CHAPTER VI
COMPLIANCE AUDIT

AUDIT OF SELECTED TOPICS

LABOUR AND SKILLS DEPARTMENT

6.1 Role of Factories and Boilers Department in the safety of factory workers

6.1.1 Introduction

The Department of Factories and Boilers (Department) was formed in 1961 by bifurcating the Labour Department so as to focus more on the health, safety and welfare of factory workers in the State and to facilitate the pace of industrialisation. While the Secretary to Government, Labour and Skills Department is having the administrative control over the Department, the Director of Factories and Boilers (Director) is the Head of the Department. The main functions of the Department are to administer/implement various provisions of the Factories Act, 1948, the Indian Boilers Act, 1923 and other enactments for ensuring the safety, health and welfare of factory workers and the safety of the people living in the neighbourhood. The departmental functions are regulatory as well as service oriented. The Director is assisted by an Enforcement wing consisting of Joint Director of Factories and Boilers (HQ) and three Regional Joint Directors. There are 22 factory divisions, each headed by an Inspector of Factories and Boilers in respect of hazardous factories and 25 Additional Inspectors of Factories in charge of non-hazardous factories.

6.1.2 Objective, Scope and Methodology of Audit

The audit was conducted from April 2017 to August 2017 covering the period 2012-13 to 2016-17 to assess the enforcement by the Department, of the provisions relating to the safety of factory workers as stipulated in the Factories Act, 1948 and other relevant enactments.

Prior to the commencement of Audit, an Entry Conference was conducted on 20 April 2017 with the Joint Secretary, Labour and Skills Department, Additional Labour Commissioner and Director of Factories and Boilers to discuss the scope and methodology of audit. Audit scrutinised the records in the Department, Offices of the Director/Joint Director of Factories and Boilers and the Inspectors of Factories and Boilers (Factory Divisions)[130], Employees' State Insurance (ESI) regional offices and the offices of the Kerala State Pollution Control Board. Audit coverage included all the three Regional Offices at Kollam, Ernakulam and Kozhikode and two divisions under each of the Regional Offices. The Divisions under the Regional Offices were selected by stratified random sampling through IDEA[131] software. Fifteen factories in each division were also selected for test-check through random sampling. An Exit

[130] Thiruvananthapuram, Kundara, Kozhikode (North), Ottappalam, Kochi and Palakkad.
[131] Interactive Data Extraction and Analysis.

Conference was conducted on 26 October 2017 with the Joint Secretary, Labour and Skills Department and Director of Factories and Boilers, where the major audit findings were discussed. Reply of the Government was considered while finalising the paragraph.

Audit findings

6.1.3 Registration and Renewal

6.1.3.1 Factories operating without obtaining registration under the Act.

Section 2 (m) of the Factories Act, 1948, defines a 'factory' as any premises including the precincts wherein 10 or more workers are/were working on any day of the preceding 12 months and where a manufacturing process is carried out with the aid of power. In cases where the manufacturing process was carried out without the aid of power, the Act provided for reckoning any premises as a factory where 20 or more workers were engaged in the manufacturing process. Government of Kerala (GOK), in exercise of powers conferred under Section 85 (1) of the Act, enlarged (August 2008) the scope of definition of 'factory' to include factories engaged in hazardous manufacturing process employing three or more persons[132] whether using power or not. Also, factories engaged in non-hazardous manufacturing process employing three or more persons[133] but less than 10 when power was used and less than 20 when power was not used were to be reckoned as 'factories' for the purpose of the Act. Thus, 96 manufacturing processes, both 'hazardous' and 'non-hazardous' were brought under the definition of 'factories' for the purpose of implementation of the Act.

Rule 5 (3) of Kerala Factories Rules, 1957, stipulates that no manufacturing process shall be carried out in any factory without a licence granted by the Chief Inspector or the Deputy Chief Inspector of the Regional Office concerned. Rule 4 under Kerala Factory Rules, 1957, stipulated that the occupier of every factory shall submit to Chief Inspector or Deputy Chief Inspector an application for registration and grant of licence.

In the test-checked divisions, Audit observed that though 185 factories were identified by the Department during 2012-17, these were not registered[134] (March 2017). Audit conducted joint field visits with the Inspectors of Factories and Boilers of the test-checked six factory divisions and detected an additional six unregistered factories (two in Kozhikode, two in Kundara, one in Ottappalam and one in Thiruvananthapuram) in four divisions. The existence of more such unregistered factories cannot be ruled out.

Records available with the Labour Department revealed that only 22,545 factories were registered with the Labour Department (as of February 2017) under the provisions of the Factories Act. Audit obtained information from the

[132] Except for manufacturing of asbestos or its ancillary products wherein employing any number of persons not exceeding nine persons where power is used or persons not exceeding 19 workers when power is not used would be considered as factories.

[133] In the case of certain non-hazardous manufacturing processes like manufacture of watches, jewellery, umbrellas, packed drinking water, etc., the minimum number of persons required to be engaged for reckoning the Unit as a 'factory' was enhanced to five or more persons against three, in respect of other units.

[134] Of the above 185 unregistered factories, prosecution cases were filed against 38 factories. The remaining 147 applications are pending with the department for want of required documents.

Director of Industries and Commerce which confirmed to Audit (August 2017) that out of 1,19,924 Micro, Small and Medium Enterprises (MSMEs) operating in the State, there were 79,010 Manufacturing Units with three or more employees as on 18 September 2015. Audit observed that these MSMEs could qualify as 'Factories' either under Section 2 (m) of the Factories Act or under the enlarged definition of 'factory' as ordered by GOK. The registered factories were bound to comply with all the norms specified in the Act and Rules including provisions relating to safety of the workers. Non-registration would lead to non-compliance on the part of the occupier and non-monitoring by the Department.

GOK replied (October 2017) that the figures as furnished to Audit by the Director of Industries and Commerce were not correct and that as per Section 85 of the Factories Act, only 96 manufacturing processes were brought under the purview of the Act. These 79,010 units were stated to be outside the purview of the Act since they do not come under the said 96 processes.

Audit filtered the data on the basis of the manufacturing processes specified under Section 85 of the Factories Act and it was noticed that there would be 70,153 factories liable for registration under the Act. Thus, the Labour Department failed to ensure registration of at least 47,608 factories[135] under the Act.

The audit observation was also discussed in detail during the Exit Conference held on 26 October 2017 wherein it was agreed that the database containing the details of 70,153 factories would be examined by the Factories and Boilers Department for verification at the field level. Audit observed that despite it having submitted (October 2017) soft copy of data relating to the MSME Units to the Director of Factories and Boilers with request to intimate the result of verification, the same is yet to be furnished.

Thus, failure of the Department to identify and ensure registration of factories under the Factories Act resulted in their inability to enforce the safety provisions contained in the Act in respect of at least 47,608 factories, thereby putting the lives of workers working in these factories as well as those staying in the neighbourhood at risk. Further, the State has foregone registration charges of at least ₹1.43 crore[136] due to its failure to register these factories.

6.1.3.2 Non-renewal of factory licences

Rule 7 of Kerala Factories Rules, 1957, stipulated that the occupier of every factory shall submit to the Chief Inspector/Deputy Chief Inspector an application for renewal of licence, not less than two months before the date of expiry of the licence by submitting prescribed documents and remitting the prescribed fee. A scrutiny of the Demand, Collection and Balance (DCB) register revealed that 878 out of 22,545 registered factories were yet to renew their licences (March 2017), resulting in non-collection of revenue[137] amounting to ₹98.41 lakh. Analysis of pendency details revealed instances of non-renewal from as early as 2001.

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[135] 70,153 - 22,545 = 47,608.

[136] ₹300 (minimum fee for registration) x 47,608 = ₹1.43 crore.

[137] Fees for renewal of licence, additional 25 *per cent* fees, additional 50 *per cent* fees and back arrear fees and back arrear additional 50 *per cent* fees.

GOK cited (October 2017) shortage of transportation facilities and manpower in the enforcement wing, non-functioning of majority of defaulting factories and disputes regarding ownership, partition, lease, legal-heirship etc., pending before various courts as reasons for non-renewal of licences. In its reply, the Department stated (December 2017) that 369 of these factories were not working and 67 factories did not renew their licences due to pending court cases. Audit observed that as per Rule 12 D of Kerala Factories Rules, 1957, if a factory was lying idle for a period exceeding one calendar year, the Chief Inspector may, after satisfying himself of the bonafides, suspend the licence for one or more licensing periods. Audit also observed that the Director was lax in initiating penal action under Section 92 of the Factories Act against the remaining 442 unlicensed factories, which failed to renew their licences, punishable with imprisonment for a term which may extend to two years or with fine of upto ₹ one lakh or with both.

Audit feels that the Government should provide transport facilities and adequate manpower to the Factories and Boilers Department, enabling it to perform its statutory duty of registration of factories for ensuring safety of workers. Government should review all cases of non-registration of factories and take appropriate action as per provisions of the Act and Rules.

6.1.3.3 Factories carrying out additional manufacturing process without registration/licence

Rule 6 (2) of the Kerala Factories Rules,1957, stipulated that licences granted under Rule 5 were to be amended in the event of change with regard to power utilised or the number of persons employed or changes in the name of the factory. Audit noticed during joint inspection along with departmental officers that 14 factories were carrying out additional manufacturing processes other than those for which licences were issued. The Department did not identify such activities and ensure safety measures to be undertaken for the additional manufacturing process. In the test-checked divisions, 14 out of 90 factories were found to be engaging upto 10 additional workers than permitted in their licences. Licences of such factories were not amended in line with the stipulations contained in Rule 6 (2). The safety of workers in these factories was thus compromised.

GOK stated (October 2017) that the additional manufacturing process in a factory could be included in the licence while submitting the application for power amendment by factory management. The reply was not correct as GOK placed the onus on the factory management to get the licence amended in the event of additional manufacturing process. GOK, however, confirmed that it was the duty of Inspectors to take appropriate action if it was found during inspections that the factories were engaging more number of workers than permitted, as per licence.

Audit observed that GOK was bound to comply with Section 92 of the Factories Act, which required such contraventions of the Act to be punishable with imprisonment for a term, which may extend to two years or with fine of up to ₹ one lakh or with both.

6.1.3.4 Factories operating without addressing Environmental issues

As per Rule 5 (1) of the Kerala Factories Rules, 1957, a licence for a factory may be granted on an application made in the prescribed Form No. 2 after ensuring that the applicant obtained approval of the plans of site and building and disposal of effluents by the concerned authorities including the Kerala State Pollution Control Board (KSPCB). While Rule 7 (1) provided for licences to be renewed by competent authority, Rule 7 (2) specified that every application for the renewal of licence shall also be in the prescribed Form No. 2. Thus, the licensing authority under the Factories Act was bound to obtain assurance that the applicant for registration and renewal of licence had obtained consent of KSPCB before renewing the licence.

Section 12 of the Factories Act, 1948, provides that arrangements should be made in every factory for treatment of wastes and effluents and for its effective disposal. As per Sections 25 and 26 of Water (Prevention and Control of Pollution) Act, 1974 and Rules framed thereunder, every factory should obtain Consent to Operate (CTO) from KSPCB before commencement of operations and the same was to be renewed on expiry of CTO.

