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ASSAM LEGISLATIVE ASSEMBLY

**PUBLIC ACCOUNTS COMMITTEE**  
(2006-2008)

**HUNDRED AND FOURTEENTH REPORT**

**(TWELFTH ASSEMBLY)**



REPORT OF THE COMMITTEE ON PUBLIC ACCOUNTS  
ON THE REPORTS OF THE COMPTROLLER AND  
AUDITOR GENERAL OF INDIA (CIVIL) FOR THE  
YEARS 2002-2003, 2003-2004 AND 2004-2005  
RELATING TO THE PUBLIC WORKS  
AND IRRIGATION DEPARTMENT,  
GOVERNMENT OF ASSAM.

*Presented To the House on 12-11-2007.*

ASSAM LEGISLATIVE ASSEMBLY SECRETARIAT  
DISPUR : GUWAHATI-6.

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(i)  
**COMPOSITION OF THE COMMITTEE**

**CHAIRMAN:**

1. Shri Brindaban Goswami

**MEMBERS:**

1. Shri Sarat Borkotoky
2. Shri Rameswar Dhanowar
3. Shri Gobinda Chandra Langthasa
4. Shri Abdul Khaleque
5. Shri Rajib Lochan Pegu
6. Shri Phani Bhusan Choudhury
7. Smti Kamali Basumatary
8. Shri Parimal Sukla Baidya
9. Shri Jagat Sing Engti
10. Shri Anwarul Hoque
11. Shri Akon Bora
- \* 12.

**SECRETARIAT:**

1. Shri G.P.Das, Secretary.
2. Shri B.Basumatari, O.S.D.
3. Shri K.Rahman, C.O.

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\* Shri Chandra Mohan Patowary, MLA & Member tendered his resignation being appointed the Leader of the Opposition, Assam Legislative Assembly.

(ii)

**PREFATORY REMARKS**

I, Shri Brindaban Goswami, Chairman, Committee on Public Accounts having been authorised to submit the Report on their behalf present this Hundred and Fourteenth Report of the Committee on Public Accounts on the Audit paras contained in the Reports of the Comptroller and Auditor General of India (Civil) for the years 2002-2003, 2003-2004 and 2004-2005 pertaining to the Public Works and Irrigation Departments, Government of Assam.

2. The Reports of the Comptroller and Auditor General of India (Civil) for the years 2002-2003, 2003-2004 and 2004-2005 was laid before the House on 12<sup>th</sup> July, 2004, 3<sup>rd</sup> March, 2005 and 8<sup>th</sup> February, 2006 .

3. The Reports as mentioned above relating to the Public Works and Irrigation Departments have been considered by the Committee in its meeting held on 31<sup>st</sup> May, 2007 and 20<sup>th</sup> July, 2007.

4. The Committee has considered the draft report and finalized the same in its sitting held on 29<sup>th</sup> October, 2007

5. The Committee has appreciated the valuable assistance rendered by the Principal Accountant General (Audit), Assam and his Junior Officers and staff during the examination of the Department.

6. The Committee thanks to the departmental witnesses for their kind co-operation and offers appreciation to the officers and staff dealing with the Committee on Public Accounts, Assam Legislative Assembly Secretariat for their strenuous and sincere services rendered to the Committee.

7. The Committee earnestly hopes that the Government would promptly implement the recommendations made in this report.

Dispur :  
The 29<sup>th</sup> October, 2007

**BRINDABAN GOSWAMI**  
Chairman  
Committee on Public Accounts.

## The Report

### PUBLIC WORKS DEPARTMENT

Extra avoidable and unproductive expenditure on  
construction of RCC bridge.

(Audit para 4.5/CAG(Civil)/(P-92-93)/2002-2003)

1.1 The audit has pointed out that a test-check (December 2001) of records of the Executive Engineer, Silchar Road Division and subsequent collection (April 2003) of information revealed that the construction of RCC bridge over River Sonai-Motinagar-Didarkosh (SMD) Road was administratively approved (March 1989) for Rs.1.68 crore and was awarded (December 1989) to a contractor at a tendered value of Rs. 1.40 crore with the stipulation to complete the work by December 1991. The contractor commenced the work in December 1989 but suspended work in June 1992 due to non receipt of payment in time and non supply of stores after achieving 28.5 per cent physical progress valued at Rs. 52.39 lakh. The department rescinded the work in March 1993. The balance work was awarded (January 1994) to another contractor at the lowest quoted tender value of Rs. 2.14 crore with the stipulation to complete the work by July 1995. Subsequently to accommodate a supplementary item Removal of spoils of all types within the wells' etc at a cost of Rs. 1.93 lakh the tender value was revised to Rs. 2.16 crore in May 1994. The contractor completed the work in July 1997. The division paid Rs. 2.31 crore (February 1994- December 1998) to the contractor against the total bill value of Rs. 2.52 crore. The completed bridge could not be opened for vehicular traffic as of March 2003 due to non-completion of approach road. The Department attributed the reason for delay in taking up the work for construction of approach road to non-settlement of land compensation. According to agreement, the department had to supply stores like cement, steel etc. and the interim payment was to be made to the firm within 10 days from the presentation of the bill. But the department failed to make payment within the stipulated time and could not maintain the continuity of supply of stores, which led to delay in completion of work by more than two years. Owing to breach of contract agreement on the part of the Department, the contractor claimed (September 1997) compensation of Rs. 2.07 crore through arbitration. Accordingly, Government constituted (December 1998) a panel which awarded (March 2000) an amount of Rs. 66.90 lakh (including outstanding amount due against running bills) along with 18 per cent

simple interest from the date of award to date of payment. The Government had sanctioned (February 2001) the arbitration award for Rs. 76.66 lakh (including Rs. 9.76 lakh as interest from 10 March 2000 to 31 December 2000), which was paid in February 2002 (Rs. 42.00 lakh) and July 2002 (Rs. 34.66 lakh). Thus, failure of the department to supply store materials and non-clearance of dues resulted in an avoidable extra expenditure of Rs.75.02 lakh (Rs. 76.66 lakh-Rs. 1.64 lakh). Besides, due to inaction on the part of the Department in settlement of land compensation, the entire expenditure of Rs.3.60 crore (Rs. 0.52 crore + Rs.2.31 crore+ Rs.0.77 crore) proved unproductive as approach road was yet to be constructed.

1.2. The Department by their written reply has stated that the construction of RCC Bridge over river Sonai on H.M.D Roads was administratively approved for Rs. 1.68 crore and the work was allotted to contractor Sri D.D.Sarma who after completion work 28.50% of the work stopped, further execution on the plea that regular payment against the progress of work and construction materials could not be supplied by the deptt. in time. The work was then withdrawn from the first contractor Sri D.D.Sarma and the balance work was re-allotted to another contractor. But subsequently after achieving certain percentage of work the 2<sup>nd</sup> contractor also stopped the work on the same plea. The delay and the slow progress was due to delay of land acquisition, shifting of H.T line, obstruction from the Pattadar from possessing of land etc. However the work is now taken up under RIDF-VIII and is completed in all respect and open for vehicular traffic.

#### OBSERVATIONS/ RECOMMENDATIONS

1.3 The para was discussed by the erstwhile Committee in its meeting held on 18.11.05 and decided to drop the para. The Committee also considering the views of the erstwhile Committee decided to drop the para.



Non-recovery of advances from contractor and infructuous expenditure.

