamed as Kakinada Seaports Limited (KSPL)
[8] One consortium withdrew from the process two days before the opening of financial bids
[9] Internal Rate of Return

suitable for award of the project and GoAP could choose any one of them, but opined that certain finer points[10] tilted the balance in favour of ISPL.

However, the Task Force[11] "wanted to have the benefit of a second expert advice" and sought a second opinion, which did not indicate any clear choice between the remaining two bids. ***Thereafter, the Task Force re-evaluated the marks for the bidders, and awarded 99 marks to ISPL and 69 marks to KPB, on the following grounds:***

- The Task Force felt that *"on deeper consideration",* although KPB had indicated higher percentage of earnings to be shared with GoAP, the amount in absolute terms was much lower compared to ISPL (₹366.8 crore for KPB and ₹1636 crore for ISPL). According to the Task Force, *"percentage of gross revenue is just a number, and what is more important is the quantum of gross revenue accruing to the Government. A higher percentage on a lower base will give less revenue than a small percentage on a higher base".*
- Further, the Task Force felt that it was not desirable to reduce or moderate the investment offered by the parties (as done by RITES), since higher investment would result in better facilities to the Port users, more revenue to the operator and higher share of revenue to GoAP.

A comparison of the marks originally awarded by RITES and the modified marks awarded by the Task Force is summarised below:

Table 2.3 – Marks awarded by RITES and Task Force for KDWP Developer Selection

Consortium	Investment in Phase-1		Minimum guaranteed share of income		Percentage share of income to GoAP	Gross revenue and share of revenue to GoAP
	RITES	Task Force	RITES	Task Force	RITES	Task Force
KPB	19	12	50	50	30	7
ISPL	20	20	49	49	27	30

Source: White paper published by GoAP

As KPB was evaluated as the H-1 bidder by RITES, revaluation by the Task Force resulted in the original H-2 bagging the contract. The justification for the amendment of the ranking precedent to the award of the contract to ISPL proved to be fallacious:

- The anticipated investment by ISPL did not materialize for the first five years; the investment of ISPL during 1999-2004 was just ₹77.24 crore. It was only after signing the first Supplementary Agreement (SA) in 2003 (granting post-bid concessions to ISPL) that investments by ISPL saw a jump, which amounted to ₹824 crore.

[10] viz. higher cargo projections, use of higher capacity equipment, proper railway linkage, integrated services to port users, higher investment, etc.
[11] Constituted by GoAP in 1995 under the Chief Secretary for infrastructure projects

- The Task Force's justification that ISPL had projected much higher gross revenue (and revenue share to GoAP) also did not turn out to be the case. Till the conclusion of the first SA in August 2003, the actual traffic was far less than the traffic projected; the difference was as high as 59 *per cent* (2002-03). Clearly, these optimistic traffic projections weighed in favour of the successful bidder in winning the project.

  The representations made by the Developer before the Government for effecting subsequent changes in the CA, on the basis of non-viability of the project due to non-reaching the targeted traffic, confirmed that the projections made by the developer at the time of bidding to win the project were unreliable.

- Further, ISPL subsequently allotted 26 *per cent* stake to the unsuccessful party, KPB, after the conclusion of the CA, evidently to compensate it for the loss of the contract. This clearly vitiated the spirit of effective competitive bidding, and the possibility of pre-award collusion between the only two qualified bidders cannot be ruled out.

2.5.3 Post-bid revisions to Concession Agreement

Consequent to the representations made by the SPV from time to time and approval of suggested modifications by the Council of Ministers, a SA to the CA was made in August 2003. The main changes introduced by the first SA were to mutually review/ discuss the situation, if even after making the investment as per DPR, the traffic still did not improve.

This introduced clause gave an opportunity to the KSPL-SPV to make requests for amending the CA and the KSPL-SPV requested (September 2008) to amend certain 'restrictive aspects' of the CA so as to bring them on par with those entered with developer for 'greenfield ports' [12] at Krishnapatnam and Gangavaram, although KDWP was a 'brownfield port'[13]. Further, the KSPL-SPV also requested GoAP to extend facilities to them broadly in line with the other port projects taken up under PPP mode. Upon request from the SPV, the second SA to the CA was approved by the Council of Ministers (December 2008) and signed (January 2009); this was based on the recommendations of a Group of Ministers (GoM)[14] constituted by GoAP in October 2008 to examine the requests of the SPV.

The GoM felt that there was strength in the argument of the KSPL-SPV for amending 'restrictive clauses', since the subsequent port policy[15] put the SPV at a disadvantage *vis-à-vis* subsequent greenfield ports, although they were on a different model. The Council of Ministers approved the decision of GoM.

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[12] Development of entirely new port
[13] Already built port
[14] Interestingly, Principal Secretary, Infrastructure & Investment Department was not associated with the exercise and the then Special Secretary in the Infrastructure & Investment Department was nominated as the convenor.
[15] No such 'policy' was formally issued by GoAP in the form of a G.O. etc.

However, the SPV's argument for removal of 'restrictive aspects' is not tenable. Bids were invited and the concession awarded on the basis of conditions then prevalent, binding both parties to their respective rights and duties. The terms of subsequent agreements cannot be applied to projects already awarded under earlier terms and conditions. Such comparison is misleading and incorrect, and the changes made on the basis of such claims amount to undue favours to the private party.

Audit scrutiny revealed that the second SA granted several undue concessions to the KSPL-SPV and completely altered the structure of the original agreement in favour of the KSPL-SPV. A summary of the major concessions granted to the KSPL-SPV through the second SA is given below:

- ***Grant of land leased to other parties to KSPL*** – *"GoAP would offer land, if any available and also in future as and when any lease agreements entered with GoAP by the port users expire (both annual and long term), first right of refusal (ROFR) may be offered to KSPL in deep water port, except the areas earmarked for ship-building units, fishing harbour and land being used for Government purpose"*. In fact, even the condition for ship-building units was not subsequently adhered to.

- ***Extension of Concession Period*** – Instead of the original period of 20 years, the concession period was extended to 30 years (from the in-operation date), which was extendable by 20 years in two spells of 10 years each under the same CA. The revenue sharing arrangement was extended to years 21 to 50.

  The consultant felt that there was no merit in the KSPL-SPV's request for extension and the Law Department of GoAP did not consider it necessary to review the clause. However, these concerns were not accepted.

- ***Development of new berths/facilities***–While the CA was for a four berth terminal[16], the second revision stipulated that the concessionaire shall have the freedom to develop new berths/facilities within the Deep Water Port[17]. In all other cases, the concessionaire has ROFR. Pursuant to the above, the KSPL-SPV completed the fifth and sixth berths during 2011-12 and had also drawn up plans for the seventh berth.

  The consultant indicated that the request of the KSPL-SPV for future developments was not in accordance with the CA and the Law Department of GoAP did not consider it necessary to review the clause. However, these concerns were not accepted.