Details collected (July 2017) by Audit from the district offices of KSPCB at Thiruvananthapuram, Kollam and Ernakulam, revealed that 449 factories were operating without obtaining CTO as mandated. Joint inspection by Audit along with department authorities revealed that five[138] out of 90 factories were operating without obtaining CTO from KSPCB. The KSPCB also withheld consent (as of July 2017) to 168 factories in Kollam district and three factories in Thiruvananthapuram district either for want of renewal application or non-compliance with previous consent conditions.

Grant of licence by the Factories and Boilers Department was subject to the factory obtaining requisite clearances from KSPCB, Fire and Rescue Department, etc. Laxity of the Department in renewing licences without ensuring compliance to the safety provisions contained in the Factories Act was significant when seen against the fact that of the 28 test-checked factories where the manufacturing process was classified as hazardous, the department renewed licences of 20 factories without ensuring valid CTO for the factories from KPSCB.

Government stated (October 2017) that since Rule 7 (1) did not require No Objection Certificate (NOC)/Consent from KSPCB for renewal of licence, renewing authority was not empowered to ensure or ask for NOC/Consent from KSPCB for renewing the licence. It was also stated that as part of Ease of doing Business, Government decided to avoid the NOC/Consent from KSPCB since it was the duty of these departments to ensure that their statutes were being complied with by the management.

The decision of GOK to avoid NOC/Consent from KSPCB as part of Ease of doing Business was not acceptable since it was to comply with the provisions of extant Rules. Rule 7 (2) stipulated submission of Application for renewal of licence in Form No. 2, and as Form No. 2 required the applicant factories to

[138] M/s. Vijayamohini Mills, Thirumala and M/s. Titanium Products Ltd., Kochuveli in Thiruvananthapuram division and M/s. Variety Pharmaceuticals, Kulappully, M/s. Vijaya Locks, Kulappully and M/s. Lakshmi PVC Products, Kulappully in Ottappalam division.

furnish details of KSPCB/environmental clearances, etc., the Department was bound to ensure the same before renewal of licence.

6.1.3.5 Installation of additional equipment in the factories without consent

Rule 3 (1) and 3 (8) (b) of the Kerala Factories Rules, 1957, states that previous permission shall be obtained for the installation of additional machinery or a permanent fixture. Audit noticed during joint inspection alongwith the Inspector of Factories and Boilers that three[139] of the test-checked 90 factories installed new machinery without the consent of the Department. In two of the three cases, new machinery was installed which warranted increase in power consumption and required both amendment of licence and payment of additional fees. In the case of M/s. Variety Pharmaceuticals Pvt. Ltd., Audit noticed that three new machineries were installed. The Department later clarified (December 2017) that one of the newly installed machineries was in replacement of an existing machinery. The fact, however, remains that two additional machineries were installed at M/s. Variety Pharmaceuticals Pvt. Ltd., without the consent of the Department.

GOK replied (October 2017) that most of the Inspectors verified approved plans during routine inspections, identifying such installations and filing prosecution cases. The reply was not acceptable since joint inspection by Audit identified factories, which installed new machinery and the Department failed to detect the same.

6.1.4 Ineffective enforcement of safety norms

The provisions in the Factories Act, 1948, prescribed installation/availability of different equipment/articles for health, safety, etc., of the workers. The Director issued (June 2015) instructions that the Factory Inspectors were to inspect each factory under their jurisdiction at least once in a year to ensure availability and functioning of the prescribed safety equipment/articles. Audit noticed that during 2012-13 to 2015-16, 1,445 accidents had occurred in which 114 workers lost their lives. Records of factories under the jurisdiction of six test-checked factory divisions and joint physical inspections of 90 factories conducted by Inspectors of Factories and Boilers in the presence of Audit, revealed deviations from safety standards stipulated in the Act in 81 out of the 90 factories, as shown in **Table 6.1**.

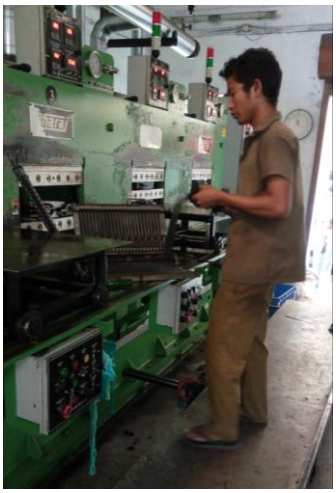
Table 6.1: Deviations from safety standards at test-checked factories

Division	Non-usage of PPEs	Non-conduct of safety training	Non-display of safety policy	Non-provision of first-aid box	Non-provision of Fire extinguishers and allied items	Non-provision of rubber mat	Non-maintenance of muster roll
Thiruvananthapuram	9	1	4	4	9	1	1
Kundara	7	-	2	3	12	1	3
Kozhikode (N)	8	4	1	3	10	4	5
Ottappalam	6	2	-	1	5	3	-
Kochi	10	6	-	4	7	8	2
Palakkad	6	-	-	-	9	4	-
Total	**46**	**13**	**7**	**15**	**52**	**21**	**11**

(Source: Joint physical inspection reports)

[139] 1) M/s. Southern Gas Ltd., KINFRA Park, Thumba, 2) M/s. Hycount Plastics and Chemicals, Kilikollur, and 3) M/s. Variety Pharmaceuticals Pvt. Ltd., Kulappully.

Picture 6.1: Poorly maintained fire extinguishers in Brilliant Ice Plant, West Hill, Kozhikode (18 May 2017)



Picture 6.2: Non-usage of PPE while working on rubber moulding machine – Lido Rubber Products, West Hill, Kozhikode (30 May 2017)

Audit found during joint inspection that in 24 of the test-checked 90 factories, firefighting equipment like fire buckets or extinguishers were not provided. While fire extinguisher in 18 factories were not found refilled after their expiry dates, the fire buckets in 10 factories were poorly maintained *i.e.*, the buckets were either not filled with water/sand or the sand had turned hard due to non-replacement. Audit also found during joint inspection that in 26 of the test-checked 90 factories, which were functioning as metal crusher units, saw mills, ice plants, soap manufacturing units, spinning and weaving mills, etc., personal protective equipment (PPE) like face masks, hand gloves, safety shoes and goggles were not provided to the workers. Moreover, workers in 20 other factories were not using the PPE despite these being provided to them.

Other significant irregularities noticed during joint verification of test-checked factories are given below.

6.1.4.1 Defective observation of Inspectors of Factories and Boilers

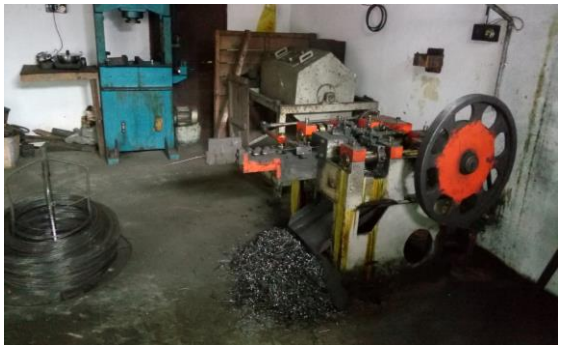
Audit observed during joint inspection that in two[140] of the test-checked six ice manufacturing plants, the outlet of the safety valve of compressed ammonia tank was not connected to a drum containing water which was accepted as a violation of prescribed safety standards by the Inspectors of Factories and Boilers. However, during the Exit Conference (October 2017), the Director clarified that the suggestion of the Inspectors to the factory owners to immerse the safety valve in water tank was erroneous since it could lead to reverse flow of water and cause explosion.

Audit observed that insistence of the Inspectors for compliance to such defective orders could result in explosions in factories. The Director admitted during the Exit Conference (October 2017) that it was a mistake on the part of the Inspectors and corrective orders would be issued immediately.

6.1.4.2 Non-fencing of machines with dynamic parts

Rule 54 of the Kerala Factories Rules, 1957, specifies that parts of machinery in motion and within reach are to be securely fenced or protected. Out of the test-checked 90 factories, it was found that 36 factories did not fence the machines and conveyer belts in violation of the norms. Failure to adhere to safety regulations led to fatal accidents in certain instances as shown below.

[140] M/s. Mary Ice Plant, Chirayinkeezhu and M/s. United Ice Plant, Kozhikode.



Picture 6.3: Non-fencing/guarding of moving parts of nail cutting machine – Kerala Wires and Nails, Payyoli, Kozhikode (21 May 2017)

- An accident occurred in M/s. Parathode Granites Pvt. Ltd, Mukkam, Kozhikode on 24 December 2012 leading to the death of a worker who got trapped in conveyer belt.
- An accident was reported by M/s. Sree Hari Blue Metal, Ozhalapathy, Palakkad on 24 June 2017 in which a worker died by falling into the unguarded drive of Screw Classifier.

6.1.4.3 Non-fencing or absence of covering for tanks

Section 33 of the Factories Act, 1948, specifies that in every factory, every fixed vessel, sump, tank, pit or opening in the ground or in a floor, if it is a source of danger, shall be either securely covered or fenced. Out of the test-checked 90 factories, it was found during joint physical inspection that slurry tanks or drains were not fenced or covered in seven factories, thus posing risk of fall and injury. Audit also came across a recorded instance of violation of safety provisions at M/s. Karthika Granites, Vayyanam, Kundara where death (May 2016) of a worker occurred by falling into the sand wash concrete tank, which was left open.

6.1.4.4 Non-provision of sufficient equipment to Inspectors

Factories Act and Rules specify minimum level of light intensity, sound pressure level and amount of combustible gases in air to which a factory worker could be exposed. This is applicable to factories where manufacturing process involves high noise levels or produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition. It was found that against the requirement of at least 22 each of lux meters, decibel meters and explosimeters only 15 lux meters, 15 decibel meters and five explosimeters were available at the Regional Offices. Out of these, five lux meters, five decibel meters and three explosimeters were not functioning. Out of the test-checked six factory divisions, three divisions[141] did not have equipment to measure the level of light intensity, sound pressure level and amount of combustible gases. Hence, the Inspectors were not in a position to identify the hazardous level of light intensity, sound pressure level, etc., during their inspections.

Government replied (October 2017) that these equipment were supplied to inspectors of Regional Safety Cells and Industrial Hygiene Lab (IHL) at Kollam. It was also stated that the local Inspectors could make use of services of the Inspectors of Regional Safety Cell and IHL in suspected cases, where the level of hazard was above the admissible level. The reply was not acceptable as these handheld machines could be carried by the local inspectors themselves during inspections and the Inspectors need not depend on the services of Inspectors of Regional Safety Cell or IHL for detection of violations. Audit recommends that the Department may make available adequate number of lux

[141] Thiruvananthapuram, Kundara and Kochi.

meters, decibel meters and explosimeters and issue strict instructions to local Inspectors to make use of these equipment during inspections.

