

आलोक Aloke



Vigilance

Syama Prasad Mookerjee Port, Kolkata
2020



Integrity Pledge for Citizens

I believe that corruption has been one of the major obstacles to economic, political and social progress of our country. I believe that all stakeholders such as Government, citizens and private sector need to work together to eradicate corruption.

I realise that every citizen should be vigilant and commit to highest standards of honesty and integrity at all times and support the fight against corruption.

I, therefore, pledge:

- To follow probity and rule of law in all walks of life;
- To neither take nor offer bribe;
- To perform all tasks in an honest and transparent manner;
- To act in public interest;
- To lead by example exhibiting integrity in personal behavior;
- To report any incident of corruption to the appropriate agency.



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केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION



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दिनांक / Dated..08.10.2020.....

MESSAGE

Vigilance Awareness Week (27th October to 2nd November 2020)

The Commission observes the Vigilance Awareness Week to emphasize the importance of integrity in public life. We are fully committed to implement the policy of "Zero Tolerance against Corruption".

"सतर्क भारत, समृद्ध भारत - Satark Bharat, Samriddh Bharat (Vigilant India, Prosperous India)" has been chosen as the theme this year. Development and progress of the nation takes place when individuals and organisations are vigilant in safeguarding integrity as a core value.

The Commission believes that citizens and organisations must look inwards at a time when the world is facing an unprecedented crisis. All organisations may focus on improvement of internal processes and activities during this year. Systemic improvements may be carried out to improve the delivery of public services in all organisations. Training and capacity building of staff is an important component supporting this objective. We have been encouraging organisations to implement these initiatives.

The Commission appeals to all citizens to actively work towards promotion of integrity in all aspects of life for the progress of the country.

(Sharad Kumar)
Vigilance Commissioner

(Suresh N. Patel)
Vigilance Commissioner

(Sanjay Kothari)
Central Vigilance Commissioner

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अध्यक्ष

Vinit Kumar, I.R.S.E.E.
Chairman

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MESSAGE

Vigilance Awareness Week - 2020 is going to be observed in Syama Prasad Mookerjee Port (SMP), Kolkata from 27th October, 2020 to 2nd November, 2020. The theme of this year's Vigilance Awareness Week is "Satark Bharat, Samriddh Bharat (Vigilant India, Prosperous India)". Vigilance Department of SMP, Kolkata is bringing out 4th edition of "ALOKE" to commemorate the occasion.

This year, the world is facing an unprecedented crisis arising out of Covid-19 pandemic. While on one hand the entire mankind has been exposed to its vulnerabilities against the SARS-Cov-2 virus, at the same time the situation has given rise to a new normal in various aspects of conducting business by leveraging technology. This will ensure increased transparency in business administration, which has always been the objective of Vigilance.

I whole-heartedly congratulate Vigilance Department for the above effort and wish them all the best in their activities.

Date: 14th October, 2020

(Vinit Kumar)
Chairman

Dr. Preeti Mahto, IP & TAFS,
Chief Vigilance Officer,
Syama Prasad Mookerjee Port, Kolkata.

ए. के. मेहरा, बी.ई., एम.सी.ई.
उपाध्यक्ष

A. K. Mehera, B.E., M.C.E.
Deputy Chairman



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MESSAGE

This year, Vigilance Awareness Week is going to be observed from 27th October, 2020 to 2nd November, 2020, with the theme "Satark Bharat, Samridhd Bharat (Vigilant India, Prosperous India)". I am happy to learn that on the occasion of Vigilance Awareness Week - 2020, Vigilance Department of Syama Prasad Mookerjee Port (SMP), Kolkata is bringing out 4th edition of "ALOKE". I appreciate Vigilance Department for such a constructive initiative.

The ongoing crisis arising out of Covid-19 pandemic has posed serious challenges in the functioning of businesses worldwide. While each and every organisation is making all out endeavours to face these difficult times, I feel that this is an opportunity for our organisation for introspection. Our focus should be on making our business processes more & more technology-driven, undertaking systemic improvements towards betterment of our services, training & capacity building of our human resources and maintaining transparency in all our activities.

I extend my heartiest congratulations to Vigilance Department for the initiatives being undertaken by them and wish them all the best in their activities.

Date: 15th October, 2020


(A. K. Mehera)
Dy. Chairman

Dr. Preeti Mahto, IP & TAFS,
Chief Vigilance Officer,
Syama Prasad Mookerjee Port, Kolkata.

FROM THE EDITOR'S DESK

Vigilance Department of Syama Prasad Mookerjee Port (SMP), Kolkata had taken an initiative in the year 2017 to bring out their first ever 'Journal' or 'Year Book' - "Aloke", during Vigilance Awareness Week (VAW) – 2017. This initiative has been continued in the subsequent years, and, this year, in keeping with the tradition, the 4th edition of "Aloke" has been scheduled for release during VAW-2020.

The main thrust in this publication has always been to not only include articles that are thought provoking, but also appraise the Port fraternity the areas where Vigilance Department has been able to make specific contribution to systemic efficiency. This year, apart from senior officers, articles have been contributed by a few young turks of the organisation also. On behalf of Vigilance Department, I would like to sincerely thank all the individuals, who have managed to spare time from their hectic schedules to contribute valuable articles for this edition of "Aloke".

These are difficult times. Since the beginning of this year, COVID-19 has been wreaking havoc, resulting in devastating socio economic impact worldwide. This pandemic has compelled us to have recourse to technology-driven work from home, online learning, webinars, virtual meetings over various online platforms, etc. Vigilance always stresses upon leveraging technology for improving both business as well as vigilance administration. At present, this unprecedented situation has virtually forced each and every organisation to take a giant leap in this direction and adapt to the new normal. Thus, amidst all adverse situations posed by the pandemic, this is, perhaps, a silver lining.

VAW-2020 would be observed from 27th October to 2nd November, 2020, with the theme "सतर्क भारत, समृद्ध भारत (Vigilant India, Prosperous India)". This comes at a time when India's ranking in the "Corruption Perceptions Index 2019" (an indicator of perceived levels of public sector corruption) of Transparency International has slipped from 78 to 80 compared to the previous year (CPI - 2018), while its score of 41 out of 100 remains the same (0 is highly corrupt and 100 is very clean). In this scenario, making serious inroads against corruption has become the order of the day. Here, let me refer to a quote by Bob Marley, the Jamaican singer – "If something can corrupt you, you're corrupted already." A very simple message, but conveys a very pertinent point. This, indeed, is a time to look inward. Merely pointing fingers towards others for the bane of corruption will not eradicate the evil. Each one of us has to make ourselves incorruptible, be it in our personal life, be it in our official spheres. Only then can we achieve being a truly prosperous nation.

