

CHAPTER III

COMPLIANCE AUDIT PARAGRAPHS

PUBLIC WORKS DEPARTMENT

**3.1 Fraudulent payment to contractors through submission of original and duplicate copies of invoices in support of purchase of bitumen for different works**

**Non-exercise of caution and checks by departmental officials enabled contractors to defraud the Department of ₹30.65 lakh by submitting multiple copies of the same invoices in support of purchase of bitumen for different works.**

The quantity of bitumen required for a road work is worked out on the basis of the estimated quantity of bituminous items required to be executed. According to the instructions issued by Chief Engineer (Admin & NH) in circular dated 22 October 2003, which also form part of the agreement conditions<sup>1</sup>, the requisition for purchase of bitumen should be placed to the Bharat Petroleum Corporation Limited (BPCL) through the Executive Engineer (EE) of the Division concerned. The EE should issue a letter to the BPCL comprising details like name of the work, the contractor and agreement number of the work, for supply of the required quantity of bitumen. The contractor would then procure the bitumen by paying its cost and BPCL would issue invoices in the name of the EE.

The Public Works Department (PWD) adopted the Central PWD Schedule of Rates and the Ministry of Road Transport & Highways (MoRTH) Specifications in the State with effect from 01 October 2013<sup>2</sup>. The MoRTH, in January 2015 instructed<sup>3</sup> the Chief Engineer, National Highways to ensure that copies of the invoices for purchase of materials are enclosed with the running/final bill of works in proof of procurement of the required quantity/grade of materials, and that a clause to this effect should be included in the contract agreement. The instruction was not adopted by PWD Roads Wing and a clause to this effect was not added in the contract agreement.

Audit test checked the accounts and registers relating to 2018-19 and 2019-20 in respect of seven out of 16 Roads Divisions of PWD. Out of the 6,922 works, audit scrutinised 442 works with total Agreed Probable Amount of Contract (PAC) of ₹1,762.11 crore and found the following irregularities in respect of five works under three Divisions as detailed below:-

<sup>1</sup> Para 12 of Agreement conditions.

<sup>2</sup> GO(P) 36/2013/PWD dated 17/04/2013.

<sup>3</sup> Letter No.RW/TRI/ Tech/Misc/3/2008 dated 15/01/2015 of MoRTH.

The Superintending Engineer, PWD (Roads & Bridges), North circle, Kozhikode awarded (11 May 2017) a work<sup>4</sup> to a contractor<sup>5</sup> under PWD Roads Division, Kannur at an agreed PAC of ₹5.92 crore. The items of the work included in the contract were of MoRTH Specifications. The bitumen required for the work was to be procured by the contractor. The contractor submitted 31 original invoices to the EE, PWD Roads Division, Kannur, in support of procurement of 463.19 Metric Ton (MT) of bitumen VG<sup>6</sup>-30/NRMB<sup>7</sup> for the work. Audit scrutiny revealed that four of the invoices produced (in the original) in support of purchase of 59.79 MT of bitumen, belonged to another road work<sup>8</sup> executed by the same contractor under another division viz. Roads Division, Wayanad as shown in the table below:

**Table 3.1 Details of bitumen purchased and work for which invoice submitted**

| Sl. No. | Invoice No. and date        | Grade of bitumen | Quantity purchased (in MT) | Cost (₹)         | Work for which bitumen was purchased   | Work to which the original invoice was submitted  |
|---------|-----------------------------|------------------|----------------------------|------------------|--|---|
| 1       | 6300007585 dated 22/04/2017 | NRMB (bulk)      | 15.04                      | 4,68,543         | Thavinjal-Valad-Kunjome road, km 0/000 to 8/300, under Roads Division, Wayand<br><b>(Copy of the invoices submitted)</b> | Airport road - Providing Dense Bituminous Macadam to Thalassery-Irikkur road from km 3/300 to 15/000 under Roads Division, Kannur |
| 2       | 6300007589 dated 22/04/2017 | NRMB (bulk)      | 14.89                      | 4,63,870         |  |   |
| 3       | 6300019349 dated 22/05/2017 | VG-30 (bulk)     | 14.93                      | 4,55,287         |  |   |
| 4       | 6300019486 dated 23/05/2017 | VG-30 (bulk)     | 14.93                      | 4,55,287         |  |   |
|         |                             |                  | <b>59.79</b>               | <b>18,42,987</b> |  |   |

Audit noticed that the agreement executed for the work under Roads Division, Kannur did not contain provision for departmental supply of material. Further, no material was transferred to the work from any other work/Division.

