

CHAPTER XI : MINISTRY OF HUMAN RESOURCE DEVELOPMENT

Satyawati College, University of Delhi

11.1 Misrepresentation of facts to the Public Accounts Committee

Ministry of Human Resource Development in their Action Taken Note falsely informed the Public Accounts Committee that Satyawati College had recovered ₹ 83.31 lakh overpaid to subscribers as interest on Provident Funds.

Mention was made in Para 9.3 of C&AG's Audit Report No. 18 of 2015 regarding Satyawati College (College), New Delhi (under the University of Delhi) overpaying interest aggregating to ₹ 83.30 lakh for the period 2008 to 2011 against General Provident Fund/Contributory Provident Fund balances of its employees. In response, Ministry of Human Resource Development (MoHRD) in their Action Taken Note (ATN) (May 2017) to the Public Accounts Committee (PAC) stated that Officiating Principal of the College had informed¹ that the amount of ₹ 83.31 lakh² had been recovered from the concerned employees.

Subsequent examination of records by Audit, however, found that the College had recovered ₹ 83.31 lakh from the surplus income arising from investment of the Provident Fund (PF) balances and not from the employees who had received the excess interest. Thus, the PAC was falsely informed that the excess interest had been recovered from the employees.

The College admitted (June 2019) the facts.

The matter was referred to the MoHRD (July 2018); their reply was awaited (December 2019).

11.2 Irregular payment of Service Tax

Educational Institutions made payment of service tax aggregating to ₹ 5.34 crore on outsourced services (housekeeping and security), although these services were exempted from payment of such tax.

Ministry of Finance (Department of Revenue), Government of India exempted certain services provided to or by an educational institution from service tax with effect from 1st July 2012 (Notification No. 25/2012-Service Tax dated

¹ Letter No. SC/ADMN./64/2016 dated 21 December 2016.

² The MoHRD reply, however, did not address the issue of additional interest payable by the employees on the undue interest received by them.

20 June 2012). The notification clarified that exempted services *inter alia* include any services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person. Ministry of Finance further clarified that by virtue of the entry in the negative list, it was clear that all services relating to education are exempt from service tax (Circular No. 172/7/2013-ST dated 19 September 2013). These services also include hostels, construction, housekeeping, security services, canteen etc.

Subsequently, the exemption to the educational institutions other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent was withdrawn by the Government *w.e.f.* 01 April 2017 (Notification No. 10/2017-Service Tax dated 08 March 2017).

Test check of records of the educational institutions under three Ministries³ revealed that 10 Institutes⁴ paid service tax aggregating to ₹ 5.34 crore (**Annexe-11.1**) to service providers during the period July 2012 to March 2017 for availing various services like security and housekeeping, even though it was exempted from payment of service tax on these services under the provisions of aforesaid notification. Thus, payment of service tax of ₹ 5.34 crore by these institutions on exempted services was irregular.

The matter of irregular payments of service tax by these Institutes were reported to the Ministry of Health and Family Welfare (MHFW), Ministry of Ayush and Ministry of Human Resource Development (MoHRD) and to concerned institutes in May 2019.

NIHFW stated in May 2019 that refund of service tax cannot be obtained as the time limit for claim has already lapsed. MHFW further stated (December 2019) that at the request of NIHFW service tax of ₹ 12.71 lakh has been refunded by one of the outsourced agency.

MoHRD stated (December 2019) that NIT Hamirpur, NIT Jalandhar and MANIT Bhopal took up the matter of refund of service tax with the Service Tax Department after a gap of more than one year from the date of payment of

³ Ministry of Human Resource Development, Ministry of Health & Family Welfare and Ministry of Ayush.

