

Chapter-IV

Compliance Audit Observations

4.1 Revenue receipts

4.1.1 Short realisation of settled value of markets

Test check of records produced by the Council Head of the Department (CHD), Market & Fair, BTC showed that 307 markets/ferries/parking lots, *etc.*, were settled with lessees during 2015-16 at a value of ₹ 259.63 lakh after call of tender. The tender was called by the respective Block Development Officer (BDO) and settled with the approval of the CHD, Market & Fair, BTC. The lessees are responsible to keep the market, parking, *etc.*, clean and collect taxes from the vendors, *etc.*, at a rate approved by the competent authority. As per terms and conditions of notice inviting tender, (NIT) the tenderer shall have to deposit the entire settled value before handing over the settled markets/ ferries, *etc.*, failing which the settlement would automatically be cancelled without any notice and alternative arrangement would be made thereon.

Scrutiny of records and information furnished to audit disclosed that the markets, ferries, *etc.*, were handed over to the lessees without collecting the settled amount in full as out of the total lease amount of ₹ 259.63 lakh due to be collected during 2015-16, the concerned Blocks did not collect ₹ 119.41 lakh from 177 lessees as detailed in *Appendix-V*. Reasons for handing over the markets/ ferries, *etc.*, prior to realisation of the entire settled amount by the BDOs was not found available on record.

Further, out of 177 defaulting lessees, *Bakijai*¹¹ proceedings against 101 lessees for realisation of ₹ 67.31 lakh have been initiated, while no action has yet been taken on the remaining 76 defaulters for realisation of the remaining lease rent of ₹ 52.10 lakh without any recorded reasons.

In reply CHD, Market & Fair, BTC (September 2022) stated that after observing heavy *Bakijai* cases, the BTC authority decided to realise one time earnest money/settlement value at the time of submission of quotation since 2017.

Appropriate steps in this respect are needed to realise the outstanding amount.

4.1.2 Bodoland Lottery

4.1.2.1 Irregular conduct of Bodoland Lottery

Paragraph 3B of the Sixth Schedule to the Constitution relating to additional powers of BTC to make laws provides that BTC shall have power to make laws within its area with respect to 40 subjects, including lotteries. Paragraph 3(3) of the Sixth Schedule further provides that all laws made under Paragraph 3 shall be submitted forthwith to the Governor and, until assented by him, shall have no effect.

¹¹ The recovery of Public demands under Bengal Public Demands Recovery Act, 1913

BTC framed (September 2007) 'Bodoland Lottery Rules (BLR), 2007' with the intent to introduce lotteries and forwarded it to GoA (November 2007) for obtaining approval of the Governor. BTC, however, introduced Bodoland lottery and started operating it, without waiting for the assent of the Governor and appointed a sole distributor¹² by executing an agreement in September 2009.

GoA communicated (June 2010) that it was not in favour of introduction of lottery in BTC area, as lottery was banned in Assam, and Assam Lottery Rules, 1994 had been withdrawn in December 1996. Subsequently, in February 2013, BTC issued a Notification in the Assam Gazette adopting the Lotteries (Regulation) Act, 1998 and the Lotteries (Regulation) Rules, 2010 in exercise of Sub-rule (1) of Rule 3 of Lotteries (Regulation) Rules, 2010 for operation of Bodoland lotteries. The Notification mentioned the expression 'Orders by the Governor'. However, the Governor's Secretariat clarified to Audit (April 2017) that the Governor had not given assent to the said Notification, and also wrote to the Chief Secretary, GoA, informing of the false notification on Bodoland Lottery, clearly stating that the Governor's secretariat had in the past informed BTC of the inability of the Hon'ble Governor to give assent to the notification relating to Bodoland Lottery, and therefore requested for action against guilty officials for such action tantamount to fraud on the Government.

In the absence of approval of the Governor for the Gazette notification adopting the Lotteries (Regulation) Act, 1998 and the Lotteries (Regulation) Rules, 2010, these had no force of law in keeping with Paragraph 3(3) of the Sixth Schedule.

The Annual accounts of BTC for 2015-16 exhibited collection of total revenue of ₹ 6.04 crore¹³ as Lottery (Sale and unclaimed prize money). In reply (October 2018), BTC stated that the subject of 'Lottery' was entrusted under Paragraph 3B of the Sixth Schedule as well as OM dated 16 October 2004, according to which, BTC issued a Notification in the Assam Gazette adopting the Lotteries (Regulation) Act, 1998 and the Lotteries (Regulation) Rules, 2010. The reply is not tenable as Governor's assent was essential, in terms of Paragraph 3(3) of the Sixth Schedule, for any law framed by an Autonomous Council to have any effect.