Verification of records of the PWD Roads Division, Wayanad, revealed that the contractor had submitted duplicate copies of the same four invoices as mentioned above in support of purchase of bitumen made for a road work executed by him under the Division. This indicated that there was underutilisation of 59.79 MT of bitumen in either of the two works (under Roads Divisions Kannur and Wayanad) leading to fraudulent gain of ₹18.43 lakh by the contractor.

Audit also came across duplicate/quintuplicate copies of five invoices worth ₹12.22 lakh submitted by three contractors in support of purchase of bitumen for three road

<sup>4</sup> Airport road-Providing Dense Bituminous Macadam to Thalassery-Irikkur road from 3/300 to 15/000 (Airport work).

<sup>5</sup> Farooque Constructions, Alappuzha.

<sup>6</sup> Viscosity Grade.

<sup>7</sup> Natural Rubber Modified Bitumen.

<sup>8</sup> Thavinjal - Valad - Kunjome road km 0/000 to 8/300 under Roads Division in Wayanad district.

works. It was observed that these invoices pertained to purchase of bitumen for five separate road works. As noticed in the above instances, illegal gain by contractors through submission of the originals of these invoices elsewhere could not be ruled out (**Appendix 3.1**).

The PWD did not adopt the MoRTH instructions (January 2015) regarding submission of copy of invoices along with work bills. It also failed to introduce a fool-proof system for payment of work bills by insisting on the submission of original invoices of bitumen along with the work bills. This system failure along with the lackadaisical approach of the departmental officials who verify the contractors' claims enabled contractors to defraud the Department of ₹30.65 lakh<sup>9</sup>.

The Government replied (February 2020) that an amount of ₹33.62 lakh<sup>10</sup> was recovered from the Contractor's Certificate (CC) 3<sup>rd</sup> and Part bill of another work<sup>11</sup> of the same Contractor<sup>12</sup> under Roads Division, Wayanad. However, on an enquiry with Executive Engineer of Wayanad Road Division, it was stated (December 2020) that the amount deducted from the contractor's bill was kept under Deposit Head and not transferred to Revenue Head.

It was further stated by the Government that to stop the malpractice of submitting duplicate bills for more than one work, the Government was considering a suggestion submitted by the Chief Engineer (Roads) to insist for (i) original invoice from oil companies for admitting the usage of bitumen; and (ii) production of non-payment certificate and transfer order of Executive Engineer of originating division in cases where material is transferred from one division to another.

As this was a test audit in the sampled works in selected road divisions, Department may examine the position in rest of the works to ensure that payments were made on the basis of original invoices to prevent such malpractices.

**Recommendation:** The Department may streamline the system by including enabling clauses in the tender/agreements insisting to invariably furnish original invoices of bitumen along with work bills in all road works involving bituminous items.

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<sup>9</sup> ₹18.43 lakh + ₹12.22lakh = ₹30.65 lakh.

<sup>10</sup> ₹18.43 lakh pointed out by Audit plus further shortage of bitumen worth ₹15.19 lakh detected by the department.

<sup>11</sup> Improvements and providing BM&BC to Nedumpoyil – Mananthavady road chainage km 38/000 to 81/000 (portion from km.50/400 to 81/000 of Thalasseri Bavali road) Balance work.

<sup>12</sup> Farooque Constructions, Alappuzha.