6.1.5 Monitoring and Inspection

6.1.5.1 Inadequate training on safety to the workers

As per Section 111A of Factories Act, 1948, every worker shall have the right to get trained within the factory wherever possible, or to get sponsored by the occupier for getting trained at a Training Centre or Institute duly approved by the Director of Factories and Boilers, where training is imparted for workers' health and safety at work. Audit observed that only one training centre at Thiruvananthapuram was approved by the Department for this purpose. Audit noticed that the Department had imparted training on safety to only 2,713 out of 6,98,263 workers covering 256 factories during 2012-13 to 2016-17 (0.40 *per cent*).

Ensuring compliance to safety norms by factory workers required adequate training to be imparted to them. During Exit Conference, the Director stated (October 2017) that in many cases, workers were themselves violating safety norms and there was a need to bring about attitudinal change through training. Audit observed that inadequate training to workers would lead to lack of awareness of safety measures to be adopted by them during work.

6.1.5.2 Shortfall in conduct of Medical Surveys and identification of Occupational Health diseases

Administrative sanction was accorded to the Department to conduct 'Industrial Hygiene cum Health survey' for the years 2015-16 and 2016-17 to initiate measures for prevention of occupational diseases, protection of health of workers, compilation of statistics of occupational diseases, etc. Accordingly, seven medical camps each were conducted for workers in Cashew and Stone Crusher Industries during the above two years for detection of occupational diseases.

The survey for the year 2015-16 detected four cases of Silicosis[142] in the State among workers in the Stone Crusher Industry[143] with more number of such cases not being ruled out. Recommendations were also made in the survey report on conducting work environment monitoring to be done in factories employing such persons, etc.

Audit noticed that the Sub Regional Office, Kozhikode of ESI Corporation also identified (April 2017) seven cases of occupational diseases including three cases of Byssinosis[144], one case of Sensory Neural Hearing Loss, etc. The Sub-Regional Office, Kollam also identified an instance of Byssinosis.

Since the List of Notifiable diseases under the Schedule III of the Act contains a list of 29 hazardous diseases and in view of identification of the prevalence of such diseases among the employees of factories, Audit feels that it was

[142] An occupational lung disease caused by inhalation of silica dust.
[143] M/s. Meta Rocks Pvt. Ltd., Cheriyakonni, Thiruvananthapuram.
[144] An occupational lung disease caused by exposure to cotton dust, which commonly occurs in workers who are employed in yarn and fabric manufacturing industries.

imperative for the Department to conduct more such surveys followed by adequate medical treatment of workers for preservation of health of the workers.

6.1.5.3 Unfruitful expenditure of ₹4.15 crore on Occupational Health and Research Centre

Section 41B of the Factories Act stipulated that the occupier of every factory involving a hazardous process shall identify health hazards and the measures to overcome such hazards. Since occupiers were not giving importance to monitoring of the health status of workers and recognising the need to provide individual units with proper occupational health care, the Director of Factories and Boilers submitted (July 2012) a proposal to Government of Kerala (GOK) for establishing Occupational Health and Research Centres (OHRC) at Kollam, Ernakulam and Kozhikode. The OHRCs were proposed to be established to provide pre-employment and periodical medical examination for all workers employed in dangerous operations, investigate cases of suspected occupational diseases, provide health education to management and workers, health training to workers and other staff, conduct occupational health survey, etc.

It was noticed during audit that GOK accorded (March 2014) Administrative Sanction for construction of a building for setting up an OHRC at Kollam at a cost of ₹2.69 crore. The work of construction of OHRC building was entrusted to KESNIK[145] and the construction was completed (July 2014) at a cost of ₹2.45 crore. GOK also issued administrative sanction (August 2014) for the purchase of equipment for the OHRC against which procurement of Office/medical equipment costing ₹1.70 crore was made. Audit observed that the failure of GOK to provide requisite manpower by way of sanction and recruitment of 12 staff members including Medical Officer, Male Nurse, Occupational Health Technician, Field Assistant, Lab Technician, Driver etc., as proposed by the Director (July 2012), resulted in non-commissioning of OHRC leading to blocking up of ₹4.15 crore and inability to render envisaged services.

Government while accepting (October 2017) the audit observation, informed Audit (March 2018) that a proposal for creation of posts for the OHRC at Kollam was since received from the Director of Factories and Boilers and the proposal was under examination.

6.1.5.4 Shortfall in conduct of Inspections

The powers assigned to the Inspector under the Act include authority to enter any place which is used or which, he has reason to believe, is used as a factory. The Inspectors, thus, play a significant role in the identification of factories and detection of violations of the provisions of the Act. A work study report of the Personnel and Administrative Reforms Department (P&ARD) fixed (February 1993) the norm for inspection as 150 factories per year for each Inspector and the same was accepted by GOK in February 1993. In January 2017, GOK stated that since online licensing system was successfully implemented in the department and the nature of work changed since then, the report of the P&ARD had lost relevance. GOK further directed the department to forward a fresh proposal giving details such as schemes proposed to be undertaken, working

[145] Kerala State Nirmithi Kendra.

pattern of the department, sanctioned posts with their nature of work, etc. Submission of the fresh proposal is pending.

Audit observed that against the norm of 150 factories per year per Inspector, the Department would need at least 150 Inspectors to inspect the already registered 22,545 factories. However, if the 47,608 factories registered with the Directorate of Industries and Commerce were also reckoned, the requirement of Inspectors would then be 468. Thus, against the total requirement of 468 Inspectors, the Department was functioning with only 47 Inspectors.

As per Circular issued by the Factories and Boilers Department (June 2015), every factory had to be inspected by the Department of Factories and Boilers at least once in a year. Data obtained from the Department revealed that out of 22,218[146] factories in the State during the years 2013-14 to 2015-16, the percentage of factories inspected ranged between 59 and 65 *per cent*. In the test-checked factory divisions, of the 5,884[147] factories registered with the Factories Department, the percentage of factories inspected during 2013-14 to 2015-16 was 61 *per cent*. Government replied (October 2017) that the proposal for inducting more number of inspectors was not accepted due to financial constraints.

Audit recommends that service of available inspectors be utilised optimally, by providing adequate vehicles for increased mobility and effective inspection. Fresh proposals may be forwarded to GOK by the Department, after working out minimum additional manpower required in the interest of efficient functioning of the Department.

6.1.5.5 Non-submission of annual and half yearly returns

Half-yearly returns in Form No. 22 specified in the Factories Act have to be submitted by the occupiers before 31 July of the current year and annual return in Form No. 21 before 31 January of the next year to the concerned Divisional Inspector of Factories and Boilers/Additional Inspector of Factories and Boilers. These forms indicate, besides other points, details on average number of workers employed daily, medical information on workers medically examined, number of workers employed in hazardous conditions, etc.

Audit noticed that on an average, 66.98 *per cent* and 67.30 *per cent* of factories did not file half-yearly and annual returns respectively as shown in **Table 6.2**.

Table 6.2: Details of half-yearly/annual returns filed by factory owners/occupiers/managers

Year	Number of Factories	Number of annual returns received	Percentage of shortfall	Number of Half yearly returns received	Percentage of shortfall
2012	19511	7546	61.3	7830	59.9
2013	20578	7788	62.2	7908	61.6
2014	21580	7714	64.3	8132	62.3
2015	22104	6213	71.9	5656	74.4
2016	22230	5204	76.6	5246	76.4

(Source: Figures obtained from Department of Factories and Boilers)

[146] Average number of factories during the years 2013-14 to 2015-16 as per database of the Department.
[147] Average number of factories registered with the Department.

The Government replied (October 2017) that most of the factories coming under Section 85 category of the Factories Act were exempted from submitting returns in accordance with the Labour Laws (Exemption from furnishing returns and maintaining registers by certain establishments) Amendment Act, 2014.

The reply of the Government was not correct as Audit noticed that though the 'small and very small establishments' were exempted from submitting returns as per Section 4 (1) of the above Act, they were required to file, in lieu of such returns, annual returns in Form I. The Department failed to monitor these returns and follow-up the cases of defaulters. Such contravention of the provisions of the Act would constitute an offence punishable with imprisonment for a term, which may extend upto two years or with fine upto ₹ one lakh or with both, as per Section 92 of the Factories Act. In the circumstances, the Department would not be in a position to ensure the well-being and safety of factory workers.

6.1.6 Conclusion

The Department of Factories and Boilers which was responsible for enforcing the provisions of Factories Act did not have effective mechanism to ensure compliance of factories to the safety standards stipulated under the Act. The number of factories registered with the Department under the Act was very low. The data on number of factories as per the Department was hugely understated. Inspection of factories was inadequate. Audit noticed shortfall in posts of Inspectors, which adversely affected enforcement measures of various provisions under the Act. Training on safety at work was imparted only to 0.40 *per cent* of the total workers. The implementation of the provisions of the Factories Act with reference to the safety of workers was, thus, not satisfactory.

6.2 Implementation of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

6.2.1 Introduction

Government of India (GOI) enacted the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (Act) in June 1979 to regulate the employment of Inter-State Migrant Workmen (ISMW) and to provide for their conditions of service and other matters connected therewith. The Act defined an ISMW as any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment[148] in another State, whether with or without the knowledge of the principal employer[149] in relation to such establishment. The provisions of this Act applied to every establishment in which five or more ISMW whether or not in addition to other workmen, are employed or were employed on any day of the preceding 12 months. Contractors who employ/employed five or more ISMW, whether or not in addition to other

[148] Establishment - Any office or department of the Government or a local authority or any place where any industry, trade, business, manufacture or occupation is carried on.

[149] Principal employer means in relation to any office or department of the Government or a local authority, the head of that office, department or authority or such other officer as may be specified; in relation to a mine, the owner or agent of the mine or Manager; and in relation to any other establishment, any person who is responsible for the supervision and control of the establishment.

workmen, on any day of the preceding twelve months were also brought under the ambit of the Act.

Government of Kerala (GOK) framed the Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 1983 (Rules), which came into force in the State on 02 May 1984. The Labour Commissioner was responsible for the implementation of the provisions of the Act and Rules in the State.

Government of Kerala notified 14 District Labour Officers (Enforcement) and one District Labour Officer (HQ) as the Registering and Licensing Officers for the State. While the Regional Joint Labour Commissioners (RJLC) at Kollam, Ernakulam and Kozhikode were designated as the Appellate Officers under the Act, 122 Officers including Labour Commissioner, Additional Labour Commissioners, District Labour Officers (DLOs) and Assistant Labour Officers (ALOs) were designated as Inspectors under the Act.

6.2.2 Objectives, Scope and Methodology of Audit

Audit was conducted from April 2017 to July 2017 covering the period 2012-13 to 2016-17 to assess the compliance of the Department to the provisions relating to ISMW as stipulated in the Act and the Rules. The audit coverage included all three Regional Offices at Kollam, Ernakulam and Kozhikode and two District Labour Offices under each Regional Office. The District Labour Offices were selected by Stratified Simple Random Sampling using Idea Software. Two Assistant Labour Offices were selected under each selected DLO based on high concentration of ISMW in these regions. Audit assessed whether all establishments and contractors to whom the Act applies in the selected districts of Thiruvananthapuram, Kollam, Ernakulam, Kottayam, Kozhikode and Kannur were registered and issued with licences respectively and whether the amenities mandated by the Act to ISMW were provided to the workers. Audit also examined whether records maintained by the principal employer/ contractor in selected cases were in compliance to the provisions of the Act and whether penal provisions were enforced in the event of contravention of any of the provisions in the Act. Audit methodology included scrutiny of records at the Government Secretariat, Office of the Labour Commissioner, Offices of three Regional Joint Labour Commissioners and Offices of selected DLOs and ALOs. Entry Conference was held on 20 April 2017 with the Joint Secretary, Labour and Skills Department, Additional Labour Commissioner and officials of Labour Department wherein the objectives and methodology of audit were discussed. Exit Conference was held with the Joint Secretary, Labour and Skills Department and the Labour Commissioner in charge on 26 October 2017, in which the audit findings were discussed.