Along with the clause for extension of concession period, the clause permitting the concessionaire to develop new berths/ facilities changed the very nature of the KDWP Project. At the time of bidding, the project was clearly specified as 3+1 berths (i.e. 3 existing and one new berth). In fact, no detailed proposals were submitted for a

[16] 3 + 1 berths – 3 existing and 1 new berth
[17] GoAP could construct and operate its own berth(s). However, this had no practical value, since GoAP's policy was to develop ports only through the PPP mode

separate package for construction of six new offshore berths. This clause amounts to a backdoor expansion of the project scope, which was never envisaged originally.

- ***Harbour Maintenance and Capital Dredging Costs*** – The original CA stipulated creation of a Port Dues Account (Fund), which would receive port dues from vessels entering the port[18], and was to be used for maintenance dredging etc. At the end of the Concession Period, the balance of the fund was to be transferred to GoAP. The original CA stipulated that GoAP would fix the total expenditure on harbour maintenance on the KSPL-SPV's recommendation, to be incurred out of the Fund. However, the second SA amended this provision, whereby this expenditure could be incurred now by the KSPL-SPV out of the Fund, after merely intimating GoAP[19].

Such substantial changes in the CA were not justified as the only cause for changes would be 'force majeure', which is already stipulated in the CA, or significant events, which could not reasonably have been foreseen at the time of bidding and signing of the CA. Changes to the CA, at the request of the successful bidders, on grounds of long term viability and bankability, vitiate the sanctity of the bidding process.

2.5.4 Construction of additional berths, despite non-approval of drawings and designs

The second SA (2009) was silent about submission of revised detailed project report (DPR), milestones, etc. The KSPL-SPV proposed (November 2009) for construction of three additional berths and submitted (February 2011) designs and drawings of the fifth and sixth berths to GoAP for approval.

Audit scrutiny revealed that GoAP did not accord approval for the drawings and designs as of December 2011 even though these additional berths were commissioned during 2011-12. Thus, KSPL-SPV constructed additional berths without the approval of the GoAP to the drawings and designs.

2.5.5 Change in shareholding pattern

As per the CA, prior approval of GoAP was to be obtained for change in the shareholding pattern of the promoter of the KSPL-SPV. In June 2008, GoAP approved a proposal for transfer of entire stake of 39.12 *per cent* of L&T in favour of Kakinada Infrastructure Holding Pvt. Ltd. (KIHPL). GoAP stated (December 2011) that permission was accorded by it to the change in shareholding pattern. This decision of GoAP paved way for the exit of the promoter of the successful bidder from the Consortium and back-door entry of a new company, which was not part of the original consortium, and control (directly and indirectly) 71.52 *per cent* stake in the KSPL-SPV.

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[18] Collected for each entry at the port and assessed on the vessel's total Gross Registered Tonnage

[19] Likewise, the requirement for a proposal for capital dredging by the concessionaire and approval by GoAP was done away with and replaced by mere intimation to GoAP.

2.5.6 Utilisation of Port Dues Account receipts for term loan principal and interest repayment

The CA stipulated that maintenance dredging[20] required prior approval of GoAP, and only then could expenditure thereon be charged to the Port Dues Account (Fund). The KSPL-SPV irregularly utilized ₹29.99 crore in the Fund for payment of interest and repayment of principal of a term loan to Union Bank of India from April 1999 to March 2007; this was discontinued only after repeated warnings of GoAP.

Instead of adjusting the irregular payment of loan from the Fund, for reimbursement of the already spent ₹31.21 crore towards maintenance dredging, the KSPL-SPV sought approval of GoAP in October 2004 to utilize the accruals to the Fund and to borrow from the lenders to meet the shortfall, if any, in the Fund; this was rejected (March 2006) as prior approval for incurring the expenditure was not obtained from GoAP. KSPL-SPV again represented (May 2007) to GoAP for reimbursement of the expenditure incurred. GoAP approved (March 2009) reimbursement of the maintenance dredging expenditure of ₹31.21 crore. The change in GoAP's stand, without any change in circumstances, lacked transparency and justification since this amount could have easily been adjusted by GoAP from the irregularly utilised fund.

2.5.7 Other concessions

Other concessions granted to the KSPL-SPV are discussed below.

- GoAP appointed (July 1999) RITES as the proof consultants on the basis of an offer by RITES without any indication of periodic review/renewal, and without following a process of competitive tender. Further, violating the CA which provided for payment of the cost by the KSPL-SPV, GoAP paid ₹4.10 crore up to December 2011 to RITES.
- DoP allotted (August 2000) the second floor of the Port administrative building to the KSPL-SPV against a consideration of maintenance of entire building. However, prior approval of GoAP was not taken, nor any agreement was entered. Audit scrutiny of the administrative building revealed that the SPV failed to honour its promise for maintenance of the entire building.
- The CA stipulated that the KSPL-SPV should furnish a Bank Guarantee (BG) of ₹ seven crore by April 1999 for securing the payment of revenue share and the guarantee, thereafter, shall be assessed every year in advance for safeguarding the financial interests of GoAP. Audit scrutiny, however, revealed that the KSPL-SPV submitted the BGs with delays ranging from 15 to 341 days.
- The concession granted to the KSPL-SPV through the second SA of Government offering land to the KSPL-SPV as well as ROFR over land leases expiring in the KDWP area has already been discussed in paragraph 2.5.2. DoP refused to renew the expired leases of four firms for land in Kakinada Port (outside the KDWP

[20] Required to maintain the stipulated depth of the common channel

area) and issued standing instructions (May 2011) to the Port Officer, Kakinada to issue resumption notices to other lands on expiry of annual lease periods.

In response to an audit enquiry, DoP stated (February 2012) that lands were resumed owing to technical reasons, and also that a stand had been taken to allot lands on the western-side of the ADB road on annual/long lease, and ROFR would be given to the KSPL-SPV in respect of land on the eastern side of the road, except areas earmarked for ship-building units, and fishing units. The response confirms the intention to allow KDWP to gain control over land even beyond the concessions already granted through the second SA.

- Notwithstanding the CA, as well as the second SA, excluding areas for ship-building units from the purview of the KSPL-SPV, GoAP, at the SPV's request, accorded permission (October 2010) to the KSPL-SPV to establish this facility in collaboration with Sembmarine Kakinada Limited (SKL), which, itself, was a joint venture between Sembawang Shipyard, Singapore and the KSPL-SPV. Further, 70 acres of land earmarked for ship building units, fishing harbour etc., were also subsequently allotted by GoAP to SKL. Such grant of permission and allotment of land was irregular.