⁴ i) National Institute of Technology, Hamirpur, ii) National Institute of Technology, Kurukshetra, iii) Dr. B.R. Ambedkar National Institute of Technology, Jalandhar, iv) Maulana Azad National Institute of Technology (MANIT) Bhopal, v) National Institute of Siddha, Chennai, vi) Central University of Tamil Nadu, Thiruvavur, vii) National Institute of Health & Family Welfare (NIHFW), New Delhi, viii) Central Institute of Indian Languages, Mysore, ix) Indian Institute of Science, Bengaluru and x) National Institute Of Technology Karnataka Surathkal.

service tax and as such it became time barred as per Section 83 of the Finance Act 1994. MoHRD further stated that NIT Surathkal, paid service tax due to non-availability of clear cut clarification/instruction in the June 2012 Notification. However, after the amendment, the Institute informed the contractor not to charge service tax in their bills. Accordingly, the amount of service tax paid from November 2014 to December 2014 was refunded by the service provider. Tax amount of July 2014 to October 2014 could not be recovered as the same was remitted to the Service Tax Department by the contractor.

The reply of the MoHRD in respect of NIT Surathkal is not tenable because mere clarification on a law/rules cannot change the very nature of those law/rules and the exemption from the service tax on auxiliary education services was available to the educational institutions since, June 2012.

NIT Kurukshetra stated (June 2019) that the matter was taken up with the Service Tax Department in Ambala and New Delhi for refund of service tax but the claim was rejected being time barred.

National Institute of Siddha stated (May 2019) that it has taken up the matter with concerned department and outcome will be intimated to audit.

Replies from the Ministries in respect of other autonomous bodies were awaited as of December 2019.

Department of Higher Education

11.3 Assessment of internal control on drawing and settling of Abstract Contingent Bills

Failure of internal controls led to advances drawn on Abstract Contingent Bills to the tune of ₹ 1.86 crore not being settled during the years 2006-07 to 2017-18.

Central Institute of Indian Languages (CIIL), Mysore (a Central Government Institution) had to draw advances of government money raising contingent bills which need to be settled later as per the extant rules. The internal control mechanism for regulating the grant and the settlement of such advances is as follows:

- (a) Head of the Office may sanction advances⁵ to a Government servant for purchase of goods or services or any other special purpose needed for the management of the office. It is essential to ensure utilisation of such

⁵ GFR 2005, Rule 292 (10 (i) & (iv)).

funds for the specific purpose within the stipulated period, but not later than 31 March of the financial year.

- (b) The adjustment bill⁶, along with balance if any, shall be submitted by the government servant within fifteen days of the drawal of advance, failing which the advance or balance shall be recovered from his next salary(ies).
- (c) The timely adjustments of the advances drawn against contingent bills are to be monitored through Form GAR 30 which has to be maintained by the office. The Head of the Office shall be responsible for timely recovery or adjustment of the advance.
- (d) Head of Office⁷ has to ascertain and assess Government dues payable by a Government servant due for retirement. Further, any amount outstanding till the date of retirement of the Government servant, shall be adjusted against the amount payable to him.
- (e) Steps should be taken to ascertain or assess the outstanding dues⁸ when the processing of pension papers is taken up two years prior to date of retirement.

As part of external Audit, successive Inspection Reports had pointed out that these controls are not being achieved and contingent bills are not settled for long period (**Annexe 11.2**).

Audit scrutiny of the relevant records (February 2017, November 2017) also revealed that the following bills forming part of such unsettled advances for the period 2006-07 to 2017-18 were in respect of the officials who have retired/died. These bills are therefore doubtful of recovery. Details are given in **Table No. 1**.

Table No. 1: Details of delay in submission of AC bills

(Amount in ₹)

Year	No of AC Bills drawn	Amount of Advance	Bills submitted/cleared	Amount Cleared	Bills pending	Amount pending	Period of pendency
2006-07 to 2007-08	14	1000000	2	150000	12	850000	>10 years
2008-09 to 2013-14	279	24030476	151	14871476	128	9159000	> 5 years

⁶ GFR 2005, Rule 292.

⁷ CCS Pension Rules, Rule 71.

⁸ Government of India decision (2) under Rule 64 of CCS Pension Rules.

2014-15	134	8540734	122	7703734	12	837000	> 4 years
2015-16	165	20196578	120	13188428	45	7008150	>3years
2016-17	80	12239606	78	12064606	2	175000	>2 year
2017-18	71	11530533	69	10985533	2	545000	>1year
Total	743	77537927	542	58963777	201	18574150	

The CIIL admitted that there are inefficiencies in financial regulatory measures as untrained staff was deployed in the absence of trained staff.

