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MANAGEMENT OF CONTRACTS

MINISTRY OF URBAN DEVELOPMENT

PUBLIC ACCOUNTS COMMITTEE 1992-93

TENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

FIFTIETH REPORT
UBLIC ACCOUNTS COMMITTEE
(1992-93)

(TENTH LOK SABHA)

MANAGEMENT OF CONTRACTS

MINISTRY OF URBAN DEVELOPMENT

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LOK SABHA SECRETARIAT
NEW DELHI

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CORRIGENDA TO THE 50TH REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (10 LS)

Page	Para	line	For	Read
5	10	7	Postive	Positive
8	22	12 from bottom	recept	receipt
15	46	3	worked	work
16	51	16	inbuild	inbuilt
17	56	4	state	stage
17	56	12	provided	provides
18	56	2	basic	basis
23	67	1	'herefore,	therefore,
23	68	7	defence assistance	defence/assistance
24	71	8	precedural	procedural
39	Sl No.3	26	from	form
40	Sl No.4	17	infructious	infructuous
40	Sl No.5	7 from bottom	intructions	instructions

CONTENTS

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£ Ceased to be members of the Committee consequent upon their appointment as Ministers w.e.f. 18 January, 1993.

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf this Fiftieth Report on Paragraph 14.3 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 1991, No. 6 of 1992, Union Government (Civil) relating to Management of contracts.

2. The Report of the Comptroller and Auditor General of India for the year ended 31 March, 1991, No. 6 of 1992, Union Government (Civil) was laid on the Table of the House on 12 May, 1992.

3. The Committee have been distressed to find that Central Public Works Department have failed to scrupulously observe the prescribed procedure and continue to make serious procedural lapses resulting in decisions of arbitrators going against them. Due to this failure on the part of the concerned officers of the CPWD the 81 arbitration cases which were decided during the years 1984-85 to 1990-91 had gone against the Government resulting in either setting aside of Government claims or leading to additional avoidable payment to the contractors to the tune of about Rs. 84.46 lakhs. The Committee have been further concerned to note that in the 231 number of arbitration cases relating to the three Delhi Zones for the years 1984-85 to 1990-91, the contractors were additionally paid Rs. 154.20 lakhs by the Government on account of procedural lapses. The Committee have taken a very serious note of the lack of seriousness on the part of the CPWD in the management of contracts resulting in huge financial loss to the Department.

4. The Committee have also taken a serious note of the fact that there is no monitoring mechanism in the Department to ensure strict compliance of all the existing provisions and the instructions issued from time to time. The Committee have recommended that concrete steps should be taken by the Department to ensure strict compliance of all existing provisions and instructions and serious note taken of any violation thereof.

5. The Committee have been extremely unhappy to note that inspite of the fact that arbitration awards have invariably been going against the Department, these awards have not been examined specifically from the systems angle with a view to evolving corrective measures. The Committee have found that an order has been issued on 5.1.1993 enjoining upon the Chief engineers to go into the awards in detail and recommend to the Director General (Works) on the issue of fixing responsibility and for taking action against the officers, wherever necessary. The Committee have recommended that these instructions should be strictly adhered to and any deviation should be appropriately dealt with.

6. The Committee have taken note of the fact that with a view to ensure proper departmental defence/assistance in the arbitration cases, the Department of Administrative Reforms and Public Grievances in their Impact Study Report on 'Arbitration Procedure in the CPWD' conducted in January, 1989 had suggested that a separate legal cell should be created in each Zone headed by a Superintending Engineer to exclusively look after the arbitration cases. It was also stated in this Report that no new posts should be created for this cell which should be manned by redeployment of existing staff. The Committee have been constrained to observe that the Special Cell has not been constituted so far inspite of the fact that there is absolutely no mechanism in the Department to look after arbitration cases. The Committee have expressed their strong displeasure over the inaction on the part of the Department in improving the dismal situation relating to management of contracts. The Department have, however assured the Committee that the cell will be created within the existing resources.

7. The Committee (1992-93) examined Audit Paragraph 14.3 at their sitting held on 7 January, 1993. The Committee considered and finalised the report at their sitting held on 22 April, 1993. Minutes of the sittings form Part II* of the Report.

8. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix IV to the Report.

9. The Committee would like to express their thanks to the Officers of the Ministry of Urban Development for the cooperation extended by them in giving information to the Committee.

10. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;
April 26, 1993
Vaisakha 6, 1915*(S)*

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

* Not Printed (One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library).

REPORT

Management of contracts

This Report is based on Paragraph 14.3 of the Comptroller and Auditor General's Report No. 6 of 1992 for the year ended 31 March 1991, Union Government (Civil), which is appended as Appendix I.

Introductory

2. The Audit Paragraph reveals that their scrutiny in 1991 of 81 arbitration cases decided during the years 1984-85 to 1990-91 revealed the following types of procedural lapses by the CPWD resulting in decisions of the arbitrators going against the department in all these cases:

(i) Recovery of compensation and extra expenditure by the department from contractors amounting to Rs. 20.60 lakhs under provisions of clauses 2 & 3 of the contracts were set aside by the arbitrators in 19 cases due to non-issue of timely and proper notices by the department to the contractor, time being not made the essence of the contract and failure on the part of the department to communicate their decision to the contractor for levying compensation for delayed execution of work before the date of completion of work.

(ii) Recoveries amounting to Rs. 6.72 lakhs were set aside by the arbitrators in 32 cases on account of the failure of the department to issue timely notice to the contractors for return of excess material as provided in clause 42 of the contract.

(iii) The arbitrators awarded Rs. 40.26 lakhs to contractors due to failure of the department in handing over complete site, drawings and designs etc. in 27 cases.

(iv) Test check of 38 cases revealed that payments to the contractors were made without careful assessment of standard of work and at rates which were subsequently reduced in the final bills. The action of CPWD in making recoveries in the final bills advancing excess measurements as reasons were disallowed by the arbitrators leading to avoidable payment of Rs. 16.88 lakhs.

3. At present, there are ten Zonal Chief Engineers in the CPWD and in addition, there are a few project teams headed by Chief Engineers. The detailed information about the total number of cases relating to all these zones which were referred to arbitration during the last 5 years was not

readily available with the CPWD. According to the Ministry they have initiated action to collect and compile the requisite information but its completion would take about 6 months' time. However, according to the Ministry out of 19520 contracts executed in three Delhi Zones during the years 1984-85 to 1990-91, 231 number of cases were referred to arbitration. The information about these 231 cases is as follows:—

Zone	No. of cases	Party who have gone for Arbitration		Contractor		Govt.	
		Govt.	Contractor	Claimed	Awarded	Claim	Awarded
I	78	1	77	322.65	16.05	19.40	0.49
II	70	—	70	428.97	85.67	77.39	28.83
III	83	—	83	313.24	52.48	26.48	0.16
	231	1	230	1064.86	154.20	123.37	29.48

Operations of Contracts in CPWD

4. On 14 January, 1982, the then Ministry of Works and Housing had issued instructions to all the Chief Engineers emphasizing the need to ensure strict compliance of the provisions of the CPWD's Manual, Vol. II. It was *inter alia* stated in these instructions as follows:—

> ".....Audit have adversely been commenting, from time to time, on CPWD's officers undertaking" planning and designing of works without availability of sites, calling tenders for works without availability of complete drawings, and undertaking works without technical/administrative sanction of estimates. They have also been pointing out that such lapses are in contravention of the provisions of the CPWD's Manual, Vol. II.
>
> I am, therefore, to request you to ensure strict compliance of the provisions of the CPWD's Manual, Vol. II."

5. However, the 81 cases discussed in the audit para reveals that these instructions have yielded little result in improving management of contracts in CPWD.

6. On being enquired about the steps taken by the Ministry/Department to ensure compliance of the said instructions, the Ministry of Urban Development have stated:

> "The erstwhile Ministry of Works & Housing had amended provisons of CPWD Manual in July 1983, and para 2.2 modified to read as under:
>
> "No normal work should be commenced or liability thereon incurred until administrative approval and expenditure sanction have been accorded, a proper detailed estimate based on essential drawings and preliminary structural and service designs sanctioned and allotment of funds made."

These instructions are generally being followed except in a very few cases because of unavoidable local conditions which are being taken into account by competent authorities before taking appropriate action.

Whenever default comes to notice in respect of procedural lapses in the management of the contracts, such cases are being referred for action from vigilance angle."

7. It is further seen that on 25 August, 1984, Directorate General of Works (CPWD) had issued instructions (copy enclosed at Appendix-II) emphasizing the need for taking timely action in respect of contract where there was delayed performance and where action was required to be taken under clauses 2 and 3 of the contract. The instructions *inter alia* enjoined as follows:

"It is, therefore, enjoined upon all concerned that all decisions relevant to the work/agreement must be taken at the appropriate level and all recoveries due from the contractors under the agreement must be settled before the bills are finalised and under no circumstances amounts should be with held in the final bills on *ad hoc* basis.

In many cases, the action taken under clauses 2 & 3 of the contract is assailed and set aside by the Arbitrators, on the above ground of incompatibility of the decision of the SE in respect of compensation levied much later than the actual date of completion of the date of rescinding of the contract or the passing of final bill, and also on the plea of inadequate notice having been given to the contractor, and further failure of department to discharge reciprocal promises.

Thus, in view of the above, the following steps should be taken by the Divisional Officers, punctiliously:—

(a) Identify delay in the execution of the work at the appropriate stage and issue Regd. A.D. letter under clause 2 of the contract indicating non-fulfilment of the progress of the work on proportionate time lapse basis.

(b) Also indicate, right before the original completion date by Regd. A.D. notice, the delay in the performance of the work, the compensation proposed to be levied and extend the date of performance by a suitable time-limit.

(c) When the extended date of completion also lapses and when the compensation accruing also exceeds 10% of the estimated cost indicated in clause 2, action is ripe for rescinding the contract under clause 3; then the matter should be considered for a decision regarding issue of Rescinding Notice under clauses 2 & 3 of the contract, after specific final show cause notice. The officer who accepted the tender should approve action for recission of the contract.

The above instructions should rigidly be followed."

8. On receipt of the draft audit paragraph in September, 1991, the Director General (Works), CPWD had circulated in October, 1991, a detailed note (Appendix-III) with regard to proper operation of contracts in CPWD to all the offices of the CPWD in order to improve the operation of the contract system and to save time and money on arbitration.