Sandip Banerjee
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Estate Management – Issues and Concerns

*By A. K. Mehera
Deputy Chairman*

SMP, Kolkata is the biggest single land owner of Kolkata City as it possesses huge chunk of land and scores of sheds and warehouses in Kolkata. A sizeable portion of land and almost all the sheds and warehouses outside Dock Area are under commercial utilization to garner revenue. Estate of SMP, Kolkata is a huge revenue earner with a potential for generating much higher income, but, at the same time, functioning, activities and scope of work of Estate Division make it highly vulnerable from the vigilance angle or aspect. It may not be an overstatement to say that most of the estate activities or functions have attributes to attract vigilance scrutiny.

At present, allotment of land and structure is made through e-tender-cum-auction. Before inviting e-tender-cum-auction, plots of land to be tendered out are identified; some plots, if required, are amalgamated, pared or divided to make the plots more attractive; and purpose of leasing of the plot is decided within the broader remit of assigned Land Use Plan of area. However, tendering remains a very critical area. Tailor-made tender terms and purpose of lease as well as fixing plot size are very vulnerable areas from vigilance aspect. At the same time, it is also true for better management and quicker allotment of land - especially the ones which have been lying un-allotted for a considerable time and located in an area prone to encroachment, necessity of dovetailing terms and purpose of lease, size of the plot – to cater to the particular interest of a party is beneficial to the overall financial interest of Port. Therefore, it is imperative to strike a proper balance between financial interest of Port and vigilance concerns.

It has been experienced that lessees often carry out construction within the leasehold premises, sometimes willfully and at times, due to exigency of business, without securing requisite mandatory approval of plan by Port (Landlord) or other statutory authorities. This type of construction without proper permission from Port is regarded as unauthorized construction, since Port being landlord has to permit such construction, as per law. Detection and corrective action in connection with such unauthorized structure have become focal area of concern of vigilance in the past. Though necessity of obtaining prior approval (NOC) for taking up any construction has been clearly laid down and emphasized in offer letter of contract and lease document, violations on this account are rife. As per

Municipal Act, any construction within its limit need to have approval/permit of Municipal Authority. Port being landlord is only giving its NOC. In order to address this problem in a better manner, a time limit, say 2 months from date of submission of plan, is to be fixed for Port to process and finally decide on the plan, as delay in sanction of plan is a root cause for commission of breach of unauthorized construction. Though this Port has a system or rule to regularize unauthorized construction post facto on realization of certain damage amount, it is to be sparingly and prudently applied, as otherwise, the tenants take the issue of unauthorized construction as granted or in casual and light manner.

Another important issue of Estate Management which may invite vigilance scrutiny is unauthorized parting with possession / subletting. As any breach of tenancy terms leads to issue of ejection notice by Port eventually followed by court case, it has been found on numerous cases and occasions that Port has failed to establish the breach of parting with possession / subletting due to lack of appropriate corroborative evidence. Mere allegation on this score often fails to impress upon the court of law as they seek clinching and conclusive evidence. Failure to prove this breach has invited vigilance criticism. Therefore, before bringing up this charge of unauthorized parting with possession / subletting, Estate Division must be doubly sure about quality, merit and substance of evidence, as otherwise, it may not serve Port in good stead from administrative, legal and financial perspective. Moreover, in an adverse business scenario (like COVID 19 pandemic), in the current atmosphere of prevalence of franchise model and with growing emphasis of logistics business, incidence of third party operation at the leasehold premises will increase in port estate dominated by storing and warehousing business. KDS being a City Port, will always have requirement of substantial storage/warehousing requirement. Now with rise of e-commerce business in the country, the need for warehousing will bound to increase. The business model of warehousing/logistic chain is based on sub-letting model. So, a fine line of distinction should be there to determine as to what constitutes parting with possession / subletting and no effort should be spared to collect solid and incontrovertible proof to support the allegation right at the stage of inspection. Detection of parting with possession / subletting being a very grey area, proper framing of guidelines to define and deal with this issue is felt necessary.

Encroachment is another key area of concern. Encroachment may be of two types - permanent and temporary. It has been noticed that while carrying out loading and unloading operation at their respective premises, the tenants often temporarily

dump materials on adjacent Port land for a few hours. This practice should not be treated as encroachment provided, the same is removed within 24 hours and does not happen on a regular basis. By treating such practice as encroachment, it gives rise to many Ejectment Notices and court cases which are avoidable. However, permanent encroachment by erecting fencing/wall should be strictly dealt with. It is also a common practice for tenants to use road berm in front of their occupation for entry and exit to and from their demised premises. Road Berm kept reserved for future expansion of road or for existence of underground service lines and therefore, cannot be generally allotted. Rank Outsiders often take full advantage of the situation and encroach the road berm. Eviction of such encroachers becomes extremely difficult for socio-politico-economic reasons. Encouraging the tenants to put up gardens in front of their occupation may serve as a deterrent. Moreover, in some areas - previously known as open storage and traffic working areas - due to lack of clear demarcation of boundary, detection of encroachment creates dispute and controversy often leading to vigilance intervention. Erection of boundary wall/fencing and putting up signage / Notice Board should be made compulsory to avoid such problem in future.

It cannot be denied that Port Estates - especially the older ones – are plagued with problem of unauthorized occupation by third party/ parties. This problem is a historical fact festering for a long time depriving Port the revenue and also embroiling it in a plethora of court cases. This knotty issue has invited criticism from all quarters including vigilance. Policy of regularization of unauthorized occupants is imperative to redress this particular administrative eyesore. This may be done as one time exercise. A similar approach was earlier taken by Govt. of India to regularize unauthorized/black money by introducing 'VDIS'. Earlier, I understand, efforts were made locally at Port level to draw up some policy / guidelines to take care of regularization of unauthorized occupants but with very limited success. Ministry of Shipping did not approve of such settlement. A proper policy / guideline is to be drawn up with approval of Ministry for unlocking of revenue and reduction of legal and administrative hassles and expenditure. This will also hopefully minimize Estate-Vigilance interface as well.

