

# **CHAPTER IV**

## **4. TRANSACTION AUDIT OBSERVATIONS**

## Chapter-IV

### 4. Transaction Audit Observations

Important audit findings emerging from test check of transactions of the State Government companies/Statutory corporations are included in this Chapter.

#### Government companies

#### South Bihar Power Distribution Company Limited

##### 4.1 Undue benefit to the consumer and loss of revenue

*Non-adherence to the provisions of the Tariff Order regarding reduction of contract demand resulted in undue benefit to the consumer and a loss of revenue of ₹1.19 crore to the Company.*

Para 7.4 of Tariff Order, 2012-13, approved (March 2012) by Bihar Electricity Regulatory Commission, which was effective from 1 April 2012, provides, *inter alia*, that for new connection and if the furnace is replaced with a new one for the existing connections, the Contract Demand shall be based on total capacity of the furnace and equipment as per manufacturer technical specifications. Further, the billing demand shall be the maximum demand recorded during the month or the contract demand, whichever is higher.

An existing High Tension Specified Services (HTSS<sup>1</sup>) consumer (M/s Balmukund Concast Limited) having a Contract Demand of 12141 KVA, applied (November 2011) for a reduction of Contract Demand to 8001 KVA consequent upon replacement of its already installed two induction furnaces and closing down of one old induction furnace. Accordingly, inspection of the premises of the said consumer was carried out (February 2012) by an Inspection Team of the erstwhile Bihar State Electricity Board (Now South Bihar Power Distribution Company Limited). As per the Inspection Report, total connected load of the furnace and the rolling mills as per Manufacturer technical specifications was found to be 9714 KVA.

We observed (February 2013) that in violation of the Tariff Order, a load of 8400 KVA was sanctioned to the consumer (August 2012) instead of 9714 KVA as recommended in the Inspection Report and bills were being issued on the reduced load of 8400 KVA since September 2012. Thus, the reduced load was sanctioned not only in violation of the Tariff Orders but also on the basis of installed capacity of the transformers instead of the capacity as per manufacturer's technical specifications in disregard to the Contract Demand determined by the Inspection Team. Thus, non-adherence to the provisions of Tariff Order in reduction of Contract Demand not only led to short sanction of Contract Demand by 1314 KVA (total connected load of 9714 KVA - sanctioned reduced load of 8400 KVA) but also resulted in undue benefit to

<sup>1</sup> High Tension Specified Services (33 KV/11KV). A consumer under this category has contract demand of 300 KVA and more for induction furnace including Ferro Alloy loads.

the consumer and a loss of revenue of ₹ 1.19<sup>2</sup> crore for the period September 2012 to September 2013.

The matter was reported to the Government/Management (May 2013); their replies were awaited (November 2013).

#### **4.2 Loss of revenue due to non-conversion of consumers' category**

***The Company suffered a loss of ₹ 36.89 lakh due to non-billing of the consumers as per the High Tension Services (HTS) -I tariff.***

The Tariff Orders<sup>3</sup> approved by Bihar Electricity Regulatory Commission provide, *inter alia*, that Low Tension Supply (LTS) tariff for Non-Domestic Services (NDS) category are applicable only for supply of electricity to LT consumers having a maximum connected load of 60 KW (up to March 2012) and 70 KW (since April 2012). The load of 75 KVA and above come under High Tension Service (HTS) -I category.

Scrutiny of records of Electric Supply Division, Danapur, a unit of erstwhile Bihar State Electricity Board [now South Bihar Power Distribution Company Limited (Company)] revealed (February 2013) that three consumers<sup>4</sup> were supplied electricity on a connected load in excess of 60 KW (67KVA)/ 70 KW (78KVA) since February 2010 but were being billed on the basis of units consumed under NDS-II<sup>5</sup> tariff.

As NDS-II tariff is applicable for the load up to 60 KW/ 70 KW only, the supply of electricity to these consumers at a load in excess of 60 KW/ 70 KW under this category was in violation of the Tariff Order. As the Company was aware of the supply of electricity in excess of permissible limits to these consumers, it was incumbent on its part to take necessary steps to convert the consumers' category from NDS-II to HTS-I. Further, in case of outstanding electricity dues, the Company was required to serve notice to the consumer concerned for payment by stipulated date failing which the electricity connection of the consumer was to be disconnected. There was no proper system to inspect consumer installations as required under Bihar Electricity Supply Code, 2007 which indicates deficient internal control mechanism to detect over such irregularities.

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<sup>2</sup> 1314 KVA x tariff rate of ₹ 700 per KVA x 13 months.

<sup>3</sup> Tariff Order 2010-11 (effective from December 2010), Tariff Order 2011-12 (effective from May 2011) and Tariff Order 2012-13 (effective from April 2012).

<sup>4</sup> M/s Ratan Priya (consumer no.- 394292, connected load- 85 KW(94 KVA)); Smt. Meena Singh, Radiant School (consumer no.- 320875, connected load - 72 KW(80 KVA)); and Principal, DAV Public School (consumer no.-297335, connected load- 71 KW(79 KVA)).

<sup>5</sup> Non-Domestic services - II is applicable for supply of electrical energy for non-domestic consumers having sanctioned load up to 60 KW in urban areas covered by Notified Area Committees Municipalities / Municipal Corporations / Regional Development Authorities / District and Sub-divisional towns/Block headquarters / Industrial areas/ contiguous sub urban areas getting power from urban/town feeders, except those covered under NDS III.

Thus, due to failure on the part of the Company to convert the consumers' category from NDS-II to HTS-I category, the Company suffered a loss of revenue of ₹ 36.89 lakh<sup>6</sup> during the period February 2010 to January 2013 on account of billing at lower rate. This also tantamounts to extension of undue benefit to the consumers.

The matter was reported to the Government/Management (May 2013); their replies were awaited (November 2013).