(Audit para 4.6/CAG(Civil)/(P-93-94)/2002-2003)

1.4 The audit has pointed out that a test-check (September 2002) of records of the Executive Engineer (EE), Golaghat P.W.D. (Roads) Division revealed that, (i) The division paid (August 1993) an amount of Rs.67 lakh to AGCC as advance and had issued (May 1991 to November 1992) store materials worth Rs.1.86 lakh, which were utilized in work. The basis for advance payment of Rs. 67 lakh was not on record. The AGCC had executed work valued Rs. 39.84 lakh only an amount of Rs.29.02 lakh remained unrecovered from the corporation till September 2002. (ii) The second contractor executed 43.87 per cent of bridge work valued at Rs.1.61 crore as claimed in 5<sup>th</sup> running account bill of which EE paid Rupees one crore including the value of stock recovered for Rs. 9.85 lakh to the contractor till November 1999. Due to non-receipt of pending claims the contractor stopped the work in June 2000. The EE had referred (August 2001) the matter to CE for providing funds but the CE did not act upon this. After visiting the work site the Additional Chief Engineer PWD (Roads) Easter Zone, Dibrugarh also informed (November 2001) the CE that due to not taking up erosion protection works the construction of proposed RCC bridge may have to be abandoned due to the continuous threat of erosion and thereby necessitating the construction of an entirely new bridge which indicated that the pain for construction of RCC bridge was ill conceived. But the CE did not take any action to get the bridge work resumed and to allot the approved works for approach roads, erosion protection works etc. to any contractor till July 2003. Thus, due to improper planning of construction of RCC bridge and appurtenant works, inadequate arrangement of fund provision and execution of the work in a highly erosion prone area resulted in investment of Rs.1.69 crore largely in fructuous besides non-recovery of advance Rs.29.02 lakh from AGCC since August 1993. Also, the works remained incomplete even after nearly 14 years leading to cost overrun of Rs.6.10 crore (Rs.8.53 crore-Rs.2.43 crore). Possibility of further escalation in cost of construction or abandonment of works in course of time could not be ruled out.

1.5 The department by their written reply has stated that the work of construction of RCC bridge over river Dayang at Jamugurihat was administratively approved vide Government letter No.DA5R.1/87/25 dtd. 6.6.89 for Rs.2,43,18,600.00. The work of bridge proper was allotted to

M/s AGCC Ltd. for Rs.19426414.00 as per instruction of Government letter No.DA5R.1/187/29 dtd. 3.7.89 and advanced was paid to M/s AGCC Rs.67.00 lakhs. The firm completed 21.61% of work then stopped the work. Due to poor progress of work the work was withdrawn from the AGCC Ltd. and re-allotted to the contractor B.N.Sarma and work is completed subsequently under RIDF Scheme and bridge is opened for vehicular traffic. The firm AGCC was instructed to deposit the excess amount of Rs.29.02 lakh paid to them, but no response was received. Now the State Government has decided to close the AGCC Ltd. and also decided to waive out all the liabilities, which is refundable to APWD.

#### OBSERVATIONS/RECOMMENDATIONS

1.6 The Committee heard the explanation from the departmental representatives and observes that, since the reply had been submitted on the basis of some records, the Committee, therefore, recommends that all the authentic evidence/report in details may be submitted to the Committee within 30 days from the date of presentation of this report before the House.



Unproductive expenditure due to non-acquisition of land for approach roads by the EE, Nagaon West Road Division

(Audit para 4.7/CAG(Civil)/(P-95-96)/2002-2003)

1.7 The audit has pointed out that a test check (February 2002) of the records of the Executive Engineer (EE), and collection (May 2003) of further information revealed the following : (i) The construction of approaches and its protection works on Police Reserve side and South Haiborgaon side estimated to cost Rs. 30.87 lakh were awarded (September 1993 and December 1993) without obtaining technical sanction to three contractors at a total cost of Rs. 29.43 lakh for completion within three months. (ii) One of the contractors commenced the work on approaches in Police Reserve side in January 1995 and stopped the work in March 1995 on the plea of enhancement of rate. The contractor was paid Rs.2.61 lakh till March 1995. As the Additional Chief Engineer PWD (Roads), Tezpur did not accede to the request for enhancement of rate, the contractor did not resume the work (May 2003). (iii) The work on approaches in South Haiborgaon side did not commence because of non-settlement of land acquisition case No 4/92 pending with the Deputy Commissioner (DC) Nagaon. Although the cost of compensation for land acquisition of Rs. 6.23 lakh was sanctioned (March 1988) along with approved work estimates, the reasons for non-payment of the amount to DC for settlement of acquisition process was neither on record nor clarified. The cost of land acquisition was revised by DC from Rs. 6.23 lakh to Rs. 9.59 lakh in May 1997 and to Rs.11.44 lakh in October 2000. As the approval of the revised cost estimates was awaited from Revenue Department since December 2000, the EE had taken up the matter with the department again in March 2003. Further development in the matter was awaited (May 2003). Since the work due for completion by March 1994, was still at the land acquisition stage, it clearly indicates a lack of proper planning and initiative on the part of the Department. (iv) Due to non-commencement /completion of approach roads, protection works of approaches were not taken up by the contractors. (v) Admitting the delay in completion of the non-settlement of land acquisition case etc. due to failure of the Division, Additional Chief Engineer (Addl.CE) (Planning) PWD, Roads directed (January 2003) the EE to initiate penal action against the contractors and to report the date of commencement and expected date of completion of the approaches and protection works. In reply, EE stated (April 2003) that the process for settlement of land

acquisition including the grievances of affected landowners delayed the commencement of work. This indicated that the land to be acquired for approaches in South Haiborgaon side of the bridge was under dispute and failure of the division to make timely payment of land compensation for Rs. 6.23 lakh sanctioned in March 1988 to the DC led to revision of the cost of compensation from time to time and its eventual non-settlement since 1993-94. Thus, injudicious decision and poor planning by the department to construct the RCC bridge before settlement of land acquisition proceedings for construction of approaches etc. followed by lack of initiative to get the land acquisition case settled within a reasonable time frame, contributed to the RCC bridge remaining closed to vehicular traffic for over five years after its completion. Consequently the investment of Rs. 73.26 lakh (Rs. 70.65 lakh+Rs.2.61 lakh) on its construction was rendered unproductive.

1.8 The Department by their written reply has stated that the work for bridge proper was awarded to contractor in October 1988 and the work was completed in all respect in 1998. The work was delayed due to inadequate flow of fund and also finalization of award of Arbitration Case. The approach work could not be completed due to non-finalization of L.A process. The land for construction of approach could not be handed over to contractor due non-possession of land in time. However now it is proposed to be taken up the work under MPNA for the year 2007-08 an amount of Rs.1.40 cr.is earmarked for the project.

1.9 The department by their further written reply has stated that the construction of R.C.C. Bridge over river Kolong and its approaches and protection work was administratively approved vide letter No. DASR/198/87/4, dtd.30.3.88. The bridge proper was completed on 6.6.98 after the award of arbitration case in April/97. The approaches and protection work for both sides were allotted between Sept./93 & Dec/93 by the Addl. Chief Engineer, PWD, Tezpur Zone, but could not be executed due to delay in non sanction of L.A. Case. In the original sanction an amount of Rs,6,22,500/- was earmarked for the land acquisition. Even after vigorous persuasion the amount in question was not sanctioned by the Revenue Deptt. and the land possession was not handed over by the D.C.Nagaon. After several persuasions one revised estimate for an amount of Rs. 9,59,045,00 was received on 1.8.94 vide D. C's letter No. NRQ(G) 2.93.44. Accordingly PWD, has forwarded the

same to Revenue Deptt .with a request for publication in the Assam Gazette. But no positive efforts had been received from Revenue Department and no fund could be provided. As a result, the Land possession would not be handed over by the D.C. Nagaon to the PWD. Subsequently, another revised L.A. estimate for Rs.11,44,250/- was prepared by the D.C. & it was also submitted to the Revenue Department. But it was also remained as unsanctioned. In fact, the Land in possession could not be freed from pattadar/ Land owners by the D.C. as it is revealed from D.C's letter No. NRQ (G) 2/92/75, dt. 23.5.2000, through which the D.C. was completed to enquire the matter. During persuasion a considerable time has been elapsed and land value increases considerably. Accordingly fresh L.A estimate considering the enhanced value of the Land has been submitted by the D.C. for an amount of Rs. 22,69,383,00. Which was forwarded to the Revenue Department vide No .DASR 114/2000/15 dt. 22.10.03. But sanction is being awaited. The amount in question has already been included in the revised works estimate under state Plan for Rs. 2.22 crores but sanction is still awaited. However, now it is proposed to take up the work under MPNA for the year 2007-08 and an amount of Rs.1.40 crore is earmarked for the work which has already been appraised before the Hon'ble P.A.C. in the last meeting.