9. The Committee desired to know the monitoring mechanism that existed prior to the issue of guidelines in 1991. The Ministry of Urban Development stated as follows:

> "The duties and responsibilities of Engineer Officers have been laid down in CPWD Code and CPWD Manual II which constituted the mechanism prior to October 1991. The set up of the Chief Technical Examiner for technical examination of the works supported by vigilance examination of doubtful cases by the CE Vigilance have helped in keeping a watch.
>
> Procedures for administration of contracts have been incorporated in the CPWD Manual-II, which is constantly up-dated and the procedures streamlined. The long list of items forming part III of the CPWD Manual, Vol. II, Appendices contains specimen forms of notices to be issued and covers the various aspects of contract management from tenders to arbitration.
>
> The instructions issued in 1991 are by way of reiterating and elaborating the instructions already incorporated in CPWD Manual II, which was last updated in 1988."

10. The Committee further enquired about the mechanism adopted by the CPWD consequent to the issue of guidelines to ensure the operation of the contracts strictly in accordance with these guidelines. The Committee also enquired as to what extent the lapses brought out in the audit paragraph have been contained after October 1991. The Ministry of Urban Development stated as follows:

> "The Circular No. 4/7/91-C.W.Bd. dated 11.10.91 gives very clear guidelines on the operation of clauses 2,3,5 & 42, areas where the arbitrators have awarded against the Deptt. However, reply to other questions is as under:
>
> CPWD Training Institute has commenced courses of training for officers as under:

a) exclusively on 'Contract & Arbitration'

b) general course forming Contract & Arbitration as their part. Total number of officers trained is as under:

1991-92	122
1.4.92 to 8.12.92	73
8.11.92 till date	35

Such courses have been held at Calcutta and Madras and new direct recruits to the Class I Engineering Service CPWD are also inducted into these courses.

The circular issued in October 1991 will have an impact only prospectively in respect of running Contract and Contracts yet to be concluded. It is hoped that training in Contracts and the instructions issued in Octotber 1991 will have postive and preventive effect."

Reyiew of Arbitration awards against the Department

11. Audit Paragraph highlights that the CPWD continues to make serious procedural lapses resulting in decisions of arbitrators going against them. The Committee were informed that when such failures of the department were pointed out by audit in the past, audit had also emphasized the need for brining out a digest of important failures of CPWD pointed out by the arbitrators.

12. On being enquired about the action taken by the Department on the above suggestion, the Ministry of Urban Development have, in their note, stated as follows:—

> "Detailed provisions about tendering, administration of contracts, processing of final bills, arbitration cases, specimen forms of notices to be issued are contained in CPWD Manual Volume II. The CPWD Manual is updated and procedures are streamlined. The Manual had been revised and updated in the year 1988. The long list of items and appendices forming part of the Manual contains specimen forms of notices to be issued. Since the Manual contains various provisions on all aspects of contracts management from tendering to arbitration, no "digest of causes due to which decision of arbitration had gone against the Government" has been prepared. A faithful adherence to the provisions of the Manual will result in much fewer arbitration cases. CPWD had considered the reasons due to which the awards have gone against the department and had issued detailed instructions in October, 1991 in order to improve the operation of the contract system in the Department and to save time and money on arbitration cases."

13. During evidence, the Committee desired to know as to why the Audit suggestion for bringing out a 'digest of important failures of the CPWD due to which arbitration awards had gone against the department' was not accpeted as such a digest would have helped the CPWD in getting a consolidated picture of causes of lapses committed in the past. The representative of the Ministry of Urban Development stated:

> "Sir, we have not really rejected the suggestion although the reply which is given by us gives that impression. In fact, after sending the reply, we have further debated and considered in the Ministry. And we have decided that we will bring out such a Digest."

He further added:

"I would not like to commit about the time frame within which it will be done except saying that we will do it very quickly in shortest possible time. We have realised the value that such a Digest will have and also understood the suggestion. What the Committee now saying is that the Manual will not serve the same purpose. The Digest is made for learning the lessons from the Courts' judgements or the Arbitrators Awards pointing out the lapses. We have accepted them. In a few months' time, we will be able to have this Digest. It will also be necessary to continuously and periodically update these Digests. We will bring out one Edition and thereafter we will think about ways how frequently it will be updated."

14. The Committee enquired whether the Ministry had examined the lacunae involved as to why all the 81 cases discussed in the audit paragraph have gone against the Government. The Director General (Works) CPWD explained as follows:—

"No consolidated study has been made but every case is studied whether there is a need to change the contract clauses."

15. Asked whether the Ministry would examine this aspect, the representative of the Ministry stated as follows:—

"We can make a pointed study on it. I would like to make one submission. When we say all these things have gone against the Government, it does not really mean that the claims of the contractors have been accepted. In these 81 cases the total amount of contract was Rs. 29 crores. The amount claimed was Rs. 4.2 crores against which they got only Rs. 95 lakhs."

16. Explaining the reasons for the awards generally going against the Government, the representative of the Ministry of Urban Development stated during evidence:

".....mostly Government contracts are biased in favour of the Government. Many times conditions are laid down which are not in favour of the contractors and therefore whenever a dispute arises, the Government takes a very conventional view and we release the money only as per the contract conditions whether it is found justified or not, but because it is covered under the contract rules. Whereas, an arbitrator looks at this in his own way. He does not look at it from the point of view of the Government, he looks at it from point of justice, equity and various other things in mind. Therefore, what we found justifiable may not be so for the arbitrator."

17. The witness further elucidated as follows:—

"Either the terms of the contract are not fair and just; in which case it is the duty of the Government to make them fair and just. Or it is the failure on the part of the CPWD and failing in their obligations and that is where the arbitrators decide the cases against the Government."

18. The position has been comprehensively explained by the Department in a post evidence note as follows:—

> "Construction Contracts are contracts of reciprocal performance on a continuous basis. There are responsibilities attaching to both the parties to the contract. The contractor is responsible for providing resources and manpower to execute the contracts. The Department is responsible for giving clear site for work, drawings, timely decisions and stipulated materials. Hindrances do come in the way of both the parties. As per the terms of the contract as exist, which is weighted in favour of the Department, the contractor becomes entitled only to extension of time for hindrances caused by the Department, whereas for any lapses on the part of the contractor, compensation is levied on the contractor. Cases of the latter type are agitated before the arbitrators who interpret the clauses in the light of natural justice and monetary compensation is allowed to the contractor.
>
> A digest is under preparation in the Department bringing out analysis of reasons which result in the decisions of the arbitrators going against the Department. The aim of the digest would be positive and preventive, a guide for proper administration of contractors and prevention of the claims going against the Department.
>
> However uptil now, apart from case by case study of arbitration awards when they come up, the arbitration awards have not been studied pointedly from the systems angle with a view to evolving corrective measures.
>
> Powers have been delegated to the CEs for accepting awards upto Rs. 5 lakhs. DG(W) has full powers. However all cases requiring challenge of award are examined in consultation with the Ministry of Law.
>
> Each arbitration award is examined in detail by the hierarchy of officials right from EE, SE, CE and is subject to legal scrutiny by Counsel who defended the case, Senior Counsel, CPWD, DGW and Ministry of Law."

19. In reply to a question about the number of cases of arbitration awards reviewed in the past with a view to taking remedial steps, the Ministry of Urban Development have stated:—

> "Each and every award is individually examined before they are accepted or a decision taken to challenge it."

20. In reply to another question about the number of officials proceeded against for the lapses as a result of review of arbitration awards, the Ministry of Urban Development have stated:—

> "All the 81 cases referred to in the Audit Para have been got examined and except in one case there is no lapse on the part of the Deptt. officials, An order has been issued on 5.1.93 wherein it is enjoined on GEs to go into the awards in detail and recommend to DGW on the issue of fixing responsibility and for taking action against the officers, wherever necessary."

21. The order 5.1.1993 (referred above) also stipulates that the Chief Engineer will keep statistics of all arbitration cases where awards go against the Department in respect of awards pronounced from 1.1.93 onwards.

Followup of Arbitration cases

22. It is seen from a note prepared by the Director General of Works (CPWD) which was issued in October, 1991 that the study of the arbitration awards conducted by Audit has revealed that in a number of cases the awards are going in favour of the contractors on account of either improper defence of the claims made by the contractors during arbitration or due to improper operation of the various clauses of the contract by the officers incharge of the works during their progress. The Committee accordingly, desired to know the standing mechanism for formulation and follow-up of detailed steps for defence in arbitration cases. In their reply, the Ministry of Urban Development have stated:

> "The contractor has to apply in a standarised form for appointment of arbitrator which will be accompanied by a statement of claims in the manner indicated in the application form.
>
> The Executive Engineer on recept of the application (in duplicate) from the contractor shall send one copy thereof direct to the Chief Engineer with the undernoted information, without waiting for a reference from the Chief Engineer and within 15 days from the date of receipt of contractor's application in his Office.

(a) An attested copy of relevant arbitration clause.

(b) A note regarding verification of the factual data furnished by the contractor in the application form.

(c) Brief comments on each claim of the contractor. While giving such comments, the admissibility of the claims in the light of arbitration clause and Limitation Act, will be kept in view and commented upon.

(d) Statement of counter claims of the departments, if any. However, if counter claims are not readily enlisted or available, comments on contractor's claims should not be delayed. Before sending the case (for appointment of arbitrator or proposals on the arbitration awards) to the Chief Engineer, the Executive Engineer should obtain the approval of the Superintending Engineer and a note to this effect shall be recorded by the Executive Engineer in the forwarding letter. All such correspondence should be through D.O. letter and should be sent through special messengers in same station.

The counter statement of facts should in all cases be got cleared from the Superintending Engineer and Senior Counsel/Junior Counsel by the Executive Engineer through D.O. letters and by keeping watch on such references."

23. As regards the steps taken by the Department from time to time to strengthen the mechanism, the Ministry have stated:

"During the hearings held by the Arbitrator, the case is defended by the Executive Engineer with the help of Senior/Junior counsel or Govt. counsel, wherever required, Executive Engineer can take guidance from the superintending Engineer."

It has been further stated:

".....a study is now being undertaken and as a result thereof the procedural aspects of the existing mechanism would be suitably strengthened."

24. In the course of evidence, the Committee enquired about the mechanism that the Ministry have adopted for ensuring compliance of the instructions issued by the Department in October, 1991 for proper operation of the contracts and arbitration cases in the CPWD. The representative of the Ministry of Urban Development stated:

"In the cadre review proposals, we have proposed a Cell specifically for this purpose which will also help incidentally in updating the Digest and to ensure that the instructions are followed up and also wherever there is a failure to plug the loopholes that should be set right.