#### **Bihar State Power (Holding) Company Limited**

#### **4.3 Avoidable expenditure in purchase of transformer oil**

***Cancellation of tender with firm price and fresh invitation of tender on variable price basis in contravention of provisions of Bihar Financial Rules resulted in avoidable expenditure of ₹ 25.48 lakh.***

The erstwhile Bihar State Electricity Board (Board), now Bihar State Power (Holding) Company Limited (Company) as one of its five unbundled parts, vide a resolution adopted (July 2008) the procurement process for future tender as per Bihar Financial Rules<sup>7</sup> (BFR), 2005.

Scrutiny of records (January 2013) revealed that the Board invited (July 2009) tender for purchase of 1304 Kilo Litre (KL) of Extra High Voltage(EHV) grade transformer oil to be supplied within four months from the date of issue of purchase order. As per terms and conditions of the Notice Inviting Tender (NIT), the tenderers were required to quote the firm price. Against the NIT, four bids were received, out of which two bids were conditional. Therefore, financial bids of only two tenderers were opened (September 2009). The lowest quoted landed rate<sup>8</sup> was ₹ 58128.31 per KL. However, the above bids were cancelled (December 2009) by the Board on the plea that competitive offers were not received due to putting of firm price condition in the tender notice. The Board again invited (December 2009) a tender for purchase of 1267 KL<sup>9</sup> EHV grade transformer oil to be supplied within four months from the date of issue of purchase order. As per NIT, the price was to be quoted on a variable basis which was contrary to the aforementioned BFR. Out of four bids received, the lowest bid of M/s Savita Oil Technologies Limited was accepted and the Board placed two purchase orders (March and April 2010) on the agency for supply of 1267 KL EHV grade transformer oil by July 2010 at the landed cost of ₹ 52606.13 per KL (total cost ₹ 736.34 lakh) which was variable as per IEEMA<sup>10</sup> price variation circular with base date of 01 January 2010. During delivery period, price of oil increased and the Board had to make

<sup>6</sup> Total loss of revenue = M/s Ratan Priya (₹ 9.90 lakh) + Smt. Mina Singh(₹ 13.23 lakh) + Principal, DAV Public School (₹ 13.76 lakh)= ₹ 36.89 lakh.

<sup>7</sup> Rule 30 (viii) of BFR relating to general principle for contracts provides, *inter alia*, that price variation clause can be provided only in long term contracts where the delivery period extends beyond 18 months whereas in short-term contracts firm and fixed prices should be provided for.

<sup>8</sup> Landed rate means ex-work price including Central Sales Tax, freight, entry tax, etc.

<sup>9</sup> The requirement was reassessed by the erstwhile Bihar State Electricity Board.

<sup>10</sup> Indian Electrical and Electronics Manufacturers' Association.

payment at higher per KL rate amounting to ₹ 761.82 lakh for 1266.749 KL transformer oil instead of ₹ 736.34 lakh which the Board would have been liable to pay had it accepted the firm rate of ₹ 58,123.31 per KL as per the BFR under the first tender in July 2009.

Thus, the Company incurred avoidable expenditure of ₹ 25.48 lakh<sup>11</sup> due to cancellation of tender with the stipulation of firm price and invitation of fresh tender on variable price basis in contravention of Bihar Financial Rules.

The matter was reported (July 2013) to the Company/Government; replies were awaited (November 2013).

#### ***4.4 Irregularities in purchase of Power***

***Due to non-drawal of purchased power and non-pursuance of the matter of obtaining monthly scheduling instead of daily scheduling, the Company suffered loss of ₹ 58.97 crore.***

**4.4.1.** The State of Bihar had acute power shortage<sup>12</sup> during the period 2008-09 to 2010-13. To sort out the deficit, the erstwhile Bihar State Electricity Board {Bihar State Power (Holding) Company Limited<sup>13</sup> (Company)} enters into Power Purchase Agreements (PPA). Power Purchase Agreements are governed by various Regulations issued by the Central Electricity Regulatory Commission from time to time.

As per clause 19 (2) of the CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations 2009, the start date of the supply of power under medium-term shall not be earlier than five months from the last day of the month in which supplier files application for grant of medium term open access with the concerned Regional Load Dispatch Center (RLDC). Supplier is supposed to file application with RLDC, only after entering into agreement for supply of power.

In order to meet the power deficit in Bihar, the Company invited a Bid (October 2011) for procurement of 450 Mega Watt (MW) of Power to be supplied for a medium term period, i.e., from March 2012 to December 2015.

On the basis of request from bidders/prospective bidders on above bid, a clarification regarding deferment of the scheduled delivery date for commencement of power supply to August/September 2012 instead of March 2012 was referred to the consultant viz. Bihar Power Infrastructure Company Private Limited<sup>14</sup> for suggestions. The consultant suggested (November 2011)

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<sup>11</sup> ₹ 761.82 lakh-₹ 736.34 lakh.

<sup>12</sup> As per 18<sup>th</sup> Electric Power Survey of Ministry of Power, Government of India, there was power deficit ranging from 4071.89 MUs in 2008-09 to 7620.15 MUs in 2011-12 in State of Bihar during the period 2008-13.

<sup>13</sup> One of the five parts after unbundling of Bihar State Electricity Board.

<sup>14</sup> A Government venture company between Government of Bihar/erstwhile BSEB and IL&FS (a Central Public Sector Undertaking).

to revise the date of commencement of supply to August /September 2012, so as to ensure maximum participation of the bidders for getting competitive bids. The Consultant also suggested that the Company may purchase power under short term during the period from March 2012 to August 2012 to meet the deficit. However, suggestion of the consultant was not taken into consideration by the Company on the plea that it would require further approval of BERC.

The bid was finalised with Lowest bidder i.e. Adani Enterprises Limited (AEL) and Power Purchase Agreement (PPA) was signed in February 2012 for Supply of 200 MW<sup>15</sup> of power with effect from March 2012 to December 2015, under medium term open access at a levelised rate<sup>16</sup> of ₹ 4.41/Unit and the supplier started the supply of power from 1 March 2012.

