

CHAPTER XVI: MINISTRY OF SURFACE TRANSPORT

16.1 Undue benefit to a toll contractor by Government of West Bengal

Government of West Bengal favoured a toll contractor by reducing the daily deposit of toll charges by 50 per cent for six months, permitting the arrear of Rs 1.99 crore to be deposited in ten equal weekly instalments without interest after one year, waiving of toll deposit of Rs 6.62 lakh, extending the contract unauthorisedly for collection of toll from one to 30 years and revising the formula of calculation of bid money in favour of toll contractor. Besides, it did not take any action for recovery of outstanding dues of Rs 8.17 crore towards toll charges and interest of Rs 1.08 crore and to terminate the contract as per provisions of agreement.

At the instance of the government of India, Ministry of Surface Transport, Government of West Bengal undertook construction of 65 km long six lanes Calcutta-Durgapur-Expressway to serve as link road of National Highway 2. On completion of construction of two lanes of the 48 km stretch of between Palsit end and the intersection with BTC road at Singur, Government of West Bengal with the consent of the Ministry of Surface Transport entered into an agreement with Shri M.R.Mondal in November 1997 for collection of toll for a period of one year from 13 December 1997 on the basis of open bidding.

Terms of agreement

As per the agreement with the contractor, he was to deposit Rs 2.21 lakh daily towards toll charges from 13 December 1997 with the stipulation that the amount equivalent to seven days' collection would be deposited in advance. Failure to deposit the amount equal to seven days' charges was to result in termination of the contract with forfeiture of security deposit, consisting of the amount equivalent to four days' toll charges of Rs 8.83 lakh and encashment of bank guarantee of Rs 50 lakh.

The toll contractor defaulted in depositing the amount as per the agreement. Until 5 January 1998, he deposited only Rs 19.86 lakh against Rs 52.97 lakh due by that date. Yet, the Superintending Engineer, Construction Circle, Durgapur Expressway did not invoke the terms of agreement to cancel the contract and forfeit the security deposit and encash the bank guarantee.

In terms of agreement, toll contractor was to pay Rs 2.21 lakh per day. Seven days collection was to be deposited in advance.

Toll contractor defaulted in depositing the amount of toll collection. Yet SE did not cancel the contract.

Concessions to the contractor granted arbitrarily

On an appeal by the contractor dated 5 January 1998 to the Minister for Public Works Department, the West Bengal Government, with the approval of the Ministers of Public Works and Finance granted the following concessions, among others, to the contractor on 11 March 1998:

Daily deposit of the toll amount of Rs 2.21 lakh per day was reduced to Rs 1.10 lakh for six months without interest liability on arrears.

Arrears of Rs 1.99 crore on account of difference for six months was allowed to be deposited in ten equal weekly instalments, without defining the time.

Toll charges of Rs 6.62 lakh for three days were waived.

Condition to deposit seven days bid money in advance was relaxed in favour of the contractor.

Government of West Bengal revised the formula of bid money in favour of toll contractor.

Government of West Bengal granted extension of the toll collection period to thirty years arbitrary and without approval of the MOST.

- Reduced the toll amount to be deposited by the contractor by about 50 *per cent*, from the contracted amount of Rs 2,20,701 per day to Rs 1,10,000 per day, for the first six months.
- The arrears aggregating Rs 1.99 crore on account of the difference of the revised amount of Rs 1,10,000 per day to be deposited by the toll contractor and the contracted amount of Rs 2,20,701 were to be deposited by him in 10 equal weekly instalments without any interest beginning from the first week of December 1998.
- Waived the toll charges of Rs 6.62 lakh due from the toll contractor for three days from 13 to 15 December 1997 on the basis of his contention that the toll road was closed for three days on 13, 14 and 15 December 1997 due to accident.
- Permitted him to deposit the reduced amount towards toll collection for seven days on the eighth day against the original provision of deposit of seven days' contracted amount in advance. Thus, the toll collector was not only given benefit of interest free deferment of payment of the 50 *per cent* of the contracted amount by six months to one year, but he was given a standing deferment of payment of Rs 7.70 lakh, being seven day's reduced amount of deposit for the first six months and Rs 15.40 lakh, thereafter.
- Revised the original formula in favour of the toll contractor for determining the bid money for daily deposit, upon opening of the remaining 17-Km expressway and consequent revision of toll charges to be levied upon the vehicles. The earlier formula for increase in the bid money by 75 *per cent* of the increase in the daily collection was revised to 60 *per cent* in an arbitrary and non-transparent manner. This provided a benefit of at least Rs 15,600 per day to the contractor, beginning from the day on which the remaining 17 km. of the expressway was to be opened to traffic.

