



**CHAPTER-III
COMPLIANCE
AUDITS**



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COMPLIANCE AUDIT

EDUCATION DEPARTMENT

3.1 *Overpayment and creation of liability due to non-deduction of Labour Cess*

Non-deduction of Labour Cess by District Programme Officers led to overpayment to Vidyalaya Shiksha Samities and creation of liability amounting to ₹ 82.10 crore.

In terms of the Building and Other Construction Workers' Welfare Cess Act (Act) in September 1996, notified by Government of India, and consequent Government of Bihar notification dated 18th February 2008, all Government departments and Public Sector Undertakings engaged in construction works were required to deduct Labour Cess at the rate of one *per cent* from the bills of agencies and remit the same to Building and Other Construction Workers Welfare Board (Welfare Board) through a crossed demand draft within 30 days of such deduction.

Audit scrutiny revealed that the 38 District Programme Officers (DPO), Sarva Shiksha Abhiyan in Bihar had paid ₹ 8,350.29 crore towards construction works during 2010-2017. However, against Labour Cess of ₹ 83.50 crore, the DPOs had deducted from the bills of implementing agencies (Vidyalaya Shiksha Samities) only ₹ 1.40 crore, which was remitted to the Welfare Board. This resulted in overpayment to implementing agencies and creation of liability amounting to ₹ 82.10 crore to the Welfare Board. Details are given in (*Appendix-3.1*) and (*Appendix-3.2*).

The Bihar Education Project Council (BEPC) accepted the audit contention and issued instructions (July 2017) to all the DPOs to calculate, deduct and remit the balance amount of Labour Cess. It further stated (August 2017) that the provision of Cess was made in the Schedule of Rates (effective from 15 June 2011). Therefore, deduction of Labour Cess was obligatory and all the DPOs were responsible to deduct and deposit the same with the Welfare Board.

The matter was reported to the Government (June 2017); despite reminders (September 2017 and January 2018), their reply had not been received.

LABOUR RESOURCES DEPARTMENT

3.2 Irregular and unauthorised disbursal of grant

The BOCW Welfare Board, irregularly disbursed ₹ 76.47 crore as grant for house building/ repair and purchase of tools/ bicycles in violation of the BOCW (RECS) Act.

In terms of the Building and Other Construction Workers (BOCW) Regulation of Employment and Conditions of Service (RECS) Act, 1996 enacted by Government of India with effect from 1 March 1996, Building and Other Construction Worker's Welfare Boards are empowered to implement the provisions of the Act.

Audit observed that the Labour Department launched (July 2011) a grant scheme¹, against which, the Welfare Board disbursed grants of ₹ 80.75 crore (2011-17) to 53,830 workers for house building/ repair and purchase of tools/ bicycles² (*Appendix-3.3*). Such disbursement violated Section 22 of the Act, which did not provide for grants for the above purposes (the Act only permitted for loans for house building and did not cover either loan or grant for purchase of tools and bicycles).

The Department stated (September 2017) that the notification amending the BOCW (RECS) Rules, 2005 to provide for the above grant had been published³ (September 2016). The Department further stated that such grant was covered under Section 22 (1) (h) empowering the Board to make provisions and improvement of such other welfare measures and facilities as may be prescribed. The reply of the Department is not acceptable, since it misinterprets Section 22 (1) (h). Further, on the basis of directions of Hon'ble Supreme Court in WP (Civil) No. 318 of 2006, Ministry of Labour and Employment, GoI directed (23 September 2015) that any amount of Cess collected under the Act and utilised for any purpose other than mandated under Section 22 of the Act was to be recouped immediately by the State Government and compliance report sent to the Ministry. This is yet to be done.