2.5.8 Deficiencies/deviations in revenue sharing and financial arrangements

A test check of records revealed the following deficiencies in revenue sharing and financial arrangements by the KSPL-SPV:

- For the period from 1999-00 to 2011-12, GoAP received revenue share (ranging from 20 to 22 *per cent* of gross income) of ₹341.06 crore. Up to 2006-07, the revenue share actually received was less than the Minimum Guarantee Amount (MGA) as per the original agreement, but thereafter the actual revenue share exceeded both the originally prescribed MGA as well as the revised MGA as per the first SA.

- As per the CA, the KSPL-SPV was not entitled to any tax concessions. Audit reviewed the compliance of the KSPL-SPV to various tax laws with the concerned authorities. Cases of evasion/short payment of revenue are discussed below.

  - Cross verification of the gross revenue of the KSPL-SPV, as reported by the consultant, with details indicated in the service tax returns filed by the KSPL-SPV for 22 months (June 2009 to March 2011) revealed understatement of gross income by ₹36 crore, leading to short remittance of revenue share to GoAP of ₹7.88 crore.

  - The KSPL-SPV had been deducting expenditure incurred (amounting to ₹3.29 crore during the period 2009-10 to 2011-12 (3rd quarter) on supply of essentials, electricity charges, payments made to APPCB[21] etc. from the gross revenue without establishing the material content. Such deductions are

[21] Andhra Pradesh Pollution Control Board

permissible only in respect of services where the material content would be 80 *per cent* or more of the tariff; this was neither ensured by the KSPL-SPV nor validated by the Consultant.

- Between April 2001 and December 2010, GoAP leased out 302.09 acres of land to the KSPL-SPV for periods which would be co-terminus with the CA and the SA thereto. None of the lease agreements were registered with the Stamps and Registration Department, resulting in evasion of stamp duty and registration charges of ₹60.21 crore. Also, the lease agreements (except for one agreement for 47.76 acres) did not even have the survey numbers of the lands.
- Further, 19 sub-leases by the KSPL-SPV were also not registered with GoAP. Of these, three sub-leases involved land to the extent of 51010 sq. metres and revenue loss of ₹2.49 crore (stamp duty: ₹0.23 crore and registration charges: ₹2.26 crore).
- KSPL-SPV had not paid seigniorage[22] charges amounting to ₹43.80 crore on 124.58 lakh cum of dredged sand. Further, the KSPL-SPV did not comply with the notices issued by the Mines & Geology Department of GoAP for payment of seigniorage charges of ₹11.86 crore.
- KSPL-SPV had executed works valuing ₹634 crore. Against the payable[23] VAT of ₹17.76 crore, it had paid only ₹0.30 crore during 2006-12 (as of December 2011), leaving ₹17.46 crore unpaid.
- KSPL-SPV failed to remit cess amounting to ₹6.63 crore at one (1) *per cent* under the Building and Other Construction Workers' Welfare Cess Act, 1996 on executed works of ₹663 crore since April 2004.

DoP stated (February 2012) that the SPV had received a notice from the Joint Commissioner of Labour, but had sought to pass on the responsibility for payment to the contractors. The reply is not convincing since it is the SPV's responsibility to recover the cess at source and remit it to the AP Building and Other Construction Workers' Welfare Board.

2.6 Krishnapatnam Port

2.6.1 Introduction

Krishnapatnam Port is situated in the south-east part of the State in SPS Nellore District. It has a vast hinterland covering the areas of Southern Andhra Pradesh, Districts of Rayalaseema, North Tamil Nadu and Eastern Karnataka.

GoAP conceived (1992) and approved (September 1993) the development of Krishnapatnam Port in phases through the private sector for import of coal and other cargo linked to the requirement of coal for the nearby proposed power plants.

[22] Cess on natural resources
[23] At 4 *per cent* of the cost of works, after allowing 30 *per cent* deduction towards labour component

RITES[24] was engaged (May 1994) as the consultant for the process for selection of the bidder for port development. Although APSEB[25] awarded (July 1994) Letters of Intent (LoIs) for setting up two 500 MW power plants, together with jetty facilities for coal handling, GoAP continued with the selection process for development of Krishnapatnam Port through the private sector. Detailed proposals were received from three parties (NATCO Group[26], Hyderabad; Balaji Industrial Corporation Ltd, Madras; and Duncan Macneil Infrastructure Ltd, New Delhi), and GoAP found NATCO's proposal to be comprehensive and consistent with the requirements of the bid notice and selected its offer. GoAP entered into a CA for Krishnapatnam Port with Krishnapatnam Port Company Ltd[27] (KPCL-SPV) in January 1997. However, the project did not take off, due to delays in implementation of the private power plants.

Thus, awarding the CA for Krishnapatnam Port to NATCO consortium when the LoIs for the private power plants already awarded by APSEB involved captive jetty facilities for coal handling i.e. without linkage with the proposed Krishnapatnam Port, was not judicious.

2.6.2 Signing of Revised Concession Agreement (September 2004)

Although there was no clause in the original agreement for any change/amendment to the CA, the CA was revised at the request of the KPCL-SPV, on the grounds that the development of the Port was delayed due to delays in implementation of private power plants at Krishnapatnam. The main benefits/concessions granted to the KPCL-SPV through the Revised CA are summarised below:

- ***Lease period –*** This was changed from 35+20 years (extension) from the date of handing over physical possession of land (January 1997) and structures to 30+10+10 years (extension) from Commercial Operations (March 2009).

- ***Land allotment*** - GoAP agreed to make available more land belonging to GoAP, if found necessary, at the appropriate time (as may be required by KPCL-SPV) to the KPCL-SPV. Further, additional land needed for port development should be acquired and owned by GoAP; the cost would be initially borne by KPCL-SPV and adjusted over 15 years from the commencement date out of the revenue share available to GoAP. Also, specific permission for KPCL-SPV to sub-lease the land (with GoAP approval) was included. Further, the concessionaire was permitted, with prior approval of GoAP, to reclaim and use further land on the waterfront.

[24] RITES Ltd was awarded (May 1994) a consultancy assignment for Phase-I privatization of four ports, including Krishnapatnam Port.
[25] Erstwhile Andhra Pradesh State Electricity Board has now been divided into six power sector companies.
[26] Consortium of NATCO Pharma Ltd, Itochu Corporation, Fluor Daniel Inc., HAM Dredging and Marine Contractors, and India Investments Inc.
[27] An SPV formed for this purpose

- ***Equity contribution*** – GoAP would make equity contribution of upto 13 *per cent* on the railway line towards the cost of land in the KRCL (Krishnapatnam Rail Company Ltd.) for construction of rail project from Krishnapatnam Port to Obulavaripalli.
- ***Fiscal incentives*** (not included in the original CA) would be given by GoAP through foregoing revenue streams in the form of exemption from (i) Sales Tax on all inputs, (ii) Stamp Duty and Registration Fee on the first transfer of land and project agreements/financing agreements and (iii) payment of seigniorage charges during construction period".
- ***Reduction in minimum shareholding of promoter*** (NATCO Group) from 55 *per cent* (indicated in bid proposal/RITES report) to 26 *per cent.*
- ***Huge reduction in GoAP revenue share*** from 5 *per cent* for the first five years, 8 *per cent* for next five years, 10 *per cent* for next five years, and 12 *per cent* thereafter to 2.6 *per cent* of gross income for the first 30 years, 5.2 *per cent* for 31-40 years, and 10.4 *per cent* for 41-50 years. Further, in deviation from the original CA, zero revenue share was payable under the revised agreement in respect of any year where the KPCL-SPV did not have a gross profit.
- ***Mortgaging the land held on lease for obtaining loan*** – The KPCL-SPV was entitled to grant in favour of lenders a first ranking security interest over all rights and assets held or enjoyed by the Concessionaire in connection with the Project, even without obtaining the approval of GoAP, though such approval of GoAP was required as per the original CA.