This cell will be set up. We have unfortunately not been able to set up the Cell which means the creation of posts which has now been provided in the cadre review proposals which are pending before the Government, as soon as that will be done, we will be having a special Cell....."

25. The Committee referred to Para 6.3 of the Impact Study Report on 'Arbitration Procedure in the CPWD conducted by Deptt. of Administrative Reforms and Public Grievances in January 1989 wherein it was suggested that a separate legal cell may be created in each zone headed by a Superintending Engineer to exclusively look after the arbitration cases. It was also stated that no new posts should be created for this cell which

should be manned by suitable adjustments from among the existing staff. Reacting to Committee's query about the implementation of the said recommendation, the Director General (Works), CPWD stated during evidence:

> ".....Our workload has been increasing year after year. We had brought this point in the Cadre Review proposals. It was approved by the Committee of Secretaries. We are hopeful of getting it through very soon. It was approved in September, 1991."

26. In reply to Committee's question whether the Ministry have come to the conclusion that it was not possible to create the proposed legal cell within the existing staff of 110 Superintending Engineers, the representative of the Ministry of Urban Development stated:

> "We may not have made a study in the sense probably in which the Hon. Member is implying. But we have discussed this point more than once. The idea is not that there will be just one cell; that will not serve any purpose. A Cell will have to be at each zone. We did come to the conclusion that for each zone it was not feasible to earmark an officer only for this work."

27. The witness further elaborated as follows:

> "We did continue to improve things. In the context of the large number of cases, one of the most important things done is to revise the model draft form itself. That would go a long way in reducing the number of arbitration cases and also making it more rational so that injustice is also not done to Government. We are taking steps and we are going to bring out the Digest which would help in guiding the officers much more than mere provisions in the Manual. The Arbitration Cell just cannot function at the Headquarters. It has to be at zonal and regional levels. We will be able to set up that. We will surely deal with it in the review proposals. We will find someway within the existing resources. We are trying all these things and if there are any other things, will be guided by the Committee's directive."

28. Detailed position about the creation of the legal cell since the recommendation was first made in the Impact study report of January, 1989 has been explained by the Department of Urban Development in a post evidence note as follows:—

> "The recommendation in the Impact study report of January, 1989 of DPT was considered. Keeping in view the fact that CPWD has a number of zones and the proposed legal cells to be headed by a SE should include EEs and other officers, it was decided that it will not be possible to have such cells by internal readjustments. The DPT was, therefore, informed on 3rd July, 89 that it was not possible to implement recommendation with regard to creation of legal cell in each zone unless new posts are created for such cells.

A proposal for creation of an independent cell headed by a CE(C) with other officers and staff was prepared. In the meantime, cadre review proposals for Group A Engineering Services of the CPWD were prepared and in the Cadre review proposals it had been proposed that 7 cells one in each proposed region, instead of one in each zone suggested in the Impact Study Report, be created. The cadre review proposals were considered by the DPT and thereafter by the Cadre Review Committee under the chairmanship of the Cabinet Secretary and the proposals were cleared. However, in view of economy instructions, the cadre review proposals have not been processed for obtaining approval of the Cabinet."

29. Referring to another recommendation contained in the Impact Study Report regarding furnishing of monthly statement of pending arbitration cases by Executive Engineer/Superintending Engineer to Chief Engineer, the Committee desired to know during evidence whether that recommendation has been accepted by the Ministry. In his reply, the representative of the Ministry of Urban Development stated that that recommendation had been accepted and the Ministry was implementing the same.

30. Subsequently, the Ministry of Urban Development have further clarified the position in this regard and have in their post evidence note, stated as follows:

"Government accepted the recommendation regarding the Executive Engineer sending a statement of pending arbitration cases to his Superintending Engineer who will send a similar statement to his Chief Engineer. Though the recommendation was for a monthly report Government modified the periodicity to quarterly while taking decision".

31. At the instance of the Committee, the Ministry of Urban Development have furnished a copy each of the quarterly statement furnished by the Superintending Engineer, Delhi central circle III for the quarters ending September, 1992 and December 1992 and by the Superintending Engineer, Delhi Central circle IX for the quarters ending September, 1992. A perusal of these statements reveal a large number of pendency of arbitration cases for considerably longer period especially where—

(i) Counter statement of facts have not been sent;

(ii) Counter statement of facts sent but award not received and;

(iii) Award received but payment not made.

32. According to the Ministry the quarterly reports are being reviewed by the Chief Engineers. This review is stated to be consisting of rectifying the shortcomings and issuing instructions as regards appointment of arbitrators, furnishing counter statement of facts, as to why cases are pending etc.

Appointment of Arbitrators

33. During evidence, the Committee desired to know the procedure adopted by the CPWD for appointment of arbitrators. In his reply, Director General (Works), CPWD stated:

> "There is a panel of arbitrators in the Ministry of Urban Development. The names are told to the Chief Engineers and whenever the contractors applies for arbitration to the Chief Engineer, the Chief Engineer will take into consideration the issues involved and appoint one of the members of the panel as arbitrator."

34. On being asked about the mode of selection of arbitrators, the Director General (works), CPWD stated:

> "The Ministry selects them. They are regular employees."

35. Elaborating further, the representative of Ministry of Urban Development informed the Committee during evidence:

> "I may submit that they are no more serving under the CPWD. They are Ministry's employees on deputation as arbitrators."

36. The Committee referred to Recommendation No. 12 of Study Report on arbitration procedure in CPWD conducted in February 1985 which stated that "the arbitrators in the Ministry of works and Housing should be those having technical background because most of the claims involved are of technical nature. In the MES, all the three standing arbitrators are Engineering officers of the rank of CE." The Committee desired to know whether this recommendation has been implemented by the Ministry of Urban Development. The representative of the Ministry stated during evidence as follows:

> "We have accepted these recommendations recently. We got approval for upgrading the posts of arbitrators to the level of chief Engineers. At present all the three arbitrators are technical officers on deputation from CPWD. We have not got non-technical personnel."

37. In reply to a question about status of the present arbitrators, the representative of the Ministry of Urban Development stated:

> "Presently they are of the rank of superintending Engineer....."

38. Replying to another related question on appointment of arbitrators, the representative of the Ministry of Urban Development stated:

> "I may say that under the new recruitment rules for arbitrators the post will be open to CPWD as well as other categories of Government officers. Presently we have three officers from CPWD....."

Types of cases decided by arbitrators

(a) *Clauses 2 & 3 of the contract*

39. Clause 2 of the contracts provides for compensation to CPWD from the contractors in case of non-completion of work as per schedule. Clause 3 provides for recession of the contract by the department in the event of breach of any one or more of the conditions of contract by the contractors.

40. Audit para reveals that recovery of compensation and extra expenditure by the department from contractors amounting to Rs. 20.60 lakhs under provisions of cluases 2 and 3 of the contracts were set aside by the arbitrators in 19 cases mainly on account of the failure of CPWD to issue timely and proper notices to the contractors, time being not made essence of the contract and breach of contract conditions attributable to the department.

41. According to the Ministry of Urban Development study of 19 cases where awards of the Arbitrators have gone against the Department has revealed that except in 3 cases, in the remaining cases notice had been issued, either under clause 2 or clause 3 or both. It is relevant to note that the Department had claimed about Rs. 18.43 lakhs. The claim of the contractors was about Rs. 2.17 lakhs. The Arbitrators go by their own interpretation in giving their awards and general reasons for the awards going against the Department are indicated below:—

(1) Even in cases where notices have been issued. Arbitrator has taken the stand that Government has not suffered any loss due to delay in execution of works.

(2) There was no material on record to prove loss to the Government owing to the dealy.

(3) Divergence in interpretation of relevant clauses 2 and 3 by the Arbitrator when earlier contracts had been rescinded and awarded to a second or third party.

(4) Interpretation of the undertaking given by the contractor while seeking extention of time that he suffered no loss on account of delay by the Arbitrator as not "out of free will".

(5) It would be seen that except in a few cases the awards have gone against the government due to Arbitrator interpreting clauses in a way which is not strictly in accordance with the terms and conditions of the agreement.

(6) In the cases of non-speaking awards (which are 4 nos. in this category) the rationale behind the awards cannot be precisely indicated. It may also be mentioned that few of the awards have also been challenged in consultation with Ministry of Law and this in itself is proof that the stand of the department was legally in order.

42. On being enquired whether the reasons of not issuing notices in three cases had been examined with a view to fixing responsibility, the

Ministry of Urban Development have stated:

> "In all the three cases no personal responsibility is fixed and no action against departmental officers is called for."

43. The Committee enquired as to when did the Ministry/Department reach the conclusion that the awards had gone against the department on account of the arbitrators interpreting the clauses not strictly in accordance with the terms and conditions of the agreement. In their reply, the Ministry of Urban Development have stated:

> "Under the existing procedure for processing of the Arbitration Awards, the Awards are examined at the levels of E.E., S.E., C.E. and where the awards are beyond the powers of acceptance of C.E. are examined in the Office of the D.G. (Works) by the Senior Counsel, C.P.W.D and Ministry of Law. It was during such intensive examination it was found that even though the contract clauses favoured the Department, the awards went against it due to the Abritrators interpreting the clauses form the point of view of equity and natural justice."

44. As regard the measures taken by the department to avoid terms leading to such interpretation by the arbitrators, the Ministry of Urban Development have stated as follows:

> "The relevant clauses of the contract form have been reviewed to remove area of doubt and ambiguity and to put the relationship between the contracts and the Government on a basis which will provide a proper balance between their mutual rights. However, as one of the parties to the contract is the Govt. the contract forms may still be somewhat weighted in its favour as the contract agreements are operated by various persons in their official capacity while the other party's interest is taken care of personally by the contractor."

45. In reply to the Committee's query whether the above reason advanced by the Ministry for the awards going against the department do not indicate inadequate defence and a perfunctory approach in operation of contracts by the officials of CPWD, the Ministry of Urban Development have stated:

> "The standard clauses of the contract form CPWD 7/8 have the approval of Ministry of Law and do not vary from contract to contract. As already stated above the existing forms are heavily weighted in favour of the Govt. As the awards are based on principles of equity and natural justice, administration of contract strictly as per conditions of the contract cannot be termed as perfunctory approach. Considering the total number of contracts concluded in the Department as a whole and the outlay on these contracts, the number of cases in which arbitration is resorted to and the amounts awarded in favour of the contractor are small and it does not reflect on the quality of defence."