Another big area of concern is non-dealing of a tenancy file for a considerable period of time due to misplacement and non-availability of file due to various reasons, not always intentional, sometimes resulting in loss or non-earning of port revenue, delay in disposal of court case, adverse judgment in court and lack of supervision of tenancy. This has grave financial and vigilance implications.

Availability of files at right place and time is of essence here. Computerized system of file movement and tracking – which has already been in place in Estate Division since last 15 years or so - is a right step. But to make it work better and more efficiently, this system needs to be upgraded and improved to make it foolproof. Scanning of all important estate files and linking up the file with respective tenancy at site, which is also going on in full swing, will, to a large extent, do away with complete dependence on the tenancy file. It will help deal with, and dispose the files and monitor tenancy issues including court cases in a much improved way.

Another important area in respect of Estate revenue is levying damages/compensation towards unauthorized occupations. Strictly in terms of Land Policy Guidelines, unauthorized occupations will lead to charging of damages at the rate of three times the prevailing SoR. Whereas the Contract Act, 1972 provides imposition of damages/compensation to the person who breaches the contract, however, the amount of compensation should be limited to whatever the person receiving the compensation should have normally get from the contract had the breach not taken place. In a recent judgment by Hon'ble Supreme Court in connection with levying damages clearly mentioned that wherever the damages are being claimed, the authority claiming damages has to prove its loss to claim damages (2015 (4) SCC 136). Accordingly, a prudent action is required keeping in view the Hon'ble Supreme Court's judgment before imposing the damaged at the rate of three times of the SoR. It is understood that in the past SMP, Kolkata on two occasions had introduced such damages for unauthorized occupations at the rate of three times of the SoR. However, within a few months, the same had to be reverted back due to various reasons. It is always better and advisable to incorporate the clause related to compensation/damages in the tender condition as well as in lease agreement so that there is no dispute raised subsequently, whenever a lessee/licensee is declared unauthorized occupant and claiming of damages at the rate of three times the SoR is become a part and parcel of agreement. This also give rise to an important question for those lessee/licensee for which agreement have been entered into past, where there is no specifically clause for charging/levying damages/compensation at the rate of three times of the SoR. This really remains a gray area and a decision need to be taken on case to case basis keeping in mind the law of the land as well as the decision of various Courts including the aforesaid order of the Hon'ble Supreme Court.

With vigorous and ardent implementation of Public Premises (Eviction of Unauthorized Occupants) Act, rate of recovery of possession of land and

structures has gone up. In most cases, possession is taken over along with goods of third parties. Seizure and disposal of goods at the premises taken over assume importance in this context. There is a specific provision of PP Act to deal with this matter. A set procedure is also there for disposal of goods through MM Division while following PP Act stipulations. But this takes time and the process is not that simple to execute on ground. Court cases by parties at stake for release of seized goods are very common. These seized goods, often coupled with prolonged court cases, come in way of speedy allotment process of land/shed taken over causing loss of income. On occasions, it has become necessary or compulsion to release goods in compliance with court order. However, there must be a transparent, non-discriminatory and cut and dried policy/norm in accordance with which decisions to release goods can be taken. It will take care of potential vigilance queries and help Port in achieving its objective.

All kinds of correspondences with tenants need to be in standardized & computerized format to the maximum extent possible. The offer letter, Lease document, various permission / regret letters, even issue of periodic demand letters are to be in prescribed and standardized format with provision of minor variation to take into account any particular issue or need of the tenancy. Even if a party starts / continues non-payment, the notice to the party should be auto-generated after a specific period and alert should come automatically to respective tenancy section. This will obviate human intervention limiting scope of arbitrariness and whims of individual official - a potential source of arousing vigilance interest.

So far, necessity of framing different rules, guidelines, and norms in order to reduce vigilance vulnerability in different areas of estate management has been discussed. Even if such rules, guidelines, norms are framed flawlessly, judicious implementation of the same will largely depend on the human beings – be it officers of Estate Division or Vigilance Dept, or tenants of the port. So, ultimately, our efforts to reduce vigilance vulnerability will be linked intricately with basic human virtues like honesty, sense of duty & responsibility, etc. of all parties concerned. Even then, we should strive to introduce dynamic system with in-built checks & balances with the active help of technology, so that subjective human interventions may be reduced, though the same cannot probably be eliminated altogether.

Food for thought

By *Arnab Basu*

CME(I/C) & EM(R&R)

The word Vigilance brings out a different sensation among persons employed in Govt. Sectors, which include all types of organisations under the umbrella of Central Govt./State Govts./Local Authorities, etc. It generally brings out a panicky response that they may be dragged into the vortex of various vigilance issues, unknowingly. I am inclined to stress upon the word 'unknowingly' because it means that though they are not doing any deliberate mischief, but still they are afraid of being plunged into vigilance investigations, cases, etc., by doing something unknowingly, which is against the prevalent vigilance guidelines.

The other side of the coin is they should compulsorily be aware of the vigilance guidelines and should generally not be prone to make mistakes, unknowingly. The fear psychosis, which is operating within their mind, prevents them from doing any mischief. This is the beauty of existence of vigilance guidelines, which, though sometimes felt as a bottleneck, in most cases, work as a saviour to Government servants.

But the question, which arises many a times, is, **Why such guidelines are applicable only for Government servants and not for officials working in private sectors?** The absence of a direct reply to the same creates an unwanted scenario, where private sectors do get undue advantages over Government sectors. Let us take the following example:

Two turnkey project-executing organisations, one in private sector and another in Government sector, have bagged orders from a big PSU. The project is of very high value and moreover it is highly prestigious from the national perspective, and thus, strict adherence to the stipulated time-line is of paramount importance.

The Government sector organisation, with highly sincere and motivated officials, takes the challenge but it has its own limitations, as the outsourcing of purchase of goods as well as purchase of service it has to carry out, has to be through tendering process. Managing multiple contracts, following the vigilance guidelines has led to a situation where the completion time got delayed by three months. This has resulted in

- (i) facing flak (by the Project Manager) from the top boss of his own organisation,

- (ii) facing flak (by the top boss of the executing organisation) from the top boss of the Govt. Sector (where the project is getting executed),
- (iii) resulting in Liquidated Damages (LD) of the executing Government organisation.

The private sector organisation does not have such limitations of outsourcing of purchase of goods as well as purchase of service it has to carry out. Hence, the said organisation, matching with the time-line, could call shots and awarded contracts, in time, so that the project was executed beforehand. This has resulted in

- (i) kudos (to the Project Manager) from the top boss of his own organisation,
- (ii) kudos (to the top boss of the executing organisation) from the top boss of the Govt. Sector (where the project is getting executed),
- (iii) resulting in bonus of the executing private organisation.