4.1.2.2 Non-deposit of sale proceeds of lottery

Lotteries (Regulation) Act, 1998 provides that one of the conditions subject to which the State Government may organise, conduct or promote a lottery is that the sale proceeds of lottery tickets shall be credited into the Public Account of the State. Rule 3(10) also states that the Organising State shall charge a minimum amount of five lakh rupees per draw for bumper draw of lottery and, for all other forms of lottery, a minimum amount of ten thousand rupees per draw. Further, Rule 4(4) of Lottery Regulations Rules, 2010 provide that the Organising State shall pay to the distributors or selling agents any commission due to them and the prize amounts disbursed by the

¹² M/s Big Star G Services Private Limited, Chennai.

¹³ Lottery sale & Unclaimed ₹ 5.01 crore and Lottery Printing charges ₹ 1.03 crore.

distributors or selling agents to the winners, if any, out of the money so deposited in the Public Deposit Account.

Despite the fact that the operation of Lottery by BTC was in violation of the Lotteries Regulation Act and Rules, BTC re-appointed the Chennai-based firm as sole distributor by entering into an agreement (04 August 2014) to market and sell lottery schemes¹⁴ for a period of five years from 01 October 2014 to 30 September 2019.

Clause 7(2) of the agreement provided that the proceeds of the sale of lottery tickets for the month shall be credited by the sole distributor into the PDA of BTC based on the invoices raised during the month. Clause 5(9), however, provided that BTC shall raise invoice on a monthly basis taking into consideration the proportionate revenue due to BTC. Thus, Clause 5(9) put a limitation to deposit the entire sale proceeds. There was nothing on record to indicate that BTC raised any invoice leading to subsequent credit of sale proceeds in the PDA of BTC. As per information furnished to Audit by the Director of Lotteries, BTC, the quantum of sale proceeds during 2015-16 was as detailed in **Table 4.1**.

Table- 4.1

Particulars	Paper ticket	Online ticket	Total
Number of tickets sold	29,00,50,000	17,75,14,871	46,75,64,871
Sale proceeds (in ₹)	1,76,44,00,000	35,50,29,742	2,11,94,29,742

Source: Information furnished by the Director of Lotteries, BTC

Thus, sale proceeds of ₹ 211.94 crore¹⁵ were not deposited into PDA of BTC in violation of the provision of Lotteries (Regulation) Act.

Further, Clause 7 (3) and Clause 10 of the agreement provided that the sole distributor shall deposit the prescribed amount ensuring minimum guaranteed revenue at the rate of ₹ 5,50,000 for each draw of bumper lotteries and at the rate of ₹ 11,000 for each draw of other forms of lotteries, or ₹ 5.00 crore per *annum*, whichever was higher. Thus, from the total sale proceeds of ₹ 211.94 crore, only ₹ 5.01 crore was remitted to BTC by the vendor and the balance revenue, after payment of prize money, was permitted to be retained by the distributor, in violation of the Lotteries Regulation Act and Rules.

As mentioned above, BTC did not maintain any records pertaining to expenditure incurred out of the total sale proceeds of ₹ 211.94 crore during the year 2015-16 regarding conduct of lottery viz., records showing actual numbers of draws, prize money distributed, commission paid to retail vendors, other incidental expenses, etc.

Hence, Audit could not analyse the sale proceeds amounting to ₹ 206.93 crore¹⁶ retained by the distributor during 2015-16 so as to ascertain the actual revenue due to the BTC, actual amount of prize money distributed and amount due to the distributor during the year.

¹⁴ Paper and Online lottery scheme.

¹⁵ ₹ 176,44,00,000 + ₹ 35,50,29,742 = ₹ 2,11,94,29,742.

¹⁶ ₹ 211.94 crore- ₹ 5.01 crore

In reply (October 2018), BTC stated that no invoices could be raised upon the sole distributor to deposit the entire amount of sale proceeds into PDA of BTC as Clause 5(9) of the Lottery agreement and Section 4(d) of the Lottery Regulation Act, which provides for depositing the entire lottery proceeds into Public Account, are contradictory to each other. The reply is not acceptable as the agreement was drafted by BTC and it was incumbent upon the Council to take care of the contradictions at the drafting stage itself.