### **3.2 Inadmissible payment made for sinking reinforced cement concrete circular wells for foundations of three bridges**

#### **Revision of estimates by the Department in favour of the contractors resulted in inadmissible payment of ₹1.99 crore in three bridge works**

Conditions No.1 and 2 under the special conditions of contracts in Public Works Department (PWD) stipulate that the rate quoted by the contractor shall be an inclusive one, covering all the operations contemplated in the specification of the work and tender schedule and all incidental works necessary for such operations. The rates quoted for the various items shall be inclusive of tools and plants required for the proper execution of work and all other incidental charges. Separate claims for these will not be entertained under any circumstances.

Section 1216(e) of the Ministry of Road Transport and Highways (MoRTH) specifications for Road and Bridge works stipulates that the contract unit rates for sinking of wells shall cover the cost of labour, tools, equipment and plant and for all operations and other incidentals for sinking of wells including seating.

During the period 2018-19 and 2019-20, the Roads Divisions under Roads and Bridges, North Circle, Kozhikode made final payments amounting to ₹607.33 crore to contractors in respect of 188 bridge works. Audit examined the payments pertaining to 59 works involving ₹397.78 crore and noticed irregularities in three<sup>13</sup> works.

The agreement schedule of the three bridge works included an item of work namely, sinking of Reinforced Cement Concrete (RCC) circular wells of different dimensions<sup>14</sup> **in all classes of soil other than rock** to lines and levels and plumb by scooping out earth from inside and below steining with dredgers or any other appliances for pier/abutment wells **including hire charges, labour charges**, dewatering, casting, vibrating, **removal of obstacles**, dumping the spoil at suitable places with all leads and lifts, incidental expenses etc. complete as per standard specifications and as directed by the departmental officers.

While the execution of the three works was in progress, the Department revised their estimates for an amount of ₹1.99 crore. The contractors completed the works and the Department paid them as per the Revised Estimates.

Audit examined the files relating to the three bridge works and noticed that the additional/extra items included in the revised estimates such as **hire charges of labourer/ equipment, cutting/breaking down of boulders of more than 40 dm<sup>3</sup> and logs of more than 100 dm<sup>3</sup> in size, removal of obstacles and seating of wells** were

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<sup>13</sup> Construction of (1) Pathikkalkadavu bridge connecting Venniyode and Kurumani across Venniyode-Valiyapuzha at Kottathara Panchayat, (2) Chekkikadavu Bridge in Kannur District, and (3) Kariyattukadavu Bridge across Kadalundi River (Balance work).

<sup>14</sup> RCC circular wells of 9.00m external diameter and 6.60m internal diameter for abutment wells and RCC circular wells of 6.50m outer diameter and 4.30m inner diameter for pier well.

already part of the specifications of the work included in the original estimate/agreement schedule, and the **seating of wells** was an incidental item to the sinking of RCC circular well. As such, there was no need to include the same in the revised estimate as additional/extra items of work. Besides the rates quoted by the contractors in the tenders were inclusive of all these operations as well as the incidental items. So, the contractors were bound to carry out the work at their quoted rates. Details of the additional payments made to the contractors on account of the inadmissible items are given in the **Appendix 3.2**.

In the reply, Government stated that the specification for 'Well sinking' excludes boulders of size more than 40 dm<sup>3</sup> and extra payment was payable for cutting and breaking obstacles into small pieces. An explanatory note from the standard data book was quoted in support of this argument. The reply is untenable. The Standard Data Book along with the Schedule of Rates only forms the basis of preparation of Detailed Estimate. The Standard Data Book is neither part of the agreement nor there is a reference to it in the agreement. The original item of work mentioned only "removal of obstacles" in the Detailed Estimate and did not distinguish between boulders below or above 40 dm<sup>3</sup>.

It was also stated in the reply that the payment for actual labour and machineries were to be made on the basis of Daily Labour Reports (DLRs). The reply is not acceptable for the reason that the payment of daily labour through a contractor, instead of by muster roll in the usual way, is objectionable in principle as per Kerala Public Works Account Code. The Code also states that in a case of great emergency<sup>15</sup> it may sometimes be found impossible to employ labour otherwise than through a contractor and when this course is adopted, a report of the number of labourers of each class employed daily (DLR) should be prepared. Further, the department itself had admitted that there were no hard and fast rules available in the department for claiming actuals in well sinking, the procedure being followed is based on DLRs. There were no recorded underlying emergency conditions which warranted payment based on DLRs.