(b) Clause 42 of the contract

46. Clause 42 of the contract provides that in case of materials like cement and steel issued by the Department, quantities of materials shown as used on worked are required to be compared with theoretical consumption. Towards materials issued to contractors in excess of theoretical requirement and not returned by contractor money can be recovered by CPWD. According to the audit paragraph such recoveries amounting to Rs. 6.72 lakhs were set aside by the Arbitrators in 32 cases on account of the failure of CPWD to issue notices in time to contractors for return of excess materials.

47. Explaining the failure of CPWD to issue notices to the contractors for return of excess material, the Ministry of Urban Development have stated as follows:

> "In most of the cases notices for return of excess material had not been issued to the contractors, as in many cases the materials like cement were consumed in the work. The normal procedure adopted in the CPWD has been to assess theoretical consumption of material, after completion of the work and to assess the excess material issued over the theoretical consumption quantity-wise and to recover cost at double the rate for excess materials not return to the Department, according to the terms of contract. It is relevant to mention that though the work load of the three zones covered by the study by the audit runs into about Rs. 300 crores, the claim of the Department in 32 cases is only about Rs. 6.72 lakhs. However the arbitrator while deciding the cases takes the view that excess material drawn has been incorporated in the work and since recovery at single rate has already been made and there has been no loss to the department and consequently disallow the claim of the Department. Since the claim is for recovery at double the rate there had been no loss to Government. It is also mentioned that in 5 cases the awards of the Arbitrator have been challenged after consulting the Ministry of Law".

48. Asked about the preventive steps taken by the department to obviate recurrence of such failures, the Ministry of Urban Development have stated:

> "...It is hoped that with the issue of instructions in October 1991, the Engineers would issue written notices at proper time immediately after the work is completed to the contractor for return of excess material and such cases of recovery of excess material would be properly taken care of".

(c) Failure of the department to take contractual obligations

49. Audit scrutiny has also revealed that in 27 cases, the arbitrators awarded Rs. 40.26 lakhs on such grounds which could have been avoided, had the department taken its contractual obligations seriously on the handing over site of work and supply of drawings, designs etc. in time.

50. As per Ministry of Urban Development the study of the 27 cases has revealed that the contractors have gone for arbitration not only on the ground that in all cases site drawings and complete designs were not made available in time but due to various other reasons also. General reasons for these cases going before the Arbitrator are indicated below:

(a) Non-completion of civil works

(b) Delay in supply of cement, steel, doors, windows, bricks etc.

(c) Delay in making available site

(d) Delay in supply of drawings/designs

(e) Other reasons

General reasons for delay are indicated below:

1. Delay in handing over site is due to encroachments, old structure being in occupation of tenants, vacation of occupied accommodation etc.

2. Delay in supply of drawings is due to changes which become necessary from the point of view of user's requirements, modifications to improve efficiency or aesthetics of the building and shortage of staff.

3. Delay in supply of materials is due to general shortage of the terms of delay in procurement of doors, windows, etc. by other agencies.

51. On being asked about the causes of failures, of CPWD to meet their contractual obligations on the clear handing over of site to the contractors, the representative of the Ministry of Urban Development stated during evidence:

> "It is very important to appreciate the background in which the CPWD works and the circumstances in which they operate. Many times the CPWD works on behalf of other Departments. Then what happens is that when a particular Department says, 'we place so much funds at your disposal, please carry out this work for us' at that point of time the CPWD takes all action and after finalising the plans they will acquire the land. In many cases we find that that particular piece of land is encroached upon or there are some legal hurdles in getting that piece of land and thus the problem goes on and on. So, many times it is beyond the control of the CPWD per se to say that they will be able to complete everything on time, because of these inbuild delays."

52. In reply to a question about the delay in supply of cement etc. to the contractors, the Director General (works) CPWD clarified during evidence:

> "We have a stock of cement and steel and then the work goes on for two years. So, the cement will not be available for all the two years. Shortage of materials is not foreseen and sometimes the shortage does take place because of some external problem."

53. On being asked about the "external problems" faced by the CPWD, the Director General (works), CPWD replied during evidence:

> "Suppose there is a strike. So, the movement by railways is disrupted or some other difficulties will come. If we wait for everything to be cleared before hand and then start work, then it is one proposition. But then under pressure from the client, sometimes by judgement we take steps to start the work. If we delay taking up the work for one year, the escalation costs will be 10 per cent. The total site will not be available at a time. So the total cost of work will go very much high."

54. As regards steps taken to avoid recurrence of lapses of this nature, the Ministry of Urban Development have stated:

> "In para 3.0 of the note circulated by the Deptt. on 11th October, 91 the necessity of making the site available after obtaining approval of the municipal body to the drawings, completion of subsoil investigation has been emphasised. It has been clearly indicated that no contract should be awarded till these are completed and drawings are available and that adequate quantities of department materials to be supplied to the contractor under the contract are also available. With the issue of these comprehensive instructions, lapses of this nature would be avoided."

(d) Excess measurements etc.

55. Audit test check of 33 cases has further revealed that payment to the contractors were made without careful assessment of standard of work and check of measurements.

56. Elaborating this aspect, the Ministry of Urban Development have stated:

> "In the CPWD while works are being executed by the contractors, running payments are released depending on the value of work done after measurement. At the state of clearing running bills the quality of work is generally assessed by the Supervisory Officer who visit the works and inspect them frequently or by officers who are stationed at the work site. The contract executed also provides that all such intermediate payments shall be recorded as payments by way of advance against the final payment only, and not as payments for work actually done and completed.
>
> The format of recording the completion certificate also provided that the quality is subject to certification by the Competent authority. It is, therefore, clear that quality of work is to be finally assessed by the authority which is senior to the engineer in charge of day to day inspection of work. It is quite likely that such an authority may find the work, which had been considered of requisite standard by the authorities releasing the payments through running bills as sub-standard.

The other issue is regarding incorrect measurement of work done by contractors and release of payments on such basic in the running bills. If a mistake has been committed and the same is detected and correction made at a later stage, there should not be any objection to deduct the payments from the final bill so long as the measurements are got accepted by the contractors.

While executing contracts, certain items not provided for in the contract are also required to be got done for which rates are to be determined and sanctioned by the Competent Authority. In such cases also provisional payments are released along with running bills but the rates are to be confirmed by the Competent Authority. In some cases the rates allowed in running bills but reduced subsequently by the Competent Authority are also challenged. The Arbitrators generally have taken the stand that the rates initially allowed in the running bill cannot be reduced in the final bill.

In most of the cases studied by Audit, wherever running payments had been made to the contractors and subsequently adjusted in the final bills, the contractors have preferred to go for arbitration and these have been by and large upheld by the Arbitrators. The Arbitrators have held that the payments made at the stage of the running bill were final. Such an action of the Arbitrator is clearly against the provisions of the contract. There are few cases where there have been discrepancies/errors at the time of measurement and releasing payments of running bills. These aspect have been covered in the guidelines issued on 11th October, 1991".

57. The Committee desired to know as to why the department have not challenged the Arbitrators' award in these cases when the department maintained that these awards were against the provisions of the contract, the Ministry of Urban Development have, in their reply, stated as follows:

"Arbitration awards can be challenged as per provisions of the Arbitration Act in cases where misconduct, as defined therein, could be attributed to the Arbitrator. Decision to challenge the award is taken invariably after consulting the Sr. Counsel CPWD, and Ministry of Law. Generally Courts of Law do not enter into the merits of the claims and counter claims."

58. According to the informations made available to the Committee, examination of the award in one case has revealed lapses on the part of the official for recording wrong measurements. The fact of the case as

reported by the Ministry of Urban Development at the instance of the Committee are reproduced below:—

"The case related to the construction of 144 Type 'A' quarters at Aram Bagh, New Delhi, Agreement No. 3/EE/CD-XII/81-82. The work was awarded at a tendered amount of Rs. 26,62,448/- which was 69.29% above the Estimated Cost of Rs. 15,72,714/-. In the final bill for the work, the quantities of certain items were reduced as compared to those in the pre-final bill. There was minus payment also under certain items to an extent of Rs. 1,48,816/- as compared to previous bill. The Arbitrator Shri J.P. Singhal gave an award on 28.5.1988 in favour of the contractor which included the amount of Rs. 1,48,816/-. The parawise reply is as under:—

(a) (i) An over payment of Rs. 1,48,816/- was made in various R.A. Bills of the work in question. This amount was recovered in the final bill paid to the contractor. the excess over payment had occurred because certain items of work were measured more than once and paid for in the running amount bills.

(ii) This over payment was detected at the stage of preparation of final bill. Precise identification of various items of overpayments was done in August 1990 after detailed investigation of the case by vigilance unit of CPWD.

(iii) A Junior Engineer, Shri x x x x x x has been held responsible to have recorded measurements wrongly. Whether any Asstt. Engineer or Ex-Engineer was involved or not is under investigation.

(iv) The case was referred to Vigilance on 13.2.1989.

(v) The role of Asstt. Engineer is being ascertained. The role of Junior Engineer has been established."

Fixation of Responsibility

59. According to the Department, whenever any default in respect of procedural lapses in the management of contracts comes to their notice, such cases are referred for action from vigilance angle.

60. The Committee enquired as to in how many of the 81 cases discussed in the audit paragraph, the matter was examined with a view to fixing responsibility. The Department stated as follows:

"Out of 81 cases taken up by audit for check in the period 1984-85 to 1990-91, a few more cases were also identified for investigation from Vigilance angle. However, these cases were gone into in detail by Chief Engineers concerned, who have given their considered opinion that Vigilance investigation is not called for."

61. Procedure for administration of contracts in the Central Public Works Department (CPWD) have been incorporated in the CPWD Manual-II,

which is constantly updated. Further, appendices to the Manual contain specimen forms of notices to be issued and covers the various aspects of contract management from tenders to arbitration. Instructions have also been issued from time to time reiterating and elaborating the instructions already incorporated in CPWD Manual II and also emphasising the need for strict observance of the prescribed procedure. The Committee are distressed to find that inspite of all this the Central Public Works Department fail to scrupulously observe the prescribed procedure and continue to make serious procedural lapses which result in decisions of arbitrators going against them. Due to this failure on the part of the concerned officers of the CPWD the 81 arbitration cases discussed in the audit paragraph which were decided during the years 1984-85 to 1990-91 had gone against the Government resulting in either setting aside of Government claims or leading to additional avoidable payment to the contractors to the tune of about Rs. 84.46 lakhs. The Committee are further concerned to note that in the 231 number of arbitration cases relating to the three Delhi Zones for the years 1984-85 to 1990-91, the contractors were additionally paid Rs. 154.20 lakhs by the Government on account of procedural lapses. With a view to know the total quantum of loss to the national exchequer, the Committee had called for similar statistics in respect of the other CPWD Zones but the same have not been readily available with them. It can, however, be obviously inferred that loss to the national exchequer due to the arbitration awards relating to the management of contracts in respect of all the CPWD Zones is definitely manifold. The Committee take a very serious note of the lack of seriousness on the part of the CPWD in the management of contracts resulting in huge financial loss to the Department.