Ministry may institute a mechanism for monitoring of the timely adjustment of AC bills and further, other advances are not granted till the settlement of previous bill.

The reply of ministry is still awaited as of December 2019.

11.4 Recovery/Adjustment of Advances from M/s EdCIL ₹ 4.32 crore

Atal Bihari Vajpayee Indian Institute of Information Technology and Management advanced a sum of ₹ 4.32 crore to M/s EdCIL and failed to recover ₹ 3.98 crore.

(A) CPWD works manual provides that mobilisation advance can be given in respect of specialized and capital-intensive works. As per rule 31.6 of the manual,

- i. Mobilisation advance should be limited to 10 *per cent* of tendered amount at 10 *per cent* simple interest and sanctioned on specific request by the contractors as per term of the contract.
- ii. The advance should be released in not less than two instalments.
- iii. Mobilisation advance shall be released only after obtaining a bank guarantee bond to cover the amount released and the period till recovery of the advance.
- iv. The recovery should be commenced after 10 *per cent* of work is completed and the entire amount together with interest shall be recovered by the time 80 *per cent* of the work is completed.

Atal Bihari Vajpayee-Indian Institute of Information Technology and Management (Institute), Gwalior (M.P.) engaged the Educational Consultant India Ltd. (EdCIL), New Delhi, (a Government of India Enterprises) as project

management consultant (PMC) to provide professional services for phase II construction works⁹ vide an Agreement (October 2003) which *inter-alia* provided the following:

- (i) Institute shall give mobilisation advance (MA) to the extent of 20 *per cent* of the initial project cost/budget cost to PMC vide Para 5.2.1, and
- (ii) MA will be adjusted against payment of construction agency's bill @ 10 *per cent* of the value of each Running Account Bill and the balance amount will be adjusted fully in the final bill of the construction agency vide Para 5.2.5.

Accordingly, Institute paid ₹ 4.32 crore¹⁰ (20 *per cent* of estimated project cost ₹ 21.60 crore) to PMC as MA. Subsequently, after the ascertainment of tender cost at ₹ 16.88 crore (February 2005) the amount of MA was revised as ₹ 3.38 crore (20 *per cent* of ₹ 16.88 crore) and hence, the excess of MA ₹ 94.00 lakh (₹ 4.32 crore - ₹ 3.38 crore) was recovered from R.A. Bills of the PMC.

The recovery of MA was made from RA Bills of the contractor with 10 *per cent* simple interest. Out of ₹ 3.38 crore, the adjustment of ₹ 2.17 crore (including interest) was made till March 2012, no recovery was made thereafter. The interest on unadjusted MA increased and remaining amount of MA ₹ 3.98 crore¹¹ (including interest) was unadjusted till March 2019. The work is stated to be completed and the buildings occupied but the final RA bill/closure of the works is still awaited.

Audit noted that the agreement with EdCIL for payment of mobilisation advance was in contravention of extant CPWD rules as under:

- i. MA has to be awarded to a body or person executing works of a specialized and capital-intensive nature. A project consultant is not required to mobilise materials and machinery for the execution of the work.
- ii. The limit of 10 *per cent* to be paid as mobilisation advance was not followed and 20 *per cent* of the tendered amount was paid.
- iii. No Bank guarantee was taken for the amount of mobilisation advance disbursed.

⁹ Construction of 2nd and 3rd Boys hostel, construction of staff quarters and guest house.

¹⁰ ₹ One crore in December 2003 and ₹ 3.32 crore in October 2004.

¹¹ ₹ 3.98 crore = Principle MA ₹ 1.43 crore + interest ₹ 2.55 crore

- iv. Recovery was also at variance with the extant Rules. Also the recovery of 10 *per cent* per RA bill would result in recovery of only 10 *per cent* of the tender amount and the balance 10 *per cent* of the MA would remain at the end of the work and the modalities for this recovery without any payments to the contractor except adjustments is not clear .

Institute replied (October 2018) that MA was given to PMC as per terms of the Agreement, and CPWD norms were not applicable. Regarding un-adjusted amount Institute stated that matter has been taken up with M/s EdCIL.