Audit findings

6.2.3 Registration of establishments and licensing of contractors

6.2.3.1 Laxity of the Department in identification and registration of Inter-State Migrant Workmen under the Act

Section 4 of the Act laid down the conditions for the registration of establishments under the Act. It required every principal employer of an

establishment to which this Act applied to make an application to the Registering Officer along with payment of prescribed fee for the registration of the establishment under the Act. Section 1 (4) (a) of the Act stipulated that the Act applied to every establishment in which five or more ISMW are employed or were employed on any day of the preceding twelve months. Section 1 (4) (b) also provided for the provisions of the Act to apply to every contractor[150] who employs or employed five or more ISMW on any day of the preceding twelve months. Section 6 also provided that no principal employer of an establishment to which this Act applies shall employ ISMW in the establishment unless a certificate of registration in respect of such establishment issued under this Act was in force.

As per information furnished by the Department (February 2018) there were 783 principal employers registered in the 14 districts of the State who had engaged 45,378 ISMW as of February 2018. However, the total number of ISMW registered with the Department as per the provisions of the Act was only 1.82 *per cent* of the 25 lakh migrant labourers assessed (February 2013) in the State by the Gulati Institute of Finance and Taxation (GIFT).

Audit observed that the Department was not proactive in identifying ISMW and registering principal employers and contractors under the Act so as to ensure that the benefits envisaged under the Act were derived by such workers as discussed in the succeeding paragraphs. In the six test-checked districts, the Department stated that there were at least 97,695 (September 2017) establishments[151], which engaged ISMW and which could have been brought under the purview of the Act. A joint inspection conducted by Audit with the ALO Perumbavoor who was the designated Inspector under the Act, identified eight plywood factories employing ISMW in Kunnathunadu Taluk in Perumbavoor, Ernakulam district, which were not registered under the Act. Audit observed that on the date of joint inspection (13 June 2017), 21 to 75 ISMW (including 16 women) were engaged by each of these factories **(Appendix 6.1)**. In three of these eight factories, the total number of workmen physically present at the time of inspection was 100, while only 46 employees were recorded in the Muster roll. A joint inspection (19 July 2017) of construction site of Dharmashala Auditorium and Convention Centre, Kannur revealed that though there were three joint principal employers, one contractor and 18 ISMW at the site, neither the principal employers applied for registration nor the contractor had applied for licence to employ ISMW. Audit noticed that despite the establishment not maintaining records and flouting provisions of the ISMW Act/Rules, no action was taken against the violators by the Registering Authority (DLO) Kannur in this regard.

In the Exit Conference (October 2017), the Labour Commissioner admitted that the total number of ISMW in the State projected by the Labour Department was presumptive and the figures projected by GIFT too could not be considered upto date. He informed that the Department was capturing biometric details of ISMW and expressed hope that an authentic figure on the quantum of ISMW in the

[150] Contractor in relation to an establishment means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub-contractor, Khatedar, sardar, agent or any other person who recruits or employs workmen.

[151] Factories, chappal manufacturing units, shops and establishments, steel industries, etc.

State would be arrived at by December 2017 itself. It was also stated that the Department did not possess any authentic category-wise figures on the quantum of principal employers and ISMW in the State with respect to Government Departments, factories, shops and commercial establishments, construction sites, etc.

The Additional Labour Commissioner and DLOs of six test-checked districts stated (June 2017) that since the migrant workers were directly employed by the employer and not through a contractor, the registration/licence under the Act would not be attracted in these cases. The reply was not acceptable in view of the fact that the Supreme Court of India had observed in Bandhua Mukthi Morcha v/s the Union of India and Others[152] 1983 that whether the ISMW who were employed were ISMW or not would have to be investigated and determined in order to make the provisions of the Inter-State Migrant Workmen Act and Rules meaningful for such workmen who were recruited from other States. The Labour Commissioner assured in the Exit Conference (October 2017) that the applicability of the Supreme Court judgment in respect of ISMW employed in the State would be examined. The reply of the Labour Commissioner was not acceptable as Government was bound to initiate required action in the light of the Supreme Court judgement.

Moreover, Sections 20 (2) (a) and 20 (2) (b) provide for Inspectors under the Department to enter any premises suspected of employing ISMW, to examine any person found in any such premise for the purpose of determining whether such person is an ISMW for ensuring compliance with provisions of the Act. Audit observed that even though the inspectors conducted inspections of 5,95,177 establishments under 28 other Labour Acts during 2012-17, the compliance to provisions of ISMW Act was examined by the inspectors of the Department only in 5,561 establishments. The DLO (Enforcement) who was the Registering Officer appointed under Section 3 of the Act, also did not evolve a mechanism to ensure that all establishments engaging ISMW were registered under the Act. The Inspection wing in the Department was required to be strengthened by enhancing the number of inspectors.

6.2.3.2 Employment of Inter-State Migrant Workmen by contractor without licence under the Act.

Section 8 (1) of the Act stipulated that no contractor, to whom the Act applies, shall recruit any person in a State for the purpose of employing him in any establishment, situated in another State without licence issued under the Act. In Kerala, the DLO (Enforcement) is the authority designated under the Act to monitor the compliance of this provision of the Act. Inspectors under Section 20 of the Act can take penal action under Sections 25 and 26 of the Act for violation of the provisions of the Act. Section 25 specified penal provisions for contravention of provisions regarding employment of ISMW. Section 26 covered other offences for which no penalty was elsewhere provided.

Violation of the said provisions was noticed in two selected districts as detailed below.

[152] On the employment of Inter-State Migrant Workers in the Stone quarries/crusher units in the State of Haryana.

Records verified at DLO Kannur revealed that in four out of eight registered establishments, contractors did not apply and obtain licence during 2016-17. At DLO Kollam, the contractor engaged under the registered principal employer 'Asset Grandios, Kollam', did not take licence for employing additional 20 ISMW. Though the principal employer obtained an amended registration certificate for engaging 25 ISMW instead of the earlier five employees, the contractor who was supplying the workers did not amend his licence to reflect the increased number of workers and did not remit the additional security deposit of ₹40,000 at the rate of ₹2,000 per workman. Audit observed that contractors were required to remit ₹2,000 per workman engaged by them as security deposit for obtaining licence under the Act. Since GIFT study sponsored by GOK had identified 25 lakh ISMW as of 2012-13, Audit reckoned that the State had foregone at least ₹320.92 crore[153] by way of security deposit.

The DLO (Enforcement) who was the Licensing Authority under Section 7 of the Act failed to initiate necessary steps for prosecuting the violators under Section 25 of the Act.

Additional Labour Commissioner stated (October 2017) that the licensing/registering authorities including DLOs of Kannur and Kollam were directed to submit a report with regard to updating/amendment of requisite registration/licence and to initiate legal steps against violation of provisions.

6.2.3.3 Contractors not holding requisite licences

As per Sections 8 (a) (ii) and 8 (b) (ii) of the Act, contractors recruiting an ISMW in one State for employment in another State and contractors employing persons from another State as workmen for the execution of any work in any State should hold valid licences issued by the appropriate authorities of both the home and host States of the ISMW.

In the six districts test-checked, there were 736 contractors holding licences under the Act and employing 35,250 ISMW during 2012-13 to 2016-17 as shown in **Table 6.3**.

Table 6.3: Details of ISMW engaged through contractors

Name of District	Total number of contractors	Total number of ISMW engaged through contractors
Thiruvananthapuram	215	12090
Kollam	40	813
Kozhikode	97	2821
Kottayam	93	1754
Ernakulam	268	16920
Kannur	23	852
Total	**736**	**35250**

(Source: Office of the Labour Commissioner)

As per Rule 21 (1), every contractor shall furnish to the specified authorities the particulars regarding recruitment and employment of migrant workmen in Form X. Also as per Rule 24, every contractor shall furnish returns regarding

[153] As per GIFT report, 66 *per cent* of 25 lakh migrants (16.5 lakh) are employed under contractors. (16.5 lakh - 45,378) x ₹2,000 = ₹320.92 crore.

migrant workmen who have ceased to be employed, in Form XI to the specified authorities concerned, either personally or by registered post so as to reach them not later than 15 days from the date the migrant workman ceased to be employed.

Audit observed that the Department issued licences to the contractors without ensuring whether the contractors possessed valid licence issued by a competent authority of the home State to recruit from that State for employment in Kerala. Submission of returns in Forms X and XI were not ensured in any of the six test-checked districts.

DLOs of all test-checked districts stated that while issuing the licence, it was not being verified whether contractors were holding licences obtained from the State where recruitment was made. DLOs, Kollam and Ernakulam stated that since the ISMW employed in the State were not recruited from their home States through contractors and came to the State on their own, the contractors employing them were not required to ensure licence from recruiting State, as envisaged by the Act.

The reply was not factually correct, as under Section 20 (2) (b), the Inspectors were to investigate and determine whether persons working in any premises were ISMW or not, which was not being complied with. This indicated that due attention was not given to the implementation of the provisions of ISMW Act/Rules.

The Labour Commissioner confirmed the fact of non-issuance of licence from home State in the Exit Conference (October 2017). He further stated that it was not proper to circumvent the provisions of the Act and issue licences without ensuring holding of licence from home State. Failure of the DLOs (Enforcement) to verify such licences issued from the home State resulted in inability of the Department to ensure that the benefits of displacement cum outward journey allowance, wages from date of recruitment, etc.[154], which the ISMW were entitled to, were received by them.

6.2.3.4 Delayed renewal of licence by the contractors

As per Rule 14 (1) of the Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules (Rules), every Contractor may apply to the Licensing Officer for renewal of the licence and every licence renewed shall remain in force for a further period of 12 months from the date of order of renewal. As per Rule 14 (2), the application shall be submitted not less than 30 days before the date on which the licence expires. DLO (Enforcement) is the licensing authority under the Act.

Licences were being renewed to the contractors in delayed cases, on payment of a fee 25 *per cent* in excess of the fee ordinarily payable for the licence as per Proviso to Rule 14 (3) of the Rules. However, there was no system in place to ensure that all active contractors holding licences under the Act were renewing licences on expiry of validity period.