Government also stated that there was no intention at all to insert the words "obstacles below 40 dm<sup>3</sup> in the revised estimate, as the obstacles were actually above 45 dm<sup>3</sup> or 100 dm<sup>3</sup> size<sup>16</sup>. But this claim is not true, as the item of work in the original estimate did not contain these words. In the revised estimate, these words were included under original item of work in order to facilitate an extra for removal of obstacles above 40 dm<sup>3</sup> or 100 dm<sup>3</sup>. Further, there was no pre-measurement or post measurement of the obstacles to prove the size of the boulders and to justify the revision of the estimate. The Government have admitted that no such measurement was feasible since the obstacles were invisible.

Further, the Government claimed that, during the well sinking process, obstacles were met with in both the abutments and six piers. As per the boreholes chart enclosed with

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<sup>15</sup> Great emergent condition like breach of canal, natural calamities like flood, earthquakes, tsunami etc.

<sup>16</sup> Government reply erroneously quoted 45dm<sup>3</sup> instead of 40dm<sup>3</sup>.

the investigation report, eight boreholes were taken and huge boulders were not met with except pebbles. The department argued that the bore hole chart prepared at the time of investigation may not be a true replica of actual happening at site and the result of eight bore holes cannot be considered as the same for entire structure. This is also not tenable since the department itself admitted in the reply relating to Karyattukadavu Bridge, that the presence of obstacles can be noticed on boring, though the size, quantity and nature of work required cannot be assessed.

It was also claimed that the boulders/logs were actually above 45 dm<sup>3</sup>/ 100 dm<sup>3</sup> in size and was got verified by the top officials of department including Chief Technical Examiner (CTE), during their inspection at site. If so, it should have been documented giving complete history of each well and the problem met with during sinking operation as envisaged under MoRTH specification 1208.1. The department admitted that this mandatory document was not maintained. In the absence of this mandatory document, the claim that the boulders/logs were actually above 40 dm<sup>3</sup>/100 dm<sup>3</sup> in size is not acceptable.

Thus, revision of estimates of the three bridge works by the Department in favour of the contractors gave undue benefit to the contractors and resulted in inadmissible payment of ₹1.99 crore.

**Recommendation:** The Department may issue directions making it compulsory that in unforeseen circumstances where boulders above 40 dm<sup>3</sup> or logs above the size of 100 dm<sup>3</sup> have be found, it should be documented giving complete history of each well and the problems met with during the sinking operation as envisaged under MoRTH specification 1208.1. Further, as use of DLRs are objectionable in principle, Government may issue directions that it is used only in emergency conditions and not in routine circumstances as in the above works.

### **3.3 Undue benefit to the contractors due to non-recovery of differential cost of departmental bitumen from them**

**Failure of the Department to recover the differential cost of departmental bitumen from contractors consequent on the decrease in the market price of bitumen resulted in undue benefit of ₹4.36 crore to the contractors**

In Kerala Public Works Department, road works were being tendered and arranged with provisions for supply of bitumen by the department. As per the provisions in the PWD Manual and Code, in the case of works with provision for departmental supply of materials<sup>17</sup>, contractor's profit and tender variation are not allowed on the cost of departmental supplies and the bidders were allowed to quote exclusive of the cost of departmental materials. Further, in all such works, the cost of departmental materials has to be compulsorily recovered from the contractor at the time of payment of his running account bills. The cost of departmental materials to be recovered is calculated

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<sup>17</sup> Departmental supplies included bitumen, steel, cement etc. But from 2012, the system of departmental supplies of materials except bitumen was stopped.

on the basis of Schedule of Rates prevalent at the time of preparation of the Detailed Estimate and shown separately in the Detailed Estimate, Tender Schedules and Agreement Schedules.