In the meantime, the Company, before finalising the above bid, extended (January 2012) short term power purchase agreement for 300 MW of power from NTPC Vidyut Vyapar Nigam Limited (NVVNL) for a further period of six months from 1 March 2012 to 31 August 2012 which was scheduled till February 2012.

We observed that notwithstanding the CERC guidelines regarding provision of period of minimum five months for commencement of supply under medium term from the date of agreement, recommendation of the consultant regarding deferment of commencement of supply of power to August 2012 and extension of short term purchase of power from NVVNL, the Company took a decision to purchase 200 MW of power from AEL with effect from March 2012 and as a result the availability of the power increased by 200 MW.

We further observed that as against the purchase of 633.17 Million Units (MUs) of power from AEL at an average rate of ₹ 4.25/ unit during the period from March 2012 to August 2012, the Company did not draw 587.79 MUs of available power during the above period and sold the same through Unscheduled Interchange<sup>17</sup> (UI) at an average value of ₹ 3.25/unit.

We observed from the data<sup>18</sup> that due to non-drawal of available power, there was loss of ₹ One per unit against the cost of purchase of power from AEL. Thus, the Company suffered loss of ₹ 58.78 crore (i.e. 587.79 MUs × ₹ One/unit) during March 2012 to August 2012.

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<sup>15</sup> Equals to 131.40 MUs i.e [(200MW × 365 Days × 24 Hrs × 0.9 Power factor) ÷ 12].

<sup>16</sup> The rate arrived at for the purpose of price comparison in bidding process, taking into account the Base Price, escalation rate, period of supply, etc.

<sup>17</sup> Unscheduled Interchange (UI) is over / under drawal of power than the scheduled allocation. Under drawal is termed as sale under UI .

<sup>18</sup> Furnished by Inter State Wing of Bihar State Power (Holding) Company Limited.

#### **4.4.2 Loss due to daily scheduling of power by the supplier**

For supply of power, the supplier is required to get advance scheduling<sup>19</sup> of bilateral transactions from the concerned Regional Load Dispatch Centre (RLDC).

As per Clause 2.1 of CERC Open Access<sup>20</sup> Regulations, 2008 and subsequent (Amendment) Regulations, 2009, an application for scheduling of bilateral transaction along with non-refundable application fee of ₹ five thousand shall be made to the concerned Regional Load Dispatch Centre (RLDC). Besides, as per clause 5.2 of above regulation an application for advance scheduling can be submitted once for whole month. Thus, the seller could have applied for monthly advance scheduling with the Eastern RLDC by paying ₹ 5000 *per* month only.

Further, as per Clause 4.4.2 of the PPA with AEL for supply of 200 MW of power, the payment of the RLDC charges (including application fees for scheduling) shall be the responsibility of procurer, i.e., the Company.

We observed that the seller had applied for daily scheduling of power with the Eastern RLDC instead of monthly scheduling which resulted in a total number of 390 schedulings during the period from March 2012 to March 2013 on a daily basis for which a sum of ₹ 19.50 lakh (at the rate of ₹ 5000 per scheduling) towards non refundable application fees was paid by AEL to Eastern RLDC and the same was reimbursed by the Company to AEL.

We further observed that the Company did not pursue the matter with the supplier regarding obtaining monthly scheduling instead of daily scheduling from the ERLDC as the supplier could have applied for monthly advance scheduling with the Eastern RLDC by paying a fee of ₹ 0.65 lakh only during the said period.

Thus, due to non-pursuance of the matter of obtaining monthly scheduling instead of daily scheduling by the Company with the supplier, the Company incurred an avoidable expenditure of ₹ 18.85 lakh up to March 2013.

The matter was reported to the Government/Company (June 2013), replies were awaited (November 2013).

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<sup>19</sup> Scheduling of power is the permission to the power generators to inject the power in the transmission system by the respective RLDC.

<sup>20</sup> Point of access to inject /draw power to/from the transmission system.

**North Bihar Power Distribution Company Limited**

**4.5 Loss of Interest**

***Delayed enhancement of the contract demand and belated issue of energy bills by the Company resulted in loss of interest amounting to ₹ 0.97 crore.***

Tariff orders<sup>21</sup> approved by Bihar Electricity Regulatory Commission (BERC), provide, *inter alia*, that the transformer capacity of High Tension (HT) consumers shall not be more than 150 *per cent* of their contract demand. It also states that if consumer is found to be utilising transformer of higher capacity than admissible for his contracted load, it will fall under malpractice. Further, Para 6.24 of Bihar Electricity Supply Code, 2007 (as approved by BERC) provides that before any transformer, switchgear or other electrical equipment in the case of HT consumer is connected to the system, it shall be subject to inspection and approval of the licensee [i.e. Bihar State Power (Holding) Company Limited<sup>22</sup>] and no connection shall be made without the licensee's approval. In addition, all high-tension installations will have to be approved by the Electrical Inspector. Further, as per Tariff Orders, billing (Minimum energy charge till March 2012 and Demand Charge) was to be done on the basis of Contract Demand.

Scrutiny of records (June 2013) of the Electric Supply Circle (ESC), Motihari of North Bihar Power Distribution Company Limited (Company) related to M/s. Steel Authority of India Limited (SAIL), SPU<sup>23</sup>, Bettiah, Bihar, an HT Consumer having a contract demand of one Mega Volt Ampere (MVA) revealed that:-

- the consumer was utilising transformer of five MVA capacity as against the admissible 1.5 MVA since March 2011 and was pointed out by audit earlier (March 2012); and
- the Company started billing the said consumer on the basis of enhanced contract demand of 3.334<sup>24</sup> MVA only from January 2013 and issued (July 2013) revised consolidated bill for the period March 2011 to December 2012 at the instance of audit after a delay of 27 months.