#### OBSERVATIONS/RECOMMENDATIONS

1.10 During the course of discussion, the Committee observes that the cost of compensation for land acquisition of Rs. 6.23 lakh was sanctioned in 1998 along with approved estimates but in what reasons who did not pay the amount to the Deputy Commissioner for settlement of acquisition process, it did not come to the knowledge of the Committee. The Committee observes that, the then Executive Engineer of the Division is responsible for this. The Engineer in that Division dispute the money for paying to the DC's concerned for land acquisition. The Committee, therefore, recommends that the department should initiate action against the defaulting officer and a report in details should be submitted to the Committee within a month from the date of presentation of this report before the House.

## Avoidable extra expenditure

(Audit para 4.8/CAG(Civil)/(P-96-97)/2002-2003)

1.11 The audit has pointed out that a test check (September 2002) of records of the Executive Engineer (EE), Chapaguri National Highway (NH) Division, Bongaigaon revealed that the work of strengthening in km 977 to 979 on NH 31 under Chapaguri NH Division, Group 1 was administratively approved (February 1991) for Rs.1.16 crore and was awarded (May 1992) to a contractor at a tender value of Rs. 71.89 lakh for completion by May 1993. The contractor started (May 1992) the work and stopped (June 1993) after completing 50 per cent on the plea that he should be allowed cost of extra lead for bituminous macadam (BM) and semi dense bituminous concrete (SBC) works due to installation of drum mix plant at 945 km of NH 31, which was 32 km away from the site of work. The division forwarded (January 1998) the proposal to the Chief Engineer (Roads)(CE), for additional cost of Rs. 7.85 lakh as extra lead for carriage of materials from the site of drum mix plant. The CE after visiting the site in April 2000 executed (May 2000) a revised supplementary tender of Rs. 1.43 crore on his own volition for extra lead and directed (June 2000) the division to execute the work through the same contractor. The balance work was completed in February 2001. The contractor was paid Rs. 1.60 crore till August 2003. The EE did not clarify the source from which the expenditure of Rs. 0.44 crore in excess of the approved amount of Rs.1.16 crore was met. Scrutiny of final bill revealed that the division paid an amount of Rs. 66.15 lakh on BM and SBC works as against the original contract value of Rs. 22.49 lakh and an amount of Rs. 24.16 lakh for extra carriage cost of material as against Rs. 7.85 lakh proposed by the division. Had the proposal submitted by the division in January 1998 been accepted, supplementary tender for BM and SBC work could have been avoided by deleting the original value. Thus, due to non-acceptance of proposal of the division and executing a revised supplementary tender by the CE arbitrarily, the department incurred an avoidable extra expenditure of Rs. 59.97 lakh.

1.12 The department by their written reply has stated that the work on the km from 976/0 to km 979/0 under Chapaguri NH Division was awarded to M/S J.L.Singhi vide Work Order No. NHR/30/87/Pt/30 dtd. 12.05.92 at a tendered value of Rs. 71.89 lakhs and the time of completion of 12 months. After executing 50% of the work, the contractor had stopped the work in June/93 on the plea of non-availability of Hot Mix Plant at the work site. The estimate of the above work was framed and

sanctioned considering the Drum Mix Plant at site of work i.e. at km.977 to km.979 on NH-31. But during the period of execution of the work, the Assam PWD had only one Hot Mix Plant in Lower Assam, which was installed at km.945 (North Salmara) of NH-31 and is 32 km. away from the work site. During the period, the Hot Mix Plant was used for the works of both Abhayapuri Construction Division and Chapaguri NH Division. However, due to urgency of Brahmaputra Bridge Approach work and other jobs under Abhayapuri Construction Division, the only H.M. Plant installed at km.945 of NH-31 could not be utilized for the above construction work. Further due to extra lead involved from the Hot Mix Plant site to the work site the contractor did not agree to execute the work with Hot Mix Plant at km.945 of NH-31. Under these circumstances the work could not be completed within the stipulated period. The departmental HMP could not be issued to the contractor till June, 1998. The contractor had claimed price escalation and extra lead for carriage of mix materials from HMP installed at km.945 of NH-31. A supplementary tender for the extra lead for carriage of stone materials for HMP as per SOR 1998-99 was accepted vide CE's letter No.NHR.30/89/Pt/67, dtd. 09.06.2000. Further due to non-availability of stone materials at Saralbhanga river quarry, extraction of stone materials from Gay lag phee quarry had also been allocated as per SOR 1998-99. One working estimate amounting to Rs.93,11,400.00 had been approved and the contractor was allowed to execute the work. Contractor Sri J.L. Singhi has completed the work and the final value of the work became Rs.1,37,904.00. Thus under the above unavoidable circumstances the extra expenditure had to be incurred for the extra lead for carriage of materials.

#### OBSERVATIONS/RECOMMENDATIONS

1.13 The Committee, during the course of discussion considers that had the proposal of the Executive Engineer been accepted by the Chief Engineer instead of executing a revised supplementary tender, the Government would not have incurred an avoidable extra expenditure of Rs. 59.97 lakh. The Committee observes that the Government should have ensured the approval of the concerned Ministry of Central Government before executing the work. But, it was not done so. Though the department sent the proposal thrice to the Ministry through a junior level officer to pursue the matter, but the Ministry did not approve the same. The Committee, therefore, recommends that the department should send a high level officer to the Ministry to pursue the matter for obtaining approval and submit a report in details to the Committee within 15 days from the date of presentation of this report before the House.

## Extra financial burden and cost overrun

(Audit para 4.9/CAG(Civil)/(P-97-98)/2002-2003)

1.14 The audit has pointed out that a test-check (September 2002) of records of the Executive Engineer (EE), Chapaguri National Highway (NH) Division, Bongaigaon, revealed that, eight contractors offered their rates. The tender committee communicated (16 December 1999) to the Chief Engineer, their recommendation for allotting the work to the lowest tenderer at Rs.3.55 crore. The Chief Engineer (Roads) informed (February 2000) the Government that he had not issue the preliminary work order to the firm on the plea that validity of the tender expired on 15<sup>th</sup> December 1999 and the firm did not have a good reputation in execution of other works under NEC programme. Also the CE did not find the rates quoted (December 1996) by the firm as workable due to subsequent increase in cost of wages, POL and other construction material etc. The contention of the CE was not correct as there was no order for extension of validity of the tender from 15 May 1997 to 15 December 1999 nor could the rates for the works quoted against tender notice of November 1996 plausibly remain valid for such an unusually long duration also the reasons for inviting tender by CE in November 1996 for the works administratively approved in January 1999 and thereby vitiating the process of inviting tender, were neither on record nor clarified. The CE had re-calculated (February 2000) the cost of work at Rs.5.24 crore at current price level as against the tender value of Rs.3.07 crore. Simultaneously, the CE desired the tender committee to review their earlier recommendation and had also forwarded to the committee a case of another contractor (non-tenderer) who had applied (date nor available) to the Hon'ble Minister, PWD for allotment of the work to him and the Hon'ble Minister ordered (February 2000) the department to allocate the work to that contractor. The tender committee recommended (March 2000) the case and the same was approved by Government in March 2000. The CE awarded the work to the new contractor in April 2000 at a tendered value of Rs.5.24 crore for its completion by October 2001. The contractor commenced the work in June 2000 and the work was in progress as of September 2002. The contractor executed the works valued Rs.2.65 crore and a payment of Rs.3.69 crore was made (October 2002) to him including secured advance of Rs.40.32 lakh. Meanwhile, the division revised (March 2002) the estimate to Rs.6.32 crore, which was sanctioned by Government in August 2002. Delay of over one year in finalizing the process for execution of works administratively approved in January 1999, awarding the work to a

non-tenderer at Rs.5.24 crore (72.62 per cent above the schedule of rates) without financial sanction and re-tendering or negotiating with any of the previous tenderers and failure of the department to get the works completed by the non-tenderer within October 2001 as scheduled even at high cost, not only led to extra financial burden of Rs. 1.59 crore (i.e.Rs.5.24 crore-Rs.3.65 crore) over the amount approved in January 1999 but also a cost overrun of Rs. 1.08 crore (i.e. Rs.6.32 crore-Rs.5.24 crore) due to revision of estimate sanctioned in August 2002.