So the Food-for-Thought are:

- (i) Why this has happened?
- (ii) Is it due to the fact that officials of the Government organisation are less sincere and less motivated and less efficient than the officials of private organisation?
- (iii) Can Government organisations, in such competitive scenario, rise up to the challenge, if some leverage of on-spot decision making are given to them?

It can be deliberated in many ways and pros and cons are to be debated over a long period of time, if some decisions are to be arrived at. I leave it to the august readers, as a food-for-thought, during their relaxed time.

Breaking the Wagon Breakers

By *Abhijit Chakrabarti*
Chief Law Officer

Like a plot of popular Bollywood movie, something unfolded in Haldia Dock Complex in the year 2019.

A Quick Response Team (QRT) of CISF caught red handed two persons belonging to a particular LOGISTIC COMPANY working with HDC while pilfering Coal at the dead of the winter night.

What unfurled thereafter is no less than climax of a movie. It was learnt that those men were working for mafia bosses who had their early start as wagon breakers and Coal smugglers dominant in the district of Midnapore.

Their approach is a mixture of mind and crime. These people, who were behind the whole operation of Coal smuggling, formed two companies. One company provided logistic service inside HDC and the other company operated as IMPORTER.

During the day, the LOGISTIC COMPANY worked as usual, however, during night, the dumpers, loaders and other equipment of the COMPANY were used to pilfer Coal from the plots of other importers and to be dumped at the plot of sister company, i.e., the IMPORTER.

This arrangement was going on since long, however, their bad luck and thanks to the QRT of CISF that they could be nabbed during such activity.

Port authorities took immediate steps and restrained removal of any goods from the IMPORTER's plot. That disturbed the chain of crime and the mafia bosses chose to approach the Judiciary by filing a Writ Petition against the Port authorities.

The law enforcement agency of the State had its role, however, the same was to be monitored by the Hon'ble Judiciary.

The first Writ Petition they filed in 2019, was withdrawn subsequently in early 2020.

However, as they could not make any way out, had to approach the Judiciary again during the period of lock down by filing a fresh Writ Petition in the month of April, 2020.

The Writ Petition was vehemently opposed by the Port, however, the Hon'ble Single Judge was not pleased to hear the plea of Port authorities and the bigger picture of theft & pilferage the Port authorities were trying to establish & illustrate. The order passed by Single Bench was prejudicial and as such, the Port authorities preferred an appeal. Sadly, the Hon'ble Division Bench also did not appreciate the submission of Port authorities.

Having no other options left, Port authorities took its plea before the Hon'ble Apex Court of India and it is there, the stand of Port was appreciated and encouraged by way of an order, which laid down the procedure to be followed during the release of the goods, which were restrained.

Both Hon'ble Single Bench and Hon'ble Division Bench were of the view that Port authorities did not have any legal right to restrain removal of goods nor it is the role of Port to see law and order situation. However, it was the determination of the Port authorities that it could establish the bigger picture and got seal of the Hon'ble Apex Court on their moral fight. The fight given by Port had greater impact on trade as it was a situation of making or breaking the confidence of the Trade Community.

Pilferage, theft, smuggling are common terms that we come to learn from movies story and plays connected to Port. However, seldom we see action against such crime that sends positive and deterrent signal out there in large to all such wrong doers and delinquents that Port will not sit quiet.

Happy to fight for the cause.

Satark Bharat – Samriddh Bharat

*By Suman Chatterjee
Dy. Chief Vigilance Officer*

Ever since we were children, we were told in our schools that our country is a Developing country. No palpable change in the lifestyle of our vast multitudes of poor people are visible over all these years, though the government seems to be regularly spending a huge amount of money to remove poverty, manage hunger and provide houses to the poor during all these years. Why is our country poor? Why can't our country become prosperous? These are some of the questions that often crop to our mind and most of us must have had many serious discussions on these issues. This article is an attempt to understand prosperity, identify the prosperous nations, analyze the causes underlying their prosperity, and visualize what we can do to change our prevailing situation.

Let us first try to find the answer to the question as to what we mean when we say that a country is prosperous? It is not a country where all the citizens are individually rich or even prosperous. That is a situation that cannot happen on such a macro scale. A prosperous country is one where huge numbers of citizens do not have to go without food or shelter, do not get the opportunity of getting educated, are deprived of even the basic healthcare facilities, have a very high birth-rate, and so on and so forth.

When we search for names of the prosperous countries of the world, the names of New Zealand, Australia, Canada, Singapore, USA, Japan, Germany, Sweden, Finland, Switzerland, Denmark and Norway, not necessarily in that order, pop up immediately. A proper and in-depth analysis of the reasons of their prosperity would lead to the discovery of some irrefutable facts regarding their society, government and economy.

A hallmark of prosperous countries is that their governments score very high on the efficacy and efficiency radar. It is quite possible that viewed from the inside, the citizens may have a number of complaints against the political dispensation presently in power. But on a cumulative basis, when we consider the various major aspects of governance, we find that the overall standard of governance in each of these countries is at a very high level. The citizens are assured of a certain minimum standard in the services that they are receiving. Infrastructure is superb, healthcare facilities are effective and not unaffordable for the large majority, the social security systems are in place, the basic minimum education facilities provided to the young

are effective and prepare them adequately for their future livelihood. The Police are generally not pervasive, so long as one stays within the legal boundaries, but are a real nuisance if the boundary is crossed. Hence, a citizen is automatically assured of a certain amount of security. In such a country, the President or the Prime Minister does not think before walking from his home to a restaurant, with his family for a typical dine-out evening or visit a theatre to grab a movie.

Though most of the public utilities are in the hands of big private corporates, the Regulatory bodies in these countries are so powerful and effective that though very big and powerful from their riches, these corporates, rarely, if ever, get away with unbridled destruction of the nature or by providing service inconsistent with their mandate or even charging the consumers exorbitant prices.