In the case of departmental supply of bitumen, Government introduced an alternate system (2003) for large works costing above a limit which was fixed by the Government. In this system, instead of the Department directly purchasing the bitumen from the manufacturer, transporting it to PWD Store and later issuing it to a work, the Department authorised the Contractor to purchase the bitumen from the manufacturer based on the indent issued by the Executive Engineer of the Division, making the payment and then transporting it to the work site. The contractor will be reimbursed the actual cost of the bitumen on furnishing the original invoice. A clause to this effect is included in the Agreement and therefore, the contractor is legally bound to submit the invoice to the Department. As the cost of bitumen purchased and used in the work is totally borne by the Department, it is treated as departmental supply of bitumen. Hence, as per the provision of the PWD Manual and Code, the cost of bitumen is to be recovered from the contractors running account bills. This system was introduced to insulate the contractor's from suffering loss due to increase in the price of bitumen in the market and also to benefit the Department when the price of bitumen decreases in the market.

During the years 2018-19 and 2019-20, the roads divisions<sup>18</sup> under the Roads and Bridges (R&B) North Circle, Kozhikode made payment of ₹2,838.28 crore in respect of 5,191 road works. Of these, Audit examined payment of ₹1,607.08 crore relating to 352 works. It was noticed that the aforementioned process regarding recovery of the cost of bitumen was not correctly followed in 34 works, as detailed below:

- As ascertained by Audit from the purchase invoices produced by the contractors and from the price list of M/s Bharath Petroleum Corporation Ltd., the supplier of bitumen, the market price of bitumen was lesser than the cost of bitumen included in the estimate in all the 34 cases.
- In three works, the office of the Superintending Engineer (R&B), North Circle, Kozhikode committed an error of noting a recovery rate of bitumen (per MT) in the agreement which was lesser than rate included in the respective estimates. The cost of bitumen was recovered from contractors at the rates noted in the agreements. This led to short-recovery of ₹1.91 crore from work bills of contractors (**Appendix 3.3**).
- In 21 works, the Department should have recovered the cost of bitumen from the contractors at estimate rates and reimbursed them the cost of bitumen at purchase rates. Instead, the Department abstained from recovering the cost of departmental supply of bitumen from the contractors and reimbursing the actual cost as per the invoice to them. As the estimate rate of bitumen recoverable from the contractors

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<sup>18</sup> Roads divisions Kasargod, Kannur, Kozhikode, Wayanad, Manjery and Palakkad.

was higher than the purchase rates, the non-recovery of cost of bitumen resulted in loss of ₹2.70 crore to the Government (**Appendix 3.4**).

- In the remaining 10 works, only part of the estimated cost of bitumen was recovered from the contractors by the Department and the reimbursement to the contractors was also limited to that extent. Lapses in the recovery procedure resulted in loss of ₹46.78 lakh to the Government (**Appendix 3.5**)

Thus, lack of diligence on the part of the departmental authorities in the above 34 cases led to undue benefit to the contractors to the tune of ₹4.36 crore.

Government have accepted the objections and agreed to initiate recovery of excess payments made to the contractors.

As this was a test audit in the sampled works in selected divisions and the audit observation is of a nature that may reflect in other works not covered in test audit, the Department may like to internally examine the position in rest of the works with a view to ensure that the provisions prescribed in this regard are followed scrupulously to avoid losses to the Government.

**Recommendation:** Government may issue directions that the cost of bitumen which is a departmental supply shall invariably be deducted from the payment of contractor's bills.

### **3.4 Unfruitful expenditure of ₹18.34 crore on payment of salary to the staff attached to Road Rollers**

**The Department incurred an unfruitful expenditure of ₹18.34 crore during the period 2014-15 to 2018-19 towards the salary of staff attached to 86 road rollers idling in eight PWD divisions.**

The Roads and the National Highway (NH) wings of the Kerala Public Works Department (PWD) attend to the planning, construction and maintenance of all roads including highways coming under the control of the PWD. The Roads wing and the NH wing have 16 and eight Divisions respectively for executing road works.