1.15 The department by their written reply has stated that this was a deposit work of state finance tax department. The estimate amounting to Rs.197.532 lacs was submitted to the Government for 4-lanning work at 3<sup>rd</sup> to 5<sup>th</sup> km. of NH-31C vide CE's letter No.NHR.6/96/3, dt.29/03/96 for approval. Subsequently as per observation of Ministry a modified estimate amounting to Rs.365.196 lacs was then submitted to the Government vide this office No.NHR.6/96/12, dt. 27/12/96 for accordingly administrative approval. Considering urgency of the work, tender was floated vide No.NHR.6/96/Pt/1, dt 15/11/96 & NHR.6/96/Pt/2, dt. 15/11/96 for NIT value of Rs.160.716 lacs. But subsequently after modification of the estimate the NIT value comes to Rs.306.981 lacs. The work value as per the lowest quoted rate was Rs.354.609 lacs, which was 14.87% above the estimated value. The AA was accorded dated 8/1/99 for a total value of Rs. 408.943 lacs. The C/S and other relevant documents were placed before the tender committee. The tender committee has also recommended for allotment of the work to the lowest tenderer at their own quoted rates of 14.95% and 39.95% above the SOR of Road and Building works respectively on 22/11/99. The validity period had also been extended upto 15/12/99 as mentioned in the minutes of the tender committee. But it is seen from the record that the preliminary work order, to the lowest contractor recommended by the tender committee, was not issued and at the same time CE vide his letter dated 19<sup>th</sup> November 1999 has informed the Government that the validity period of the tender has been expired on 15/12/99 and at the same time had expressed his dissatisfactory on the previous on going works of the lowest tenderer including his incapability of completing works in time, although he was also a signatory on the minutes of the tender committee recommended for allotment of the work. He also enclosed one recommendation from Hon'ble Minister, PWS dt. 11-2-2000 and also himself recommended for the genuineness and capability of the contractor Sri J K Mahanta a non-tenderer of the work. Sri J K Mahanta was also recommended for allotment of the work at current price level for a total value of Rs. 523.771 lacs and all relevant



documents submitted to the Government. Finally the tender committee has duly approved the proposal and formal work order was issued to Sri J K Mahanta at an approximate tendered value of Rs. 523.771 lacs. During the execution of work, some additional Works were to be carried out as per site condition. And accordingly the revised administrative approval for an amount of Rs.631.90 lacs was accorded. It can be seen that although initial action for framing the estimate started in the month of March 1996 yet AA for the work was accorded in the month of January 1999 only for a value of Rs.408.943 lacs. Which however felt at that time as unworkable, and hence finally allotted the work at current price prevailing at that time. The revised AA was also accorded for a value of 631.90 lacs. Due to the above circumstances, the extra financial burden was cropped up and was unavoidable.

### OBSERVATIONS/RECOMMENDATIONS

1.16 During the course of discussion, the Committee observes that tender for the work was invited in December, 1996 while Administrative Approval accorded only in January, 1999. The Committee also observes that the work has been awarded to a person who did not submit his tender papers instead of the contractors who submitted their tender papers legally. It is a gross irregularity. The Committee, therefore, recommends that responsibility should be fixed against the officer/official who has been awarded the work to a non-tenderer person and a detailed report may be submitted to the Committee mentioning the name of the Contractors who had submitted their tender papers for the works and how the work was awarded to a non tenderer (Shri Jugal Kishore Mahanta) instead of the contractors who had submitted their tender papers legally within 15 days from the date of presentation of this report before the House.

**Avoidable extra expenditure****(Audit para 4.10/CAG(Civil)/(P-98-99)/2002-2003)**

1.17 The audit has pointed out that a test-check (April 2002) of records of the Executive Engineer(EE), National Highway Division, Guwahati revealed that the area of the pavement surface to be executed was 77,259 square metres ( 11037m X 7m), but due to non-execution of 17,920 square metres (2,560m X 7m) the actual execution of pavement surface was 59,339 square metres. But, payment was made to the contractor on the basis of execution of 64,793 sqm. ( 9,718.96 cubic metres of 0.15 m thickness) Water Bound Macadam (WBM) Grade III and 66,610.90 sqm. For both 20 mm thick premixed carpeting and providing liquid seal coat. Thus, excess payment of Rs.10 lakh was made for 5,454 sqm.in respect of WBM-Grade III (Rs.6.97 lakh) and 7,271.90 sqm in respect of both 20 mm thick premix carpeting and liquid seal coat (Rs.3.03 lakh).Moreover, the division paid an amount of Rs. 7.76 lakh for execution of 6,444.68 sqm of 75 mm thick Built Up Spray Grout (BUSG), as a supplementary item which was neither included in the estimate, nor approved by MOST Application of prime coat covering for 57,423.33 sqm. Indicated in the utilization statement of bitumen also proved that the execution of pavement surface was not done for more than 59,339 sqm. Admitting the extra payment, the EE informed (June 2003) the CE that excess execution of works were taken up as per verbal orders/directions of the higher authority and works estimates there against as needed were submitted to the Superintending Engineer. Further reply from SE/CE was awaited (July 2003) Thus, payment to contractor on inflated measurement for WBM, Premix Carpeting, and liquid seal cost and unauthorized payment for execution of BUSG resulted in an extra expenditure of Rs. 21.19 lakh, which could have been avoided.

1.18 The Department by their written reply has stated that as observed in the audit para the stipulated date of completion had to be extended as the proportionate progress could not be achieved due to non-availability of bitumen in the departmental store and fund constrains during the period.The final bill amounting to Rs.2,27,69,551.00 (Rs.2.28 Crores) submitted to the R.O. MOSRT & H. Guwahati by the Executive Engineer, PWD, Guwahati NH Division was prepared based on measurements recorded as per actual execution. The payment was made to the contractor during the period from 2/98 to 12/2000 was Rs.2,10,68,007.00 including

payment of Rs.35,87,710.00 made by the R.O. MoSRT & H, Guwahati vide voucher No. 49 dtd.19.12.2000. The upto date position together with the payment of Rs. 3,375.00 made by the MoSRT & H vide voucher No. 147, dtd. 28.03.04 is Rs. 2,110,382.00. The work had to be finalized keeping the already executed works at a safe level leaving an area of  $(2349.30 \times 7.00) = 16445.10$  m untouched out of the total sanctioned area of  $(11037.00 \times 7.00 + 150.00 \times 9.00) = 78609.00$  m in view of the compelling situation of immediate handing over this portion of NH to NHAI. Hence, in some stretches, only PC & SC were provided just to improved the riding quality of the road without executing the WBM and prime coat in consultation with the visiting MoSRT & H officials and as per the opinion of the then Chief Engineer, PWD (NH Works), Assam. Regarding executed volume of WBM works, it may be stated that WBM work was measured as finalized work in-position in cubic meter as per Clause No.404.6 of MoSRT & H specification for Roads & Bridge works. The provision of BUSG had also to be provided in some stretches of km.160,162,164,165 over the executed WBM & Prime Coat in consultation with the MoSRT & H officials and in the strength of Chief Engineer's accepted supplementary tender based on approved sub-estimate amounting to Rs.7,71,000.00 for rectification of disintegrated surface of earlier executed WBM followed by prime coat which could not be covered in time due to scarcity of Bitumen as stated above. It is transparent that the payment in question amounting to Rs. 21.19 lakhs and as observed in the Audit Para as excess/avoidable expenditure was not justified considering the above facts already worked out. Hence question of inflated measurement does not arise.

#### OBSERVATIONS/RECOMMENDATIONS

1.19 After threadbare discussion the Committee decided to drop the para with a stricture that no such incident should be recurred in future.