4.2 Revenue and Capital expenditure

Department of Health Services

4.2.1 Avoidable expenditure due to approval of procurement rate without calling for fresh tender

BTC issued notification (November 2014) constituting the Purchase Board of BTC for procurement of materials (including schematic materials and stationery articles of General Administration Department) by departments. The notification, *inter alia*, provided that the Board may collect the existing market rates and company price list while recommending the admissible rates.

The Purchase Board of BTC approved (August 2015) the existing approved rate of the Health Department of BTC for procurement of Medicated Mosquito Nets (MMN) at ₹ 535 each. The Department approved the rate from the quotations received during April 2008 from four intending suppliers who quoted rates for two models of MMNs (one general model and the other-premium model). The approved rate did not specify the size of MMNs. The Comparative Statement (through which the rate was fixed) showed the lowest offered rate of ₹ 535 each for premium model MMN. Thus, the Purchase Board of BTC did not consult the market price, company's price list, approved rate of DHS Assam, *etc.*

The DHS, BTC procured 32,256 MMNs at the approved rate of ₹ 535 each from three suppliers worth ₹ 1.73 crore¹⁷ during 2015-16. The specification of MMNs as per claim and supply order was of the size 190cmx180cmx160cm, but MMNs of the size 190cmx180cmx150cm was actually supplied. The prevailing approved rate of each MMN of size 190cmx180cmx150cm of DHS Assam was ₹ 379 each for 2015-16. As such, BTC incurred extra avoidable expenditure of ₹ 50.31 lakh¹⁸ due to approval of the rate without calling for fresh tender as well as without exploration of market rate by the Purchase Board.

The DHS, BTC stated in reply (September 2017) that the rate of ₹ 535 each was adopted without issuing Notice inviting tender (NIT) and without consideration of rate of DHS, Assam on the consideration that MMNs were of good quality. In September 2018, the DHS furnished the same reply.

¹⁷ JB Enterprise-10106 pcs worth ₹ 5406710; Dhanshri Enterprise-12150 pcs worth ₹ 6500250; Kamrup Enterprise-10000 pcs worth ₹ 5350000

¹⁸ ₹ (535 - 379) x 32256 = ₹ 50,31,936

The reply is not acceptable as documentation in support of procurement of MMNs of better quality could not be substantiated with records. Moreover, due to not exploring the market rate by calling fresh tender, BTC was deprived of competitive rates and excess expenditure of ₹ 50.31 lakh¹⁹ could have been avoided.

4.2.2 Extra expenditure in procurement of hospital articles, machineries, equipment, etc.

The Chief of BTC directed (May 2015) for procurement of hospital articles like fire extinguisher, water disinfectant and hospital machineries worth ₹ 10 crore from Chief Discretionary (CD) Fund of 2015-16. Based on the above direction, and without any assessment of requirement of these items, DHS, BTC submitted (29 June 2015) to the Secretary, Health Department, requirement of hospital equipment, articles, etc., worth ₹ 9.99 crore (calculated on the basis of approved rate) and requested to approve and accord sanction of fund.

Health and Family Welfare department (H&FW) of BTC forwarded (04 July 2015) the proposal to Welfare of Plain Tribes and Backward Classes (WPT&BC) Department of BTC. The WPT&BC Department of BTC accorded administrative approval (28 July 2015) of ₹ 9.99 crore for incurring expenditure under the head of account '2225 Welfare of Scheduled Caste & Scheduled Tribe and Backward Classes – Chief Discretionary Fund' for 2015-16. Tender was floated (September 2015) and supply order was placed to the firm²⁰ offering lowest rate.

Further scrutiny revealed that procurement of hospital articles included procurement of 1,625 fire extinguishers of 5 litres capacity at the rate of ₹ 14,518 each. On physical verification, it was found that the supplier actually supplied fire extinguisher having 4 kg ABC Dry powder (Attack fire), manufactured by Chirag Industries India, instead of 5 litre capacity. Web Portal (October 2017) of the manufacturer showed that the rate of fire extinguishers having 4 kg capacity ABC Dry Powder (Attack fire) was ₹ 3,250 each during the period of audit.

