

CHAPTER XIX : MINISTRY OF URBAN AFFAIRS AND EMPLOYMENT

19.1 Outstanding licence fee of Rs 4.05 crore from licensees of Janpath Bhawan.

Due to delay in revision of licence fee of shops of Janpath Bhawan by the Directorate of Estate, the licensees got a benefit of Rs 2.93 crore in interest at the cost of public exchequer. Besides Directorate of Estates has not been able to recover Rs 4.05 crore towards revised licence fee from them nor he has been able to cancel the lease due to default in payment of rent.

Directorate of Estate, Ministry of Urban Development revised the licence fee of 29 shops of Janpath Bhawan allotted in 1970, belatedly in August 1998 with retrospective effect from 1 April 1985, 1988, 1991, 1994 and 1997 respectively. On the basis of the retrospective revision of licence fee, Directorate of Estates, issued in September/October 1998 demand notices for Rs 3.87 crore to the 29 licensees. The demand for individual ranged between Rs 9.71 lakh and Rs 21.65 lakh towards arrears of licence fee pertaining to April 1985 to October 1998. The demand for arrears of licence fee from November 1998 to March 1999 of Rs 17.64 lakh has not been made. Thus, the total arrears of licence fee aggregating Rs 4.05 crore besides interest of Rs 24.30 lakh @ 12 per cent per annum for the period September/October 1998 to March 1999 were recoverable from the licensees as of March 1999.

Due to retrospective revision with delay of up to 13 years, the licensees have been benefited by the amount of interest on the overdue amounts for the periods when the licence fee became due and the date of demand of notice. The benefit to the licensees due to retrospective revision towards interest cost at the expense of public exchequer was Rs 2.93 crore as worked out by Audit up to December 1999.

The Ministry stated, in September 1999, that demand-cum-show cause notices had been issued to the licensees in August 1999 for the recovery of dues and cancellation orders of allotment of these shops due to non-payment of arrears of the revised licence fee are being issued. The confirmation of action was awaited as of December 1999.

19.2 Retention of rented premises beyond requirement

Retention of accommodation beyond requirement by Branch Secretariat of the Ministry of Law, Justice and Company Affairs, Calcutta for 12 years resulted in avoidable expenditure of Rs 1.89 crore on rent.

The Estate Manager, Calcutta allotted 7640 sq. ft. accommodation on 18th and 19th floors of Multi Storey Office Building at Nizam Palace in June 1986 to the Joint Secretary, Branch Secretariat, Ministry of Law, Justice and Company Affairs, Calcutta. At that time, his office was accommodated in a rented building at 4, K.S.Roy Road, Calcutta consisting of 8554 sq. ft. The allotment of accommodation in MSO Building Nizam Palace by the Estate Manager to the Branch Secretariat, was subject to the condition that the rented building would be vacated.

The Estate Manager, Calcutta assessed the requirement of accommodation of the Branch Secretariat, Calcutta at 8193 sq. ft. Yet the Joint Secretary, Branch Secretariat, Ministry of Law, Justice and Company Affairs, Calcutta has been holding accommodation of 16194 sq. ft.; 7640 sq. ft. in the MSO Building Nizam Palace and 8554 sq. ft. of lease accommodation at 4, K.S.Roy Road, Calcutta since March 1987.

The Joint Secretary, Branch Secretariat, Ministry of Law, Justice and Company Affairs, Calcutta did not vacate the additional accommodation held by him despite being categorically advised by the Estate Manager to vacate it. The Estate Manager compounded it by renewing the lease agreements for the rented building for five years from 1987, 1992 and 1997 respectively.

The accommodation occupied by the Joint Secretary, Branch Secretariat, Ministry of Law, Justice and Company Affairs, Calcutta in the MSO Building in March 1987 was quite close to the entitlement worked out by the Estate Manager. Thus, almost the entire rent of Rs 1.89 crore paid up to November 1999 was avoidable and infructuous. It calls for fixing responsibility by the Ministries of Law, Justice and Company Affairs and Urban Affairs and Employment. It is recommended that the Ministry should get the premises vacated immediately on which unnecessary expenditure of Rs 1.63 lakh is being incurred every month towards rent.

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

19.3 Failure to deduct income tax at source

Estate Manager, Calcutta failed to deduct income tax at source totalling Rs 1.39 crore from rent bills of Rs 6.95 crore for the period June 1994 to July 1997.

As per Section 194-I of Income Tax Act 1961, inserted with effect from June 1994, any person not being an individual or a Hindu Undivided Family, is to deduct income tax at source at 15/20 *per cent* at the time of payment of rent to an individual or a Hindu Undivided Family/others, if the rent in such case exceeds one hundred and twenty thousand rupees in the financial year.