Cost overrun and non-recovery/adjustment from contractor

(Audit para 4.11/CAG(Civil)/(P-100-101)/2002-2003)

1.20 The audit has pointed out that a test check (October-November 2002) of records of the Executive Engineer, Medical College Construction (EE,MCC) division revealed the following :- (i) AGCC commenced the work in the March 1991 and after achieving 65 per cent of physical progress stopped the work in September 1995 seeking enhancement in rates. The Superintendent Engineer, Public Works Department, Guwahati informed (August 1997) the CE that the Corporation's plea was unacceptable as the slow progress of work was due to negligence of the AGCC. The AGCC did not resume the work and as per directions (August 1997) of the CE, the EE had withdrawn (September 1997) the work from AGCC without involving any penalty clause. According to the incomplete final bill preferred (April 1997) by the AGCC the value of work done was Rs.46.93 lakh of which the division had paid Rs. 42.36 lakh to AGCC till March 1997 including advance payment of Rs. 24.08 lakh and stock material issued for work valued Rs.15.90 lakh which were not recovered/adjusted. Thus, net amount of Rs.0.35 crore remained to be recovered/adjusted from AGCC as of November 2002.(ii) The EE had assessed (March 1998) the value of the balance work at Rs.1.28 crore which was administratively approved in June 2000. The CE had awarded (May 1998) the balance work to another contractor at tendered value of Rs.0.70 crore for completion by November 1998. The reason for not awarding the work at the risk and cost of the first contractor was not on record. The second contractor completed the work in September 2001 at a cost of Rs.1.03 crore of which the division paid Rupees one crore upto fourth running account bill till September 2002. Receipt of final bill from the contractor was awaited (November 2002). The building was handed over to the Health and Family Welfare Department in December 2001.Thus, due to abnormal delay in completion of work the department incurred a cost overrun of Rs.0.32 crore as of September 2002, besides non-recovery/adjustment of Rs.0.35 crore from AGCC for over five years.

1.21 The department by their written reply has stated that the work for construction of 192 seated four storied Post Graduate Boys Hostel Building of Guwahati Medical College including Suptd's Quarter was allotted to M/S AGCC Ltd. at a tender value of Rs. 0.88 crore on March 1991 for completion by March 1993. But after achieving 65 per cent

physical progress of the work, M/S AGCC Ltd. had stopped the work seeking enhancement of rate which was ultimately rejected by the Deptt. due to very slow progress of the work. As M/S AGCC Ltd. denied to resume the work in spite of repeated request the work was withdrawn and allotted to another contractor at a tender value of Rs.0.70 crore without imposing any penalty of the difference of cost from the 1<sup>st</sup> contractor M/S AGCC Ltd. as it is being a Govt. undertaking organization. An amount of Rs.27.00 lakhs paid in advance to M/S AGCC Ltd. had already been adjusted. However, an amount of Rs.6.43 lakhs still remains to be recovered from M/S AGCC Ltd. and if cost over run for 2<sup>nd</sup> contract is taken into account another amount of Rs.15.50 lakhs will have to be recovered. So. Total recoverable amount will be Rs. 21.93 lakhs. At present, there is no scope to recover the amount from M/S AGCC Ltd. since the firm is at the verge of closure and winding up process already on. Further it was accepted in principle that extra fund will be provided by the Finance department for clearing of liabilities of M/S AGCC Ltd. which also includes the amount to be recovered against the work under PWD.

#### OBSERVATIONS/RECOMMENDATIONS

1.22 The Committee satisfied with the submission of the departmental representatives and pleased to drop the para.

## Infructuous expenditure

(Audit para 4.2.3/CAG(Civil)/(P-67)/2003-2004)

1.23 The audit has pointed out that a test-check (December 2003) of records of the Executive Engineer (EE), Goalpara Road Division and information gathered subsequently (March 2004) revealed that the Executive Engineer (EE), Goalpara Road Division carried out (February-March 2002) repair works through a contractor at a cost of Rs. 22.78 lakh (April 2002). In June-July 2002, the SPT Bridge No.19/1 got tilted by 1.30 metre towards downstream side of the river due to flash flood causing damage to piles, belts, collars, beams etc. rendering the road closed to traffic. Scrutiny of records revealed further that in the repair work (February-March 2002) the Division instead of dismantling and removing the 59 old tilted pile had repaired the weak ones with joints and driven an additional 50 piles. The EE in his report (May 2003) to the Additional Chief Engineer PWD (Roads) stated that due to non-removal of the old piles, space between the piles was narrowed down causing obstruction to the free-flow of floodwater together with debris. Consequently, the piles (109) of the bridge failed to withstand the pressure and got tilted rendering the bridge non-operational within two months of repair. Thus, the expenditure of Rs. 22.78 lakh incurred on repair and strengthening of the Bridge No.19/1 was rendered infructuous. Thus, improper planning by the department in driving piles neglecting the ground reality of regular floods every year had caused the damage to the bridge resulting in an infructuous expenditure of Rs. 22.78 lakh.

1.24 The department by their written reply has stated that the work "Improvement of Goalpara Dudhnoi via Sainik School (Repairs to SPT Br.No. 19/1)" under F.D.R. (CRF) was administratively approved by the Govt. of Assam (Revenue Department) for Rs. 22.78 lakhs vide No.RGR-9/2001/Pt-II/7 dtd.18.1.2002. The work was awarded to Sri Dharmeswar Kachari, Contractor by the C.E.PWD (Road) vide work Order No.CE/Comn./25/2002/4 dtd 16.2.2002 with an agreement to complete the work within 30 days from the date of issue of F.W.O. and tender was drawn by C.E. PWD (Roads) vide No.CE/Comn/27 dtd.16.2.2002 for Rs. 22,77,800.00. The work was commence by the contractor on 16.02.02 and completed the same by 25.03.02 and payment was made for total amount of Rs. 22.78 lakhs vide voucher No.18-04-2002. During execution of the aforesaid work under F.D.R.(CRF) the old and unserviceable piles were not dismantled or removed as because there were cluster of piles (Box

Type) consisting of 10 non.of piles (including main and fender piles) in each box. But all old piles in a box were not weak. It is not feasible to remove the weak piles as if the piles were not completely dugged out, no piles can be drawn in that place and digging out all the old weak piles completely was not possible without disturbing the other good piles. Simply cutting the old weak piles at the water level also would not serve any purpose as driving of new piles would not possible in such case. As such new piles were driven in between the gap of the existing piles. It may also be mentioned that join of 59 existing piles did not weaken the bridge. Joining of piles had been done to those piles whose portion above ground i.e. above existed water level were weak. The surfacing were done as per specification of APWD and also tighten by providing Iron Rings, channel Bolting etc. as per specification. On study of river bed it can be seen easily that there occur huge silting of sand. As such, when there flood or incessant rain the velocity of the water rises which causes heavy scouring of the river bed and there is every possibility of the wooden members including piles to be washed out. Hence, during the unprecedented flood of June/July 2002 which causes tremendous scouring of the river bed resulting the piles were tilted and bridge was damaged badly. As such the total amount of Rs. 22.78 lakh incurred on repaired and strengthening of bridge no, 19/1 were based on actual observation of ground reality of the situation which can not be treated as infructuous expenditure.

#### OBSERVATIONS/RECOMMENDATIONS

1.25 The Committee satisfied with the submission of departmental witnesses and decided to drop the para.



**Extra avoidable expenditure on construction of Railway over bridge  
(Audit para 4.3.2/CAG (Civil)/(P-69-70)/2003-2004)**

1.26 The audit has pointed out that a test check (October 2003) of records of the Executive Engineer (EE),RIDF-II Division, Guwahati, revealed that the contractor preferred 22 running account bills between 7 January 2000 to 9 April 2003 amounting to Rs.9.11 crore, but the Division failed to make full payment of the bills within the grace period of two months as stipulated in the financial clause of the agreement. Consequently, the EE had to pay Rs. 80.33 lakh to contractor as interest for delayed payment up to 22<sup>nd</sup> running account bill. Thus, the failure of the CE and the EE to coordinate with the different departments of State (Finance, PHE and ASEB ) and Central PSU (BSNL) to arrange for a clear site and requisite funds led to an avoidable extra expenditure of Rs.80.33 lakh.