Changes to the CA as indicated above completely altered its basic structure. There was, thus a need for a new set of project terms and conditions and a fresh bidding process, which was circumvented and resulted in undue favour to the developer.

2.6.3 Subsequent Concessions

2.6.3.1 Allotment of additional land and non-fixation of market value for determination of lease charges

The Revised CA had an open-ended, but discretionary clause (3.13) on GoAP making available 'more land', as required by the SPV for future development plans. In June/ August 2007, the KPCL-SPV projected additional land requirement of 5800 acres *plus* 1000 acres of water bodies and sand dunes. This was approved by GoAP in October 2007. As of November 2011, 2978 acres of land was handed over to the KPCL–SPV. Further, GoAP handed over 1000 acres of land (water bodies) to the DoP and eventual handing over of this land to the KPCL-SPV did not materialise, as approval from GoAP was not received, though the land has been in possession of the KPCL-SPV. Handing over of the remaining 2822 acres (5800 acres – 2978 acres) was reportedly under process.

Out of the total allotment of additional land, audit noticed that while advance possession of 2486.05 acres of Government land[28] was handed over to the KPCL-SPV, fixation of market value and alienation proposals were not finalised on this land. This resulted in non-raising of the demand for the lease charges. Further, full particulars of lands handed over, yet to be handed over, and status of alienation proposals were sought by audit from the Revenue Department, but were still awaited.

2.6.3.2 Non-consideration of impact on the National Waterway

GoI had declared the canal stretch of 1095 km connecting Kakinada to Puducherry as National Waterway No. 4 and this was passing through the land allotted to the Port; there was no evidence of consideration of the impact of allotment of the 1000 acres of land on the future development of this National Waterway. Further, there were representations from the public against closure of water bodies, and consequential problems of flood waters finding their way into the habitations, there were no records with DoP regarding redressal of such environmental issues.

2.6.3.3 Belated conclusion of lease deeds

Out of 2978 acres of land allotted, lease deeds stood executed only in respect of 612.95 acres of land as of July 2010. One of the prime 'concessions' to the KPCL-SPV in the revised CA was the right to assign, by way of security, its rights and interests to lenders. This facilitated the mortgaging of 269.95 acre Government land for obtaining loans of ₹887.50 crore. The scope for more mortgages by the KPCL-SPV is enormous, since 2978 acres of land had been handed over to KPCL-SPV and handing over of another 3822 acres (out of the total of 6800 acres) is stated to be 'under process'. Under Phase II development of the project, a loan of ₹2990 crore was sanctioned by a consortium of banks led by State Bank of India against the mortgage of 1840 acres.

2.6.4 Other concessions

Other concessions granted to the KPCL-SPV are discussed below.

- Clause 13.2 of revised CA made the KPCL-SPV responsible for complying with all applicable laws. However, the KPCL-SPV did not obtain permission and pay the fee of ₹1.78 crore for conversion of agricultural land of 2006.38 acres under its occupation for port development.
- There was short levy of lease charges of ₹0.14 crore from September 2004 to August 2011 on 269.925 acre land, due to continued adoption of the base rate at ₹6,000/acre (as of January 1997) instead of adopting the fair market value of ₹40,877/acre of 2004.
- The KPCL-SPV was to pay lease charges on 676 acres of water front land reclaimed by GoAP at the cost of ₹25.48 crore in October 2008. District

[28] Comprising of DKT (Darkhastudar patta) lands, CJFS (Co-operative Joint Farming Society) lands, assigned, unassigned and other lands

Authorities have yet to survey the reclaimed land and fix the market value. This resulted in non-raising the demand for the lease charges even after three years of reclamation.

- The Revised CA provided for GoAP's contribution at 13 *per cent* as equity towards land cost for the railway line from Krishnapatnam to Obulavaripalli. GoAP contributed ₹35 crore as equity to the cash calls of the Special Purpose Company, Krishnapatnam Rail Road Corporation Ltd, instead of remitting this amount to the Revenue Authorities for land acquisition (since GoAP's agreement for equity contribution was towards land cost). Utilisation of this amount towards land acquisition (or otherwise) is to be confirmed.
- As per the agreed terms of revised CA, the KPCL-SPV approached (March 2006) GoAP for fiscal incentives like exemption of stamp duty and registration fee, refund of VAT paid, seigniorage charges for procurement/ excavation of minor minerals and entry tax on notified goods/motor vehicles (total estimate ₹124 crore), and GoAP issued orders conferring these incentives till April 2010 or Phase-I completion, whichever was earlier. However, these fiscal incentives were not stopped on completion of Phase-I (2008), and were irregularly continued and extended till completion of Phase-II construction or till 2015, whichever was earlier.
- The Revised CA stipulated that the NATCO Group would hold 26 *per cent* shareholding in the SPV for at least five years from the date of commercial operations (up to March 2014). This was not adhered to by the KPCL-SPV, and substantial control was passed on to Navayuga Engineering Company Limited (NECL).

2.6.5 Traffic projections

Traffic projections vis-à-vis actual traffic at Krishnapatnam Port during 2008-12 is given below.

Table 2.4 – Traffic projections and actual traffic at Krishnapatnam Port

(In Million Tonnes)

Year	Traffic projected by SPV	Actual traffic
2008-09	14.40	8.20
2009-10	20.50	16.13
2010-11	30.50	15.91
2011-12	45.30	15.42

Source: Records of Department of Ports

Commercial operations began during 2008-09. The KPCL-SPV did not achieve the projected traffic in any year; during 2010-11, it was about 50 *per cent* of the projected traffic and the gap between projections and actual traffic has widened further in 2011-12, as it was about *one-third* of the estimate.

2.6.6 Revenue Share

During the period March 2009 to March 2011, the concessionaire indicated revenue of ₹1195.44 crore. Of this, GoAP's revenue share was ₹31.07 crore; after the KPCL-SPV adjusted ₹15.10 crore against land acquisition and remitted ₹15.97 crore to GoAP.