Thus, by accepting the supply of 4 kg capacity fire extinguishers in place of the ordered 5 kg capacity and making payment for the supply at the agreed rate of ₹ 14518 per piece for 1625 fire extinguishers, the risk of extending undue benefit to the supplier to the tune of ₹ 1.83 crore²¹ cannot be ruled out.

It was further noticed that 175 fire extinguishers worth ₹ 25.41 lakh²² were lying in stock without issue. This implies that procurement was made in excess of requirement leading to blocking of fund to the extent of ₹ 25.41 lakh.

On being pointed out in audit, DHS, BTC stated (September 2018), that the supplier replaced 175 numbers of 4 kg fire extinguishers with 5 kg fire extinguishers which were

¹⁹ ₹ (535 - 379) x 32256 = ₹ 50,31,936

²⁰ M/S Ocean Pearl Enterprise.

²¹ ₹ 11,268 x 1,625 = ₹ 1,83,10,500

²² ₹ 14,518 x 175 = ₹ 25,40,650

distributed to different health centres. The reply was silent about accepting 4 kg capacity fire extinguishers in place of ordered 5 kg capacity.

Agriculture Department

4.2.3 Extra expenditure for payment exceeding maximum retail price

Rule 114 of the BTC Fund Rules, 2012 provides that payment for purchases shall be accompanied by a certificate that the articles detailed in the vouchers have been actually received and entered in the Stock Register, that their quantities are correct and their quality good, the rates paid are not in excess of accepted or market rates and that suitable notes of payment have been made in the indents and invoices concerned to prevent double payment.

The Director of Agriculture (DoA), BTC proposed (May 2015) for distribution of 100 *per cent* subsidised rain coats among small and marginal farmers during 2015-16 at an expenditure of ₹ one crore. Deputy Secretary, BTC directed (June 2015) to invite quotations for the purpose. Accordingly, DoA invited quotation for supply of rain coats (XXL size, full body, gent's rain suit, three pieces with jacket coat, trouser and cap).

The Purchase Committee (PC) of BTC examined (July 2015) the quotations received and selected a Kokrajhar based enterprise²³ at the lowest offered rate of ₹ 2,440 per rain coat of Duckback brand (canvas cloth).

BTC administratively approved ₹ one crore (₹ 98.33 lakh plus administrative and other cost of ₹ 1.67 lakh) for purchase and distribution of rain coats among small and marginal farmers during 2015-16. DoA placed indents (October 2015) to the selected enterprise to deliver 4,030 rain coats²⁴ to District Agricultural Officer (DAO) and Sub-Divisional Agricultural Officer (SDAO) under its jurisdiction. The supplier delivered the entire quantity between October 2015 and January 2016.

Audit noticed that the maximum retail price (MRP) of the raincoats supplied was ₹ 856 per raincoat set. Thus, DoA purchased raincoats worth ₹ 98.33 lakh at the rate of ₹ 2,440 per set which resulted in extra expenditure of ₹ 63.83 lakh.

In reply (September 2018), BTC stated that the rate was genuine and as per market rate. However, it did not explain as to how the market rate could be higher than the MRP. The reply was not tenable as the procurement rate of the raincoats exceeded the MRP in violation of the rules *ibid*, and the PC failed to elicit a reasonable rate.

4.3 Conclusion

The audit of accounts of BTC for 2015-16 disclosed that:

1. System of governance appears weak as evidenced by numerous control failures listed in the paragraphs above, including issue of supply orders without call of tender.

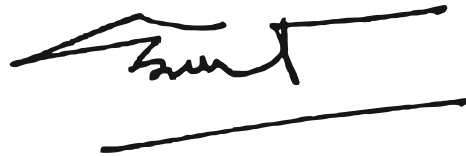
²³ M/s M. Machahari Enterprise, Kokrajhar.

²⁴ Kokrajhar-1030 units, Chirang-1000 units, Baksa-1000 units and Udalguri- 1000 units

2. Compliance with financial rules and orders in the Council was poor which resulted in various irregularities as pointed out in preceding paragraphs of this Report.
3. There was no well-defined purchase policy. Procurement was found to be made at rates higher than the market rates.
4. These issues need to be addressed with corrective measures taken by BTC in order to improve its functioning and ensure compliance with Financial Rules.

4.4 Recommendation

The Council should ensure effective checks and controls with proper documentation in the process of procurement of materials, works, distributions, etc.



Guwahati
The 28 December 2023

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The 09 January 2024

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