In Kozhikode, delay in renewal of licence ranged from one to two months while in Kannur, delay ranged from one to seven months. No data on period of delay

[154] Sections 14 and 15 of the Act.

in renewal was available with DLOs of Ernakulam, Kollam, Kottayam and Thiruvananthapuram. The DLO, Ernakulam stated (September 2017) that since there was no fixed date for renewal of licence, it was difficult to obtain renewal date in individual cases and that software update was essential for the same. The DLO Kollam stated (September 2017) that they were issuing notices to such contractors who were not renewing the licence after the due date, while the DLOs Thiruvananthapuram and Kottayam stated (September 2017) that the Department did not have any details on the renewal dates of licence, either in registers or in Labour Commissioner Automation System (LCAS). Audit observed that there was no monitoring mechanism in place to ensure timely renewal of licence. No monthly or quarterly returns/reports were prescribed.

The Labour Commissioner stated in the Exit Conference (October 2017) that reasons for not taking action against the contractors for delayed renewal of licences would be obtained from the respective DLOs.

6.2.4 Implementation of welfare provisions and amenities

Sections 13 to 18 of the Act stipulated the obligations of contractors in respect of the wages to be paid and welfare and other facilities to be provided to ISMW by the contractor.

In the six districts test-checked, there were 736 contractors holding licence and 420 principal employers registered under the Act employing 35,250 ISMW. Violations of some of these provisions, noticed in the course of audit are brought out below.

6.2.4.1 Displacement allowance not paid

As per Section 14 (1) of Act and Rule 50 of the Rules, a displacement allowance should be paid by the contractor to every ISMW at the time of recruitment, which would be equal to 50 *per cent* of the monthly wages payable to him or ₹75 whichever was higher. Each contractor was required to maintain a sheet for payment of displacement-cum-outward journey allowances in Form XV.

The DLOs (Enforcement) in the six districts test-checked admitted that Displacement allowance was not paid in any of the districts either by the contractor under Section 14 (1) or by the principal employer under Section 18, which dealt with the liability of the principal employer when the contractor failed to fulfil his obligations under Section 14(1). Joint inspection also revealed that contractors were not maintaining Form XV as required by the Act (**Appendix 6.2**).

Thus, it was clear that the Department was not performing its duty as prescribed in the Act, as the records checked during joint inspection did not reveal sufficient details in the matter.

6.2.4.2 Journey allowance not paid

As per Section 15, a journey allowance of a sum not less than the fare from the place of residence of the ISMW in his State to the place of work in the other State shall be payable by the contractor to the ISMW, both for the outward and return journeys and such ISMW shall be entitled to payment of wages during the period of such journeys as if they were on duty. Also, as per Rule 50 of the

Rules, every contractor shall maintain a register for return journey allowance in Form XVI.

In the six districts test-checked, there were 736 contractors holding licences under the Act and employing 35,250 ISMW during 2012-17. Audit observed that Journey allowance was not paid in any of the selected districts. Form XVI was not being maintained by the contractors in any of the six districts. No penalty was imposed by the Department under Sections 25 and 26 of the Act for contravention of Sections 15 and 18 (1) of the Act.

Government replied (October 2017) to paragraphs 6.2.4.1 and 6.2.4.2 that the ISMW Act will apply only if recruitment was made in the home State. Since majority of ISMW were recruited only after reaching the destination State, the provisions of the Act could not be made applicable in such cases. The above justification was not acceptable as the Labour Department failed to ensure that provision under section 20 (2) (b) of the Act requiring Inspectors to inspect premises and determine whether workers employed in such premises were ISMW or not, was complied with.

The Labour Commissioner admitted in the Exit Conference (October 2017) that the Department was not in a position to ensure payment of displacement allowance and journey allowance to ISMW, as licences from both home State and employing State as required under the Act were not being ensured. Audit observed that mere acceptance of inability to ensure payment of Displacement and Journey Allowances was inadequate justification for failure to discharge its duties of correctly identifying ISMW and ensuring payment of benefits to them.

No penalty was imposed by the Department under Section 25 of the Act for contravention of Sections 14 (1) and 18 (1) of the Act.

The Department may ensure that contractors maintained the required details regarding displacement/journey allowances in the prescribed forms so that payment of allowances entitled to the ISMW by the contractors, could be enforced and monitored effectively.

6.2.4.3 Provision of medical facilities not ensured

As per Section 16 (e) of the Act and Rule 36 (1) of the Rules, medical facilities for outdoor treatment to ISMW were to be provided free of cost without fail as prescribed. As per Rule 36 (2), the contractor had to ensure that suitable arrangements existed to provide medical facilities for in-patient treatment.

As per Rule 36 (3) every contractor shall provide and maintain so as to be readily accessible during all working hours, first-aid boxes at the rate of not less than one box for 150 ISMW or part thereof. As per sub-section (4), the first-aid box was to be distinctly marked with a Red Cross on a white background and contain equipment[155] specified as per Rules.

On a joint inspection of Lulu International Mall Project site, Thiruvananthapuram, the first-aid kit was found in an unmarked box dumped on the ground. In Dharmashala Auditorium and Convention Centre, Kannur, Audit found that only three sterilised dressings were available, which were

[155] Sterilized cotton and dressings, iodine solution, potassium permanganate crystals, adhesive plaster, scissors, burn ointment, snake-bite lancet, aspirin, antiseptic solution bottle.

stacked between the roof tiles. No other prescribed equipment/medicines as per Rules were maintained.

Audit collected data on diseases prevalent among ISMW in the State. It was seen that the Directorate of Health Services, Thiruvananthapuram recorded 2,336 cases of malaria, 931 cases of filariasis, 5,202 cases of fever and 1,562 cases of Acute Diarrheal Diseases during 2012-17 among ISMW in the 14 districts**.** Kerala State AIDS Control Society's (KSACS) Migrant Targeted Intervention Projects under National AIDS Control Programme (NACP) recorded a total of 151 HIV positive cases and 6,352 cases of Sexually Transmitted Infections (STI) during the period 2012-17 among migrant workers.

Scrutiny of inspection files in six test-checked districts and replies to audit enquiries revealed that no records on medical facilities provided under the Act were being maintained by the establishments. Government replied (October 2017) that the inspectors were gathering details regarding medical facilities provided by employers and that no complaints had been received from workers in this regard. The reply was not acceptable because Government did not provide any records for scrutiny. In the absence of such records, Audit was not in a position to ascertain whether outdoor treatment was provided free of cost and medical facilities extended to in-patient ISMW.

6.2.4.4 Canteen facilities not provided

As per Rule 40 (1), canteen shall be provided by contractor in every establishment where work was likely to continue for six months and where there were more than 100 ISMW. As per Rule 40 (2), if the contractor failed to provide canteen as per Rules, the same shall be provided by the principal employer, within 60 days of the expiry of the time allowed to the contractor.

Audit noticed during joint inspection that in Feroke, Kozhikode district, three footwear manufacturing units employing 105-240 ISMW did not provide canteen facility to the workers. In Thiruvananthapuram district, inspections conducted in three out of 12 construction sites employing 100 to 500 ISMW revealed that food was provided under hygienic conditions only in one site. In Ernakulam district, of the 44 establishments engaging 100 to 2,500 ISMW, canteen facility was offered only in certain cases, the exact number of which was not available.

No action was taken by the DLOs/ALOs who were the inspecting officers under Section 20 of the Act, for violation of provisions contained in Rule 40 (1) and (2) by the principal employers/contractors.

6.2.4.5 Issue of pass book to Inter-State Migrant Workmen - non-compliance of provisions

As per Section 12 (1) (b), it shall be the duty of every contractor to issue to the ISMW, a pass book affixed with a passport size photograph of the workman. The Act specified that the pass book should indicate in Hindi and English and where the language of the workman was not Hindi or English, in the language of the workman, all particulars including benefits specified under the Act. Section 12 (2) required the contractor to maintain the pass book up-to-date and cause it to be retained with the ISMW concerned.

Audit conducted joint inspection with the officials of the Labour department in the establishments at Thiruvananthapuram, Ernakulam, Kozhikode and Kannur and noted that pass books as required under the Act were not being issued. Replies furnished by DLOs of six test-checked districts confirmed that none of the 35,250 ISMW engaged by the principal employers were issued with Pass Books indicating that Government/Department failed in complying with the provisions of the Act. In the absence of maintenance of pass books, an assurance on benefits provided to ISMW could not be obtained in audit.

The Department needs to ensure that Pass books containing details of all benefits due to ISMW, are maintained and kept up-to-date by the contractors.

6.2.5 Quality of Inspections conducted

As per Section 21 of the Act, ISMW were entitled to benefits of provisions contained in Workmen's Compensation Act, 1923, Payment of Wages Act, 1936, Employees State Insurance Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, 1952, Industrial Disputes Act and Maternity Benefit Act, 1961.

Audit noticed that the Inspectors did not check whether benefits of all the above Acts were extended to the ISMW employed in the establishments, as stipulated in the ISMW Act. While the Inspectors in Kollam and Kottayam did not exercise checks on provision of benefits stipulated by any of the Acts, the inspectors in Kozhikode conducted checks under the Payment of Wages Act only.

Government replied (October 2017) that the present staff strength of inspectors was too low to handle the huge influx of migrant workers and that measures to revamp the enforcement machinery of the Department to ensure safe and conducive work atmosphere and other welfare amenities to the migrant workers would be adopted. Reply of the Government that staff strength was inadequate was not acceptable, as it was incumbent on the Government to implement various provisions of the Act by exploring various ways and means to address the shortfall and enhance capacity building of the Inspectors.

6.2.5.1 Shortfall in inspections conducted under ISMW Act

As per Circular issued by Labour Commissioner (May 2015), a minimum of 50 establishments were to be subject to inspection per month to oversee the compliance of all 29 Labour Acts including ISMW Act. Scrutiny of records of inspections for the period 2012-17, revealed that inspections were not carried out regularly to verify compliance to provisions of the Act and Rules.

A comparative study of inspections conducted under the ISMW Act and other Acts in the Labour Department revealed meagre inspections under the ISMW Act. Scrutiny of records at the office of the Labour Commissioner revealed that departmental officers conducted inspections of 5,95,177 establishments under 28 other Labour Acts during 2012-17. In the absence of any specific norms on the number of inspections to be conducted under each Act, Audit worked out an average of 21,256[156] inspections per Act, under 28 other Labour Acts. Against this, the total number of inspections carried out under ISMW Act during 2012-

[156] 5,95,177 / 28 = 21,256.

17 was 5,561 only. It was also seen that the number of Inspections conducted annually under ISMW Act showed a declining trend during 2014-17.

Government (October 2017) cited heavy work load due to multiplicity of Acts and Rules to be enforced by the department, shortage of staff and vehicles as reasons for shortfall in inspections. Non-compliance of provisions of Act/Rules citing shortage of staff/vehicles was not acceptable, as Government was required to provide requisite infrastructure to facilitate timely conduct of inspections.

6.2.5.2 Non- Maintenance of records and registers

As per Section 23 (1), every principal employer and every contractor shall maintain such registers and records giving such particulars of ISMW who were employed, the nature of work performed by such workmen, the rates of wages paid to the workmen and such other particulars in such form as may be prescribed. Registers were also to be maintained under Rules 47 to 51.