62. The Committee further note that on 14 January, 1982 the Ministry of Works and Housing had issued instructions to all the Chief Engineers *inter-alia* stating therein that audit have adversely been commenting, from time to time, on CPWD's officers undertaking planning and designing of works without availability of sites, calling tenders for works without availability of complete drawings etc. The strict compliance of the necessary provisions of the CPWD Manual was also emphasised in these instructions. Para 2.2 of the CPWD Manual was modified in July, 1983, providing that—

> "No normal work should be commenced or liability thereon incurred until administrative approval and expenditure sanction have been accorded, a proper detailed estimate based on essential drawings and preliminary structural and service designs sanctioned and allotment of funds made."

It is a matter of serious concern that inspite of the existing clear provisions and the specific instructions for the strict compliance of those provisions, in 27 of the 81 cases discussed in the audit paragraph, the arbitrators awarded Rs. 40.26 lakhs to the contractors primarily due to failure of the Department in handing over complete site, drawings and design etc. The

Committee have no doubt that this avoidable extra payment of Rs. 40.26 lakhs to the contractors has resulted due to the failure of the Department in undertaking its contractual obligations seriously.

63. The Audit para further reveals that recovery and extra expenditure by the Department from contractors amounting to Rs. 20.60 lakhs under provisions of clauses 2 and 3 of the contracts were set aside by the arbitrators in 19 cases due to the non-issue of timely and proper notices by the Department to the contractor, time being not made the essence of the contract and failure on the part of the Department to communicate their decision to the contractor for levying compensation for delayed execution of work. The Committee cannot but deprecate these failures on the part of the Department. However, according to the Department, except in three cases, in the remaining cases notices had been issued either under clause 2 or clause 3 or both. The Department have further stated that even in cases where notices have been issued, Arbitrator has taken the stand that the Government has not suffered any loss due to delay in execution of works. Further, according to the Department, except in a few cases the awards have gone against the Government due to arbitrator interpreting clauses in a way which is not strictly in accordance with the terms and conditions of the agreement. It has been stated that the relevant clauses of the contract form have since been reviewed to eliminate areas of doubt and ambiguity and to place the relationship between the contractor and the Government on a basis that is just and equitable from the point of view of both Government and the contractor. The Committee emphasise that necessary action to redefine the clauses of the contract to remove ambiguity should be taken up immediately in consultation with the Ministry of Law.

64. The Committee further note that in 38 of the 81 cases, payments to the contractors were made without careful assessment of standard of work at rates which were subsequently reduced in the final bills. Failure of CPWD to release the payments and its action in making recoveries in the final bills advancing excess measurements as reasons were disallowed by the arbitrators, which led to avoidable payment of Rs. 16.88 lakhs. According to the Department, the Arbitrators have held that the payments made at the stage of the running bills were final and such an action of the Arbitrator is clearly against the provisions of the contract. The Committee emphasize that any ambiguity in the existing clauses of the contract in this behalf should also be immediately removed in consultation with the Ministry of Law. The Committee are distressed to note that as conceded by the Department there are in fact few cases where there have been discrepancies/errors at the time of measurement and releasing payments of running bills. The Committee take a serious view of these discrepancies/errors leading to avoidable infructuous payments to the contractors. The Department have assured that these aspects have been covered in the guidelines issued in October, 1991. The Com-

mittee stress that detection of any discrepancies/errors in measurements in future should invariably be examined with a view to fixing responsibility.

65. The Committee note that procedures for administration of contracts have been incorporated in the CPWD Manual-II. Further, the Department have in a routine manner been issuing instructions from time to time emphasising the need for strict compliance of the instructions. Unfortunately, the arbitration awards have invariably been given against the Department due to serious procedural lapses which undoubtedly proved that these repeated instructions have yielded little result in improving the management of contracts in CPWD. The Committee take a serious note of the fact that there is no monitoring mechanism in the Department to ensure strict compliance of all the existing provisions and the instructions issued from time to time. The Committee also note that instead of taking remedial action to plug the loopholes highlighted in the audit paragraph, the Department on receipt of the draft audit paragraph in September, 1991, chose to simply rest content with the issue of a note with regard to proper operation of contracts in CPWD to all the offices of CPWD in October, 1991. The Committee recommend that concrete steps should be taken by the Department to ensure strict compliance of all existing provisions and instructions and serious note taken of any violation thereof.

66. The Committee are extremely unhappy to note that inspite of the fact that arbitration awards have invariably been going against the Department, these awards have not been examined specifically from the systems angle with a view to evolving corrective measures. Undoubtedly, the Department should have undertaken a pointed study of each and every award as soon as it was pronounced to tackle and avoid procedural lapses in future but by not doing so, the Department have failed to discharge even its basic functions. The Committee find that an order has been issued on 5.1.1993 enjoining upon the Chief Engineers to go into the awards in detail and recommend to the Director General (Works) on the issue of fixing responsibility and for taking action against the officers, wherever necessary. The Committee recommend that these instructions should be strictly adhered to and any deviation should be appropriately dealt with.

67. The Committee have been informed that when the commission of procedural lapses in the CPWD were pointed out by audit in the past, audit had also emphasized the need for bringing out a digest of the important failures of CPWD pointed out by the arbitrators. The Committee are of the view that had this suggestion been heeded by the Department, the inadequacies in the existing procedures could have been plugged and this could have acted as a comprehensive guide for the proper administration of contracts and helped in the prevention of claims going against the Government. This would also facilitate elimination of procedural lapses and strengthen the stand of CPWD. The Committee,

Therefore, recommend that immediate steps to discourage and eliminate the commission of procedural lapses should be taken as soon as the loopholes are detected.

68. The Committee find that study of a number of arbitration awards made by audit has revealed that in many cases the awards have been given in favour of the contractors on account of either improper defence of the claims made by the contractors during arbitration or due to improper operation of the various clauses of the contract by the officers incharge of the work. The Committee note that with a view to ensure proper departmental defence assistance in the arbitration cases, the Department of Administrative Reforms and Public Grievances in their Impact Study Report on 'Arbitration Procedure in the CPWD' conducted in January, 1989 had suggested that a separate legal cell should be created in each Zone headed by a Superintending Engineer to exclusively look after the arbitration cases. It was also stated in this Report that no new posts should be created for this cell which should be manned by redeployment of existing staff. The Committee are constrained to observe that the Special Cell has not been constituted so far inspite of the fact that there is absolutely no machanism in the Department to look after arbitration cases. The Committee feel that if it was difficult to create such a cell in each Zone manned by suitable adjustments from among the existing staff, such a cell could have at least been created at the Head-quarters to start with. The Committee cannot but express their strong displeasure over the inaction on the part of the Department in improving the dismal situation relating to management of contracts. The Department have however assured the Committee that the cell will be created within the existing resources. The Committee would like to be apprised of the concrete steps taken in this regard within a period of three months.

69. The Committee's examination has revealed that continuing commission of serious lapses by the CPWD have invariably been resulting in decision of arbitrators going against them leading to avoidable infructuous expenditure. The Committee would have appreciated if each such case of procedural lapse was seriously examined with a view to fix responsibility but unfortunately that has not been done. The Committee are not convinced with the reply of the Department that whenever any default in respect of procedural lapses in the managment of contracts comes to their notice, such cases are referred for necessary action from the vigilance angle. The laxity of the Department in not seriously examining each of the cases of commission of serious procedural lapses is borne out by the fact that but for one case, the Chief Engineers concerned have been of the opinion that vigilance investigation in other cases is not called for. The Committee cannot but deprecate this casual approach of the Department as a result of which the Department have failed so far to curb the rampant tendency for commission of pro-

cedural lapses. The Committee recommend that in future such lapses should be seriously examined with a view to fix responsibility and taking corrective action.

70. The Committee note that examination of the award in one case has revealed lapses on that part of the official for recording wrong measurements resulting in overpayment of Rs. 1,48,816/-. The overpayment had occurred because certain items of work were measured more than once and paid for in the running bills. The case was referred to vigilance on 13.2.1989 and a Junior Engineer has been held responsible to have recorded measurements wrongly. The Committee are distressed to find that even after four years of referring the case to vigilance the role of the Assistant Engineer is still being ascertained. The Committee are of the considered opinion that such inordinate delays in finalizing the vigilance cases apart from vitiating the administration of timely justice has a demoralising effect on administration. While the Committee would like to know the specific punishment awarded to the Junior Engineer, they would also urge that the investigations into the role of the Assistant Engineer in this case should be expeditiously completed so as to take further action in the matter. The Committee would like to know the concrete action taken in this regard.

71. The preceding paragraphs clearly establish lack of concern and seriousness on the part of Ministry of Urban Development/CPWD to curb the rampant tendency in the CPWD to commit serious procedural lapses resulting in decisions of the arbitrators going against them. The miserable failure of the Ministry/CPWD is clearly borne but by the following:

(i) In 231 arbitration awards relating to the three Delhi Zones, for the period 1984-85 to 1991-92 the contractors were additionally paid Rs. 154.20 lakhs by the Government on account of precedural lapses.

(ii) There is no monitoring mechanism in the Department to ensure the compliance of the existing provisions and the instructions issued from time to time.

(iii) Inability of the Department to bring out a digest of the important failures pointed out by arbitrators.

(iv) Complete absence of pointed study from the systems angle with a view to evolving corrective measures.

(v) Failure to create a special cell as recommended by the Department of Administrative Reforms and Public Grievances.

(vi) Failure to seriously examine individual cases of commission of serious procedural lapses with a view to fixing responsibility.

The Committee take a very serious view of the lack of concerted approach on the part of the Ministry/CPWD to effectively tackle the dismal situation over so many years. This calls for an indepth probe about the situation obtaining in the Department.

The Committee recommend that urgent and effective steps should be taken in pursuance of the various recommendations made in the preceding paragraphs.