We observed that the monitoring and control with respect to the adequacy of transformers and billing was deficient as the Company failed to ensure the timely enhancement of the contract demand and billing accordingly, despite being pointed out by audit in March 2012. Besides, the Company took further six months resulting in a delay of 27 months in issuing revised consolidated bill for the period March 2011 to December 2012.

<sup>21</sup> Tariff orders 2010-11(effective from December 2010); Tariff orders 2011-12 (effective from May 2011); Tariff orders 2012-13 (effective from April 2012); Tariff orders 2013-14 (effective from April 2013).

<sup>22</sup> Previously Bihar State Electricity Board.

<sup>23</sup> Steel Processing Unit.

<sup>24</sup> 5 MVA x 2/3=3.334 MVA.



Due to delayed enhancement of contract demand of the consumer on the part of the Company, an amount of ₹ 4.73 crore pertaining to the period March 2011 to December 2012 was billed in July 2013, i.e., after a delay of 27 months. As a result of delayed billing the Company had already suffered a loss of interest amounting to ₹ 0.97<sup>25</sup> crore.

The Company, while confirming the facts and figures, stated (September 2013) that the said consumer was being billed on the basis of contract demand of 3.334 MVA since January 2013 and had been charged for the aforementioned earlier period in the bill for the month of June 2013.

The fact remains that the Company, despite knowing the installation of transformer of higher capacity in excess of the admissible capacity, failed to enhance the contract demand on the basis of transformer capacity of the consumer and raise the bills accordingly. Thus, due to deficient monitoring and control with respect to the enhancement of the contract demand of the said consumer and delayed billing thereof, the Company suffered a loss of interest amounting to ₹ 0.97 crore.

The matter was reported (July 2013) to the Government; reply was awaited (November 2013).

#### **Bihar Urban Infrastructure Development Corporation Limited**

#### **4.6 Contribution to the Chief Minister's Relief fund**

***The Company, despite incurring losses in the Accounts, made contribution of ₹ two crore to the Chief Minister's Relief Fund without following due procedures and also in violation of relevant provision of the Companies Act, 1956.***

The Managing Director of the Bihar Urban Infrastructure Development Corporation Limited (Company) proposed to the Board of Directors (BoD), a resolution by circulation (March 2012), to grant approval to make a donation of ₹ three crore to the CM Relief Fund citing plea that such contributions were also being made by other corporations earning profit. The BoD approved donation of ₹ three crore to the CM Relief Fund in anticipation of approval of shareholders in general meeting. However, against the approved contribution of ₹ three crore, the Company contributed a sum of ₹ two crore to the CM Relief Fund.

It would be pertinent to mention here that Section 293(1)(e) of the Companies Act, 1956 (Act) restricts the powers of the Board of Directors of a public Company to contribute to charitable and other funds not directly related to the business of the Company or the welfare of their employees. The Company may contribute any amount, the aggregate of which, within any financial year, does not exceed fifty thousand rupees or five *per cent* of its average profit during the immediately preceding three financial years, whichever was greater. Where the contribution is likely to exceed the aforesaid limit, the same must be done with the prior consent of the Company in a General Meeting.

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<sup>25</sup> Loss of interest has been worked out at the rate of 13 *per cent*, i.e. borrowing rate charged by the State Government.

Scrutiny of records of the Company revealed that:

- As against the admissible income of ₹ 2.65 crore in the Accounts for the year 2011-12, the Company exhibited an income of ₹ 8.25 crore due to excess accountal of Centage<sup>26</sup> and Contingency charges and other income. Besides, ₹ 0.54 crore payable on account of Minimum Alternate Tax was also not provided for in the Accounts. Thus, as against the exhibited profit of ₹ 2.70 crore in the Accounts, the Company, in fact, incurred a loss of ₹ 3.44 crore<sup>27</sup>. A comment on the incorrect recognition of revenue by the Company was also made by the CAG in the audit of the accounts for the year 2011-12.
- Since no surplus was available with the Company, the contribution of ₹ two crore to the CM Relief Fund, in fact, was made from the capital of the Company which was in violation of Section 293(1)(e) of the Companies Act, 1956.
- Further, the aforementioned contribution to the CM Relief Fund was made on the basis of provisional accounts and in absence of any call for contribution for an emergent cause.

Thus, the Company made contribution of ₹ two crore to the Chief Minister's Relief Fund without adhering to the due procedures and provisions of the Companies Act, 1956.

The matter was reported (July 2013) to the Government/Management; replies were still awaited (November 2013).

#### **Bihar State Hydroelectric Power Corporation Limited**

##### **4.7 Creation of undue liability due to non-deduction of labour cess**

***Due to not effecting mandatory deduction of labour cess from the bills of the contractors, the Company made itself liable to pay ₹ 0.56 crore towards labour cess and penal interest thereon.***

The Government of Bihar (GoB) vide an Extraordinary Gazette notification<sup>28</sup> enforced Labour Cess as envisaged by the Ministry of Labour, Government of India notification<sup>29</sup> of 'the Building and Other Construction Workers' Welfare Cess Act, 1996(Act)<sup>30</sup>. The Act specified deduction of Labour Cess at the rate of one *per cent* out of the cost of construction incurred by an employer. As per Section 3(2) of the Act, *ibid*, all Government Departments and Public Sector

<sup>26</sup> These are the charges received by the Company from the Government on deposit works.

<sup>27</sup> Inadmissible Income (₹ 5.60 crore) + Provision for MAT (₹ 0.54 crore) - Exhibited Profit (₹ 2.70 crore) = ₹ 3.44 crore.

<sup>28</sup> Notification No. 865 dated 04 April 2008.

<sup>29</sup> Central Gazette Notification No: SO 2899 of 26 September 1996.