¹ One-time lump-sum grant of ₹ 15,000 for construction/repairing of house (₹ 10,000) and for purchase of tools/ bicycles (₹ 5,000)

² Against this, 50,983 workers were paid ₹ 76.47 crore (March 2017) and the remaining ₹ 4.28 crore was lying in the Board's account

³ Placed in the Legislative Assembly (December 2016) and Legislative Council (December 2017)

PUBLIC HEALTH ENGINEERING DEPARTMENT

3.3 Excess payment

Public Health Division, Bihar Sharif made an excess payment of ₹ 8.47 crore to the contractor as price variation clause required under Bihar Financial (Amendment), Rules 2005 and guidelines of World Bank borrowers, was not included in the Agreement.

Rule 30 (viii) (a) and (viii) (d) of the Bihar Financial (Amendment) Rules, 2005 (BFR) read with clauses 2.24 and 2.25 of the guidelines of World Bank Borrowers provided for price adjustment on the basic estimate and stipulated that the buyer should ensure a provision in the contract for benefit of any reduction in the price, in terms of the price adjustment clause, being passed on to him. The provision for price adjustment should be included in contracts which extend beyond 18 months. Further, clauses 2.24 and 2.25 of guidelines of World Bank borrowers⁴ stipulated that under exceptional circumstances, bidding documents may provide for price adjustment on the basis of documentary evidence (including actual invoices) provided by the supplier or contractor.

Scrutiny of records of the Executive Engineer (EE), Public Health (PH) Division, Bihar Sharif pertaining to the World Bank assisted Scheme⁵ 'Bihar Rural Water Supply and Sanitation Project for Low Income States (BRWSSP-LIS)', revealed that the Chief Engineer, PHED, Patna Zone, Patna (CE) accorded (October 2013) Technical Sanction (TS) for ₹ 58.12 crore for design, commissioning and maintenance of Silao Multi Village Piped Water Supply Scheme which included provision for price variation of seven *per cent* per annum for two consecutive years. An Agreement valued at ₹ 73.22 crore⁶, at 25.97 *per cent* above the TS, was executed (20 August 2014) with the contracting agency and the work was to be completed by August 2017.

Scrutiny of invoices and site accounts of the work revealed that the Agency utilised DI Spun pipes K7, whose rates were lower than those approved in the TS. However, the Division did not adjust the price of pipes though it was provided for in the guidelines for World Bank borrowers and BFR and made payment of ₹ 40.10 crore (as of March 2017) at the rate as per the estimate to the Agency. The total difference in cost of the supplied pipes amounted to ₹ 8.47 crore as detailed in **table 3.1**.

⁴ Procurement of goods, works and non-consulting services under IBRD loans and IDA credits & grants by World Bank borrowers

⁵ The Scheme is financed by a credit from International Development Association (IDA), the World Bank's concessionary lending arm

⁶ Being a World Bank aided project, the Department sought No Objection Certificate (NOC) from World Bank and after getting NOC, EC headed by Development Commissioner approved the rate.

Table 3.1: Excess payment to the agency

Sl. No.	Diameter of pipes (in mm)	Supplied quantity as per Measurement Book (in metre)	Rate as per TS (in ₹ per metre)	Rate as per agreement (Column 4x25.97 per cent) in ₹ per metre	Rate as per invoices after adding overhead charges and CP ⁷ @ 10% each (in ₹ per metre)	Difference of rate	Excess payment (₹ in crore)
1	2	3	4	5	6	7(5-6)	8 (7x3)
1	400	20,552.50	4,411.80	5,557.54	3,893.96	1,663.58	3.42
2	350	3,360.00	3,671.94	4,625.54	3,237.34	1,388.20	0.47
3	300	2,327.00	2,940.06	3,703.59	2,539.29	1,164.30	0.27
4	250	4,926.00	2,316.48	2,918.07	1,984.40	933.67	0.46
5	200	14,735.00	1,759.02	2,215.84	1,500.40	715.44	1.05
6	150	19,342.00	1,386.24	1,746.25	1,210.00	536.25	1.04
7	100	7,324.00	940.50	1,184.75	865.80	318.95	0.23
8	080	36,087.00	929.10	1,170.39	747.66	422.73	1.53
Total							8.47

Public Health Engineering Department, Government of Bihar (Department) stated (September 2017) that payment was made as per the Agreement and pipes purchased by the Agency at lower costs as shown in invoices had nothing to do with the concerned Agreement. As such, no excess payment was made.