It is a fact that none of these countries are 'Police States', like China, and rather on the contrary, these countries place a high premium on personal freedom. Yet we find that these are the countries where tax-evasion is not as big a menace as it is in our country or in many other countries similarly placed as ours, e.g. Brazil, Russia. Rogue elements are present everywhere, and one will always find some people who manage to evade the system. However, what one finds in these countries is that the taxation system is quite simple. The laws are not too many and the tax-slabs aren't such as to make one lose one's sleep deciding under which slab his income would fall. The procedure for filing a tax return or submitting one's taxes is also not too complicated. Such simple procedures induce an average individual to pay his taxes, as due. There is minimum intervention of the tax-administration on the normal process of collection of taxes. On the other hand, in these countries the penalty for evasion is so high that evaders will be forced to think not once, but multiple number of times, before deciding to evade taxes. As a matter of fact, in most of these countries, detection of tax-evasion by an individual invariably leads to a penalty that ends up in prison, which is itself a serious deterrent. A very important role is played by the judicial system in these countries. The system employed by tax-evaders in India is to file a succession of complaints in successively higher judicial forum, in each of which it takes an unusually large number of years to decide on the complaints. During all these years, the tax-evader concerned gets to use his disputed wealth, without any law requiring it to not use such disputed money. In the prosperous countries, one needs to pay his taxes, as per notice, first, before one can file an appeal against the notice per se. Such efficient systems make tax-evasion an act that would require taking too much of risk as compared to the immediate consequent benefits that would accrue therefrom, unless one is a really big

operator, for whom the gains of tax-evasion far outweigh the risks. A normal individual would definitely shun risk-taking impulses under such a scenario, and hence the much better compliance to the prevalent taxation system. The prevailing tax rates in a country may/should not have much effect on the prosperity of a country or its citizens. The tax policy should be more oriented towards efficient tax collection from the maximum possible number of individual citizens and the way it is spent instead of the tax rate itself. Furthermore, it makes sense that a properly implemented taxation policy, with sharp focus on non-evasion from the widest possible base, is positively correlated with the prosperity as it enables governments to fund things like education and healthcare.

Each of these countries has an economy that puts a premium on knowledge. Their educational institutions are among the world's best and students from all over the globe strive to get admitted into these institutions. Whenever a new or path-breaking product, technology or service that can significantly impact the life or business is developed, it is rarely, if at all that such new product, technology or service is developed in a country other than any of these. The systems in place in these countries, including very strong Intellectual Property Rights, put a premium on knowledge and actively encourage innovation. The business, governments and the judicial system in these countries are also configured and oriented towards encouraging such innovation. They actively invest into the future by making committing huge sums of money in innovative research. Consequently, the best business houses from these countries actively engage in and promote research and innovation and then earning their mega-profits from the sale of such products. Facebook, Microsoft, Novartis, Siemens, Benz, Boeing, Astra-Zeneca, etc., are the names that immediately spring to mind whose products no one can do without.

If the business environment in a country is dominated by a few Monopolies or Duopolies, such economies can never be efficient, and in fact, these dominant corporations would invariably strive to earn massive and unjustified profits even while providing unsatisfactory services or products. These corporations know perfectly well that the existing legislations are incapable of ending their market dominance, and hence artificially create very high entry barriers for any new potential competitors, so as to continue with their ungainly merry profit-making. In a competitive economy typically, many competing corporations jostle for a share of the customers' pie, and consequently none can afford to compromise on the quality of product or services offered or charge exorbitantly. As a natural corollary, it is a win-win situation for both the consumers as well as the efficient

corporations, who all thrive, and let the market arrive at the fair price at which a product or a service should sell. Neither a corporate nor a consumer has anything to fear from such a scenario so long as everyone plays by the rule book. Even where the product or the service demands that only one or at most two entities should provide the product or service, e.g., water supply in a city, an all-powerful Regulator is omnipresent who will decide and deliver its decision, that must mandatorily be complied with, on all issues that are referred to it. It comes as a surprise to none that all the countries referred to in this article earlier, as being prosperous, follow this model of economy, without any exception.

A society in which any group or community is trampled upon, solely for reasons that they are in the minority by way of ethnicity, colour, race, religion or creed, by the majority, cannot attain a higher strata of development, moral, economic or social. Such minority groups can never consider themselves to be inalienable part of the society so trampling down upon them solely for reasons of belonging to a minority grouping. Over a period of time, such alienation invariably leads to deep discontent within the society at large and its various sub-groups of the society look at each other with distrust.

Such a social behavioural position can never be an ideal scenario for any government, and is a recipe for disaster. Various ideological infightings will break out and overall prosperity of the country will suffer tremendously. The government will have to spend a vast part of its resources in taking remedial administrative steps. Needless to say that economic activity will never really prosper under such a scenario. Few new investment proposals will come, and even capital flights might occur under extreme scenarios. Not even a highly prosperous or rich country can successfully counter such a situation, without a considerable cost that will irreparably damage its overall prosperity. When viewed with this background in mind, we find that all the countries named at the beginning of this article are also societies that are highly progressive. The overall social environment allows their citizens to think liberally and rationally. They are often found to be among the first countries to embrace changes for the better, and are also quick in protesting any act by their government that tries to alter the liberal viewpoint of their society. The judicial systems in such countries are also in sync with the society and rarely if ever pass a judgment that is incompatible with the overall societal environment. It is under such a social environment that economy flourishes most since businesses want continuity and hate disruptions of any kind.

A closer scrutiny of the main factors contributing towards the prosperity of a country would therefore, identify the following few factors common to all of these prosperous countries :

- Efficient government
- Efficient tax collection
- Economy based on innovation
- Socially progressive environment
- Competitive business environment

Transparency International is a global movement that tracks and exposes instances of corruption happening across the world. They aim to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society. They publish a Corruption Perceptions Index that ranks 180 countries and territories by their perceived levels of public sector corruption, according to experts and business people. Their website records that analysis of the results of 2019 Index shows that corruption is more pervasive in countries where big money can flow freely into electoral campaigns and where governments listen only to the voices of wealthy or well-connected individuals.

This list shows that almost all the countries named at the beginning of this article score very highly in the Index published by Transparency International, meaning that they have been perceived by the Organization to be the least corrupt among the 184 countries of the world.

Will it therefore be too illogical to conclude that those countries which are prosperous are so only because they are intolerant of corruption, and have the necessary systems in place to check, identify and prevent corruption? Will it also be too illogical to conclude that prosperity of a society, and hence a country, is dependent upon how careful its government and its entire society is, to detect and identify corrupt practices?

The answer to both the above questions are also apparent from the discussions held in the previous paragraphs, and it is reiterated that the answers to both the above questions is a resounding NO. It, therefore, means that the prosperity of a country is totally dependent upon how careful we as a society are to detect acts of corruption and it is not the duty of the government alone. Our society as a whole needs to remain vigilant.