<sup>30</sup> Section 2(d) of the Act provides that "Building or other Construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to buildings, streets, roads, railways, generation, transmission and distribution of power, etc. but does not include any building or other construction work to which the provisions of the Factory Act would apply.

Undertakings, engaged in construction works are required to deduct Labour Cess at the prescribed rate from the bills of the agencies and remit the same to the “Building and Other Construction Workers Welfare Board”. Further Section 8 of the Act stipulates that if any employer failed to pay any amount of Labour Cess payable within the time specified, such employer would be liable to pay interest on the amount at the rate of two *per cent* for every month or part of a month till such amount was actually paid.

Bihar State Hydroelectric Power Corporation Limited (Company) is engaged in the generation of power and setting up of hydel power projects. The construction of power projects is got executed through outside construction agencies (contractors). As per the provisions of the Act, the Company was liable to deduct the cess from the bills of the contractors and deposit the same with the Labour Resources Department of GoB.

We observed (February 2013) that the Company was not effecting the mandatory deduction of Labour Cess since April 2008. Consequently, a sum of ₹ 0.41<sup>31</sup> crore was not deducted from the bills of contractors to be deposited with the concerned authorities as a result of which the Company became liable to pay penal interest to the tune of ₹ 0.15 crore. This has resulted in creation of undue liability to the extent of ₹ 0.56 crore on account of Labour Cess and interest thereon (up to June 2013) towards the Labour Resources Department, GoB.

The Management stated (June 2013) that since the projects of the Company, after commissioning, were registered under the Factories Act, 1948, cess levied at a rate of one *per cent* by the Labour Resources Department, Government of Bihar as such was not applicable to the Company.

The reply of the Company is not acceptable as only those premises including the precincts thereof, wherein a manufacturing process is being carried out with or without the aid of power, can be registered as a factory under the Factories Act, 1948. Further, the Labour Resources Department of the Government of Bihar has also clarified (October 2013) that the Company was liable to pay cess at the rate of one *per cent* on the projects under construction. Thus, failure on the part of the Company to enforce Labour Cess led to creation of undue liability amounting to ₹ 0.56 crore.

The Company needs to effect statutory deduction of Labour Cess from the bills of contractors in respect of its construction projects so as to avoid undue liability.

The matter was reported to the Government (June 2013); reply was awaited (November 2013).

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<sup>31</sup> Cess of ₹ 0.41 crore at the rate of one *per cent* on total cost of construction in respect of 23 projects.

#### 4.8 Avoidable expenditure

***The Company incurred an avoidable expenditure of ₹ 1.50 crore due to failure to verify the international issues associated with the Dagmara power project and awarding of work order for preparation of DPR in contravention of the Central Water Commission Guidelines.***

Para 2.1 of the Guidelines for Submission, Appraisal and Clearance of Irrigation and Multipurpose projects issued (July 2002) by the Central Water Commission (CWC), Ministry of Water Resources (MoWR), Government of India (GoI) provides, *inter alia*, that a Preliminary Feasibility Report (PFR) in respect of multipurpose projects having inter-state/international ramifications along with the applicable checklists should be submitted to CWC for their "In Principle" consent for preparation of the Detailed Project Report (DPR).

Bihar State Hydroelectric Power Corporation Limited (Company) prepared (August 2006) a PFR for setting up a Hydroelectric Project of 126 MW capacity on Koshi River near Dagmara village in Supaul District of Bihar. The proposed Dagmara project envisaged construction of a barrage 22.5 kilometers downstream of the Nepal border and therefore had international ramifications (viz. sub-mergence of the territory of Nepal, sharing of water, etc.) associated with it. On the basis of PFR, the Company placed (September 2007) a work order for preparation of DPR on M/s Water & Power Consultancy Services Limited (WAPCOS) for ₹ 3.08 crore plus taxes. The scope of the said work order included power potential studies, assisting in appraisal of the said Project by Central Electricity Authority (CEA)/CWC/Geological Survey of India (GSI), and obtaining clearance from the Ministry of Environment and Forests (MoEF) as well as Ministry of Defence (MoD). WAPCOS prepared and submitted (December 2010) the DPR to the Company after a delay of two years from the schedule date of submission (September 2008) of DPR. For preparation of DPR, the Company released a payment of ₹ 3.48 crore (inclusive of taxes) to WAPCOS up to April 2011.

We observed that:-

- Though the projects had international ramification, the Company did not submit the PFR along with the applicable checklists to CWC for their "In Principle" consent for preparation of the Detailed Project Report (DPR) as stipulated under the aforementioned Para 2.1 of the CWC Guidelines .
- Based on news regarding fear of submersion in border area of Nepal due to Dagmara Project published (02 July 2007) in newspaper of Nepal, the Indian Embassy in Kathmandu requested the Government of

Bihar/Company to make available full information in this regard. The Company, without verifying the international issues associated with the project, intimated on the same day, i.e., 02 July 2007 the Indian Embassy in Kathmandu that Dagmara Project did not pose any threat of submergence of land or dislocation of population in India or Nepal.

- The draft DPR submitted by WAPCOS was forwarded (July 2010) by the Company to CEA for approval. CEA informed (November 2010) that Dagmara Project being a multipurpose project (MPP) procedurally required clearance from the Technical Advisory Committee (TAC) of MoWR, GoI first and thereafter Power Component would be concurred by CEA. Accordingly, the CEA returned the DPR to the Company with an instruction to resubmit the DPR only after resolving the international issue associated with the said project.
- Accordingly, the Company took up (December 2010) the matter with the MoWR, GoI for clearance. MoWR advised (December 2010) the Company to either shift the proposed project further downward stream so as to ensure that all the civil structures were situated at least eight kilometers from the international border and as such there was no submergence of land in the territory of Nepal or the proposed project in its present form be planned only after obtaining clearance from the Government of Nepal.
- The Company, decided (July 2011) to shift the proposed project 7.5 kilometers downward stream. Accordingly, the Company placed (September 2011) an additional work order on WAPCOS for preparation of DPR for the proposed project at its revised location, at a cost of ₹ 1.50 crore. The scope of additional work order included Topographical survey, Geological investigations, Environment study, modifications in design, drawings and estimates, and preparation of DPR. This resulted in avoidable expenditure of ₹ 1.50 crore on Topographical survey, Geological investigations, Environment study, etc. of the original location of the said project for preparation of DPR which were already carried out as per the earlier DPR.