Further, there were delays in remittance of revenue share, on which interest of ₹0.18 crore was to be levied for the period March 2009 to March 2011, which had not been levied or collected.

2.6.7 Extension of exclusive rights over coastline

While the Revised CA conferred exclusive rights on the KPCL-SPV over 30 kms on either side of the port (a total of 73 km[29]), the KPCL-SPV requested (June 2008) extension of concessionary rights up to 30 km south of Vadarevu Port (which represented the boundary of exclusive rights for VANPIC) for enabling development of cargo handling facilities with suitable jetties, promotion of Special Economic Zones (SEZs), power plants, multifarious industries and social infrastructure.

GoAP approved (September 2008) the request of KPCL-SPV on the justification that the effective hinterland of Krishnapatnam Port gets reduced to a greater extent due to development of ports in every district of the State and location of major ports like Chennai, which may also result in reduced cargo handling and affect its viability and the amendment to the CA made in February 2009. Although the GO did not mention the exact length of the coastline for which the KPCL-SPV would have exclusive rights, this amounted to 153 km *i.e.* an additional 80 km over the terms of the Revised CA.

The irregular extension of concession rights (that too without any corresponding increase in revenue share to GoAP) to a length of 153 km, covering 15 *per cent* of the AP coastline, prevents potential port development by GoI/GoAP, as well as by other private parties, which could have provided competition to the KPCL-SPV.

2.6.8 Monitoring Arrangements

The Revised CA empowered GoAP to organise operational and financial audit to ensure accuracy of the income of the KPCL-SPV, of which it gets its share. GoAP had not appointed a financial auditor and independent engineer since the commencement of commercial operations in March 2009. Subsequent to an audit enquiry, DoP initiated (March 2012) the process for appointment of financial auditor.

The CA also empowered GoAP to inspect the implementation of all construction activities and monitor compliance with the approved plans and designs. GoAP had not conducted such inspection. A joint inspection of the Port by GoAP with the Port Authorities, though required, was not conducted.

[29] Actual port area of 13 km + 30 km North + 30 km South

The CA stipulated Performance Standards covering average pre-berthing time[30] not exceeding 12 hours, as well as levy of penalty for failure to meet these Standards. However, DoP and GoAP had no information about actual pre-berthing time, or about penalty leviable, if any, and thus failed to monitor compliance with the stipulated Performance Standards.

While the Master Plan and Land Usage Plan of the KPCL-SPV projecting land requirement of 5800 *plus* 1000 acres was approved by GoAP in October 2007, a revised Master Plan (over the already approved Master Plan, earmarking details of land and its utility, duly indicating Customs Zone) had not been furnished by the KPCL-SPV.

2.7 Gangavaram Port

2.7.1 Introduction

Gangavaram is situated about 15 km south of Visakhapatnam on the East Coast. GoAP issued orders in 1994 declaring Gangavaram as a Minor Port, and the Task Force decided (1996) to develop Gangavaram through privatisation. After an unsuccessful attempt at privatisation, GoAP nominated (September 2000) APIIC as the nodal agency for project development; APIIC, in turn, entered into a MoU with Infrastructure Leasing and Financial Services Limited (IL&FS) as the Project Development Promotion Partner.

APIIC invited (September 2001) Expression of Interest (EoIs) for port development. 10 firms submitted EoIs, of which seven firms were shortlisted (January 2002) for issue of Request for Proposal (RFP). Two consortia, led by Adani Exports Ltd.[31] and DVS Consortium[32], submitted bids in May 2002. After evaluation, the project was awarded (July 2002) to the DVS consortium, which incorporated (March 2003) a Special Purpose Company in the name of Gangavaram Port Limited (GPL-SPV). GoAP signed a CA (August 2003) with the GPL-SPV for a concession period of 30 years, extendable by two spells of 10 years each. Construction for Phase-I (five berths) commenced in December 2005. GoAP declared (April 2010) commercial operations to have commenced from April 2009. Phase-I, consisting of five berths at an estimated cost of ₹1677 crore, was completed in 2008-09, while Phase-II, for four additional berths, is under consideration of GoAP.

2.7.2 Selection of Developer

Audit scrutiny revealed deficiencies in selection of the developer affecting the fairness and transparency of the award process as summarised below.

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[30] The waiting period for ship which is ready in all aspects for berthing and the receivers/shippers of which are ready to receive/load full cargo

[31] Consisting of Adani Exports Limited, Adani Infrastructure Services Limited and Adani Port Infrastructure Limited

[32] Consisting of Sri DVS Raju, New Wave Securities & Industrial Credits Ltd., Dubai Ports International (DPI), Dubai, West Port Holdings SDN BHD, Malaysia and Jurong Consultants Pte. Ltd., Singapore

- ***Conditional qualifying of four parties*** - Four parties (including the successful bidder – the DVS consortium) were qualified conditionally for issue of RFP. APIIC requested (February 2002) the DVS Consortium to furnish the three previous annual reports of Dubai Ports International (DPI) – the specified port operator for the DVS consortium – or documentary evidence certified by an independent auditor/banker or a corporate brochure to assess the financial position of DPI. The DVS Consortium expressed difficulties in submission of annual reports of DPI, and promised to submit a Government certificate that they exceeded all the stipulated financial criteria. Although the consultants expressed their reservations and insisted on additional documentation, so as to be transparent and fair to other parties involved, the AP Infrastructure Authority (APIA) did not agree and decided (April 2002) that the letter from the Dubai Port authorities could be considered as sufficient, subject to confirmation of its financial status.

- ***Lead member (DVS consortium) had no port experience*** - While accepting the Evaluation Report on EoIs, the Steering Committee[33] stipulated that the lead member should have port-related experience, and also that an individual should not be named as the lead member of any consortium; instead, a company preferably having port/ shipping experience should be named as the lead member. The individual (who along with New Wave Securities & Industrial Credits Limited was the lead member of the successful consortium) was in the IT industry for the last 15 years, and had no port experience. However, APIA successively changed the definition of lead member to *'an individual and a firm, together satisfying the EoI criteria'* and then to 'a *firm or an individual along with a firm satisfying the EoI criteria and nominated to act as the lead applicant'*. This allowed the DVS consortium to be qualified, despite the lead member having no port experience.

- ***Change in consortium composition before bid submission*** - In January 2002, the Steering Committee stipulated that changes in consortium members were to be allowed up to the date of submission of RFP, with the prior approval of APIIC/GoAP, and the new members should have equal or better credentials. Though the conditional selection of the DVS - led consortium was based on the financial statements of West Port Malaysia and Jurong Town Corporation (parent company of Jurong Consultants Pvt. Ltd) and the net worth statements of DPI and the individual, yet in April and May 2002, these two members withdrew due to the joint and several liability clauses in the RFP, and a Consortium Agreement was signed between the remaining parties. Although APIIC was aware of the withdrawal, it did not report this to GoAP. Further, the credentials of the newly formed DVS-led consortium at the RFP stage were not re-examined. Such changes in the consortium composition after the EoI short listing rendered the process of short listing at the EoI stage irrelevant, while minimising competition by ensuring that new consortia could not submit proposals.