Unauthorised and arbitrary extension of contract period

- More importantly, the Government extended the contract period from one year to an unprecedented 30 years. The examination of the papers in the Public Works Department (Roads) disclosed that the toll collector had not requested for any extension of the period of contract in his original representation dated 5 January 1998 to the Minister in-charge of PWD

(Roads), on which the Minister had recorded a note for the Principal Secretary, “May please see this and if necessary discuss”.

However, the papers available in the Department included another application by the toll collector on the same date, which included a request for extension of the period of contract for toll collection for 40 years. The second application dated the same day as the first one, did not contain any initials of the Minister or any departmental stamp or initial of any officer in token of its receipt. Thus, the documents available with the Department failed to establish that this second application was actually received by the Minister/Department on the same date.

Infringement of rules, procedure and propriety

Government of West Bengal violated the established procedure for bidding and gave undue benefit to toll contractor.

The action of the Government of West Bengal was in disregard of the established procedure, vitiated the open bidding procedure for determining the toll contractor and the toll amount, calls into question the propriety of the decision and has favoured the toll contractor with at least Rs 30 lakh by remission of toll collection and interest-free deferment of the liability for payment of interest at the expense of the public exchequer, besides an unspecified amount of benefit by way of change of formula for determining the bid money and future increase in the volume of traffic and non-recovery of dues as under:

Unauthorised extension of period of contract

Government of West Bengal extended the period of contract without approval of MOST.

- The Government of West Bengal was not authorised to extend the period of contract. Yet it did not obtain prior approval of MOST for extension of the toll collection period to 30 years nor for remission of three days’ toll collection charges.
- The Government of West Bengal accepted the contention of the toll contractor about disruption of the traffic due to accident, without verifying the facts independently in a transparent manner and waived Rs 6.62 lakh.
- By reducing the amount to be deposited to half of the bid money for the first six months and allowing the contractor to deposit the difference aggregating Rs 1.99 crore without interest in ten weekly instalments, one year after the commencement of the contract provided an interest benefit of Rs 23.79 lakh to the contractor at the maximum borrowing rate of 14 *per cent*. The Government left the time of payment of arrears for the first six months of the agreement due to reduction in the daily deposits open ended without any time schedule. It defined the time period for deposit of arrears as late as December 1998 i.e. more than one year after the commencement of contract.
- There was no justification for change of the original condition of advance payment of seven day’s bid money on the eighth day,

Arbitrary deferment of toll charges gave an interest benefit of Rs 23.79 lakh to the contractor.

particularly when the bidders in the open tender had quoted their rates keeping the prescribed conditions in view.

Most of the contentions of the contractor were accepted without verification.

The post bid concessions to the successful bidder vitiated the bidding process.

Traffic census by the Government had established adequate toll collection by the contractor.

Despite continuous default with outstanding of over Rs 8.17 crore, the Government did not terminate the contract.

In the light of extension of period of contract to 30 years, the contractor obtained injunction against call for fresh bids.

- The extension of the contract period for 30 years bound the Government to the same toll contractor, without a chance for open competition attracting better returns on the basis of increased volume of traffic.
- The impropriety of the decision was apparent from the fact that the Government did not carry out any independent verification of the claims of the contractor and accepted whatever the contractor contended without transparent examination/verification. The government issued three amendments to original agreement accepting almost all demands of the toll contractor.
- Apart from causing financial loss to the Government and favour to the contractor, the action of the Government vitiated the tendering process, since most of the terms and conditions of the tender documents, based on which the bidders had offered their rates were changed to the advantage of the successful bidder, after his selection.
- Government of West Bengal, while reducing the amount to be deposited by the contractor due to financial hardship to him ignored the basic fact that at the same time he had requested for extension of the contract period from one to 40 years. A contractor, who was actually suffering loss, could not be expected to be asking for extension in the same breadth.
- As per traffic census conducted by department between June and July 1998, the daily collection towards toll charges was Rs 2.63 lakh. Thus, there was no ground to reduce the daily collection to half for the first six months.