The Estate Manager, Calcutta made total payment of Rs 6.95 crore towards rent for hired buildings during June 1994 to July 1997, in which the payment of rent during one financial year was rupees one hundred and twenty thousand or more in each case.

Yet, he did not deduct income tax at source aggregating Rs 1.39 crore, on payments made upto July 1997, until pointed out by internal audit in 1997. As per the provisions of Income Tax Act, 1961, any person, who fails to deduct the whole or part of the tax at source is liable to pay by way of penalty, a sum equal to the amount of tax which he failed to deduct.

The Estate Manager stated, in March 1999 that he was not aware of this provision of the Act. The Ministry reiterated the same position in August 1999 and added that out of ten cases pointed out by Audit, verification by the Estate Manager from the copies of income tax returns filed by the landlords during the relevant period in eight cases, shows that the amount paid by the Estate Manager, Calcutta, to them as rental have been taken into account.

However, of the 11 cases pointed out by Audit further examination from the copies of documents relating to payment of income tax by landlords for the financial years 1994-98 furnished by Estate Manager Calcutta revealed that two assesseees had included the rent received from the Estate Manager in their returns of income tax and paid tax. In another two cases the payment of tax on rent received from the Estate Manager were ascertained by him on the basis of certificates furnished by the chartered accountants of the assesseees. In two cases, the rent component received from the Estate Manager could not be verified from the computation of income and in other three cases the verification of tax deducted from the rent received from the Estate Manager could not be verified as the properties rented to the Estate Manager had numerous co-owners. Of the remaining two cases, copies of documents in support of payment of income tax were not made available to Audit.

The Estate Manager's contention that payment of tax subsequently by the landlords was verified is, therefore, not acceptable. More importantly, the payment of tax at a later date by the landlord does not absolve a DDO of his statutory responsibility to deduct tax at source.

19.4 Licence fee and damage charges not realised

Failure of the Estate Manager, Calcutta to effectively pursue eviction cases against unauthorised occupants resulted in Rs 34.37 lakh remaining unrecovered.

The Estate Manager, Calcutta is the 'Administering Officer' for the General Pool accommodation at Calcutta. Under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 he is empowered to obtain information regarding unauthorised occupation, to assess and recover damages and to pass and put into effect the order of eviction. Government servants are allowed to retain Government accommodation on retirement, death, transfer and cessation of service for periods as specified in SR 317-B-11 of 'FRs & SRs'¹ They are prohibited under SR 317-B-20 from subletting such accommodation and/or enjoying double occupation in case of change of residence.

Test check of records for the period 1993-99 revealed that the Estate Manager, Calcutta failed to effectively pursue eviction cases against unauthorised occupants of Government accommodation, which resulted in delay in eviction from two months to 16 years and consequently non-recovery of licence fee/damage rent of Rs 34.37 lakh as of November 1999, as detailed below: -

Ineffective persuasion by Estate Manager and delay in eviction of unauthorised occupants upto 16 years resulted in non recovery of dues of Rs 34.37 lakh.

Category		Sub-category	No. of cases	Maximum and Minimum period of delay in eviction	Amount Outstanding (Rs in lakh)
I.	Unauthorised retention	Retirement Transfer & Others Death	23 3 6	Seven to 170 months 56 to 194 months 13 to 56 months	16.29 4.54 2.19
II.	Subletting		29	Two to 84 months	11.35
Total			61		34.37

Sample check of 32 cases out of above 61 cases disclosed the following: -

The Estate Manager issued show cause notices two to 78 months after cancellation orders. In some cases he issued as many as seven to eight such notices and allowed repeated hearings which continued even upto three years. The gap between the last show cause notice and date of issue of eviction order stretched upto 13 months. In a number of cases, the Estate Manager evicted the occupants 44 to 46 months after issue of the order. The above delay do not take into account the time taken for processing eviction cases, where the allottees had sought legal intervention.

¹ 'Fundamental Rules & Supplementary Rules'

Of the 32 cases sample-checked, in two cases, eviction was effected three to ten months after the cancellation orders; in five cases, which were subjudice, eviction took three to 16 years; one more case is subjudice and eviction has not been effected yet. In the remaining 24 cases, the entire eviction process took between one to ten years to be completed even though there were no court cases.

The long drawn out eviction process and delays at every stage affected the availability of residential accommodation to the wait listed employees besides recovery of damage rent was also not made. In 19 out of 32 cases sample-checked no recovery of damage rent was made while in three cases only, the full amount of damage rent was recovered. In two cases, recovery stopped as the pensioners had expired. In the remaining eight cases recovery is continuing. Out of a total of 32 cases, in one case the Estate Manager sought the collector's help for recovery of the damage rent as arrears of land revenue.

Thus, ineffective monitoring of unauthorised occupation of Government residential accommodation led to denial of that accommodation to the wait-listed employees besides non-recovery of damage rent of Rs 34.37 lakh.

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