1.27 The department by their written reply has stated that the Construction of Railway Over bridge at Athgaon on A.T. Road was administratively approved by the Government of Assam, Planning & Development Department for Rs.15.00 Crore vide No.DA5R.290/95/78 dated 01.12.1998 including service road land acquisition. The amount for bridge proper excluding bridge over Railway bridge over Railway track was Rs.8.99 Crore. The estimated amount for Railway portion was Rs.4.28 Crore. Due to the land acquisition problem and due to non receipt of undertaking from the Railway Authority Notice for inviting Tender cloud not be floated in time. However short Notice Inviting Tender subsequently were floated vide No.T/BR/12/93/Pt./184 dated 1.3.99. Accordingly C/S were prepared and as per term and condition fulfill by the firm/contractor M/s D.D. Sarma was selected for awarding the work as per decision of the Tender Committee was held on 12.10.99. The formal work order was issued vide No.T/BR/14/99/23 dated 26.10.99 to M/s D.D. Sarma, Contractor. Besides the construction of work in which the road of the bridge was erected is a very old one through where the A.S.E.B, Tower Line, BSNL Cable Line, and Water Supply Pipe were passes away near by the road. There is separate department also sponsored by State and Central Government. As a result shifting of above factories becomes delayed.However numerous correspondence were made with the respective department in a co-ordinate way. Accordingly considerable period of time required. On the other had to shift the above ancillary work separate fund had to be provided to the respective department. It

does meant that there was no co-ordination with the respective deptt. as objected in the Para. The proper co-ordination has been maintained time to time. During the execution of work the financial position of the State was very stringent. Perhaps due fiscal financial situation a special tender clause was inserted in the tender agreement that the running bill will be made as per availability of fund. However 12% interest per annum will be paid on dues for the delay after 2(two) month. The special financial tender clause was inserted, so that the progress of work could not be hampered for payment. As the existing road was one of the basic and vital road connection to Capital campus through out Eastern side of the State, the erection of the Railway over bridge at Athgaon was very essential. Perhaps the tender clause inserted was not at all unavoidable. From the fact stated above it is clear that interest paid to the fund was not at all unavoidable considering the density of the work. The work has now been completed in all respected and open for vehicular traffic.

#### OBSERVATIONS/RECOMMENDATIONS

1.28 After threadbare discussion, the Committee pleased to drop the para.

## Undue financial aid to the contractor and extra expenditure

(Audit para 4.3.3./CAG(Civil)/(P.70-71)/2003-2004)

1.29 The audit has pointed out that a test check(November 2003) of records of the Executive Engineer (EE)Guwahati Roads Division revealed that : The Chief Engineer (CE) PWD (Roads) allowed rate of Rs. 97.35 per cubic metre for earthwork with imported soil from private land within a distance of 3 kilometre including land compensation as per Assam PWD schedule of Rated, 2000-01 and in addition paid Rs. 22.50 lakh to the contractor towards Forest Royalty (FR) @ Rs. 8.00 per cubic meter on 256006 cum of earth work executed. The payment of Forest Royalty on soil collected from private land was in contravention of Government (Forest Department) order of June 1992 and thus resulted in excess payment of Rs. 22.50 lakh. Against the analyzed rate of the item "Construction of Water Bound Macadam (WBM)" the rates of collection of 63-45 mm size metal and 53-22.4 mm size metal from quarry were taken as Rs. 383.75 per cum and Rs.390.25 per cum (rate for machine broken metal) instead of Rs. 335.65 and Rs. 353.60 (rate for hand broken metal ) though as per approved estimate WBM was to be executed with hand broken metals. Moreover, as per corrigendum issued by the CE in October 2001 on the Schedule of Rates (SOR) 2000-01, the labour rate for WMB and the carriage rates for stone metals were reduced with effect from October 2001. However, this aspect was not taken into account while awarding the work in June 2002. This had resulted in an extra expenditure of Rs. 20.10 lakh. Thus irregular payment of forest royalty on collection of soil from private land for use on earthwork and non-adherence to the instructions contained in the corrigendum on SOR 2000-01 issued by the Chief Engineer (CE) resulted in an excess payment of Rs.22.50 lakh and an extra expenditure of Rs. 20.10 lakh.

1.30 The Department by their written reply has stated that :

1. Total quantity of earth work executed against the work =	272047.23
cm	
The total amount of Forest Royalty to be recovered @	= 2176378.00
Rs. 8.00 per cm (272047.23 cm X 8.00)	
Amount recovered from the Contractor (-)	= 1498107.00
Balance yet to be recovered	= 678271.00

However, the balance recoverable amount of Rs. 678271.00 has been deducted from the existing 5 R.A. Bill of the contractor amounting to Rs. 2677545.00 which is passed for payment but not cleared for want of fund. 2. As per Tender Agreement against the item construction of WBM, the rate for collection of 63-45 mm, 53-22.4 mm size metal were allowed on the basis of rate as incorporated in the approved estimate based on the S.O.R for 2000-01 for Rs. 383.75 and Rs. 390.25 respectively ( in chapter no 5 and item no. 7 (B) (C) i.e. rate for machine broken metal and not hand broken metals. The bills of the contractor prepared and passed accordingly. Hence there is no question of extra expenditure incurred against this item of work. 3. As regard non allowances of labour rates for WBM and carriage rates for stone metal at reduced rate as per corrigendum by C.E. in October 2001 on the S.O.R. of 2000-01, it may be stated that the NIT for the work was invited as per sanction estimate and tender agreement was also drawn accordingly on the basis of rate offered by the contractor. In this case the question of extra expenditure may not arise in the sense that the contractor concerned definitely would had offered rates in the event of inviting tender at reduced rate as per C.E corrigendum mentioned above.

#### OBSERVATIONS/RECOMMENDATIONS

1.31 The Committee satisfied with the submission of the departmental representatives and pleased to drop the para.

## Irrigation Department

Avoidable extra expenditure in form of interest due to delay in payment

(Audit para 4.3.1/CAG(Civil)/(p-68-69)/2003-2004)

2.1 The Audit has pointed out that a test-check (April 2003) of records of the Executive Engineer (EE), Guwahati Irrigation Division and further collection of information revealed that against the firm's claim of Rs.1.76 crore, the division paid Rs.1.33 crore to the firm up to May 1995 leaving balance of Rs.0.43 crore unpaid due to non-release of funds by the Government. The aggrieved firm filed (May 1995) a suit for recovery of principal amount of Rs.40.68 lakh (as calculated by the firm, details not available on record) together with interest up to 15 November 1994. The EE could not furnish copies of agreement drawn with the supplier specifying the terms and conditions of supply and mode of payment. According to the terms of payment incorporated in the supply orders, there was no provision for payment of interest for delayed payments. The Hon'ble Court in its interim orders issued (November 2000) after five and half years of filing money suit, directed the department to pay the outstanding amount of Rs.40.68 lakh to the supplier excluding interest and cost of the suit. The Hon'ble Court in final judgment ordered (June 2002) for payment of interest of Rs. 28.25 lakh for the period from 23 September 1992 to 15 November 1994 along with cost suit and from 16 November 1994 to actual date of payment under the Industrial Act 1993. Accordingly, the Irrigation Department of the Government released Rs. 2.86 crore to the divisional officer for payment of principal (Rs.40.68 lakh) and interest with cost of suit (Rs.2.45 crore). As of February 2003, the division paid Rs. 2.84 crore to the firm towards principal amount (Rs.40.68 lakh), interest (Rs.2.43 crore) and cost of suit (Rs.0.21 lakh). According to the information furnished by the EE, the division made an up to date payment of Rs.2.62 crore towards interest and cost of suit. The division attributed (May 2004) the delay in payment to paucity of fund. Thus, non-payment of the supplier's outstanding claims of Rs. 40.68 lakh in time resulted in avoidable extra expenditure of Rs. 2.62 crore. The matter was reported to Government in July 2004. In reply, the CE stated (October 2004) that as per agreement drawn up with the supplier (in Form H of tender agreement) there was no provision for payment of interest on delayed payments since payment was to be made as and when funds had

been received from Government. The CE added further that it was the Industrial Act 1993 (enacted with retrospective effect from September 1992) which provided for payment of interest on delayed payments to SSI units and the Court verdict was a result of the Act *ibid*. The department incurred the extra expenditure in compliance with the court decree. Audit observed that the responsibility of the department could not be avoided as they failed to discharge the contractual obligation and settle the supplier's claim amicably, before the supplier could move the court for redressal. The reply of the Government had not been received (October 2004).