The reply of the Department is not acceptable, as the cost of DI pipes mentioned in the technically sanctioned estimate was much higher than those mentioned in the invoices. The Empowered Committee had also approved the bid at 25.97 per cent above the sanctioned estimate citing the anticipated escalation in price/cost of pipes to be used in the work.

Thus, due to non-inclusion of the price variation clause as provided under BFR and guidelines of World Bank borrowers in the Agreement, the Division could not limit payment to the contractor on the basis of actual cost of pipes, resulting in excess payment of ₹ 8.47 crore.

⁷ Overhead charges and Contractors' profit (CP) were provided in the Schedule of Rates 2012 @ 10 per cent each, cumulatively standing at 21 per cent.

PUBLIC HEALTH ENGINEERING DEPARTMENT (PHED)

3.4 *Non-recovery of security deposit and unadjusted mobilisation advance and additional burden due to non-recovery of risk and cost amount*

PHED failed to recover the security deposit and unadjusted mobilisation advance of ₹ 1.43 crore and differential amount of ₹ 10.05 crore needed to complete the balance work.

Clause 14 of the Standard Bidding Document (SBD)⁸ provides that in case of cancellation of a contract, the incomplete work shall be carried out at the risk and cost of the contractor. Any excess expenditure incurred or to be incurred by Government in completing the works or excess loss or damages suffered by the Government shall be recovered from the moneys due to the contractor or from the contractor himself in accordance with the provisions of the contract.

Test check of records of Departmental PH Divisions⁹ revealed that the Chief Engineer (CE), PHED awarded (January 2011) the work of 'design, construction and commissioning of 270 Mini Water Supply Schemes (MWSS), with provision of electrical pumping sets on turnkey basis for rural areas in 12 districts¹⁰ of Bihar to an Agency¹¹ at a total cost of ₹ 41.53 crore¹². An Agreement was executed (January 2011), on behalf of PHED, between the Agency and PH Division, Samastipur for completion of work in all 12 districts by January 2012.

Scrutiny of works revealed that the Agency started work on only 183 schemes and completed 26 of these, leaving 157 schemes partially executed. No work was started in the remaining 87 schemes. Thus, 244 schemes were either not started or not completed. Despite reminders (October 2012 and November 2012) by EE, the Agency did not take necessary steps to bring progress in the work. Due to slow progress of work, the Department rescinded the Agreement (October 2014) and ordered (October 2014) for forfeiture of Security Deposit of ₹ 83.06 lakh, which, however, could not be done as Bank guarantee against the security deposit had expired (September 2014).

Later, in the light of instructions of the Department (October 2014), the concerned divisions floated tenders (division-wise) for 93 schemes and allotted the residual work to different agencies. Execution of works on the remaining 151 schemes¹³ was kept in abeyance.

⁸ As per Government of Bihar Resolution (March 2008), any contract with money value above ₹ two crore shall be executed in SBD agreement format.

⁹ Araria, Bettiah (West Champaran), Darbhanga, Dhaka (East Champaran), Gopalganj, Khagaria, Madhubani, Motihari, Purnea, Saharsa, Samastipur, Sheohar, Supaul

¹⁰ Araria (20), Darbhanga (25), East Champaran (40), Gopalganj (20), Khagaria (15), Madhubani (25), Purnea (25), Saharsa (15), Samastipur (25), Sheohar (20), Supaul (15), West Champaran (25)

¹¹ M/s Vishwa Infrastructure Pvt. Ltd

¹² ₹ 15.38 lakh per scheme

¹³ Total 270 schemes- completed 26 schemes= 244 schemes; 244 Incomplete schemes -93 tendered schemes=151 schemes.