[33] Constituted specifically for the development of the Gangavaram Port Project

- ***Inflated traffic projections by the successful bidder*** - The traffic projections in the RFP and DPR by the DVS Consortium were vastly overstated vis-à-vis the actual cargo traffic for the first three years (2009-12). Inclusion of traffic projections in the technical evaluation, without any mechanism for holding the bidder accountable for achieving such projections, is overlooking the financial interests of the Government.

2.7.3 Change in Shareholding and Port Operator

The CA stipulated that the Port Operator, holding an equity stake of not less than 13 *per cent*, should continue for a minimum period of five years from the Commercial Operations Date. However, even before the completion of construction (let alone commencement of operations), the GPL-SPV requested (March 2006) to permit change of Port Operator from DPI to Integrax Berhad, Malaysia on the grounds that continuation of DPI would lead to monopoly, as well as major conflict of interest to Gangavaram Port. GoAP approved the change in Port Operator in March 2006. Integrax Berhad, Malaysia was further replaced (November 2007) as 'Port Operator' by Portia Management Services Ltd., UK with the approval of GoAP citing that Portia Management Services had better capabilities, international experience and expertise in providing technical operations and maintenance services in port operations.

Contrary to the terms of the CA (stipulating 13 *per cent* shareholding for the Port Operator), Portia Management Services did not have any equity share in the SPV as of August 2011. Further, the brochure of Portia Management Services Ltd., UK[34] indicated that the scope of Portia's involvement with Gangavaram Port was indicated as "Technical Support" and not Port Operator; this was in clear contrast to ports in other countries[35] where Portia's responsibility for a terminal was clearly indicated. Supplementary information on Portia's website indicated the Technical Support Project for Gangavaram Port commenced from January 2008 and was ongoing; with just four professional staff with 16 man months.

It is, thus, evident that the services rendered by Portia Management Services Ltd. UK are clearly limited to technical support, and do not appear, by any means, to extend to "Port Operator", nor is Portia an equity shareholder at all in the GPL-SPV. The provisions of the CA relating to the Port Operator have not been adhered to.

2.7.4 Land Allotment

The CA stipulated that land of 1800 acres and the waterfront within the port limits was earmarked for development of the Port. GoAP acquired 1400 acres from Rashtriya Ispat Nigam Limited (RINL)[36] and 604.96 acres from Revenue Department at a cost of ₹53.73 crore, and transferred 1800 acres (August 2007) to the GPL-SPV, which availed of a loan of ₹1170 crore from a consortium of 13 banks for Phase-I, by mortgaging lands allotted to it. Although the SPV informed GoAP (June 2005) that

[34] Available on Portia Management Services' website
[35] Pakistan, Lebanon, Trinidad, Mozambique, Argentina, and Kenya
[36] Also commonly known as Visakhapatnam Steel Plant (VSP)

creating equitable mortgage on the lands allotted was a standard requirement of any financial institution to reach financial closure, however, dates of creation of mortgage were not available with GoAP.

2.7.5 Other Irregularities

- In November 2000, APIIC appointed IL&FS as a Project Development Promotion Partner for selection of the consultant as well as the developer for Gangavaram Port. A Project Development Fee (PDF) was to be collected from the selected bidder and shared between APIIC and IL&FS in a mutually agreed ratio, which was not determined in advance. In February 2002, the Steering Committee decided that the successful bidder would furnish Performance Security through Bank Guarantee of ₹25 crore. GoAP also fixed the PDF to ₹15 crore at a pre-bid meeting stage. However, post-award, after negotiation between the Developer and APIIC, Government (October 2002) reduced the PDF from ₹15 crore to ₹5 crore, also with instalment-based payment[37], and the Performance Security from ₹25 crore to ₹20 crore, that too in three stages. While IL&FS questioned APIIC on the huge reduction in PDF, this was resolved between IL&FS and APIIC by sharing the PDF in the ratio of 75:25.

  Reduction in PDF and performance security, and instalment/stage-based payment, thus led to post-award undue favours to the successful bidder. DoP confirmed (February 2012) that copies of performance securities were also not available with it.

- Though, the land was handed over to GPL-SPV between November 2006 and August 2007, yet the lease charges were calculated by adopting the fair market value as of January 2002 (which pre-dated the CA) resulting in unjust financial gain to the GPL-SPV of ₹2.17 crore over the period January 2002 to August 2007, with substantial future losses as well.

- The CA and the State Support Agreement mandated provision of external infrastructure (road connection to the nearest National Highway from the port boundary, water supply up to port boundary, and power supply from nearest substation to port boundary) by GoAP before financial closure in October 2005. These were, however, not provided by GoAP in time. The road works were completed in June 2006. The water supply scheme was commissioned in November 2008 and handed over to the GPL-SPV in February 2009.

- In May 1995, GoAP had declared Mutyalammapalem as a Minor Port, with prescribed Port Limits. Gangavaram Port limits were notified by GoAP in June 2001. GoAP de-notified (August 2008) the existing Mutyalammapalem Minor Port and extended the Port Limits of Gangavaram Port by merging the port limits of Mutyalammapalem Port. Such de-notification has led to GoAP foregoing its right to develop this port and amounted to undue favour to the GPL-SPV.

[37] ₹2 crore immediately after issue of LoI and ₹3 crore at the time of financial closure

- The GPL-SPV was to pay annual lease charges at 2 *per cent* of fair market value, with annual escalation of 6.5 *per cent* per annum. However, the developer paid lease rentals with delays ranging from 9 to 57 days. Neither the CA nor the lease agreements had any provision for interest for delayed payment.

2.7.6 Revenue Share

The CA stipulated payment of annual concession fee at 2.1 *per cent* of the Gross Income for the first 30 years of the Concession Period, and at double the rate for the extended spells of 10 years each. However, the CA also provided for non-payment of the Concession Fee, where the GPL-SPV did not earn a Gross Profit; this clause did not exist in the bidding documents[38], and amounted to post-bid favour to the GPL-SPV. During the period 2009-11, the Port earned gross revenue of ₹810.26 crore, of which GoAP received a revenue share of ₹17.02 crore.

2.7.7 Monitoring Arrangements

- The CA provided for appointment by GoAP of an Independent Engineer (within one year from the date of the CA) i.e. by August 2004 and an Independent Auditor. However, GoAP appointed RITES as the Independent Engineer only in October 2007. Also, GoAP appointed RITES as the Independent Auditor in April 2011; however, after noticing that RITES was not on the list of empanelled auditors with RBI, DoP requested (December 2011) GoAP to withdraw the orders appointing RITES as the Independent Auditor, and appointing an audit firm from the panel maintained by the CAG. RITES' appointment was finally cancelled by GoAP in March 2012, after being pointed out by audit and DoP was requested to submit a proposal for appointment of an auditor from amongst the CAG's panel.