2.2 The department by their written reply has stated that it was a fact that department had to pay avoidable extra expenditure of Rs.2.62 crores in the form of interest and cost of money suit to M/S Kamakhya Udog Pvt.Ltd,SSI Unit. The Circumstances leading to the extra expenditure as mentioned above incurred by the department is explained below :- (i)The Chief Engineer (MI) has placed supply order in 1991-92 to a local firm (P.S.E), namely M/S Kamakhya Udog Pvt.Ltd.SSI Unit,for supply of rigid Prs pipes fitting in connection with procurement of material as normally done by executing agency to ensure availability of material during the execution of works. As per tender agreement payment would be made as and when fund is received from the Govt. There were no terms and conditions in the agreement to pay interest for delayed payment. (ii) During the period of supply order issued to supplier as mentioned above ,there was no dearth of fund to carry out works and the contractors/suppliers have no objection, when they will received payment and they have accordingly accepted the terms and conditions of works order,that ,payment will be made as and when fund is available. The specimen copy of work order and agreement is enclosed . The department accordingly issued supply orders in good intention that no work should be held up due to non-availability of materials. But,due to drastic cut in budgetary prevision after 1993 flow of fund was also restricted and due to which full payment to supplier could not be made as per orders so placed after receiving the materials. The supplier filed amoney suit in 1995 due to non payment of their outstanding bills. (iii)Though the objection was raised against the Guwahati Irrigation Division but practically several Divisions are involyed. The CE (MI) has appointed Executive Engineer,Ghy Division as a nodal officer for proper monitoring and verification of the outstanding bills vide his letter No.CEI (B)63/92/80, dt.22/6/93. Hence, the EE, Ghy Division had cleared the

liabilities to supplier after verification of the bills. (iv) During 1993 a policy statement on SSI was made by the Govt. in parliament for suitable legislation would be brought to ensure prompt payment of money by buyers. An ordinance namely, Interest on Delayed payment to small scale and Ancillary Industrial undertaking ordinance 1992 was therefore promulgated by the president of India, on 23<sup>rd</sup> Sept/92. The Act 32 of 1993 regarding the delayed payment to small Scale and Ancillary Industrial undertaking Bill having been passed by both house of the parliament received the assent of the president on 2<sup>nd</sup> April/93. It came on statute book as 'THE INTEREST ON DELAYED PAYMENTS TO SMALL SCALE AND ANCILLARY INDUSTRIAL UNDERTAKING ACT/1993'. This Act extends to the whole of India and it shall be deemed to have come in force on the 23<sup>rd</sup> Sept/92. According to Sec.4 of the Act 93 the buyers are liable to pay interest to SSI Unit /Supplier at one and half time of prime lending rate charged by State Bank of India. Under Sec. 5 of same Act, it imposes a liability to pay the compound interest at the rate of one and half time prime lending rate charged by S.B.I. on the amount due to supplier by buyers. The Act 1993 was also subsequently amended in 1998 which was published in Gazette of India dt. 11.8.93. As per amended Act 1998 the provision under Sec.3 of Act 1993 had been inserted as that "In no case period agreed upon between the supplier and the buyers in writing shall exceed one hundred twenty days from the date of acceptance or the day of deemed acceptance." (v) The local supplier, M/S Kamakhya Udog Pvt.Ltd filed the Money suit (No.39/95) in the year 1995, after the Deptt.failed to pay the due amount to supplier. The Hon'ble High Court ordered part Decree in Nov/2000 after five years of filing Money Suit and directed Deptt. to pay outstanding amount of Rs. 40.68 lakh (the amount was admitted by Deptt. being outstanding dues to supplier) minus interest and cost of suit, which shall be decided at the time of the final disposal. It is also fact, that the Hon'ble High Court in its order and judgement on 19.6.02 observed that the plaintiff (supplier MS Kamakhya Udog Pvt.Ltd) entitled to get interest under interest on delayed payment Act 32 of 1993, through there were no agreement between Deptt. and supplier to pay interest. As per Hon'ble High Court order, the supplier is entitled to cost of the suit and interest amounting Rs. 28,25,021 (being outstanding interest from 23.9.92 to 15.11.94) under delayed payment Act/93 till realization. Thus the department paid Rs.2,61,93277.00 to supplier as per High Court order. (vi) The department also tried to defund the case under Amendment of Act 1998. But learned Advocate appearing for the plaintiff, showed similar



judgement passed by High Court in RPA NO.66 of 2000, ASEB and others Vs M/S Shanti Contractors Pvt Ltd and another. In this case Hon'ble High Court in para 21 of the judgement held that Act of 1993 would be applicable even to the contracts entered prior to the enforcement of the Act i.e. 23.9.92. So the Department is bound to pay the interest (copy of the High Court order is enclosed. As the supplier orders were issued before promulgation Act 1993, the department had the impression that payment of interest would not be applicable. Moreover, as per clause of the supply order that payment would be made, when fund is received from the Govt., which was considered as agreement both the parties to cover clause-4 of the Act. But same was rejected by full bench of High Court and so also by Civil Judge which nullify Department appeals as per clause 5 of the Act. Thus, decree was ordered against the Department to pay the interest under Act of the 1993. (vii) It is clear from the above that department had to incurred avoidable expenditure of Rs. 2.62 crores due to following main reasons. (a) Amount due to supplier could not be paid due to paucity of fund which was not anticipated by department at time of issue of orders. (b) The department had to abide by Hon'ble High Court order to pay the liability as per SSI Act/93 and amendment Act of 1998 to evade contempt of court. (c) Amount could have been less/nominal if there was no delay in issue of High Court interim order. (d) Supplier had availed the opportunity for Money Suit under clause 5 of the said Act 93 when department fail to clear outstanding bills. From the explanatory notes and documents enclosed above it is observed that the expenditure incurred by department was "Unavoidable and "Unintentional". The department also had a limited scope to waive the court Judgement order regarding the payment of Interest to Supplier. As per provision of the Act 1993. The matter has been noted by the Deptt. and effective steps taken to avoid similar issue in future. Accordingly circular has been issued to all subordinate offices of the Deptt. Not to issue such supply order to SSI unit in future unless the payment is assured within specified period. Under the circumstances mentioned above, it is also observed that the question of responsibility/liability of this Deptt. does not arise in this particular issues.

## OBSERVATIONS/RECOMMENDATIONS

2.3 During the course of discussion, the Committee observes that the Executive Engineer, Guwahati Irrigation Division paid Rs. 1.33 crore to a Firm leaving an amount of Rs. 0.43 crore unpaid due to non-release of funds by the Government. Since the suppliers had submitted the required materials as per order in time, and if there was no budget provision during that financial year, the department immediately should have moved their proposal for budget allocation in the next year. Moreover, the Government should have ensured release of required fund in due time to avoid extra expenditure of Rs. 2.60 crore in the form of interest and the cost of money suit. Due to negligence of the department an amount of Rs. 2.60 crore had to be paid more against an amount of Rs. 0.43 crore.

2.3.1 The Committee, therefore, recommends that the Chief Secretary to the Government of Assam may entrust one of the Additional Chief Secretaries to the Government of Assam to cause an inquiry on the matter and submit a detailed report to the Committee within 30 days from the date of presentation of this report before the House.

2.3.2 The Committee also recommends that Govt. should formulate the policy so that an officer in the rank of Director/CE or equivalent of any department of the Govt. of Assam may not be allowed to place any supply/work order, except the day to day administrative expenditure, to any firm/company before six months from the date of his/her retirement.