Audit noticed that as per provisions contained in the Rules, units registered under the Act had to maintain 14 records/registers in stipulated forms. Joint inspection conducted by Audit along with DLOs/ALOs in 20 establishments revealed that no registers/returns were maintained in 18 establishments. Seven registers/returns were seen maintained in two establishments in Ernakulam. The details of registers and records to be maintained, persons responsible for the maintenance of records and the form in which registers were to be maintained in six test-checked districts are detailed in **Appendix 6.3**. The DLOs who were the Inspecting Authorities failed to ensure compliance of provisions envisaged in the Act and Rules.

6.2.5.3 Notices of conditions of work and abstract of Act and Rules not displayed

As per Section 23 (2) of the Act and Rules 53 and 54 of the Rules, every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the ISMW are employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed and also display abstract of Act and Rules. Joint inspection of 20 sites/factories with the departmental officers in Thiruvananthapuram, Ernakulam, Kannur and Kozhikode revealed that such notices were not being displayed in any of the sites. DLO was to initiate penal action under Sections 25 and 26 of the Act against the contractor and employer for non-compliance of provisions stipulated in the Act. Audit observed that no such action was initiated in this regard.

6.2.5.4 Penal provisions not imposed

Sections 24 to 27 of the Act stipulated the penal provisions for contravention of the provisions of the Act.

Audit noticed laxity on the part of the DLOs/ALOs in enforcing penal provisions for violation of the provisions of the Act. There were very few convictions and prosecutions under the Act.

Section 29 of the Act stipulated that no Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the inspector or authorised person concerned. Examination of 67 inspection files in the test-checked districts revealed that in 14 cases, the inspecting officers closed the files citing reasons such as expiry of time limit, migrant workmen leaving establishment following inspection, etc. It was observed that the offences became time barred since the inspecting officers were lax in pursuing the cases and did not file cases in Court within three months from the date on which the commission of the offence came to their knowledge, as required by Section 29 of the Act.

Government replied (October 2017) that the present pattern of inspectors and staff of Labour Department was fixed without considering the large flow of migrant workers into the State and that the enforcement machinery of the Department would be revamped. The laxity of the inspectors in diligently pursuing cases and ensuring prosecution of offenders is a matter of concern and needed to be addressed, so as to ensure proper implementation of the Act.

6.2.6 Conclusion

Audit observed that the Department was lax in identifying ISMW and ensuring that the benefits under the Act were derived by these workers. The DLO (Enforcement) who was the Registering Officer appointed under Section 3 of the Act failed to evolve a mechanism to ensure that all establishments engaging ISMW were registered under the Act. The Department issued licences to the contractors without ensuring whether the contractors possessed valid licences issued by a competent authority of the home State, to recruit from that State for employment in Kerala. Audit observed laxity on the part of Inspectors in diligently pursuing cases and ensuring prosecution of offenders under the Act. The implementation of the Inter-State Migrant Workmen Act in the State was, thus, not effective.

FAILURE OF OVERSIGHT/ADMINISTRATIVE CONTROLS

HOME AND VIGILANCE DEPARTMENT

6.3 Misappropriation of Government money in Vilappilsala Police Station, Thiruvananthapuram

Non-adherence to codal provisions and laxity in discharge of mandated responsibilities resulted in misappropriation of ₹4.86 lakh.

Provisions of the Kerala Treasury Code (KTC) required all Government officers who handle cash to enter all monetary transactions in the Cash Book as soon as they occur and to be attested by the Head of Office in token of check. The Head of Office should verify the totalling of the Cash Book or have this done by some responsible subordinate other than the writer of the cash book and initial them as correct. At the end of each month, the Head of Office should verify the cash balance in the cash book and record

a signed and dated certificate to that effect. The KTC also required that when Government moneys in the custody of a Government Officer were paid into the treasury or the bank, the Head of the Office making such payments should compare the Treasury Officer's receipt or the bank's receipt on the challan or compare his pass book with the entry in the cash book before attesting it, and satisfy himself that the amounts have been actually credited into the treasury or the bank. The Kerala Police Manual, 1969, (Police Manual) entrusted the responsibility of maintenance of Cash Book in police stations with the Station House Officers (SHO) and in his absence, the Station Writer. The Police Manual also required the Circle Inspectors to verify cash book and cash balance in hand in Police Stations whenever they visit them for other purposes. Audit noticed failure to adhere to the codal/manual provisions and resultant misappropriation of ₹4.86 lakh in the Vilappilsala Police Station, during audit of Office of the District Police Chief, Thiruvananthapuram Rural for the period August 2015 to June 2016, as detailed below.

Upto September 2015, the fines levied and collected under the Motor Vehicles Act, 1988 (MVA) and the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) by the SHO of each Police Station and Circle Offices under the Office of the District Police Chief, Thiruvananthapuram Rural were directly deposited at the cash section of the District Police Office. The remittances were made through Money Memo[157] in Kerala Police Form No. 105 (KPF 105). The District Police Chief, Thiruvananthapuram Rural (DPC), citing reasons such as wastage of time and money due to policemen having to travel to the Office of the DPC for making remittances and to make use of the online banking facilities, modified the procedure and ordered (September 2015) that fines collected under the MVA and COTPA be deposited into the designated current accounts in the State Bank of Travancore (SBT), jointly opened and operated by the DPC and Accounts Officer of Office of the DPC, from October 2015. All fines, thus collected, were to be deposited in the nearest branch of the SBT with the counterfoil of the pay-in-slip to be retained as expenditure voucher and forwarded to the Cashier, Office of the DPC along with the daily remittance statement on the first day of the next week. The Cashier, Office of the DPC was to collect details of daily remittance from the bank's site and use it as receipt voucher for recording in the cash book. The money, thus deposited, was to be remitted into treasury the next day. A detailed monthly statement of the fines collected and remitted into the bank should reach the Office of the DPC before the fifth of next month.

Audit conducted a test-check of records for the month of January 2016 at the Vilappilsala Police Station under Malayinkeezhu Circle which revealed that fines collected under MVA and COTPA of ₹51,200 and ₹3,600 respectively and shown in the Cash Book as having been remitted to the Office of the DPC through Money Memo had not been actually remitted. Further, an amount of ₹400 collected as fine under MVA was not recorded in the Cash Book. As the Money Memo acknowledgements/bank receipts

[157] Form to send money from the Units to the Head Office.

in proof of deposits were not available in the Police Station, Audit detected the misappropriation by cross verifying the payments purported to have been made to the Office of the DPC with the records of the Office of the DPC and Bank statements. It was found that the amounts entered in the cash book as remitted through Money Memo were not deposited, either with the Office of the DPC or in the Bank.

Audit then conducted a detailed scrutiny of cash books and related records at the Vilappilsala Police Station and the Office of the DPC for the period 01 October 2015[158] to 22 July 2016[159], which revealed that the MVA and COTPA fines of ₹4.86 lakh collected during the period was misappropriated using the same modus operandi. Consequent to Audit pointing out the misappropriation, the Writer of Vilappilsala Police Station remitted (July 2016) ₹5.19 lakh into the bank account opened for remittance of fines collected on account of violations under the MVA. Since an amount of ₹0.33 lakh was remitted in excess of the amount in question (₹5.19 lakh - ₹4.86 lakh = ₹0.33 lakh) by the Writer, the same needs to be set right after following the prescribed procedure.

Audit observed systemic deficiencies, which led to the misappropriation of cash. The assigned duty as per the stipulation in the KTC that all entries in the cash book were to be attested by the head of the office, in this case, the SHO, was not done. The SHO did not compare the entries in the Cash Book with the counterfoil of the Pay-in-slip and thus failed to confirm that the payments were actually made into the Bank account. The laxity of the Circle Inspector of Malayinkeezhu Circle (CI) who inspected the Police Station on 04 December 2015, is evident from the fact that he failed to detect the misappropriation. Audit observed that there was no internal audit system in place in connection with the verification of fines collected under the MVA and COTPA at District Police Office level.

Thus, multiple failures at various levels facilitated misappropriation of Government money at Vilappilsala Police Station. Consequent to the matter being referred to the State Police Chief, the Station Writer was placed under suspension, a crime case registered against him and the case transferred to Crime Branch, Crime Investigation Department. While one SHO was awarded a punishment of 'increment bar for one year without cumulative effect', an oral inquiry was ordered against the other SHO. At the instance of Audit, the Government also issued (November 2017) strict direction to the State Police Chief to adhere to the relevant rules in KFC and KTC while handling Government money. Government may take steps to strengthen the internal control mechanism, so as to avoid recurrence of such instances in future.

[158] Date from which orders of DPC on remittance of fines into bank accounts came into effect.
[159] Date of taking possession of cash book by SHO from Station Writer.

AYUSH DEPARTMENT

6.4 Irregular construction of a pharmaceutical factory costing ₹3.76 crore in a residential zone violating Zonal Regulations

Government of Kerala irregularly assigned land falling under 'residential zone' for construction of a pharmaceutical factory resulting in denial of mandatory clearances from local body and consequent idle investment and locking up of funds to the tune of ₹3.76 crore.

Under the Town Planning Act, 1933, the General Town Planning Scheme for Thiruvananthapuram as amended in 2007 lays down Zoning Regulations, which stipulate that all future developments in Thiruvananthapuram would be in conformity with the provisions of the Development plan for the district. Accordingly, areas have been zoned under various uses such as residential, commercial, industrial, public and semi-public, etc. Details regarding the nature of uses 'permitted', uses 'restricted' and uses 'prohibited' in each zone are also enlisted under the Zoning Regulations. The 'Uses permitted'[160] in a Zone cover the uses that could be normally accommodated in the relevant zone. Cases could be categorised as 'Uses Restricted'[161] where it might be possible for the executive authority with the concurrence of the Chief Town Planner to Government (CTP), to permit some other uses also, which were not likely to affect the quality and environment in a zone specified for a particular use. 'Uses prohibited'[162] enlist the various objectionable uses in each zone which are not specified under the other two uses and which shall not be permitted under normal circumstances. The Zoning Regulations permitted operation of only such non-obnoxious, non-nuisance type of service or Light industries engaging not more than three workers, with power limited to 3 HP or six workers without power, in residential zones. The Zoning Regulations also stipulated that large scale development proposals in an area not less than two Hectares[163], exceeding an investment of ₹50 crore, which provide direct employment to not less than 500 may be permitted in all zones subject to recommendation of a committee[164] constituted by the Government for this purpose.

Audit of the Pharmaceutical Corporation (Indian Medicines) Kerala Ltd., Thrissur (Oushadhi)[165] for the period 2015-16 conducted during January-February 2017 revealed violation of the above Zoning Regulations leading to idle investment of ₹3.76 crore, as detailed below.

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[160] 'Uses Permitted' category under Residential Zones – All residences, retail shops, professional/ commercial offices/establishments upto 200 sq.m, nursery, kindergarten, primary schools, clinics (out-patient) diagnostic centres, small service industries of a non-nuisance nature, etc.

[161] 'Uses Restricted' category under Residential Zones -Hostels, boarding houses, commercial offices/shops/restaurants upto 500 sq.m, Markets, Gymnasium, Automobile showrooms/workshops, Research and Development Institute, Hospitals and Healthcare upto 20 beds, Service Industries upto 20 workers without power or 10 workers with 10 HP, Local/State/Central/Public sector offices, schools, etc.