According to Para 7.3.16 of the Kerala Public Works Account Code, if any plant or machinery which is serviceable is not required for immediate use on any work in any Division, it shall be sold and if any plant is considered unserviceable, it shall be condemned with the sanction of the competent authority. According to Section 309 of the Kerala PWD Manual 2012, the quantum of work handled by the staff may vary from time to time necessitating suitable norms to be fixed so that the staff strength be augmented, reduced or arranged according to requirements. The HR Cell of the PWD is responsible for assessing the staff requirement and for submitting proposals to the Chief Engineer (Administration) for creation/deployment/abolishing of posts. The

Government has to, from time to time, fix the norms based on the suggestions from the Chief Engineer.

Departmental equipment and machinery including Road Rollers were frequently used in road works. However, with the introduction of modern machinery by contractors in road works, there has been a drastic decline in the use of departmental Road rollers. Moreover, the huge expense involved in their repairs made the maintenance of departmental Road Rollers uneconomical, leading to their idling.

The Government identified<sup>19</sup> 140 posts of Roller drivers and 110 posts of Roller cleaners as surplus and abolished (November 2003) 80 posts of drivers and 60 posts of cleaners, but they were allowed to be retained as supernumerary.

As of October 2019 the Department had 26 Roller drivers and 57 Roller cleaners, who were idling in their posts. According to the details furnished, (May 2018) the Department had 187 road rollers, of which 140 were non-functional. The status as of 31 March 2019 is awaited from the Department (March 2020).

Audit examined the records relating to the Road rollers and the salary paid to the roller drivers and cleaners in eight randomly selected Roads/NH Divisions covering the period from 2014-15 to 2018-19 and observed the following:

- Out of 86 road rollers available in the eight selected divisions, 73 were idling for periods ranging from 8 months to 27 years (March 2019). Further, 15 roller drivers and 26 cleaners were retained for maintaining the balance 13 operational road rollers.
- Out of the 73 rollers idling, 47 were beyond repair, but only nine of them were disposed of at a total value of ₹13.21 lakh.
- The average use of the 13 rollers in operation was around six days in a year.
- The Government did not explore the possibility of re-deploying the idling crew, whose basic qualification was ITI (Diesel Mechanic), to other departments such as Technical Education, Industrial Training, Motor Vehicles, Ground Water, etc. in posts requiring similar qualification.
- The Chief Engineer (Admn), PWD submitted several<sup>20</sup> proposals to the Government for re-deployment of the idling Roller drivers and cleaners, including proposals to deploy them as 'Ferry Man' in Local Self Government Department. The Transport Commissioner, Motor Vehicles Department (MVD) also submitted a proposal to deploy these staff as 'Guards' in MVD. But the Government did not take (June 2019) any action in the matter. As a result majority of the drivers and cleaners,

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<sup>19</sup> GO (Rt) No.1078/2003/PWD dated 04/11/2003.

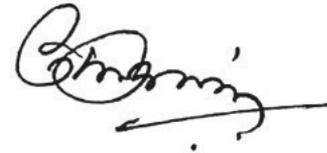
<sup>20</sup> FOn 23/11/2010, 08/11/2016, 20/07/2017 and 31/10/2018.

including those retained in supernumerary posts, remained idle drawing salary till their retirement.

Thus the indecision of the Government in re-deploying the idling staff attached to road rollers in the PW Department resulted in payment of idle salary of ₹18.34 crore to the drivers and cleaners during the period 2014-15 to 2018-19 (**Appendix 3.6**) in the eight Roads Divisions alone. Even though most of the 73 Road rollers are unserviceable, the Department retained them in the eight Divisions. Failure to take timely action to dispose them would result in reduction in their value when they are put to auction.

In response to an audit query CE (Administration), PWD admitted (October 2019) that many of the 26 Roller drivers and 57 Roller cleaners working under the Department were idling without doing any work as majority of the rollers were in condemnation stage.

**Recommendation:** Government may adopt a system for re-deployment of personnel who became supernumerary due to abolishing of posts or restructuring of departments in order to avoid unfruitful expenditure on idle staff retained as supernumerary



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Countersigned



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The 5<sup>th</sup> April 2021

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Comptroller and Auditor General of India