Reply is not tenable because (i) mobilisation advance is an advance paid to the contractor in order to mobilise his resources for starting the work, and PMC had no such requirement therefore MA was not payable, (ii) Contract terms were not clear regarding recovery of balance 10 *per cent* and action for adjustment/refund was taken only after being pointed out by Audit (2015) but no refund/recovery has been made till date, (iii) Para 2.2.8 of the Agreement mentioned that documentation for scope of work will be in accordance with CPWD norms. CPWA code is applicable to all the bodies functioning under the aegis of Government of India unless alternatively specified.

Hence, undue favour was extended to the PMC by execution of faulty agreement in violation of CPWD norms and recovery of ₹ 3.98 crore including interest was pending from M/s EdCIL as on 31 March 2019.

(B) Institute executed another contract with M/s EdCIL (India) Ltd. (04 September 2012) in r/o consultancy for procurement of equipment/items¹² required by the Institute for three years (till 31 March 2015). Audit noted that ₹ 1.23 crore was paid as advance despite absence of any such clause for payment of advance in the agreement. Till the end of the contract ₹ 1.80 crore (including an amount of ₹ 1.23 crore as advance) was released to the consultant and only ₹ 1.46 crore was adjusted during this period against actual procurement. Hence, the remaining amount of ₹ 33.69 lakh was pending for adjustment since March 2015 (closure of agreement).

Institute replied (July 2019) that EdCIL has been requested to refund the balance amount of ₹ 33.69 lakh.

¹² Air conditioners, Conference tables, chairs etc.

The fact remains that Institute took no action for refund of the unadjusted amount and took up the matter only after being pointed out by audit (July 2019) and the refund has still not been done.

A and **B** above show that Institute gave undue benefit to M/s EdCIL without safeguarding Institute's financial interests, resulting in pending recovery of ₹ 3.98 crore and ₹ 0.34 crore respectively as on March 2019.

Write off cases

Rule 12 of GFR 2005 states that 'amounts due to Government shall not be left outstanding without sufficient reasons. Where such amounts appear to be irrecoverable, the orders of the competent authority shall be obtained for their adjustment'. Further, Para 16(5) of the First Statute of the Institute (December 2016) *inter alia*, prescribes that Director may write off the irrecoverable losses on the recommendation of the Standing Committee appointed by the Board for such purpose, subject to such financial limit as may be specified by the Board.

An amount of ₹ 23.64 lakh (₹ 19.85 lakh + ₹ 3.79 lakh) which was recoverable in two different cases as detailed below had been shown as outstanding for recovery in the accounts of the years 2009-10 to 2014-15. However, this amount was irregularly adjusted in the annual accounts for the year 2015-16, without obtaining orders for write off from the competent authority:

(i) Institute was required to impart skill development training to teachers under Staff Development Programme (SDP) scheme of All India Council for Technical Education (AICTE). Out of ₹ 23.79 lakh expenditure incurred by the Institute on account of trainings imparted during July 2008 to December 2009, an amount of ₹ 19.85 lakh was outstanding to be reimbursed by AICTE which was being shown as recoverable in annual accounts from 2009-10 to 2014-15.

(ii) Out of the advance of ₹ 1.56 crore given to Education and Research Networking (ERNET) India, New Delhi (May 2006 and May 2007) for setting up of Campus Wide Network in the Institute, the expenditure of ₹ 1.52 crore was made by ERNET. The remaining amount of ₹ 3.79 lakh was being shown as recoverable in the annual accounts from the ERNET from 2010-11 to 2014-2015.

Institute replied (March 2019) that the adjustment of ₹ 23.64 lakh was made in accordance with the approval of appropriate authority. The adjustment entries

were made in the accounts of the Institute and accordingly incorporated in the Annual Accounts, which were duly verified by the Chartered Accountant and approved by BoG (11 July 2016).

Reply is not tenable because specific approval of BoG was not taken for the write-off and approval of Annual Accounts cannot be treated as approval of write-off.

The above was reported to the Ministry in November 2018 and May 2019. Reply was awaited till date (December 2019).