- The CA stipulated Performance Standards covering average pre-berthing time[39] not exceeding 12 hours, as well as levy of penalty for failure to meet these Standards. However, DoP and GoAP had no information about actual pre-berthing time, or about penalty leviable, if any, and thus failed to monitor compliance with the stipulated Performance Standards.

- GoAP is required to watch the utilisation of funds provided for carrying out relief and rehabilitation of affected families, creation of external infrastructure, etc. since these are vital for completion of construction of the Port and opening it for commercial operations. GoAP released ₹152.23 crore to various agencies for the above purposes.

  Even after eight years of receipt of funds, UCs had not been submitted for ₹79.38 crore. Expenditure particulars collected from the Special Officer, R&R, Gangavaram Port reflected unspent balance of ₹4.38 crore.

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[38] The draft CA supplied by GoAP (prepared by LTR) contained a clause stating that in case the concession fee, which would be worked out on the basis of percentage of gross income was more than the net profit, concessionaire shall not pay any fee for that year.

[39] The waiting period for ship which is ready in all aspects for berthing and the receivers/shippers of which are ready to receive /load full cargo

Further, no cash book was maintained by the Special Officer and monthly reconciliation was not done with the Bank, contrary to requirement. Further, a Chartered Accountant was appointed for conducting audit only up to 2007-08, and he had not submitted any report to the Special Officer/ GoAP even as of January 2012.

- Although the CA empowered GoAP to inspect facilities with regard to O&M of the Port with prior intimation to the GPL-SPV, and also to conduct an annual physical inventory of plants, equipment and accessories provided by the GPL-SPV as part of the Port development, no evidence of such inspection was available.
- The GPL-SPV commenced trial operations in August 2008 and the Customs Department issued the notification in October 2008. However, the issue of declaration of Commercial Operations Date (COD) was under examination by GoAP till 8 April 2010, when the COD was retrospectively declared as April 2009.

2.8 Machilipatnam Port

2.8.1 Introduction

GoAP decided to develop all weather, deep water multipurpose port at Machilipatnam in Krishna District through a competitive process. Expression of Interest (EoI) was invited in September 2005; nine firms responded, out of which five were short-listed for issue of bid documents. After issue of bids and a pre-bid meeting, only one party, a consortium of four companies which included MAYTAS Infrastructure Pvt. Limited (MAYTAS), submitted the bid for development of the port at 'Gogileru'. The work was entrusted to the Consortium in January 2007 on BOST basis. The location of the port was subsequently changed (January 2008) to 'Gilakaladinne' by GoAP, and the CA was signed in April 2008. Audit findings on the award of development of Machilipatnam Port were reported through paragraph 2.2.3 of the Audit Report for the year ended 31 March 2009.

Subsequently, GoAP allowed the substitution of MAYTAS by Navayuga Engineering Company Ltd. (NECL), and a revised CA was signed in June 2010. The project is yet to take off, mainly due to land acquisition issues.

2.8.2 Change in Shareholding Pattern of SPV

In August 2009, the SPV sought approval of GoAP for admitting NECL and exit of MAYTAS and SREI-SCPL due to the financial difficulties being faced by MAYTAS. Simultaneously, MAYTAS authorised another member of the consortium, Nagarjuna Construction Company Ltd (NCC), to represent it before GoAP and release it from all matters under the CA.

Although the CA and the Consortium Agreement (March 2006) did not provide for substitution of the lead member of the project (MAYTAS) and concerns were also expressed internally within GoAP (October 2009) that such an amendment would be violative of constitutional requirement of equality, GoAP decided (March 2010) to sign the amended agreement with a new party. Further, GoAP also ignored another request (November 2009) from MPSEZL (Mundra Port & Special Economic Zone

Ltd), which was successfully operating Mundra Port for a decade, to grant the port to new players so that competition could be induced.

GoAP allowed the change of lead partner (with 89 *per cent* stake) from MAYTAS and its associates to NECL by amending the CA, without going through a tendering process for selection of a new lead partner. This also ensured that GoAP continued to be burdened by an additional cost of ₹335 crore payable to the original SPV for change of port location as discussed in paragraph 2.2.3 of the CAG's Audit Report (Civil) for the year 2008-09. The following deficiencies were further noticed in the project:

- The Machilipatnam Ports Limited (MPL-SPV) sought (May/June 2008) exclusive rights zone of 30 km for setting up power plant at the previous location at Gogileru village (originally proposed for the Port) in an area of 2300 acres. DoP submitted draft notification for the extension of port limits. GoAP issued orders in August 2008 for the extension of the port limits[40] with exclusive rights to the SPV[41] though not contemplated in the CA.

- Although the foundation stone for the port project was laid in April 2008, and the revised CA (involving NECL) signed in June 2010, the port project is yet to take off, mainly due to land acquisition issues. The DPR submitted (June 2010) by Vajra Seaport Private Limited was followed by a Supplementary DPR (SPR) in May 2011, which was scrutinised through Indian Ports Association (IPA) but had not yet been approved by GoAP.

  The then Collector, Krishna District intimated (November 2005/ March 2006) that required Government lands were available for port development; hence, GoAP committed to hand over 6262 acres of land through the RFQ for the successful bidder. However, in January 2011, the district administration belatedly noted that only 1249 acres of Government land was available, and the balance would have to be acquired from private persons at an assessed cost of ₹200 crore.

  Incidentally, DoP felt (December 2010) that as per the DPR, only 761 acres of land was required even for the final phase of the Port; the remaining requirement was for other purposes (setting up a steel plant, power plant, multi-purpose SEZ, integrated township, desalination plant, container freight station etc.); and that it was not desirable to acquire 4000 acres from the socio-economic point of view. However, DoP later communicated (January 2012) comments on the IPA Report (January 2012) agreeing to the additional requirement of land.

- Government land of 412.57 acres was handed over (October 2008) by DoP to the MPL-SPV, for which lease charges of ₹0.63 crore (based on the value fixed for land) were payable from October 2008 to October 2010 was not paid (June 2010) by the SPV, on the grounds that the Fair Market Value (FMV) was not fixed by the District Collector. DoP requested GoAP in August 2011 to address the District

[40] Although the notings indicate a zone of 35 kms, the GO indicated the boundary co-ordinates and not the port limits in kms.

[41] Then designated as Vajra Seaport Private Limited, which was renamed as Machilipatnam Port Ltd.

Collector to fix the FMV. No further demand had been made on the SPV, and lease charges of ₹1.35 crore for the four year period from October 2008 to October 2012 remained unrealised.