Failure to terminate the contract despite continuous default in deposits

Despite various concessions, the contractor continued to default in depositing the amounts due towards toll charges. The outstanding dues towards toll charges had increased to Rs 8.17 crore including the amount of arrear of Rs 1.99 crore for the first six months due to lowering of the amount of daily deposit as of September 1999. The interest leviable at 14 *per cent* for defaulted payment worked out to Rs 1.08 crore. The Government of West Bengal did not take any penal action either to recover the outstanding dues against the defaulting toll collector or to terminate the contract with forfeiture of security in terms of the agreement.

Injunction obtained by contractor against fresh bid

MOST asked the State Government in March 1998 to refrain from entering into any long-term contract and asked them to invite fresh bids for toll collection after the original one-year period of the contract with the existing toll contractor expired. But citing the state Government's order of March

1998, extending the period of contract to 30 years, the contractor obtained injunction of the Court of Civil Judge, Burdwan in November 1998 against fresh bidding. MOST asked the Government of West Bengal in December 1998 to take steps for immediate vacation of the injunction and reiterated its earlier decision communicated in March 1998 that the State Government should not enter into any long term agreement with any toll agency as constructions of additional two lanes of the express way is to be undertaken and that prior permission of the MOST was necessary before levying/finalising any toll.

Recommendation

The management of the toll contract by the Government of West Bengal after the representation by the contractor seeking various concessions, arbitrary non-transparent grant of concessions, unauthorised extension of the period of toll contract from one to 30 years and failure to take action for termination of the contract in terms of the agreement are suggestive of clear favour to the contractor in various ways. This calls for an investigation by an independent agency to fix accountability. This also throws up the issue of the effectiveness of authority and control of the Ministry of Surface Transport over the State Governments against such arbitrary and irregular decisions infringing the canons of propriety by them, who are only performing agency functions in respect of the National Highways.

The matter was referred to the Ministry in January 2000; their reply was awaited as of February 2000.

16.2 Undue benefit to a contractor

Change of original terms of agreement for dumping of excavated material on road side to a lead of up to one kilometer without transparent reasons by SE, R&B, NH Circle, Hyderabad, resulted in undue benefit of Rs 78.50 lakh to the contractor.

Agreement with contractor envisaged excavation including stacking of excavated material on road side.

SE¹, Roads and Buildings, NH² Circle, Hyderabad entrusted the work of widening of the existing single lane carriageway of Nagpur-Hyderabad section of NH 7 to double lane without strengthening, from Km 256/710 to Km 263/400 to a contractor in July 1997 for Rs 5.73 crore. The agreement envisaged, *inter alia*, excavation of 1,45,981 cubic metres consisting of 68,124 cubic meters of fissured and fractured rock and 77,857 cubic meters of hard rock and stacking of the excavated material on the road side for reuse. The tender conditions, as also the agreement, contained a conclusive presumption that the contractor had satisfied himself as to the nature of work,

¹ Superintending Engineer

² National Highways

local conditions, transport/handling of materials and disposal of spoil etc. and that the Department would bear no responsibility therefor.

Superintending Engineer concluded supplemental agreement for dumping elsewhere the excavated material at extra cost.

During execution, however, the SE concluded in February 1998 a supplemental agreement with the contractor for dumping 1,62,442 cubic metre of the excavated materials, inclusive of additional quantities estimated due to change in classification of soils met with during execution, over a lead of one kilometre at an extra cost of Rs 87.35 lakh, on the ground that stacking was not possible at high embankments in the stretch, situated in steep slopes and passing through reserve forest area. Dumping of 1,60,630 cubic metre had been completed for which Rs 86.37 lakh was paid to the contractor as of October 1999.

This resulted in undue benefit of Rs 78.50 lakh to the contractor.

Neither the Ministry of Surface Transport (MOST), which sanctioned in November 1997 a revised estimate for the work incorporating these changes, nor the Chief Engineer (NH) and the SE (NH), who prepared the revised estimates explained in a transparent manner as to how the original estimate envisaged stacking of material on road side, if suitable dumping area/site was not available. In any case, as per the tender/agreement conditions also, the contractor was deemed to have satisfied himself about suitability of the area and, therefore, the supplemental agreement providing for an additional payment had resulted in extending an undue benefit of atleast Rs 78.50 lakh paid towards lead, excluding the additional quantity, which was not envisaged in the original agreement.

Chief Engineer, MOST stated in December 1999 that the correct levels of the site were taken during execution of work at closer intervals, leading to increase in the earthwork quantities and consequent inadequacy of roadside area for stacking.

The reply is not tenable since stacking should have been possible at least for the quantity of 1,45,981 cubic metres agreed to by both the contractor and the Department in the original agreement itself, prior to the revision.