The Management stated (June 2013) that Dagmara project being a power project required appraisal from CEA only. It further stated that the issue pertaining to the submergence problem in Nepal came to its notice only after preparation of DPR at earlier location. The reply of the Company is not acceptable since Dagmara project was a multipurpose project and the Company was aware (July 2007) of the international issues associated with the said project through Indian Embassy in Nepal prior to awarding (September 2007) of the work of preparation of DPR to WAPCOS.

Thus, failure on the part of the Company to verify the international issues associated with the Dagmara power project and awarding of work order for preparation of DPR in contravention of the Central Water Commission Guidelines resulted in avoidable expenditure of ₹ 1.50 crore.

The matter was reported to the Government (June 2013); reply was awaited (November 2013).

#### 4.9 Wasteful expenditure

***Deficient planning on the part of the Company in respect of Dhoba SHP resulted in wasteful expenditure of ₹ 0.31 crore. Besides, there was irregular drawal of further instalments of NABARD loan by submitting incorrect expenditure certificates by the Company.***

Bihar State Hydroelectric Power Corporation Limited (Company) decided (March 2001) to set up 2 x 1000 KW Dhoba Small Hydel Power (SHP) project at Tirhut main canal in the district of West Champaran at an estimated cost of ₹ 8.73 crore. Since the site of the project fell within forest land and it required transfer of land under Forest Conservation Act (Act), 1980, a proposal was sent (December 2008) to the Chief Conservator of Forest-cum-Nodal Officer, Bihar for clearance under the said Act. On the basis of latest cost estimates of ₹ 8.90 crore for the said SHP, NABARD sanctioned (March 2008) a loan<sup>32</sup> of ₹ 8.46 crore and the balance (₹ 44 lakh) amount was to be funded by the Government of Bihar (GoB). The scheduled date of completion of the SHP was 31 March 2010. The Company was required to submit drawal application along with the duly certified statement of expenditure to NABARD through the Department of Energy, Government of Bihar for reimbursement of the subsequent expenditure incurred on the project.

Scrutiny of records (March 2013) revealed that the Company, without ensuring the availability of land for the project, invited (January 2009) a tender for construction of Dhoba SHP project on turn key basis in which only one<sup>33</sup> firm submitted its offer. However, the aforementioned tender was cancelled (June 2009) on the ground of review of the projects due to administrative and technical reasons. The Company awarded (April 2010) the civil work of the project to M/s Gandak Construction Private Limited at a cost of ₹ 8.11 crore who had submitted their offer (December 2009) after the cancellation of the tender. Besides, without ascertaining the source of additional fund<sup>34</sup> and inviting any tender, a Letter of Intent (LoI) for the work relating to main generating equipments (including erection, testing & commissioning and O & M for one year) was issued (July 2010) to M/s BEAS

<sup>32</sup> Interest payable on NABARD Loan at the rate of 12 per cent per annum and additional 2.5 per cent per annum in case of default in repayment of loan.

<sup>33</sup> M/s Nortech Power Project Private Limited, Kolkata.

<sup>34</sup> i.e. cost of the civil work ( ₹ 8.11 crore) + cost of work relating to main generating equipments (₹6.65 crore) – sanctioned cost of the SHP ( ₹ 8.90 crore) = ₹ 5.86 crore.

Infrastructure Private Limited at a cost of ₹ 6.65 crore. The actual expenditure incurred (2006-07 to 2010-11) by the Company in respect of the said SHP stood at ₹ 0.31<sup>35</sup> crore.

We further observed that:

- The Forest Department asked (July 2011) the Company to either provide eight hectares of land for the purpose of compensatory afforestation together with a compensation of ₹ 3.92<sup>36</sup> crore to the Forest Department or to review the techno-feasibility of the SHP.
- Perceiving heavy compensation payable to the Forest Department to secure the land, the Company belatedly decided (December 2012) to close the project and accordingly directed the contractor to stop the work.
- Despite non-availability of the required land and non-preparation of design and drawings, the Company obtained further instalments of loan aggregating to ₹ 5.95 crore during the period 2008-09 to 2011-12 by submitting incorrect expenditure certificates to NABARD.

As a result of the closure of the Dhoba SHP, the expenditure of ₹ 0.31 crore incurred by the Company, thus, became wasteful.

The Management, while accepting irregularity in reimbursement claims of Dhoba project stated (July 2013) that the fund drawn for Dhoba SHP in excess of actual expenditure had been utilised in Mathauli SHP, which was sanctioned under the same tranche of NABARD. The reply is not based on facts as the expenditure incurred for Mathauli SHP was incurred out of a different loan of ₹ 4.73 crore and was not incurred out of the funds drawn for Dhoba SHP.

Thus, deficient planning on the part of the Company in respect of Dhoba SHP resulted in wasteful expenditure of ₹ 0.31 crore. Besides, there was irregular drawal of further instalments of NABARD loan by submitting incorrect expenditure certificates by the Company.

The matter was reported to the Government (June 2013); reply was awaited (November 2013).

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<sup>35</sup> Inclusive of mobilisation advance of ₹ 14.86 lakh.

<sup>36</sup> At the rate of ₹ 98.10 lakh per hectare.