Thus, if we Indians remain SATARK (vigilant) towards identifying acts of corruption, we will have a SAMRIDDH (prosperous) Bharat.

Necessity of Accuracy of Measuring Instruments – A Case Studied by Vigilance Department

*By Debananda Dasgupta
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By definition, a measuring instrument is a device meant for measuring a physical quantity. Like any other business establishment, SMP, Kolkata is also using different types of measuring instruments/devices, like - Measuring Tape, Vernier Caliper, Micrometer, Flowmeter, Voltmeter, Ammeter, Ohmmeter, Energy Meter, Lux Meter, Pressure Gauge, Weighing Machine, Weigh Bridge, etc.

Some of these instruments are installed in an equipment or in a system of equipment to monitor their condition/performance (e.g., Voltmeter, Ammeter, Pressure Gauge, etc.), while many of them are dedicated for measuring quantity of certain items, having specific monetary value (e.g., Energy Meter, Flowmeter, Weighing Machine, Weigh Bridge, etc.) and others are used for some specific purposes (e.g., Vernier Caliper, Micrometer, Lux Meter, etc.) to perform certain activities.

Performance of any measuring instrument depends on 'Accuracy' and 'Precision' of the instrument. If a set of measurements is taken by using an instrument, then Accuracy of the instrument is the degree of closeness of measurements to the true value and Precision is the closeness of the measurements to each other.

For example, if a weighing machine is used to measure the mass of a body of 20 kg and we get 17.4, 17, 17.3 and 17.1 as readings, our weighing machine is precise but not accurate. If another weighing machine gives us readings as 19.8, 20.5, 21.0, and 19.6, then the second machine is more accurate than the first one, but not very precise.

Now, the question is why there are errors in the reading of a measuring instrument? The answer is every measuring instrument has a certain level of accuracy. The smallest measurement that can be measured accurately by an instrument is called 'Least Count'. Error in measurement due to the limitation (or Least Count) of the instrument is called 'permissible error'. If an instrument gives erroneous results beyond the permissible error, then the instrument is inaccurate and hence unacceptable.

Error may be 'Systemic Error' or it may be 'Random Error'. Systemic Error may be due to erroneous instrument. Errors can be reduced by servicing/repairing the instrument or by replacing the instrument. Changes in temperature, pressure, humidity, etc. may also sometimes be caused Systemic Error. Random Error may arise due to variety of reasons. For example, the reading of a sensitive beam balance may change by the vibration caused in the building due to vehicles running nearby.

A measurement system can be accurate but not precise, precise but not accurate, neither, or both. For example, if an experiment contains a systematic error, then increasing the sample size (i.e., readings of the instrument) generally increases precision, but does not improve accuracy. The result would be a consistent yet inaccurate string of results from the flawed experiment. Eliminating the systematic error improves accuracy, but does not change precision. A measurement system is considered valid if it is both accurate and precise. Fig. 1 displays relationship between Accuracy, Precision and True or Reference value.

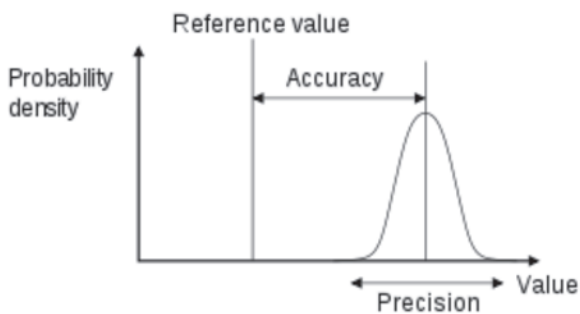


Fig. 1

In order to check accuracy of a measuring instrument, calibration is done. Calibration is a comparison between a known measurement (the standard) and the measurement using the instrument under examination. Calibration of a measuring instrument has two objectives. It checks the accuracy of the instrument and it determines the traceability of the measurement. A report is provided by the calibration expert, which shows whether the measuring device is working at the acceptable level of accuracy or not.

In the instant case, a Fuel Dispensing Unit of SMP, Kolkata was examined. Here, High Speed Diesel (HSD) is being delivered to different users, as per their requirement. HSD is supplied by a Petroleum Company and is stored in a tank and the tank is connected with the dispensing unit. The quantity of HSD to be delivered is set in the Flowmeter installed with the dispensing unit. After dispensing the

required quantity, flow of HSD is automatically cut off and the quantity delivered is available from the reading of the Flowmeter. A stock register is maintained to keep date-wise record of quantity received from the supplier and the quantity delivered to different users.

Quantity of HSD available inside the tank, at any point of time, can be measured by using a dipstick. This dipstick has millimetre graduation and after inserting it into the tank, one can get the level of HSD inside the tank and by using the Tank Calibration Chart, available quantity of HSD can be ascertained.

During initial examination, quantity available in the tank was measured and the same was compared with the stock register. Surprisingly, it was found that actual quantity inside the tank was on much higher side, i.e., in other words, there was a significant excess quantity (to the tune of 39.4%) than the quantity recorded in the stock register.

To inquire into the matter, another inspection was conducted on a subsequent date, when full day operation/activities of the said dispensing unit were observed. At the beginning of operation, i.e., before dispensing any fuel, quantity of HSD was measured by using dipstick and the same was compared with the stock register. Excess quantity at the beginning was noted. After completion of all the dispensing activities, same procedure was repeated.

If before dispensing any HSD, the excess quantity was found as 'A' litre and after dispensing 'X' litre, the excess quantity was found as 'B' litre. Theoretically, difference between A and X should be B.

$$\text{Thus, } A - X = B \text{ or, } A - B = X$$

However, from the difference of quantity of HSD available inside the tank, before and after dispensing, the actual dispensed quantity was found as 'Y' litre. The actual dispensed quantity ('Y') is less than the reading of Flowmeter ('X') installed with the dispensing unit.

$$\text{Thus, } A - B = Y, \text{ and } Y < X.$$

$$\text{Therefore, Percentage of error of the Flowmeter} = [(Y - X)/X] \times 100\%.$$

While measuring the quantity of HSD available in the tank, enough time was given to settle down the fluid (HSD) inside the tank. Dipstick reading was taken 4-5 times on each occasion. Also, each time it was ensured that the dipstick should reach at the bottom of the tank. These were done to eliminate the 'Random Error', which may occur while taking reading. A view was obtained that due to

sedimentation, presence of accumulated water inside the tank, worn-out of zero mark of the dipstick, etc., such excess quantity was found. However, repeated measurements within a short period of time could eliminate these factors.