2.9 VANPIC Port

- Deficiencies in the award of selection of developer in respect of VANPIC project were reported through paragraph 4.10 of CAG's Audit Report on Land Allotment for 2011-12.
- Critical records relating to VANPIC Port (viz. MoU between GoAP and Government of Ras Al Khaimah; development of VANPIC – request for deletion/ withdrawal of certain lands; information relating to various components of the project by different SPVs; review meetings in connection with the Project; road connectivity to Vadarevu Port) were not provided to audit on the grounds of these being handed over to CBI[42].
- VANPIC Port SPV transferred 40.5 *per cent* shareholding in the Consortium to NECL. in violation of Clause 3.8 of the CA, which prescribed that M/s Matrix Enport Holdings Pvt. Ltd. (MEHPL) should hold 49 *per cent* stake in the SPV. This transfer resulted in reducing the shareholding of MEHPL to 6.13 *per cent*. Further, GoAP objected to this transfer, as it was violative of the CA.

2.10 Captive Ports

GoAP considered the requests of the promoters of private power plants in Srikakulam and Visakhapatnam districts and allotted Bhavanapadu/ Meghavaram and Nakkapalli minor ports on captive basis, without tender process. Observations are discussed in the succeeding paragraphs.

2.10.1 Bhavanapadu and Meghavaram Ports

East Coast Energy Pvt. Ltd (party) requested (August 2007) GoAP to accord permission for establishing captive jetty facilities at Bhavanapadu Port in Srikakulam District for receiving and unloading the imported coal for use at the proposed Thermal Power Project. However, the party sought revision (within 10 days) for establishing captive jetty facilities at Meghavaram, which was accorded (January 2009) to ECEPL. However, State Government's order did not restrict the permission specifically for coal handling for the thermal power project.

The party again approached DoP in April and December 2010 with proposals for developing captive berths at Bhavanapadu Minor Port. DoP recommended (January 2011) the party's proposal for consideration of GoAP. The recommendation of the DoP was incorrect in view of the following:

- A tendering process was not followed for selection of the developer, and signing of a CA as per the terms and conditions proposed by the private parties was against the principles of transparency and equity.

[42] Central Bureau of Investigation

- The GO did not include the term 'coal handling for the thermal power plant' and merely indicated construction of captive jetty. This was an obvious deviation and unintended favour to ECEPL.

  DoP contended (February 2012) that captive jetty was different from the development of a greenfield port and that tender system was not feasible in cases of captive jetties. The response of DoP is not tenable, in the absence of any specific guidelines for allotment of captive jetties/ berths to private parties in a transparent and fair manner and finalisation of project terms and conditions, other than through a tendering process.

2.10.2 Nakkapalli Port

ANRAK Aluminium Limited requested (May 2010) GoAP for approval for a captive jetty at Nakkapalli in Visakhapatnam District. The Special Secretary to GoAP directed (June 2010) DoP to furnish a detailed report on this proposal, including whether any naval base was being set up by the Ministry of Defence at the proposed location as well as an undertaking from ANRAK Aluminium Limited about implementation of the rehabilitation package.

However, without ascertaining information about the naval base and obtaining an undertaking on the rehabilitation package, DoP submitted (July 2010) a draft notification to declare Nakkapalli as a Minor Port. GoAP notified (August 2010) Nakkapalli as a Minor Port and accorded *in-principle* permission to ANRAK Aluminium Limited for constructing a captive jetty.

In October 2010, the Eastern Naval Command (ENC) requested GoAP for reconsideration of the notification, as it was only seven nautical miles from the strategic infrastructure being created at Rambili. DoP intimated (December 2010) ENC that there was no need to reconsider the decision, as the proposed location was beyond 10 km of the south side of the Naval Alternate Operating Base (NAOB) boundary. However, ENC approached (January 2011) the Chief Secretary, GoAP on this issue, which was followed up by the Defence Secretary (December 2011) with GoAP.

DoP stated (February 2012) that they had no information about the development of the naval base at the time, and indicated that a decision would be taken after due examination.

2.11 Setting up of second Major Port in Andhra Pradesh by GoI

As per the press releases of the Press Information Bureau of GoI, a technical committee of the Ministry of Shipping (MoS), GoI had visited three sites in Andhra Pradesh for the second major port (besides Visakhapatnam); MoS would finalise the site by end-August 2012 for subsequent *in-principle* approval by GoI. However, as of date, although the establishment of the second new major port of GoI in Andhra Pradesh was stated to have been approved by the MoS, its location was not notified. This is particularly critical, considering the extensive stretches of exclusive rights granted by GoAP to various private port developers along the State's coastline.

2.12 Conclusion

GoAP developed several non-Major Ports along the State's coastline through the Public Private Partnership mode. While audit acknowledges the importance of port development for the economic development of the hinterland and the contribution of these non-Major Ports to such growth, the mode of such development had numerous deficiencies and irregularities. Further, the Act for establishment of a Maritime Board in the State has also not been enacted.

There were deficiencies in the process of award of these Ports and various instances of post-bid/ post-award changes to the projects and terms and conditions, which resulted in undue favour to the private developers and against the financial interests of GoAP, though none of the Concession Agreements had provisions for such amendments/revisions. Changes were made to the Concession Agreements to alter its basic structure, thereby vitiating the sanctity of the bidding and contracting process.

GoAP's financial benefit from these PPP projects (excepting Kakinada), with the miniscule revenue share, was vastly overshadowed by other costs incurred by GoAP in terms of external infrastructure creation, land acquisition and relief & rehabilitation. Thus, existing port assets and the rights for future developments were granted to private parties without commensurate benefit to GoAP.

A key aspect of the development of ports on PPP mode has been the allotment of large amounts of land to these ports, also facilitating mortgaging of such lands by the private developers to banks and other lending institutions for obtaining huge loans for project development, leaving little risk or exposure on the part of the private parties.

Multiplicity of non-major Ports along the coastline, along with liberal grant of exclusive rights over large lengths of the coastline (well beyond Port Limits) has virtually rendered the majority of the State's coastline privatised.

2.13 Recommendations

- ***GoAP may consider setting up a Maritime Board to regulate the functioning of the privatised ports (as well as minor ports under GoAP's control).***
- ***Action should be initiated against the persons responsible for the irregularities and deficiencies pointed out in audit scrutiny. Necessary action may be initiated for recoveries of dues from the SPVs. Accordingly, responsibility needs to be fixed for the various lapses/ deficiencies pointed out.***
- ***Legal advice may be sought as to the extent to which it would be feasible for GoAP to withdraw and/or curtail post-bid concessions/favours granted to the successful bidders.***
- ***GoAP may initiate action for reviewing withdrawal/ curtailing the exclusive rights granted to Ports. This is particularly important to provide potential for setting up of a second Major Port by GoI (in addition to Visakhapatnam).***