NEW DELHI;
April 26, 1993
Vaisakha 6, 1915(S)

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

APPENDIX I

(*Vide* Para 1)

Audit Paragraph 14.3 of the Report of the C & AG of India for the year ended 31 March, 1991 (No. 6 of 1992) Union Govt. (Civil) relating to Management of contracts

The Central Public Works Department (CPWD) is continuing to make serious procedural lapses which result in decisions of arbitrators going against them. When such failures of the department were pointed out in audit in the past, the advantage which a departmental publication containing digest of important failures of CPWD pointed out by the arbitrators can render towards attention to procedural aspects of contractual obligations of CPWD, was also pointed out.

While the Ministry issued Instructions in 1981-82 it was only to direct avoidance of lapses in future. These instructions have yielded little result in improving management of contracts in CPWD. Scrutiny in 1991 of 81 arbitration cases decided during the years 1984-85 to 1990-91 revealed the following:

(i) Clause 2 of the contracts provides for compensation to CPWD from the contractors in case of non-completion of work as per schedule. Clause 3 provides for rescission of the contract by the department in the event of breach of any one or more of the conditions of contract by the contractors. Forfeiture of security deposit and recovery of extra expenditure incurred by the department (over and above the amount of security deposit forfeited) for getting work completed at their risk and cost is also provided for.

Recovery of compensation and extra expenditure by the department from contractors amounting to Rs. 20.60 lakhs under provisions of clauses 2 and 3 of the contracts were set aside by the arbitrators in 19 cases on account of the following failures of CPWD:

— Non-issue of timely and proper notices to the contractors notifying intention of the department to levy compensation for failure to complete the work within contract period.

— Time was not made the essence of the contract.

— Communicating of decision of the department to levy compensation for delayed execution of work after the date of completion of work.

— Reasons for breach of contract conditions which were attributable to the department.

(ii) Clause 42 of the contract provides that in case of materials like cement and steel issued by the department, quantities of materials shown as used on work are required to be compared with theoretical consumption. Towards materials issued to contractors in excess of the theoretical requirement and not returned by contractor, moneys can be recovered by CPWD. Such recoveries amounting to Rs. 6.72 lakhs were set aside by the arbitrators in 32 cases on account of the failure of CPWD to issue notices in time to contractors for return of excess material.

(iii) The contractors claimed damages and compensation due to prolongation of contracts primarily due to failure of the department in handing over complete site, drawings and designs etc. In 27 cases, the arbitrators awarded Rs. 40.26 lakhs on such grounds which could have been avoided, had the department taken its contractual obligations seriously on the handing over site of work and supply of drawings, designs etc., in time.

(iv) Payment to contractor is subject to the execution of work as per prescribed specifications. A test check of 38 cases revealed that payments to the contractors were made without careful assessment of standard of work and at rates which were subsequently reduced in the final bills. Measurements including standard of work once taken and recorded for work done by contractors cannot be altered by CPWD. Failure of CPWD to release the payment and its action in making recoveries in the final bills advancing excess measurements as reasons were disallowed by the arbitrators. Failure of CPWD led to avoidable payment of Rs. 16.88 lakhs.

The matter was referred to the Ministry in September 1991; reply has not been received (November 1991).

APPENDIX II

Government of India
Directorate General of Works
Central Public Works Department

No. CE/CON/789 Dated, New Delhi, the 25-8-84.

MEMORANDUM

SUB:— *Timely action in respect of contracts where there is delayed performance and where action is to be taken under Clause 2 & 3 of the contract.*

It has been impressed time and again that the success of any departmental action against contractors who have been delaying execution of works, would depend largely on the promptness with which the Executive Engineers and the Superintending Engineers take enabling actions in regard to issue of proper Regd./A.D. notices pointing out the slow progress of the work (not being proportionate to time as envisaged in Clause 2), issue of proper Regd./AD notice about the contractor having rendered himself liable for compensation under Clause 2 due to delayed performance, well before the originally stipulated date of completion and also indicating the quantum of compensation proposed to be levied and fixing a revised extended date for completion, issue of Regd./A.D. rescinding notice under Clause 2 & 3 of the contract after the culmination of the extended completion date given to the contractor for final performance, and intimating the contractor Regd./A.D. of the final bill being ready for payment/adjustment.

2. It has been noticed that Executive Engineers are generally very slack in finalising the contractors' account, and even when the same is finalised, it is incomplete in many respects, like non-sanction of extra/substituted items/AHR statements/RR statements, and non-decision on the final compensation for delayed performance, *adhoc* withholding of amounts for test check of Executive Engineer not done, labour reports not received etc.

3. *Vide* Ministry of W&H Memo. No. 21011(27)/69-W4 dated 30.5.72(CE/CON/534 of 29.6.72) it had been made obligatory on the part of the contractor that he should prefer all his claims in respect of the contract within 90 days of the receipt of intimation of final bill being ready for payment. Obviously, the contractor cannot quantify and marshal his claims, unless and until there is finality in the final bill, and deductions are clearly indentified. When compensation for delayed performance is levied under Clause 2 after 1½ to 2 years after the so called passing of the final bill, when EI/SI statements are sanctioned a year or so after the said final bill, the original final bill losses its sanctity as a final bill. Naturally, in such

a situation, the contractor, who prefers his claims much later (sometimes even after two years.), derives the right for the condonation of the 90 days period stipulated in the Agmt., since the 90 days period is vitiated by the final bill being really not final in content or recoveries.

4. Though the Department had been refusing appointment of Arbitrator for adjudication of disputes in some cases, when the contractor goes to the court of law his contention on is uphold and the courts have directed the Department to appoint Arbitrators, and leave it to the arbitrator to decide if the claim is barred by time.

4.1. Thus, the Department is left with a piquant situation in which even though enabling measure of 90 days limitation for the preferring of the claims (with a view to restricting vexatious claims at much belated time) has been incorporated in the agreements, it has become virtually inoperative.

5.1. A number of cases have come to notice where final bills are no doubt paid, but there has been no finality in the true sense in as much as:

(a) extra/substituted items are not finally sanctioned;

(b) A.H.R. statements/R.R. items statements are not approved.

(c) decision in regard to extension of time case and levy of compensation is not taken;

(d) test check not done by the Executive Engineer;

(e) completion certificate by the SE/Senior Architect not recorded;

(f) C.T.E. observations are not finally settled;

(g) want of labour reports and labour clearance certificate etc. etc.

and pending finalisation of decision on all or any of the above items, lumpsum amount is withheld in the final bill.

5.11. It is, therefore, enjoined upon all concerned that all decisions relevant to the work/agreement must be taken at the appropriate level and all recoveries due from the contractors under the agreement must be settled before the bills are finalised and under no circumstances amounts should be withheld in the final bills on *ad hoc* basis.

6. In many cases, the action taken under clause 2&3 of the contract is assailed and set aside by the Arbitrators, on the above ground of incompatibility of the decision of the SE in respect of compensation levied much later than the actual date of completion or the date of rescinding of the contract or the passing of final bill, and also on the plea of inadequate notice having been given to the contractor, and further failure of department to discharge reciprocal promises.

6.1. Thus, in view of the above, the following steps should be taken by the Divisional Officers, punctiliously:—

(a) Indentify delay in the execution of the work at the appropriate

stage and issue Regd. A.D. letter under Clause 2 of the contract indicating non-fulfilment of the progress of the work on proportionate time lapse basis.

(b) Also indicate, right before the original completion date by Regd. A.D. notice, the delay in the performance of the work, the compensation proposed to be levied and extend the date of performance by a suitable time-limit.

(c) When the extended date of completion also lapses and when the compensation accruing also exceeds 10% of the estimated cost indicated in Clause 3, action is ripe fore rescinding the contract under Clause 3; then the matter should be considered for a decision regarding issue of Rescinding Notice Under Clause 2&3 of the contract, after specific final show cause notice. The officer who accepted the tender should approve action for rescission of the contract. The above instructions should rigidly be followed.

sd/-
(G.S. RAO)
DIRECTOR GENERAL OF WORKS

[*Issued from file No.* 10/2/79-*A&C (DGW)*]

APPENDIX III

Directorate General of Works Central Public Works Department

SUBJECT:— *Proper operation of contracts in C.P.W.D.*

A study of a number of arbitraction awards made by the audit has revealed that in a number of cases the awards are going in favour of the contractors on account of either improper defence of the claims made by the contractors during arbitration or due to improper operation of the various clauses of the contract by the officers incharge of the works during their progress.

Some of the common reasons for which the awards have gone against the Department are indicated below. All concerned are requested to ensure that these lapses do not recur in future.

1.0 Recovery under Clause 42 of Forms PWD 7&8:

1.1 Clause 10 of the contract lays down that such materials shall remain the absolute property of Government and the contractor shall be the trustee of the stores/materials. Any such stores/materials remaining unused shall be returned to the Engineer-in-Charge at a place directed by him if by a notice he shall so require. This clause further lays down that in the event of breach of the conditions the contractor shall in addition to throwing himself open to account for criminal breach of trust, be liable to Government for all advantages or profits resulting or which in the usual course would have resulted to him by reason of such breach.

According to clause 42 and Clause 10 the Engineer-in-Charge is supposed to give a written notice to the contractor asking him to return the excess materials drawn by him indicating the place where these should be returned and the time during which it should be done. It is seen that such *notices have not been issued* by the Engineer-in-Charge at proper time immediately after the work is completed, the final measurements, particularly in respect of the items involving the use of departmentally supplied materials, are complete and a statement showing the theoretical requirements of the such materials worked out and got checked for its correctness.

1.2 Instead of stating that the materials have been drawn by the contractor in excess of the requirements, we losely use the terminology that the materials have been consumed in the work. This occasionally had made the arbitrators feel that there had been no theft or pilferage of materials supplied by the department to the contractor and since the same has gone into the work the recovery for the materials consumed in excess of the theoretical requirements need not be made at penal rates. Hence we

should categorically *avoid using the terminology of excess consumption* but should always ensure that we *state the fact of excess drawal of materials* by the contractor under Clasue 10 of the contract.

1.3 Normally out of the materials supplied by the department except cement other materials such as steel, pipes, sheets, etc. as and when issued to the contractor are seldom in the joint custody of the contractor and the department. Even in case of cement for certain categories of contractors and in certain contracts by mutual agreement it is decided that the cement will not be in the joint custody. In such cases this fact should be clearly brought out while making correspondence with the contractor during the operation of the contract. At the time of the defending the case before the arbitrator also the above fact of *only contractor's custody* suould be highlighted.