[162] 'Uses Prohibited' category under Residential Zones – Any use other than those specified in 'Uses Permitted' and 'Uses Restricted'.

[163] One hectare = 100 ares.

[164] Committee consisting of Secretary LSGD, CTP, District Town Planner, Secretary, Thiruvananthapuram Development Authority and Secretary, Thiruvananthapuram Corporation.

[165] A fully owned Government of Kerala undertaking engaged in the business of Ayurvedic Medicines.

The Managing Director (MD) of Oushadhi requested GOK (November 2012) to provide approximately one acre of land for constructing a Panchakarma Institute at Thiruvananthapuram. Accordingly, Government of Kerala (GOK) informed Oushadhi (June 2014) of its intention to transfer on lease, 40.47 ares[166] of land situated in Survey No. 2615 of Muttathara village in Thiruvananthapuram district for the purpose. However, Oushadhi informed GOK (July 2014) its decision to construct a pharmaceutical factory on the site and requested to levy only a nominal rate as lease charges. GOK issued orders (May 2015) transferring 40.47 ares of land to Oushadhi at a nominal lease rent of ₹100 per are for 30 years. Audit observed that the proposed factory did not figure in the list of services/light industries permissible in residential zones.

The work of preparing a Project Report to set up a unit for the production of proprietary Ayurvedic medicines was entrusted (May 2015) to M/s. KITCO Ltd. (KITCO)[167] by Oushadhi. Agreement was later executed (September 2015) with KITCO for obtaining consultancy services within the scope of work including preparation of project report, engineering[168], procurement[169] and construction management for the project as well as providing technical expertise during construction and commissioning of the project. The agreement also provided for KITCO to provide technical assistance to Oushadhi in seeking approval from Government and statutory bodies like Pollution Control Board, Electricity Board, Water Authority, Factory Inspectorate, Electrical Inspectorate, etc.

KITCO submitted (July 2015) the final Project Report for setting up a state of the art production facility at Muttathara in Thiruvananthapuram at an estimated cost of ₹6.56 crore. Agreement was executed (October 2015) by Oushadhi with M/s. Crescent Construction Company, Thiruvananthapuram (Contractor) for taking up Civil Works at a contract price of ₹3.44 crore. The time of completion of the work was fixed as four months from the date of the agreement. The work of construction of the factory building was completed at an expense of ₹3.76 crore and the building inaugurated in February 2016. The machinery for the first phase was supplied by March 2017 for which an expenditure of ₹1.14 crore was incurred. Despite completion of factory building and procurement of necessary equipment, the factory is yet to commence its operation (February 2018).

Audit noticed that the land leased out by GOK to Oushadhi at Muttathara was situated in a residential zone wherein construction of factory was not permissible. It is evident that Oushadhi with its envisaged state-of-the-art production facility, targeting to engage 33 persons directly and 150 persons indirectly, was not eligible to set up and run the factory in a residential area. The project report prepared by KITCO for the factory also recognised the fact that the land for the factory was situated in a green zone which necessitated prior approval of CTP to be obtained before commencement of any construction

[166] 40.47 Ares = One Acre.

[167] A Public Ltd. Company and an Accredited Agency for execution of public works.

[168] Engineering services included providing technical assistance to Oushadhi for identification, negotiation and finalisation of all plant, equipment, parts etc., required for the project and negotiation with contractors for civil, structural, mechanical, electrical instrumentation, erection, etc.

[169] Procurement services included identification of project packages, preparation of tenders (Both technical and commercial), preparation of Tender Notices, techno-commercial discussions with the bidders, techno- commercial evaluation of offers and recommendation thereof, drafting and forwarding letter of award of contract to the client to issue to the contractor, operation of contract, processing of bills for payment, etc.

activity. Initial clearances for the project from the Fire and Safety Department, Local Body, Factories and Boilers Department, Pollution Control Board, Ground Water Department and Ministry of Civil Aviation were also to be obtained.

Audit further noticed that Oushadhi sought permission (September 2015) for conversion of land situated in a residential zone into industrial zone from CTP. Without waiting for any formal approval, Oushadhi commenced the construction of the factory devoid of statutory clearances, which was a serious violation of extant rules, on its part. Audit later observed (January 2016) that even the CTP, from whom formal approval was sought for by Oushadhi, was not competent to accord the same and the matter was taken up with GOK.

Though the proposed factory of Oushadhi did not satisfy any of the aforesaid criteria laid down in the Zoning Regulations, it was decided (July 2017) in a meeting of Ministers of Health and Local Self Government Departments, Government Secretaries of Local Self Government and Ayush Departments, CTP, the Secretary, Corporation of Thiruvananthapuram and the Chairman/MD Oushadhi that in view of the likely delay in obtaining building permit, the Corporation was to grant temporary UA number[170] to Oushadhi within one week from the date of receipt of application from Oushadhi. This was clearly indicative of a move towards regularising the Zonal violation and consequent irregular construction. Temporary UA number was allotted to the building in October 2017.

After the matter was referred (September 2017) to GOK, Audit was informed (October 2017) that Government proceeded with construction of the factory with the bonafide belief that zone regularisation would take place in due course. It was also stated that as the Government had since taken a positive decision on the subject, the factory could be operationalized within a short period.

The reply of the Government was not acceptable because Government cannot proceed with serious issues such as construction of factories in residential zones on the basis of assumptions and belief that regularisation would occur in due course. Government has to function within the parameters prescribed by Acts and Regulations. The matter assumes seriousness when Government violates the Rules and Regulations formulated by itself, which calls for fixation of responsibility on the Officers at fault.

HIGHER EDUCATION DEPARTMENT

6.5 Violation of AICTE norms in placement to posts of Associate Professors

Director of Technical Education violated AICTE norms/GOK orders while making placement to posts of Associate Professors resulting in inadmissible payment of at least ₹1.46 crore in 24 cases test-checked.

The All India Council for Technical Education (AICTE) notified (March 2010) Regulations prescribing the Pay scales, Service conditions and Qualifications

[170] Permit number given to Unauthorised Constructions.

for the teachers and other academic staff in degree level Technical Institutions. The Regulations stipulated that teachers in Universities and Colleges would be designated only as Assistant Professors, Associate Professors and Professors with retrospective effect from 01 January 2006.

As per the provisions contained in the Regulations, persons entering the teaching profession in Technical Institutions shall be designated as Assistant Professors and placed in the Pay Band of ₹15,600-39,100 with Academic Grade Pay (AGP) of ₹6,000. Also, such incumbent Assistant Professors and incumbent Lecturers (Selection Grade) who have completed three years in the pre-revised pay scale of ₹12,000-18,300 on 01 January 2006 shall be placed in the Pay Band of ₹37,400-67,000 with AGP of ₹9,000 and shall be re-designated as Associate Professors. The Hon'ble High Court of Kerala had also observed (November 2015) in 'National Institute of Technology *vs* Dr. Arun C and others' that Pay Band 4 in the scale of pay of ₹37,400-67,000 with AGP of ₹9,000 was admissible only to those Assistant Professors with Ph.D who have completed three years' service and that the revised scale of pay admissible to incumbent Assistant Professors was Pay Band 3 of ₹15,600-39,100 with AGP of ₹8,000.

The Regulations also provided that such incumbent Assistant Professors and incumbent Lecturers (Selection Grade) who did not complete three years in the pay scale of ₹12,000-18,300 on 01 January 2006 shall be placed at the appropriate stage in the Pay Band of ₹15,600-39,100 with AGP of ₹8,000 till they complete three years of service in the grade of Lecturer (Selection Grade) and thereafter in the higher Pay Band of ₹37,400-67,000 and accordingly re-designated as Associate Professor. Such incumbent Lecturers (Selection Grade) in service as on the date of issue of the Notification (March 2010) would continue to be designated as Lecturer (Selection Grade) until they are placed in the Pay Band of ₹37,400-67,000 and re-designated as Associate Professor as stipulated in the Regulations.

Government of Kerala (GOK) accepted the revised AICTE scheme for revision of pay scales in degree level Technical Institutions and issued orders (December 2010) for implementing the Regulations with retrospective effect from 01 January 2006. Provisions, similar to those contained in the AICTE Regulations were incorporated under Paragraphs 6.1.9 and 6.1.10 of the GOK order.

During audit of the Directorate of Technical Education (DTE)[171], it was observed that the DTE, in violation of the AICTE Regulations and similar directions of GOK, issued orders (April/June 2012) placing all Assistant Professors as on 01 January 2006 as Associate Professors in the Pay Band ₹37,400-67,000 with AGP ₹9,000 irrespective of their service in the cadre of Assistant Professor. Thus, all the Assistant Professors in the Department were designated as Associate Professors and placed in Pay Band ₹37,400-67,000 with AGP ₹9,000 without considering whether they had three years' service in the cadre, as required by AICTE/GOK.

[171] Compliance Audit of DTE under the Higher Education Department.

The irregular placement of Assistant Professors as Associate Professors consequent to the erroneous orders of DTE resulted in inadmissible payment of at least ₹1.46 crore in 24 cases (**Appendix 6.4**) test-checked during audit.

On being asked, the DTE replied (December 2017) that Higher Education Department issued a letter (March 2012) clarifying the GOK orders which stated that as per clauses 5.3 and 5.5 all incumbent Assistant Professors in sanctioned posts shall be redesignated as Associate Professors and shall be placed in the Pay Band ₹37,400-67,000 with AGP of ₹9,000 as on 01 January 2006 or on the date of promotion after that, as the case maybe. It was further stated that clauses 6.1.9 and 6.1.10 were applicable only for Career Advancement Scheme and not for promotions to the sanctioned posts. A reply on similar lines was also received from GOK (March 2018).

The reply is not factually correct as clause 5.5 clearly states that appointment to the cadre posts of Associate Professors shall be by way of promotion from among the eligible candidates on the basis of seniority subject to conditions specified in clause 6. Further, neither the AICTE Regulation nor the GOK order makes any distinction between placement by promotion or through Career Advancement Scheme and the requirement of three years' service was an unambiguous provision in the AICTE Regulation and GOK orders.

During the Exit Conference (December 2017) on the Compliance Audit on Directorate of Technical Education under Higher Education Department, the paragraph was discussed in detail and Secretary to Government of Kerala, Higher Education Department agreed to review the cases.

6.6 Deficiencies identified by AICTE during the inspection of a Polytechnic College resulted in denial of Extension of Approval to the College by AICTE and subsequent inability to admit an entire batch of students to the College

The Principal, Central Polytechnic College, Thiruvananthapuram failed to follow-up and ensure successful submission of application for Extension of Approval to AICTE for 2015-16, resulting in irregularly granting admission to 360 students to its courses in 2015-16 without obtaining approval from the AICTE.

The All India Council for Technical Education (AICTE) was established under an Act of Parliament[172] for the proper planning and coordinated development of the technical education system throughout the country. Section 10.1 (k) of AICTE Act, 1987, empowers AICTE to grant approval to new Technical institutions and for new courses or programmes, while Section 10.1 (q) empowers AICTE to withhold/discontinue grants in respect of courses/ programmes to such institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of AICTE. The Hon'ble Supreme Court of India also ordered (December 2014) that prior

[172] The All India Council for Technical Education Act, 1987.

approval of AICTE was compulsory and mandatory for conduct of a technical course by an existing affiliated Technical College.