**Avidabale extra expenditure****(Audit para 4.2.3/CAG(Civil)/(P-75-76)/2004-2005)**

2.4. The audit has pointed out that a test check (August 2004) of records of the Executive Engineer (EE), Guwahati Irrigation Division revealed that against the firm's claim of Rs. 1.27 crore, the division paid Rs. 0.68 crore to the firm up to March 1995 leaving a balance of Rs. 0.59 crore unpaid due to non-release of funds by the Government. The aggrieved firm filed (March 1995) a suit in the Gauhati High Court for recovery of principal amount of Rs.60 lakh (as claims by the firm, details not available on records but CE admitted the same). The Court allowed (March 1995) the State four months time to file an affidavit in opposition. But as the State failed to comply with the court directives even after a lapse of four years, the Court directed (November 1999) the respondents to pay the outstanding principal amount within a period of four months from the date of order. The court also ruled that the question of payment of interest on delayed payments should be taken up by the petitioner with the authority concerned for consideration according to relevant provisions of law. Accordingly, the division cleared the principal amount of Rs.60 lakh during August-September 2000. Though there was no clause in the agreement for payment of interest on delayed payments, the division paid (February 2002) Rs. 20.99 lakh to the firm being the interest for the period from 10 August 1998 to 31 July 2000. Scrutiny further revealed that the firm again filed a suit in the year 2003 claiming interest on delayed payment according to the Small Scale and Ancillary Industrial Undertaking Act 1993 against the unpaid principal amount of Rs. 89 lakh up to 23 September 1992. The Court in its judgment ordered (August 2003) the CE to clear the interest as per provisions of the Act of 1993. As of March 2005, the division had paid (up to August 2004) Rs. 3.37 crore as interest for the period from September 1992 to February 2004. The department's failure to discharge its contractual obligation led to non-payment of supplier's outstanding claim of Rs. 0.59 crore and thereby resulted in an avoidable extra expenditure of Rs. 3.58 crore (Rs. 3.37 crore + Rs. 0.21 crore).

2.6 The department by their written reply has stated that It was a fact that department had paid avoidable extra expenditure of Rs. 3.38 Crores in the form of interest and cost of money suit to M/S Universal Pipe. Ltd., SSI Unit. The Circumstances lending to the extra expenditure as mentioned above incurred by the department is explained below :- (i) The Chief Engineer, (M.I) had placed supply order in 1991-92 to local firm namely M/S Universal Pipes Pvt. Ltd. SSI Unit, for supply of rigid PVC Pipes and pipes fitting in connection with procurement of materials as normally done by executing agency to ensure availability of materials during the execution of works. As per tender agreement payment will be made as and when fund is received from the Government. There were no terms & conditions in the agreement to pay interest for delayed payment. (ii) During the period of supply orders issued to suppliers as mentioned above, there was no dearth of fund to carry out works and the contractors/Suppliers have no objection, when they will received payment and they have accordingly accepted the terms and conditions of works Order" that payment will be made as and when fund is available". The Department accordingly issued supply orders in good intention that no work should be held up due to non-availability of materials. But, due to drastic cut in budgetary provision after 1993 flow of fund was also restricted and due to which full payment to supplier could not to be made as per orders so placed after receiving the materials. The supplier filed a money suit in 1995 due to non payment of their outstanding bills.(iii) Through the objection was raised against the Guwahati Irrigation Division but practically several Divisions are involved. The C.E.(M.I) had appointed Executive Engineer, Guwahati Division as a nodal officer for proper monitoring and verification of the outstanding bills vide letter No.CEI (B) 63/92/80,dt.22.6.93 Hence the Executive Engineer, Guwahati Division had cleared the liabilities to supplier after verification of the bills. (iv) During 1993 a policy statement on SSI was made by the Govt.in parliament for suitable legislation would be brought to ensure prompt payment of money by buyers. An ordinance namely Interest on Delayed payment to small Scale and Ancillary Industrial Undertaking Ordinance 1992 was therefore promulgated by the President of India, on 23<sup>rd</sup> Sept/92. The Act 32 of 1993 regarding the delayed payment to small scale and Ancillary Industrial Undertaking Bill having been passed by both house of the parliament received the assent of the President on 2<sup>nd</sup> April/93. It came on the statute book as "THE INTEREST ON DELAYED PAYMENTS TO SMALL SCALE AND ANCILLARY INDUSTRIAL UNDERTAKING ACT/1993.This Act extends to the whole of India and

it shall be deemed to have come in force on the 23<sup>rd</sup> Sept/92. According to Sec.4 of the Act.1993 the buyers are liable to pay interest to SSI Unit/Supplier at one and half time of Prime lending rate charged by State Bank of India. Under Section-5 same Act,it imposes a liability to pay the compound interest (with monthly rest) at the rate of one and half time prime lending rate charged by S.B.I.on the amount due to supplier by buyers. The Act.1993 was also subsequently amended in 1998 which was published in Gazette of India dt. 11.8.93. As per amended Act/1998 the provision under Sec.3 of Act 1993 had been inserted as that. In no case period agreed upon between the supplier and the buyers in writing shall exceed one hundred twenty days from the date of acceptance or the day of deemed acceptance. The local firm Ms.Universal Pipes Private Ltd.issued notice under Section 80 CPC and finally filed civilcase No.933/95 for payment of their dues imposing interest on delayed payment under the Act. 1993. It may be mentioned here that the Department had not submitted affidavit to High Court within a fixed time of four months due to the fact that the Principal outstanding amount was admitted by the then Chief Engineer (M.I) as per similar nature of court cases pending during that periods. But the Hon'ble High Court disposed the case No. 933/95 Nov/1999 after lapse of four years. However,the Department had no comments on the formal procedure of High Court's Rules etc. As per order of Hon'ble High Court, the Deptt .make payment of Principal amount after due verification. But the question of payment of interest on delayed payment as per relevant provision of law shall be taken up with competent authority for consideration of same as per said order. Thus the Department paid the Principal amount to supplier accordingly. The Department did not agree to the condition of paying interest on delayed payment as per terms & condition of the work order as mentioned above even after several pursuance by the Firm (M/S Universal Pipes Pvt.Ltd). The Firm (M/S Universal Pipes Pvt. Ltd.) filed a writ petition No. 1194 of 2003 after not receiving favourable decision from the Deptt.The Deptt.accordingly submitted a counter affidavit on the matter that the petitioner is not entitled to receive interest on the terms of SSI Act/1993 and prayed to concerned authority. But Hon'ble High Court finally passed order on 6.8.2003. As per aforesaid order (Judgement of full bench) the petitioner entitled to get the interest from the date of effect of the Act/1993 i.e. 23.9.92 to 3.10.2000 and till realization when the balance amount is paid as per provision of Section 4&5 of the said

Act. Thus the total interest including cost of suit etc. was paid to M/S Universal Pipes Pvt.Ltd. to the tune of Rs. 357,93,534/- as per record maintained in the office. Thus the Department has tried its best effort to discharge contractual obligation but could not get favourable order from High Court as per provision of the Act/1993. (vii) It is clear from the above that department had to incur avoidable expenditure of Rs. 3.58 crores due to following main reasons. (a) Amount due to supplier could not be paid due to paucity of fund which was not anticipated by the department at the time of issue of work orders. (b) The department had to abide by Hon'ble High Court order to pay the liability as per SSI Act/93 amendment Act of 1998 to avoid contempt of court. (c) Amount could have been loss/nominal if there was no delay in issue of High Court order after four months. (d) Supplier has availed the opportunity for Money Suit under clause 5 of the said Act 1993 when department fail to clear cut standing bills. From the explanatory notes and documents enclosed above it is observed that the expenditures incurred by department was unavoidable and unintentional. The department also had a limited scope to waive the Court Judgement/Order regarding the payment of interest to supplier as per provision of the delayed payment in Act/1993. The matter has been noted by the Deptt. And affective steps have been taken to avoid similar issue in future. Accordingly a circular has been issue to all subordinate offices of the Deptt. Note to issue such supply orders to SSI unit in future unless the payment is assured within specified. Under the circumstances mentioned above, it is also observed that the question of responsibility/liability of this Deptt. Does not arise in this particular issue.

### OBSERVATIONS/RECOMMENDATIONS

2.6 The Committee during the course of discussion observes that due to delayed payment of supplier's bill the Executive Engineer, Guwahati Division incurred an extra expenditure of Rs. 3.58 crore. It is a very serious matter. The Committee expresses its Conner that why the Government placed supply order to the contractors without ensuring availability of fund for which the Government failed to pay supplier's bill in due time and incurred in avoidable interest and other liability of Rs. 3.58 crore. The Committee, therefore, recommends that the Chief Secretary to the Government of Assam may entrust one of the Additional Chief Secretaries to the Government of Assam to cause an enquiry and a detailed report may be submitted to the Committee within 30 days from the date of presentation this report before the House.