**4.10 Energy generation loss due to absence of a sound power evacuation system**

**Deficient planning in setting up of the Small Hydel Power Projects without a sound Power Evacuation System led to Energy generation loss of 35.88 MUs of power valuing ₹ 8.93 crore.**

Bihar State Hydroelectric Power Corporation Limited (Company), a licensee for generation of power, sells all the power generated through its Hydroelectric Power Plants to the Bihar State Power (Holding) Company Limited<sup>37</sup> (BSPHC) by evacuating the same at the receiving points<sup>38</sup> of the system of BSPHC. For evacuation of power without any interruptions, the Power House of a generating station is connected by electric line either with a 33/11 KV Power Sub-station (PSS) or with a 132/33 KV Grid Sub-station (GSS) of BSPHC. Evacuation of power at the sub-station is possible only when the GSS or PSS is in charged condition, otherwise the power generated by the Company cannot be evacuated and as such generation has to be stopped in the power house of the Company since surplus power cannot be stored. As the Grid Sub-stations cover larger area, these always remain charged whereas PSSs remain in charged condition depending upon the availability of power in the Grid system and/or area-wise distribution priority of BSPHC. Thus, to maintain generation of power and its evacuation for sale for revenue, it is imperative on the part of the Company to establish a foolproof system to ensure that the targeted GSSs/PSSs remain charged uninterruptedly.

Scrutiny of records of the Company revealed (March 2013) that:

- The Company commissioned eight<sup>39</sup> Small Hydroelectric Power Projects (SHPs) during the period 2006-07 to 2009-10. As per the Detailed Project Report (DPR) of these SHPs, power generated was to be evacuated at different GSS of BSPHC. These SHPs were, however, linked with the sub-stations of BSPHC which were, in fact, PSSs and not GSSs. Linking of power-houses of the aforementioned SHPs to the nearest GSS of BSPHC, as envisaged in the DPR for these SHPs was, however, not done so as to ensure uninterrupted generation of power and evacuation.
- During the period 2011-12 to 2012-13, the PSSs of BSPHC were not in a charged condition for 29733<sup>40</sup> hours due to continual trippings. Consequently, the Company had to shut down its generation at the aforementioned five SHPs for 17,710 hours during the said period and

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<sup>37</sup> Previously known by the name of Bihar State Electricity Board(Board).

<sup>38</sup> Power Sub-station (PSS) and Grid Sub-station (GSS).

<sup>39</sup> Jainagra, Shirkhinda, Sebari, Dhelabag , Nasriganj, Agnoor, Arwal and Belsar.

<sup>40</sup> 2011-12 (10466 hours) and 2012-13 (19267 hours).



as such could not generate 35.88 MUs of power valued at ₹ 8.93<sup>41</sup> crore.

Thus, due to absence of a sound Power Evacuation System, the Company suffered Energy Generation loss of 35.88 MUs valued at ₹ 8.93 crore.

The Management stated (July 2013) that due to poor power system condition, power availability was not continuous in the PSSs and hence the Company sustained generation loss. It further stated that for the purpose of ensuring a better availability of evacuation system by pooling the power of two to three generating stations, it had got prepared a DPR by its consultant<sup>42</sup> which was also sanctioned under the State Plan.

The fact, thus, remains that the Company failed to plan a sound Power Evacuation System prior to setting up of the SHPs itself to ensure a sound Power Evacuation System to avoid loss of potential generation of power.

The matter was reported to the Government (July 2013); the reply was awaited (November 2013).

**Bihar State Electronics Development Corporation Limited, Bihar Police Buildings Construction Corporation (Private) Limited and Bihar State Beverages Corporation Limited**

**4.11 Avoidable payment of interest**

***Failure on the part of the companies to devise a suitable system for ensuring proper assessment of tax liability led to non-payment of advance tax resulting in avoidable payment of interest of ₹ 1.64 crore.***

Section 207 of the Income Tax Act, 1961 (Act), *inter alia*, provides that every assessee having a tax liability of ₹ 10,000 or more shall pay advance tax in the manner and at the rate prescribed under the Act. Failure to deposit minimum 90 per cent of the tax in advance as well as shortfall in depositing tax as per the prescribed slab attracts interest at the rate of one per cent per month separately as prescribed under Section 234B and 234C of the Act. The Management is, thus, required to make proper estimation of taxable income to ensure timely deposit of advance tax as required under the Act to avoid the incidence of interest payment.

We examined the system of assessment of tax liability and payment of advance tax in three companies viz. Bihar State Electronics Development Corporation Limited (BELTRON), Bihar Police Buildings Construction Corporation (Private) Limited (BPBCC) and Bihar State Beverages Corporation Limited (BSBCL) and noticed deficiencies as mentioned here under:

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<sup>41</sup> Jainagra(4.83 MUs valued at ₹ 1.20 crore), Shirkhinda(4.67 MUs valued at ₹ 1.16 crore), Sebari(3.92 MUs valued at ₹ 0.98 crore), Dhelabag (8.25 MUs valued at ₹ 2.05 crore), Nasriganj(4.10 MUs valued at ₹ 1.02 crore), Agnoor(5.25 MUs valued at ₹ 1.31 crore), Arwal(1.88 MUs valued at ₹ 0.47 crore) and Belsar(2.98 MUs valued at ₹ 0.74 crore).

<sup>42</sup> Alternate Hydro Energy Center (AHEC), Roorkee.