The AICTE, in line with the judgment of the Hon'ble Supreme Court of India, commenced (January 2015) filing of Online Application on its portal for Extension of Approval (EOA)[173] from all technical institutions[174] for conducting technical programmes/courses for the academic year 2015-16. The last date for submitting online application was extended by AICTE from 20 February 2015 to 27 February 2015 and further till 02 March 2015 beyond which applications could be submitted with Late Fee. It was also clearly stipulated that no applications would be accepted beyond 05 March 2015 under any circumstances, even with Late Fee.

While examining the records of the Directorate of Technical Education (DTE), an instance of violation of these provisions by a technical institution was noticed (April 2017) which resulted in non-recognition of its courses during 2015-16. The Institution was also not able to admit 360 students during 2016-17, as detailed below.

The Central Polytechnic College, Vattiyoorkavu, Thiruvananthapuram (CPTC), functioning under the DTE had been conducting regular diploma courses in six branches with AICTE approval upto 2014-15. The Principal, CPTC, submitted online application in the AICTE portal on 23 February 2015, for obtaining EOA for the year 2015-16. However, the status of submission of application was shown as 'In Progress', which remained so till 07 March 2015, when it was displayed as 'Application not submitted'. The Principal CPTC informed Audit (December 2017) that the status of application submitted online was shown as 'In Progress' due to technical issues and that generation of report from AICTE portal was possible only after the last date of submitting the application, which was 02 March 2015. The Principal further stated that the status of application as 'Application not submitted' was known only when the report was generated on 07 March 2015.

Audit observed that AICTE did not include CPTC in its list of approved institutions for the year 2015-16. As such, CPTC was not eligible to admit students to any of its courses during 2015-16. However, contrary to the provisions of AICTE Act, 360[175] students were irregularly admitted to six different courses offered by the College during the year 2015-16, which could invite appropriate penal action against the institution.

As EOA was denied to the CPTC for the year 2015-16, CPTC applied to the AICTE for EOA for the academic year 2016-17 under the category 'Break in EOA'. In accordance with the provisions given in the Approval Process Handbook issued by AICTE, an Expert Visiting Committee (EVC) conducted inspection at CPTC and noted several deficiencies like sanctioning of posts by Government not being in conformity with AICTE norms on faculty strength, minimum medical facilities, inadequate capacity of reading room, non-

[173] The Technical Institutions were to submit the application for Extension of Approval to the concerned Regional office of AICTE each year.

[174] Technical Institutions including affiliated Technical Colleges and also new Technical Colleges which will require affiliation by a University.

[175] 60 Diploma students each under Diploma in Civil/Mechanical/Electronics/Electrical and Electronics/Computer Engineering and Textile Technology.

furnishing of details/submission of records, etc. Consequent to the observations of EVC, AICTE rejected the application of CPTC, thereby denying permission to the institution to admit students to any of the six courses during 2016-17.

The Principal CPTC requested (August 2017) AICTE Approval Bureau to grant EOA for academic year 2015-16, considering the fact that the students admitted to the institution would be completing their courses in March 2018, to which AICTE replied (November 2017) that EOA for 2015-16 and 2016-17 could not be granted.

Government stated (November 2017) that the loss in EOA for the academic years 2015-16 and 2016-17 was primarily due to technical reasons and that there was no wilful delay or negligence on the part of the Principal. It was also assured that all possible measures were adopted to ensure non-occurrence of such incidents in future.

Audit observed that the reply of Government was not factually correct as, though the Principal CPTC was aware that the AICTE portal showed the status as 'In Progress', no correspondence was initiated with the AICTE between 23 February 2015 and 07 March 2015 to seek clarification on the status of its application. The failure of the Principal, CPTC to follow-up and ensure successful submission of application for EOA to AICTE in 2015-16 and admitting students to courses without approval of AICTE put the validity of the diploma acquired by the students at risk, which calls for fixing of responsibility. Further, laxity on the part of the Principal and DTE in ensuring rectification of operational deficiencies, deprived the College of EOA from AICTE in 2016-17 and consequent denial of technical education to an entire batch of 360 students. The Government did not take any steps to guard against recurrence of such instances in future.

PUBLIC WORKS DEPARTMENT

6.7 Non-finalisation of tender within the firm period leading to avoidable expenditure of ₹1.53 crore

Non-finalisation of tender for construction of two buildings within the firm period led to avoidable excess expenditure of ₹1.53 crore to Government of Kerala.

Section 2009.5 of Kerala Public Works Department Manual (PWD) stipulated that the consideration of tenders and decision thereon shall be completed well before the date of expiry of the firm period[176] noted in the tender so that the letter of acceptance is sent to the bidder before the expiry of the firm period. The firm period was fixed as the maximum time required within which a decision can be taken on the tender and order of acceptance issued in writing to the bidder, which shall not exceed two months in the normal course. If delay is anticipated, the officer who invited the tenders shall get the consent of the lowest two bidders for extending the firm period

[176] The firm period of a tender is the period from the date of opening of the tender to the date upto which the offer given in the tender is binding on the bidder.

by one month or more as required. In case any of the two lowest bidders refused to extend the firm period, that tender could not be considered. All officers concerned with the consideration of tenders were, therefore, to deal with them expeditiously and settle the contract before the expiry of the firm period.

Audit noticed[177] that the departmental authorities failed in adhering to the above provisions in the construction of two buildings, which resulted in avoidable excess expenditure of ₹1.53 crore to the Government exchequer as discussed below.

- **Construction of Mini Civil Station at Devikulam, Idukki District - Phase I**

  Government of Kerala (GOK) accorded (July 2013) administrative sanction for construction of Phase I of Mini Civil Station, Devikulam in Idukki District at a cost of ₹ five crore. The Superintending Engineer (Buildings) (SE) Central Circle, Thrissur tendered (December 2013) the work for an estimate cost of ₹4.75 crore, with a firm period of two months (upto 02 March 2014) from the date of opening of the tender (30 December 2013). As per the bid documents, the lowest of three bidders, Shri. Peter Kuriakose, quoted 13 *per cent* above the estimate rate. Audit scrutiny of records at the SE Central Circle, Thrissur revealed that the tender acceptance proposal was forwarded by the SE to the Chief Engineer (Buildings) (CE) only on 17 March 2014, after the expiry of the firm period on 02 March 2014. Due to refusal (April 2014) of the lowest bidder to accept extension of the firm period, the tender could not be finalised.

  Consequently, SE Central Circle, Thrissur retendered (June 2014) and awarded (October 2014) the work to M/s. Kerala State Construction Corporation at 35 *per cent* above the estimate rate and the work was completed (July 2016) at a total cost of ₹6.40 crore.

  Had the tender acceptance proposal been sent to CE well before the expiry of the firm period, the work could have been awarded at 13 *per cent* above the estimated rate and an excess expenditure of ₹1.04 crore[178], being the tender excess variation could have been avoided. The SE Central Circle, Thrissur in his reply (September 2017) admitted the procedural lapses that resulted in the delay and informed that strict instructions were since given to the staff to give priority to tender approval files for completion within the time frame.

  The CE stated in reply that (January 2018) there was no deliberate attempt on the part of the officials concerned in delaying the communication and that the period of two months was insufficient for finalisation of tender, particularly in cases where Local Market Rate (LMR) justification was required.

[177] During audit of Office of the Superintending Engineer (Buildings) Central Circle, Thrissur from 25 May 2017 to 09 June 2017 and Office of Superintending Engineer (Buildings) North Circle, Kozhikode from 17 April 2017 to 03 August 2017 for the period 2014-17.

[178] ₹6.40 crore - ₹5.36 crore = ₹1.04 crore (Difference between the lowest bids accepted).

The reply was not acceptable as the delay was not caused as a result of delay in receipt of LMR from the Assistant Engineer. Audit observed that the LMR was received on 06 February 2014, but the tender acceptance proposal was forwarded to CE only on 17 March 2014 after expiry of the firm period on 02 March 2014. Moreover, the contention that the period of two months was insufficient was not correct as a period of two months was sufficient to complete the process, if executed in a vigilant and responsible manner. In this instance, things were handled in a casual manner which led to loss of ₹1.04 crore which calls for fixing of responsibility.

- **Construction of school building for Government Higher Secondary School, Edappal, Malappuram District**

Government accorded (February 2013) Administrative Sanction for the construction of a school building for the Government Higher Secondary School (GHSS), Edappal, Malappuram District at a cost of ₹1.25 crore. The SE North Circle, Kozhikode tendered (November 2013) the work for an estimated cost of ₹1.18 crore and forwarded (December 2013) a proposal to accept the tender and award the work to the lowest bidder, Shri. Nandakumar U V, who quoted a rate of 12.25 *per cent* above the estimate. The firm period of the tender was two months (upto 29 January 2014) from the date of opening of tender (30 November 2013). However, Audit noticed from the scrutiny of records at the office of the CE that though the CE approved (22 January 2014) tender acceptance proposal within the firm period, the same was despatched (14 February 2014) to the SE only after the expiry of the firm period. Consequently, the SE received the tender approval from the CE only on 03 March 2014 after the expiry of the firm period. As the lowest bidder refused (March 2014) to extend the firm period, the tender could not be finalised.

The SE, therefore, retendered (July 2014) and awarded the work (February 2015) to Manzil Constructions at 54.50 *per cent* above the estimate rate and the work was completed (April 2016) at a total cost of ₹1.81 crore.

Had the CE communicated the tender acceptance in time, the work could have been awarded at 12.25 *per cent* above the estimated rate and the excess expenditure of ₹0.49 crore[179], being the tender excess variation, was avoidable.

The CE while admitting (January 2018) the lapses stated that there was no deliberate attempt on the part of the officials concerned in delaying the communication. However, Audit observed that though the tender acceptance proposal for the work was received at the office of the CE on 31 December 2013, the acceptance of tender was communicated to SE only on 03 March 2014 after the expiry of firm period on 29 January 2014. Thus, it was observed that the negligent attitude exhibited in the processing of tender proposals resulted in avoidable excess expenditure of ₹0.49 crore to the Government exchequer, which needs fixing of accountability.

[179] ₹1.81 crore - ₹1.32 crore = ₹0.49 crore (Difference between the lowest bids accepted).

Thus, failure of the SEs of Central Circle, Thrissur and North Circle, Kozhikode and the CE to ensure completion of the tender formalities within the firm period in the above two cases led to loss amounting ₹1.53 crore. The Department needed to strengthen its internal control mechanism for avoidance of recurrence of similar instances in future.

The paragraph was sent (October 2017) to Principal Secretary to Government, Public Works Department. Despite reminders, reply was not received (February 2018).

(S. SUNIL RAJ)
Accountant General
(General and Social Sector Audit), Kerala

Thiruvananthapuram,
The

Countersigned

(RAJIV MEHRISHI)
Comptroller and Auditor General of India

New Delhi,
The