16.3 Non-recovery of extra cost from defaulting contractor

The Executive Engineer, R&B, NH Division, Gudur, did not recover risk and cost amount of Rs 25 lakh from the defaulting contractor and later incorrectly interpreted a government order to defend his inaction.

The work entrusted to a contractor in June 1995 for Rs 2.25 crore was rescinded in April 1996 at his risk and cost.

Consequent upon the inability of the contractor Shri C.Babu Reddy to start the work of 'Strengthening of weak pavements from Km 200/0 to Km 213/0 of Madras-Vijayawada NH 5, entrusted to him in June 1995 at Rs 2.25 crore,

the Executive Engineer, Roads & Buildings, NH¹ Division, Gudur, rescinded the contract at his risk and cost in April 1996.

The work was awarded to another contractor in December 1996 for Rs 2.53 crore.

The Superintending Engineer, R&B², NH Circle, Nellore, awarded this work to KMC constructions in December 1996 at his lowest bid of Rs 2.53 crore, which was Rs 28 lakh more than the value of the first contract. The work was in progress as of March 1999.

Executive engineer incorrectly interpreted a government order to defend his inaction in not recovering the extra expenditure of Rs 25 lakh from the first contractor.

As per the terms of agreement, the first contractor was liable to pay the extra cost as a result of award of the work to the second contractor at the risk and cost of the former. Yet, the Executive Engineer, R&B, NH Division, Gudur did not recover the extra expenditure of Rs 25 lakh, after adjusting Rs 3 lakh, being the earnest money deposit with the department. Upon being pointed out by Audit, he incorrectly interpreted a government order to defend his inaction.

The Executive Engineer cited in March 1999 a Government of Andhra Pradesh instruction of 1978, in which the Government had exhorted the engineers to ensure that the work to the second contractor should be awarded within six months of recession of contract at the risk and cost of the former, as his reason for not recovering the extra expenditure.

The contention of the Executive Engineer shows a negligent attitude towards public funds, since the Government order was only a direction to the departmental officers to conclude the contract for the balance work within six months and did not even remotely hint at non-recovery of the risk and cost amount, if the second contract was awarded beyond six months from the date of recession of the first contract. It is recommended that the responsibility for non-recovery of the risk and cost amount and pecuniary loss to the government should be established.

The matter was referred to the Ministry in August 1999; their reply was awaited as of December 1999.

16.4 Unauthorised aid to a lessee and loss of revenue

Award of the leasehold rights by Government of Andhra Pradesh for tolls for 1996-98 on three bridges on National Highway 5 to the existing lessee without public auction/in violation of the rules and without following the prescribed procedure resulted in undue financial aid of Rs 23 lakh to the lessee at the cost of the public

Leasehold rights to collect tolls are required to be sold by public auction.

As per A.P.Roads and Bridges Tolls Rules, read with the instructions issued by MOST, the rights to collect tolls on roads or bridges for every year are to be sold through public auction. The collection of toll is to be made at a single point for bridges located within 80 kilometres. The lease hold rights for

¹ National Highway

² Roads and Buildings

collection of toll charges on bridges at mile 48/2 and mile 48/5 of Sullurpet bypass on Chennai-Calcutta road of National Highways 5 for 1994-96 were held by Shri P.Narsimha Reddy at Rs 50.40 lakh.

Chief Engineer (R&B)¹, National Highways, Hyderabad, issued notification on 11 December 1995 for sale of leasehold rights by auction to collect tolls during 1996-98 on the bridges at mile 48/2, mile 48/5 of Sullurpet bypass on Chennai-Calcutta National Highway 5 along with a third bridge at Km 110/6, also on this National Highway, which falls within 80 km of the other two bridges. The scheduled date of public auction was 19 January 1996, which was extended to 31 January 1996. 16 bidders obtained eligibility certificate after paying earnest money of Rupees six lakh each.

Leasehold rights for three bridges were awarded to the present lessee for a further period of two years without public auction.

On a representation by the then lessee, Shri P. Narsimha Reddy to the then Minister for Roads and Buildings to extend the existing lease period for a further period of two years at the lease rent of 1994-96 plus ten *per cent* on the ground that he had suffered heavy losses due to the disturbed conditions, the Chief Engineer (R&B), NH recommended on 27 December 1995 the award of leasehold rights in his favour for 1996-98 at a negotiated price of Rs 85 lakh. On the recommendation of the Chief Engineer (R&B), NH 5 the Government of Andhra Pradesh issued orders on 22 January 1996 in favour of present lessee at Rs 85 lakh without public auction. The public auction scheduled to be held on 31 January 1996 was never held.