From the foregoing paragraphs, one may conclude that less quantity of HSD is being delivered by the said dispensing unit due to 'Systemic Error' of the Flowmeter and this may be a cause for such excess quantity of HSD inside the tank. Subsequently, it was learnt that calibration of the Flowmeter was due in May 2020, but it could not be done due to lockdown situation.

This case study shows the necessity of calibration/accuracy checking of an instrument used to measure a quantity of an item, having a specific monetary value. Similarly, calibration of instruments used to monitor condition and/or performance of equipment are equally important.

At this point of time, it is worth remembering what ISO 9001: 2015 standard had defined under Clause 7.1.5 (i.e., Monitoring and measuring resources):

“The organization shall determine and provide the resources needed to ensure valid and reliable results when monitoring or measuring is used to verify the conformity of products and services to requirements”.

Being vigilant enhances wealth & resources

By Miss Mitali Ghose

Member - VSC Kolkata Chapter

Vigilance means Watchfulness, Alertness, Awareness and Observation. Government of India has always put emphasis on Vigilance for curbing of corruption. The recommendations made by the committee headed by Shri K. Santhanam, the “Committee on Prevention of Corruption” led to the establishment of the Central Vigilance Commission in 1964.

Why do we need vigilance units in Public Authorities? Simply put, the object of Vigilance is to detect & investigate corruption and fix accountability and also to study and suggest methods to prevent corruption. The vigilance activities inter alia result in adding to the resources of the nation. When an employee of a Public Authority takes advantage of his official capacity for personal gains, he is being corrupt. Misuse and abuse of official position leads to loss of the exchequer and adversely affects the wealth of the nation. A bribe generates black money - it is a form of income which is not taxed and hurts the nation's interest twice over. We can stop or prevent such theft of our national resources only by being vigilant.

So what can vigilance units do to add to the resources of the nation? Some thoughts are penned here. These ideas are not exhaustive and more in the nature of thinking aloud or brain storming.

(I) Suggesting Systemic Improvements

Suggesting systemic improvements is an important function of Vigilance. The various areas of work within a PSU are studied by its Vigilance Wing (a) while investigating corruption, and (b) during studies to examine the organization's processes.

For example, many PSUs have Electrical Workshops & Stores. A check by vigilance may reveal that inventory of items are not properly maintained, that there is unnecessary wastage or no accounting/reconciliation of items. There may be deliberate misuse or theft of items or callous neglect of the PSUs resources. This is where Vigilance has a role, not only to ensure that the corrupt are punished, but also to suggest systemic improvement measures and to make certain that such suggestions are implemented. Only taking punitive action does not solve the problem. The loophole in the system, which led to negligence or corruption, has to be plugged. If corrective

measures are taken, they will definitely prevent recurrence of corruption/negligence, save public funds & assets, thus adding to the wealth of the organization.

(II) Accountability to Prevent Abuse of Public Office for Private Gain

Office manuals should have clear job definitions, mentioning the powers and responsibilities for every post in the organization, so that every employee discharges his duty within his job parameters. Discretionary power, at senior levels of management, often leads to allegations of abuse of power.

If any action is taken in exercise of discretionary powers, then it should be done transparently. For instance, a system to make proactive disclosures, on the organization's website, may ensure that rules are not manipulated in the guise of exercising discretionary powers. Such vigilance will prevent abuse of public office for private gain and theft of public assets.

(III) Devising Deterrence against Misuse of Public Funds For Personal Gain

PSUs have lot of discretionary financial powers, which are sometimes misused by some employees for their personal gains. For example, an employee may be allowed an expensive mobile phone/laptop/tablet with the vague justification that the official requires it to discharge his duty, or allowed the use of official car. Such expenditure will be incurred without any rule to back it up and such facilities will not be given to his colleagues doing the same work. Some officials may be drawing allowances without actually performing the work for which it is being given or availing of extra facilities/benefits beyond their eligibility, under the guise of hardship allowance. Usually such extra facilities/payments are done silently, through manual supplementary bills, kept tucked in some innocuous corner of books of accounts and are not reflected in the salary slips of the employee. Prevention of such misuse of public funds can be checked by mandatory uploading on the organizations website details of perks/extra facilities/benefits availed by particular employee, which are not a normal component of his salary or eligibility.

(IV) Internal or External Audit as a Tool for Prevention of Corruption

Every public servant is on guard about Government Audit. Regular internal or external examination of Public Authorities' accounts, processes, functions and performance go a long way to check or reveal corruption. Effective audit depends on asking the right questions, which alone will reveal

the loopholes in the system and lead to prevention. Vigilance has to examine the Audit Reports, study the audit objections and detect corrupt actions, investigate and suggest systemic improvements.

(V) Electronic Technology as an aid to Vigilance and Addition to Public Wealth

The use of electronic technology prevents corruption in public transactions. Before electronic technology became a part of our lives, there were many corrupt practices and corrupt activities, resulting in loss of public wealth in many public transactions. For example, purchase of railway tickets, income tax returns, sales tax matters, taxes payable to municipality, vehicle taxes, etc. Today, various kinds of electronic payments, including salaries, net banking, purchase of e-tickets for rail and air travel, payment of taxes, e-filing and e-refund of income tax, accessing copies of court judgements/orders/cause lists via internet, e-auctions, e-payment of utility bills etc., have ensured that funds flow into public coffers and not illegal private hands. More e-technology translates into greater public wealth.

Conclusion

I have travelled to many European and Asian countries. During my travels, I have observed that many European countries were devastated in the Second World War but are today modern, wealthy nations. They rebuilt their nations from the rubbles of war and are today the most prosperous countries, because they are virtually free from corruption. For example, London was bombed frequently at night during World War-II. The British were so systematic, that immediately after each night's bombing, they drew up plans of how to rebuild the bombed area. Thus, after the War ended, they were ready with plans to rebuild the city. These plans were successfully implemented because of corruption free environment. Similarly Germany (particularly erstwhile West Germany) rebuilt itself from the ashes of War. Among the Asian countries, Singapore is a young nation, which became free from foreign domination after us. Yet they are a thriving and prospering nation today, because of corruption free systems.