2.0 *Sub-Standared Works/Defects:*

2.1 Clause 14 lays down that if it shall appear that any work has been executed with unsound, imperfect or unskilled workmanship or with materials of any inferior description, or that any materials or articles provided by him for the execution of the work are unsound or of a quality inferior to that contracted for or otherwise not in accordance with the contract, the Engineer-in-Charge has to make a *demand in writing specifying the work, materials or articles about which he has complained.* This can be done irrespective of the fact that these might have been passed, certified or paid for. The Engineer-in-Charge has also *to indicate a definite period* during which such removals/rectifications/replacements have to be done. *The period* to be indicated in such notices should always *be a reasonable* one and not unrealistic.

2.2 Clause 14 referred to above also states that such demand of the Enginner-in-Charge has to be made in writing *within six months of the completion of the work.* It is, therefore, no use bringing any defects etc. to the notice of the contractor beyond the above period. It is advisable that such *notices* are given to the contractors *as and when the defects are noticed.*

2.3 Occasionally it is seen that the defects are not removed and either some lumpsum amount is placed in deposit through the running/final bill or the reduction in the rate is made unilaterally.

In such cases the arbitrators have been found to be upholding the contractor's contention and awarding the refund of such amount held back in the form of lumpsum deduction made from the bills or reduction from the contract rates. In order to insure that this does not happen the following action is required to be taken.

2.3.1 It is no use only pointing out the defects and forgetting them thereafter. This has to be followed by a proper notice under clause 14, indicating the location and the extent of the inferior materials/workman-

ship noticed and also indicating the precise time during which these should be rectified and also drawing attention to the provisions of clause 14 of the contract.

2.3.2 *On expiry of the above notice period, action has to be taken* by the Engineer-in-Charge *to rectify,* remove or re-execute the work and remove or replace the materials or articles complained of at the risk and expense of the contractor. Immediately after such expenditure is incurred in rectification etc. it is *better to keep the contractor informed of the fact that such expenditure will be recovered* from the next bill to be paid to him or from the security deposit lying with the department, as the case may be.

2.4 When it is proposed to accept the sub-standared work at reduced rate instead of getting it set right the provisions given in the C.P.W.D. Manual Volume II viz. of issuing a proper notice to the contractor and obtaining a reply from him giving his consent for fixing of the rates by the SE for sub-standard work has to be followed. Any unilateral reduction made in the rates given in the contract is not likely to be upheld by the arbitartors.

3.0 Availability of Site, approval, drawings & departmental materials:

3.1 In form PWD 6, we are supposed to indicate the position regarding availability of site. Normally the site should be fully available at the time of award of work and if this is definitely known the tender papers should indicate accordingly. In case a definite part of the site is not going to be available at the time of award of the work but will be available subsequently in such a case we are supposed to indicate the exact location and the extent of land which will be made available subsequent to the date of award of the contract and also indicate the latest date by which this pat of the land will be made available. No contract should be awarded when we are not in a position to stick to the obligations given in the NIT about the making of site available to the contractor.

3.2 Incidentally similar position arises in respect of municipal approval to the drawings. No contract should be awarded if the drawings for the work, if required to be approved by the local bodies, are not approved before the award of the work.

3.3 Similarly no contract should be awarded till the sub-soil investigations are complete & the foundation drawings are available and that adequate quantities of departmental materials to be supplied to the contractor under the contract are also available.

If we undertake these obligations viz. to make available clear site, materials, drawings, tools and plants but we are not in a position to carry out these obligations we commit breach of the contract and cannot escape from the liability arising out of the same.

4.0 Action under clause 2 and 5:

4.1 Operation of clause 5 has relevancy if the decision to grant extension of time is taken during the currency of the contract. If the contract period is over and subsequent performance is accepted granting extension of time under clause 5 upto the date of actual completion of work becomes a formality and can be done *immediately after such date is over by the Engineer-in-Charge,* subject to decision under clause 2 being taken by the Competent Authority subsequently.

Clause 2 states that so far as the contractor is concerned, the time shall be deemed to be of the essence of the contract. In order to enable us to take full advantage of the provisions of this clause it is, therefore, necessary that "time being essence of the contract" has to be ensured and no action of any sort should be taken this will take away this vital element. A number of guidelines are already available in the C.P.W.D. Manual Volume II to ensure retaining the time as essence of the contract. All these provisions should be meticulously followed.

4.2 As and when it is proposed to invoke the provisions of this clause it is advisable to give proper and timely notice to the contractor duly signed by the Engineer-in-Charge. This will enable the contractor to put forth his defence, if any, as to why the department should not invoke the provisions of this clause.

4.3 Before deciding the amount of compensation under clause 2, the *Superintending Engineer should give a notice* of his intention to do so to the contractor and only after examining the reply, if any, received from the contractor should take a final decision and intimate the same to the contractor. This should be done as early as possible.

The question of grant of extension of time is normally governed by provisions of clause 5 of the contract whereas that of levying compensation is covered in clause 2. Often the execuse given for not taking timely decision under clause 2 is cited as non receipt of application for grant of extension of time under clause 5 from the contractor. To overcome this problem it is suggested that when the stipulated date of completion or the formally extended date approaches the Engineer-in-Charge, if he has not received any formal application from the contractor, should bring to the notice of the contractor the fact that the stipulated date of completion or the extended date as the case may be is approaching fast and that if the contractor feels that he was unavoidably hindered in execution of the work he should apply in the prescribed Proforma (copy to be sent along with such letter) to the Asstt. Engineer within the date to be indicated by the Engineer-in-Charge in his letter directly with a copy to the Engineer-in-Charge. It should also be mentioned in the notice that if the contractor fails to send his application as indicated above it will be presumed that the

contractor was not unavoidably hindered in the execution of work and the decision regarding grant of extension of time might be taken by the department without any further reference to him.

If the contractor fails to apply as aforesaid the Engineer-in-Charge could also on the basis of the various records at site, in the Divisional Office and in the Sub-Divisional Office make out a list of hindrances, if any, and if he feels that further extension is justified he may extend the date by a reasonable period. If the contractor does not react adversely to such a communication it can be assumed that he has accepted the extension of the contract.

Simultaneously the Engineer-in-Charge can send his recommendations to the S.E. for deciding the compensation under clause 2 and the latter after *issuing a notice to the contractor* as indicated above *and after considering the reply,* if any, received from the contractor *may take a decision about the levy of compensation.*

Though the maximum limit laid down for levy of compensation under this clause is 10% of the estimated cost of work put to tender the S.E. should be extremely careful in deciding the compensation. While on the one hand the defaulting contractor should not be allowed to go scot free but at the same time there should be no intention of sidetracking the main objective of getting the work completed in a reasonable time & to the quality as specified in the contract. The collection of revenue is not the objective of this clause and hence the S.E. has to be very careful before taking a decision on the amount of compensation. All the same since the S.E. in such cases is supposed to work like a semi-judicial officer he should consider both sides and take a judicious view. The departmental instructions also require the S.E. to keep on record the reasons for not levying full compensation under this clause. This is very necessary to ensure that the S.E. has applied his mind and no arbitrariness is displayed in his decision. He should also try to be consistent in taking such decisions.

5.0 *Action under clause 3:*

5.1 Here also *issue of timely and proper notice by the Engineer-in-Charge* indicating the precise reasons for invoking the provisions of this clause, is essential. Simultaneously, it is also necessary that the Engineer-in-Charge should *indicate the particular clause* which he is going to invoke and what he is going to do with the Security Deposit, should also be brought out clearly in such a notice.

5.2 It is necessary that once the contract is rescinded, *action to get the balance work completed should be taken expeditiously.*

It is seen from a number of awards where the arbitrators have felt that the recovery made by the department under this clause for the extra cost incurred by the department in getting the balance work completed through another agency has been too much excessive. One of the reasons for this

excess was long time gap between the date of recission and the date of completion of the balance work through another agency. If the gap is kept to the minimum and the action to rescind the contract is taken correctly, there should be no reason for the arbitrator not to accept the re-imbursement of extra expenditure incurred by the department in getting the balance work completed through another agency.

6.0 Measurements:

6.1 In some arbitration awards, it is seen that the measurements taken in the final bill were less than those in running bills and the arbitrators had held that measurements once taken and recorded for the works done by the contractors are final and cannot be reduced subsequently. This brings out the need of being extremely careful at the time of recording the measurements. Normally *there should be no reasons why the measurements should get reduced at a subsequent date* and this needs to be avoided.

7.0 *Payments through running bills:*

Instances are not uncommon where though the full item of work was not executed but full payment was released through the running bills and later on while settling the final bill certain deductions were made on account of certain deficiencies in execution of the items. This is highly objectionable. If certain part of the item was not executed, in that case the correct action would have been the following:-

(a) full rate should not have been paid and *reasonable amount should have been kept back* which should have been not less than the amount that was required *for getting that deficiency supplied.*

(b) Proper reason for not paying full rate should have been indicated so that before releasing the full rate one can ensure that the said deficiency has been made good.

All CEs/SEs/EEs/DOH/Dy. DOH are requested to note the above observations carefully and also bring them to the notice of all concerned in order to improve the operation of the contract system in the department and to save time and on money on arbitration cases.