- BELTRON failed to deposit advance tax with the Income Tax authorities for the financial years 2009-10 and 2011-12. The amount of tax deducted at source on the income of BELTRON for the financial years 2009-10 and 2011-12 stood at ₹ 1.20 crore and ₹ 1.83 crore respectively which was deposited with the Income Tax authorities. The total tax liability of BELTRON for the financial years 2009-10 and 2011-12, however, amounted to ₹ 2.59 crore and ₹ 5.29 crore respectively. Since the total tax paid fell short of 90 per cent of tax payable, BELTRON had to pay penal interest of ₹ 14.37 lakh and ₹ 38.18 lakh for the financial years 2009-10 and 2011 -12 respectively. Further, for the financial year 2010-11, BELTRON deposited ₹ 0.75 crore and ₹ 1.49 crore on account of advance tax and TDS which fell short of 90 per cent of tax payable, i.e., ₹ 4.52 crore , being the actual tax liability for the financial year 2010-11. Thus, BELTRON had to pay penal interest of ₹ 28.23 lakh for the financial year 2010-11.
- BPBCC failed to deposit advance tax with the Income Tax authorities for the financial years 2009-10 and 2011-12. The amount of tax deducted at source on the income of BPBCC for the financial years 2009-10 and 2011-12 stood at ₹ 0.96 crore and ₹ 0.77 crore respectively which was deposited with the Income Tax authorities. The total tax liability of BPBCC for the financial years 2009-10 and 2011-12 was ₹ 2.92 crore and ₹ 1.59 crore respectively. Since the total tax paid fell short of 90 per cent of tax payable, BPBCC had to pay penal interest of ₹ 22.65 lakh and ₹ 7.89 lakh for the financial years 2009-10 and 2011-12 respectively. For the financial year 2010-11, BPBCC deposited a sum of ₹ 1.36 crore on account of advance tax which fell short of 90 per cent of tax payable for the financial year 2010-11. Thus, BPBCC had to pay penal interest of ₹ 5.73 lakh for the financial year 2010-11.
- Similarly, the total tax liability of BSBCL for the financial years 2009-10, 2010-11 and 2011-12 stood at ₹ 2.82 crore, ₹ 6.39 crore and ₹ 7.40 crore respectively. Since the total tax paid (i.e. advance tax plus TDS) fell short of 90 per cent of tax payable in these financial years, BSBCL had to pay penal interests of ₹ 13.39 lakh, ₹ 13.72 lakh and ₹ 19.74 lakh for the financial years 2009-10, 2010-11 and 2011-12 respectively.

Thus, due to failure on the part of the aforementioned companies to devise a suitable system for ensuring proper assessment of tax liability, the companies had to make an avoidable payment of interest of ₹ 1.64<sup>43</sup> crore.

The BELTRON Management, while confirming the facts and figures, stated (July 2013) that the suggestions made by the audit have been noted for future.

The Government/BPBCC Management, while confirming the facts and figures, stated (October 2013) that the Company is strengthening its internal

<sup>43</sup> i.e. BELTRON - ₹ 14.37 lakh (2009-10) + ₹ 28.23 lakh (2010-11) + ₹ 38.18 lakh (2011-12) = ₹ 80.78 lakh.  
BPBCC - ₹ 22.65 lakh (2009-10) + ₹ 5.73 lakh (2010-11) + ₹ 7.89 lakh(2011-12) = ₹ 36.27 lakh.  
BSBCL - ₹ 13.39 lakh (2009-10) + ₹ 13.72 lakh (2010-11) + ₹ 19.74 lakh(2011-12) = ₹ 46.85 lakh.

control system to ensure timely availability of information pertaining to turnover, revenues and other parameters necessary for estimation of taxable income.

The BSBCL Management, stated (September 2013) that the system adopted by the Company for estimation of annual income is based on premises and assumptions as prevailing at the time of making projections and are best judgment estimates of future probable income. Further, due to certain expenditure like privilege fee, contribution to Chief Ministers' Relief Fund which crystallise at the end of the accounting year, sharply skewed sales at the end of the accounting year, etc., they can be estimated vaguely only and as such the variance between the projected income and the assessed income is bound to arise causing payment of interest under Section 234 B and 234 C. The contention of the Management is not acceptable as expenditure incurred in the normal course of business can be estimated with a reasonable degree of accuracy by devising a system of making accurate projections/estimates pertaining to turnover, revenues and other parameters necessary for computation of taxable income.

Thus, failure on the part of the companies in assessing the turnover indicated poor internal control system prevalent in the companies to ensure proper estimation of taxable income and formation of other projections, etc.

The companies should strengthen their internal control system so as to ensure timely availability of information pertaining to turnover, revenues and other parameters necessary for estimation of taxable income and formation of other projections, etc.

The matter was reported to the Government (Information Technology Department and Registration, Excise & Prohibition Department) (May and August 2013), replies were awaited (November 2013).

## **GENERAL**

### ***4.12 Response to Inspection Reports, Draft Paragraphs and Performance Audit Reports***

Audit observations made during audit and not settled on the spot were communicated to the heads of PSUs and concerned departments of the State Government through Inspection Reports (IRs). The heads of the PSUs were required to furnish replies to the IRs through respective heads of departments within a period of four weeks. IRs issued up to March 2013 pertaining to 24 PSUs disclosed that 1480 paragraphs related to 658 inspection reports were outstanding at the end of September 2013. These outstanding Inspection Report paragraphs had not been replied to for one year to seven years. Department-wise break-up of IRs and audit observations outstanding as on 30 September 2013 is given in *Annexure- 9*.

Similarly, Draft Paragraphs and Performance Audit Reports on the working of PSUs were forwarded to the Principal Secretary/Secretary of the administrative department concerned demi-officially, seeking confirmation of facts and figures and their comments thereon within a period of six weeks. It was,

however, observed, that replies to 11 Draft Paragraphs and two Performance Audit Reports forwarded to the various departments during May to September 2013 as detailed in *Annexure -10* were awaited (November 2013).

It is recommended that the Government should ensure that (a) procedure exists for action against officials who fail to send replies to Inspection Reports/Draft Paragraphs/Performance Audit Reports as per the prescribed time schedule; (b) action is taken to recover loss/outstanding advances/overpayments in a time bound schedule; and (c) the system of responding to audit observations is strengthened.

Patna  
The



(P. K. SINGH)

Accountant General (Audit), Bihar

Countersigned

New Delhi  
The



(SHASHI KANT SHARMA)

Comptroller and Auditor General of India