This has resulted in creation of additional liability of ₹ 10.05 crore¹⁴ (**Appendix 3.4 and 3.5**) for completion of the 244 schemes.

The Department stated (January 2018) that after rescission of Agreement with the Agency, it has been decided to recover bid security and unadjusted mobilisation advance as also to blacklist the company for five years. The reply is not acceptable, since even after more than five years of scheduled date of completion of the works and three years of termination of the contract, the Department has failed to recover the security deposit and unadjusted mobilisation advance of ₹ 1.43 crore¹⁵ and differential amount of ₹ 10.05 crore needed to complete the balance work. It is therefore unclear how the Department proposes to recover even the bid security and unadjusted mobilisation advance.

FINANCE DEPARTMENT

3.5 Avoidable excess expenditure due to payment of surcharge

The Finance Department incurred avoidable excess expenditure of ₹ 1.91 crore as surcharge due to non-installation of capacitors to avoid exceeding power factor limits.

In terms of the order (December 2007) of Bihar Electricity Regulatory Commission (Commission), relevant Tariff Orders of the Commission and agreements signed by the consumer with the Bihar State Electricity Board (BSEB) and its successor entities, High Tension (HT) consumers are required to maintain an average power factor of 90 *per cent* or above, failing which, penalty by way of surcharge was leviable. Consumers were required to install capacitors¹⁶ (devices to regulate power consumption) at their own cost to avoid exceeding power factor limits.

Scrutiny of the records of the Finance Department, Government of Bihar revealed (April 2016) that the Department (an HT consumer having connected load of 1500 KVA) did not maintain the average power factor during April 2012 to March 2016 due to not having capacitors of 1,684.80 KVAR¹⁷ installed. Consequently, the Department paid an amount of ₹ 1.91 crore¹⁸ in 48 billed cases as surcharge to the South Bihar Power Distribution Company Limited¹⁹ (SBPDCL) for the same period. Had the Department installed capacitors beforehand, payment of surcharge could have been avoided.

¹⁴ ₹ 7.04 crore for 157 schemes + ₹ 3.01 crore for 87 schemes = ₹ 10.05 crore

¹⁵ Security Deposit: ₹ 83.06 lakh and unadjusted mobilisation advance: ₹ 59.85 lakh

¹⁶ Capacitors can be added in parallel with the connected motor or lighting circuits and can be applied at the equipment distribution board or at the origin of the installation to maintain average power factor and also stabilise the grid.

¹⁷ Total cost of capacitors to be installed was ₹ 4.37 lakh (at the rate of ₹ 220 per KVAR + 18 per cent GST) as per prevailing market rate.

¹⁸ ₹ 0.48 crore (2012-13), ₹ 0.52 crore (2013-14), ₹ 0.36 crore (2014-15) and ₹ 0.55 crore (2015-16).

¹⁹ SBPDCL was one of the successor companies of the erstwhile BSEB.

The Department accepted the audit observation and stated (June 2017) that the capacitors had not been installed due to lack of technical information. It further stated that the Department of Energy had neither informed nor had taken any action in this regard. The reply is not acceptable, since as per the relevant orders and agreements and as reiterated (August 2017) by the Chief Engineer (Commercial), SBPDCL, it is the responsibility of the consumer to install capacitors at their own cost, in order to maintain average power factor.

Thus, non-installation of capacitors by Finance Department resulted in an avoidable expenditure of ₹ 1.91 crore as surcharge.

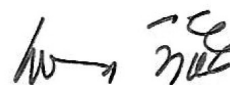


(NILOTPAL GOSWAMI)

Patna
The 2 November 2018

Principal Accountant General (Audit), Bihar

Countersigned



(RAJIV MEHRISHI)

New Delhi
The 12 November 2018

Comptroller and Auditor General of India