Sd-
(W.D. Dandage)
Director General of Works
8.10.91

To

All CEs/SEs/EEs/DOH/Dy.DOH

APPENDIX IV

Conclusions and Recommendations

Sl. No.	Para No.	Ministry/ Deptt. concerned	Conclusion/Recommendation
1	2	3	4
1.	61	Ministry of Urban Development	Procedure for administration of contracts in the Central Public Works Department (CPWD) have been incorporated in the CPWD Manual-II, which is constantly updated. Further, appendices to the Manual contain specimen forms of notices to be issued and covers the various aspects of contract management from tenders to arbitration, Instructions have also been issued from time to time reiterating and elaborating the instructions already incorporated in CPWD Manual II and also emphasising the need for strict observance of the prescribed procedure. The Committee are distressed to find that inspite of all this the Central Public Works Department fail to scrupulously observe the prescribed procedure and continue to make serious procedural lapses which result in decisions of arbitrators going against them. Due to this failure on the part of the concerned officers of the CPWD the 81 arbitration cases discussed in the audit paragraph which were decided during the years 1984-85 to 1990-91 had gone against the Government resulting in either setting aside of Government claims or leading to additional avoidable payment to the contractors to the tune of about Rs. 84.46 lakhs. The Committee are further concerned to note that in the 231 number of arbitration cases relating to the three Delhi Zones for the years 1984-85 to 1990-91, the contractors were additionally paid Rs. 154.20 lakhs by the Government on account of procedural lapses. With a view to know the total quatum of loss to the

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			national exchequer, the Committee had called for similar statistics in respect of the other CPWD Zones but the same have not been readily available with them. It can, however, be obviously inferred that loss to the national exchequer due to the arbitration awards relating to the management of contracts in respect of all the CPWD Zones is definitely manifold. The Committee take a very serious note of the lack of seriousness on the part of the CPWD in the management of contracts resulting in huge financial loss to the Department.
2	62	Ministry of Urban Development	The Committee further note that on 14 January, 1982 the Ministry of Works and Housing had issued instructions to all the Chief Engineers *inter alia* stating therein that audit have adversely been commenting, from time to time, on CPWD's officers undertaking planning and designing of works without availability of sites, calling tenders for works without availability of complete drawings etc. The strict compliance of the necessary provisions of the CPWD Manual was also emphasised in these instructions. Para 2.2 of the CPWD Manual was modified in July, 1983 providing that— "No normal work should be commenced or liability thereon incurred until administrative approval and expenditure sanction have been accorded, a proper detailed estimate based on essential drawings and preliminary structural and service designs sanctioned and allotment of funds made." It is a matter of serious concern that inspite of the existing clear provisions and the specific instructions for the strict compliance of those provisions, in 27 of the 81 cases discussed in the audit paragraph, the arbitrators awarded Rs. 40.26 lakhs to the contractors primarily due to failure of the Department in handing over complete site, drawings and design etc. The Committee have no doubt that this avoidable extra payment of Rs. 40.26 lakhs to the contractors has resulted due to the failure of the Department in under-taking its contractual obligations seriously.

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3	63	Ministry of Urban Development	This Audit para further reveals that recovery and extra expenditure by the Department from contractors amounting to Rs. 20.60 lakhs under provisions of clauses 2 and 3 of the contracts were set aside by the arbitrators in 19 cases due to the non-issue of timely and proper notices by the Department to the contractor, time being not made the essence of the contract and failure on the part of the Department to communicate their decision to the contractor for levying compensation for delayed execution of work. The Committee cannot but deprecate these failures on the part of the Department. However, according to the Department, except in three cases, in the remaining cases notices had been issued either under clause 2 or clause 3 or both. The Department have further stated that even in cases where notices have been issued, Arbitrator has taken the stand that the Government has not suffered any loss due to delay in execution of works. Further, according to the Department, except in a few cases the awards have gone against the Government due to arbitrator interpreting clauses in a way which is not strictly in accordance with the terms and conditions of the agreement. It has been stated that the relevant clauses of the contract from have since been reviewed to eliminate areas of the doubt and ambiguity and to place the relationship between the contractor and the Government on a basis that is just and equitable from the point of view of both Government and the contractor. The Committee emphasise that necessary action to redefine the clauses of the contract to remove ambiguity should be taken up immediately in consultation with the Ministry of Law.
4	64	-do-	The Committee further note that in 38 of the 81 cases, payments to the contractors were made without careful assessment of standard of work at rates which were subsequently reduced in the final bills. Failure of CPWD to release the payments and its action in making recoveries in the final bills advancing excess measurements as reasons were disallowed by the arbitrators, which led to avoidable payment of Rs. 16.88 lakhs. According to the

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			Department, the Arbitrators have held that the payments made at the stage of the running bills were final and such an action of the Arbitrator is clearly against the provisions of the contract. The Committee emphasize that any ambiguity in the existing clauses of the contract in this behalf should also be immediately removed in consultation with the Ministry of Law. The Committee are distressed to note that as conceded by the Department there are in fact few cases where there have been discrepancies/errors at the time of measurement and releasing payments of running bills. The Committee take a serious view of these discrepancies/errors leading to avoidable infructious payments to the contractors. The Department have assured that these aspects have been covered in the guidelines issued in October, 1991. The Committee stress that detection of any discrepancies/errors in measurements in future should invariably be examined with a view to fixing responsibility.
65	Ministry of Urban Development		The Committee note that procedures for administration of contracts have been incorporated in the CPWD Manual-II. Further, the Department have in a routine manner been issuing instructions from time to time emphasising the need for strict compliance of the instructions. Unfortunately, the arbitration awards have invariably been given against the Department due to serious procedural lapses which undoubtedly proved that these repeated instructions have yielded little result in improving the management of contracts in CPWD. The Committee take a serious note of the fact that there is no monitoring mechanism in the Department to ensure strict compliance of all the existing provisions and the intructions issued from time to time. The Committee also note that instead of taking remedial action to plug the loopholes highlighted in the audit paragraph, the Department on receipt of the draft audit paragraph in September, 1991, chose to simply rest content with the issue of a note with regard to proper operation of contracts

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			in CPWD to all the offices of CPWD in October, 1991. The Committee recommend that concrete steps should be taken by the Department to ensure strict compliance of all existing provisions and instructions and serious note taken of any violation thereof.
6	66	Ministry of Urban Develop-ment	The Committee are extremely unhappy to note that in spite of the fact that arbitration awards have invariably been going against the Department, these awards have not been examined specifically from the systems angle with a view to evolving corrective measures. Undoubtedly, the Department should have undertaken a pointed study of each and every award as soon as it was pronounced to tackle and avoid procedural lapses in future but by not doing so, the Department have failed to discharge even its basic functions. The Committee find that an order has been issued on 5.1.1993 enjoining upon the Chief Engineers to go into the awards in detail and recommend to the Director General (Works) on the issue of fixing responsibility and for taking action against the officers, wherever necessary. The Committee recommend that these instructions should be strictly adhered to and any deviation should be appropriately dealt with.
7	67	-do-	The Committee have been informed that when the commission of procedural lapses in the CPWD were pointed out by audit in the past, audit had also emphasized the need for bringing out a digest of the important failures of CPWD pointed out by the arbitrators. The Committee are of the view that had this suggestion been heeded by the Department, the inadequacies in the existing procedures could have been plugged and this could have acted as a comprehensive guide for the proper administration of contracts and helped in the prevention of claims going against the Government. This would also facilitate elimination of procedural lapses and strengthen the stand of CPWD. The Committee, therefore, recommend that immediate steps to discourage and eliminate the commission of procedural lapses should be taken as soon as the loopholes are detected.

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8	68	Ministry of Urban Development	The Committee find that study of a number of arbitration awards made by audit has revealed that in many cases the awards have been given in favour of the contractors on account of either improper defence of the claims made by the contractors during arbitration or due to improper operation of the various clauses of the contract by the officers incharge of the work. The Committee note that with a view to ensure proper departmental defence assistance in the arbitration cases, the Department of Administrative Reforms and Public Grievances in their Impact Study Report on 'Arbitration Procedure in the CPWD' conducted in January, 1989 had suggested that a separate legal cell should be created in each Zone headed by a Superintending Engineer to exclusively look after the arbitration cases. It was also stated in this Report that no new posts should be created for this cell which should be manned by redeployment of existing staff. The Committee are constrained to observe that the Special Cell has not been constituted so far in spite of the fact that there is absolutely no mechanism in the Department to look after arbitration cases. The Committee feel that if it was difficult to create such a cell in each Zone manned by suitable adjustments from among the existing staff, such a cell could have at least been created at the Head quarters to start with. The Committee cannot but express their strong displeasure over the inaction on the part of the Department in improving the dismal situation relating to management of contracts. The Department have however assured the Committee that the cell will be created within the existing resources. The Committee would like to be apprised of the concrete steps taken in this regard within a period of three months.
9	69	-do-	The Committee's examination has revealed that continuing commission of serious lapses by the CPWD have invariably been resulting in decision of arbitrators going against them leading to avoidable infructuous expenditure. The Committee would have appreciated if each such case of

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			procedural lapse was seriously examined with a view to fix responsibility but unfortunately that has not been done. The Committee are not convinced with the reply of the Department that whenever any default in respect of procedural lapses in the management of contracts comes to their notice, such cases are referred for necessary action from the vigilance angle. The laxity of the Department in not seriously examining each of the cases of commission of serious procedural lapses is borne out by the fact that but for one case, the Chief Engineers concerned have been of the opinion that vigilance investigation in other cases is not called for. The Committee cannot but deprecate this casual approach of the Department as a result of which the Department have failed so far to curb the rempant tendency for commission of procedural lapses. The Committee recommend that in future such lapses should be seriously examined with a view to fix responsibility and taking corrective action.
10	70	Ministry of Urban Development	The Committee note that examination of the award in one case has revealed lapses on that part of the official for recording wrong measurements resulting in overpayment of Rs. 1,48,816/-. The overpayment had occurred because certain items of work were measured more than once and paid for in the running bills. The case was referred to vigilance on 13.2.1989 and a Junior Engineer has been held responsible to have recorded measurements wrongly. The Committee are distressed to find that even after four years of refering the case to vigilance the role of the Assistant Engineer is still being ascertained. The Committee are of the considered opinion that such inordinate delays in finalizing the vigilance cases apart from vitiating the administration of timely justice has a demoralising effect on administration. While the Committee would like to know the specific punishment awarded to the Junior Engineer, they would also urge that the investigations into the role of the Assistant Engineer in this case should be expeditiously completed so as to take further

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			action in the matter. The Committee would like to know the concrete action taken in this regard.
11	71	Ministry of Urban Development	The preceding paragraphs clearly establish lack of concern and seriousness on the part of Ministry of Urban Development/CPWD to curb the rampant tendency in the CPWD to commit serious procedural lapses resulting in decisions of the arbitrators going against them. The miserable failure of the Ministry/CPWD is clearly borne out by the following: (i) In 231 arbitration awards relating to the three Delhi Zones, for the period 1984-85 to 1991-92 the contractors were additionally paid Rs. 154.20 lakhs by the Government on account of procedural lapses. (ii) There is no monitoring mechanism in the Department to ensure the compliance of the existing provisions and the instructions issued from time to time. (iii) Inability of the Department to bring out a digest of the important failures pointed out by arbitrators. (iv) Complete absence of pointed study from the systems angle with a view to evolving corrective measures. (v) Failure to create a special cell as recommended by the Department of Administrative Reforms and Public Grievances. (vi) Failure to seriously examine individual cases of commission of serious procedural lapses with a view to fixing responsibility. The Committee take a very serious view of the lack of concerted approach on the part of the Ministry/CPWD to effectively tackle the dismal situation over so many years. This calls for an indepth probe about the situation obtaining in the Department. The Committee recommend that urgent and effective steps should be taken in pursuance of the various recommendations made in the preceding paragraphs.