Arbitrary decision by Government/CE resulted in loss of Rs 23 lakh to Government.

The amount of loss of revenue that would have occurred due to the action of the Government in awarding the leasehold rights to the then existing lessee for another two years at a nominated price is not determinable due to termination of the auction process. However, one of the 16 bidders, namely Shri N.S.Lakshmi Narayana Setty, who had obtained the eligibility certificate offered Rs 1.08 crore on 24 February 1996, even before the commencement of the lease agreement with the then existing lessee. With reference to this offer, the Government suffered a revenue loss of at least Rs 23 lakh.

The action to confer the leasehold rights to the then existing lessee without public auction was arbitrary and unjustified due to the following:-

- (i) sudden disregard of the prescribed due process and abrupt premature termination of the auction was uncalled for.
- (ii) Representation of the then existing lessee was accepted on the basis of his own statement and no transparent evidence of verification of facts stated by him and analysis of the basis for the decision was available with the Chief Engineer.
- (iii) The recommendation of the Chief Engineer to the Government to award him the leasehold rights at Rs 85 lakh for 1996-98 was non-transparent also on the grounds that no basis existed to conclude that the amount offered by the existing lessee was the maximum that the government could expect.

¹ Roads and Buildings

Mere statement of arithmetical increase of 70 *per cent* over the previous lease amount did not lend any legitimacy to the price recommended by the Chief Engineer for the next lease period.

(iv) The decision of the Chief Engineer and the Government of Andhra Pradesh to accept the contention of the lessee is not convincing, since a contractor, who had claimed to have suffered losses, could not be expected to request continuance of the lease.

(v) Addition of the third bridge to the then existing two bridges for toll collection made it incumbent upon the Chief Engineer to fix the lease price through open bidding.

This calls for investigation into the circumstances under which the prescribed procedure was given a go-by.

The Ministry stated in December 1999 that Shri Lakshmi Narayana Setty had subsequently withdrawn his offer on 4 March 1996. The reply is not tenable since the offer of Shri Setty was mentioned only as an indication about the extent of loss suffered by Government. Further, the reply is silent about how the statutory rules prescribing auction were not followed and why the offer of Shri Setty had not been considered earlier, soon after its receipt.

16.5 Delay in implementation of a project

Lack of adequate planning and co-ordination coupled with failure of the Regional Director, Lighthouses and Lightships to obtain lawful ownership of land resulted in delay in implementation of a project on which Rs 24.53 lakh had been spent.

The existing lighthouse at Puri erected on top of the Circuit House was declared unsafe in December 1991. In September 1992, the Ministry accorded administrative approval and expenditure sanction for Rs 55.50 lakh for construction of a lighthouse at a separate site.

The Regional Director, Lighthouses and Lightships, Calcutta took over possession of land in April 1994 and paid Rs 9.09 lakh to the Puri Municipality. He spent Rs 1.34 lakh between April 1994 and September 1994 on the project.

The Regional Director placed the purchase order in June 1993 for the equipment for the lighthouse, even before start/finalisation of the contract for the construction of the lighthouse tower. The equipment costing Rs 14.10 lakh were received in October 1995. The warranty period of the equipment expired in January 1997.

The Regional Director invited tenders for construction of the lighthouse tower in March 1995. He had to cancel the tenders thrice due to procedural lapses and delays on his part.

The Puri Konark Development Authority conditionally permitted the Regional Director in December 1997 to construct the lighthouse tower pending issue of lease deed and lawful ownership of the land.

The Regional Director engaged in January 1999 two contractors, one for labour and one for material, for the construction of the lighthouse tower. The work commenced in May 1999. However, the lease deed of the land could not be executed due to legal dispute between the Puri Municipal Authority and the Revenue Authority.

Thus, the Regional Director's lack of planning, co-ordination and administrative indecision resulted in delay in implementation of the project on which Rs 24.53 lakh had been spent. The lighthouse continues to be accommodated in the unsafe building for the last eight years. The benefit of warranty coverage for the equipment has already been lost.

The Ministry stated, in November 1999, that the Director General of Lighthouses and Lightships had instituted a disciplinary case against the concerned Regional Director for the delay and the Department of Lighthouses and Lightships was also directed to procure the lighthouse equipment only after commencement of construction works on lighthouse tower henceforth.