Since 1995, Transparency International publishes a yearly list called the Corruption Perceptions Index (CPI). CPI ranks countries "by their perceived levels of public sector corruption, as determined by expert assessments and opinion surveys." They define corruption as "the misuse of public power for private benefit".

A country's CPI score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). The CPI for the year 2019 has ranked 180 countries.

Denmark, Finland, New Zealand, Sweden, Singapore and Switzerland are the top five least corrupt nations. As we all know, they are also among the most prosperous nations on earth. They have flourished because they are vigilant against corruption and have developed systems free from dishonesty. To combat corruption and to prosper, we too have to be vigilant. The views/opinions expressed in this article are the author's own.

The World Bank has defined corruption as “the abuse of public office for private gain. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state revenues.” (The World Bank Report- Helping Countries Combat Corruption: The Role of the World Bank).

Practical difficulties faced in contract management and suggested solutions thereof

*By Nilanshu Banerjee
Asst. Manager, Haldia Dock Complex*

One Cover Bid

Vide System Improvement circular dated 08.02.2018, it was stated that tenders of estimated contract value within Rs. 3 Crore to be invited in one cover bid. Two cover bid may be invited for works/procurement above Rs. 3 Crore.

Now, it can be safely assumed that more than 95% of the tenders pertaining to any Department of Haldia Dock Complex is below the estimated value of Rs. 3 Crore.

Further, on inviting tender in single cover, the Department is able to identify the bidder who has quoted the **least** without confirming its techno-commercial suitability or other pre-qualification criteria, as the case may be. Many a time it has been experienced that the bidder who has quoted the least is not techno-commercial qualified. However, say the L-2 bidder has all the requisite qualifications.

In these cases, the Department is not in a position to negotiate with the L-2 bidder (as the same would lead to gross violation of CVC norms) and thus, is left with no choice other than to discharge the tender, which tantamount to non-completion/delay of work/supply.

The price part of any two bids/offers can **only** be adjudged after ensuring that both the offers are at par, i.e., both the bidders satisfy the techno-commercial and other criteria of the tender.

However, in cases where the Department is carrying out procurement of specialized items from licensed suppliers, i.e., where there is no requirement of verifying the techno-commercial suitability of the vendor, because the supplier is an authorized dealer, single cover bid are to be invited.

Thus, it is felt that for tenders related to works/procurement wherein the Department has to verify the techno-commercial suitability of the bidder, two-cover system may be employed.

Imposition of Liquidated Damages while granting extension

In all the tenders, there is a provision of granting extension of delivery period/work

completion period. The process followed, in this regard, along with an example, is stated hereby:

Say a supply/works contract has to be executed in 90 days. However, due to reason attributable either to the Port/Contractor, the Contractor is unable to oblige his commitments. Now, he applies for extension on 90th day and as per the contract provision, LD has been kept as usual 0.5% / week till 10 weeks. On receipt of the application of the Contractor, a note is raised for approval of extension of time and the approval is solicited on 100th day. The executing Department further communicated the same to the Contractor on the same day of approval of extension.

Consequent to the above, the Contractor is able to complete his obligations on 105th day.

Now, as per extant practice, Port shall be imposing LD for 15 days. However, the actual delay should be only of 5 days.

Liquidated Damages can be levied for delay in delivery/work completion, if it is acceptable to the Principal, i.e., Port. However, the delay in getting administrative approval may not be attributable to the Contractor. Moreover, when LD clause is present, it can be deemed that delay is acceptable to the Principal up to a certain extent.

Thus, a process is to be laid down for acceptance of delay delivery/work completion by imposing LD till a certain period on the day of application by the Contractor.

No Claim Certificate

Though it cannot be strictly termed as flaw in contract, the extant practice of obtaining NO CLAIM CERTIFICATE FROM CONTRACTOR as per FORM G.C.3 before passing the final bills of suppliers/contractors, particularly in Works Contract, is inequitable on part of the contractor. It is understood that the same is meant to be a safeguard against frivolous claims after final measurement.

The essence of NO CLAIM CERTIFICATE FROM CONTRACTOR is that the contractor has no claim left expect the final bill (that has been lodged with the principal). The contractor usually does it under protest; however, the fact that his final bill has been duly accepted (if not processed and paid) needs to be communicated through the General Condition Form.

Moreover, at times the contractor performs additional work and hence is entitled for additional amount/damages against the same tender and the contractor has claims which are genuine, at a later date, even after submission of such No Claim Certificate.

Thus, the clause FORM 3 **Quote**... I / We do hereby declare that I / we have received **full and final payment** from the Calcutta Port Trust for the execution of the following work and I / we have **no further claim** against the Calcutta Port Trust in respect of the above-mentioned job ... **Unquote** may be rephrased such that the contractor is enabled to detail his genuine claims.

Not an ideal case study ...

By *Subrata Das,*

Asst. Manager, Haldia Dock Complex

Introduction :

One of the Major Ports of India (say, MP) invited tender from eligible bidders for the Operation & Maintenance of mechanized cargo handling system (for handling dry bulk cargo) installed in one of its berths, for three (3) years. Upon competitive bidding, one of the renowned stevedoring agents of that part of the country (say, SA) was entrusted with the contract for carrying out tender specified work, i.e., cargo handling operation, maintenance activities & specified capital repair work. The contract was, however, despite the poor performance of SA, extended for 6 (six) months. Not only poor performance of SA resulted customer satisfaction to reach rock bottom but also its sub-optimal maintenance practice & non-performing of capital repair work directly accelerated the erosion of the stock of capital asset of the country. Non-payment of dues, encashment of Bank Guarantees, etc. by MP became the bone of contentions and ultimately an arbitral tribunal was setup to resolve the impending disputes. After 10 long years of arbitral proceedings, which incurred over 90 Lakh Rupees coupled with unimaginative numbers of executive man-days of high rank managers, as a cherry on the top of the cake, the majority of the three members' arbitral tribunal directed MP to pay SA a staggering sum of Rs. 8.61 Cr. The entire saga, however, had been resolved amicably as an out of court settlement at a cost of Rs. 5.5 Cr. after due conciliation by the conciliator.

Discussion :

The SA offered Rs. 43.50 per MT for discharging all three contract liabilities, i.e., cargo handling operation, maintenance activities & capital repair work. Interestingly, no separate rates were taken or no such platform, as a matter of fact, was created by MP in the bidding process wherein the intended bidders could quote for each specified capital works. The SA performed only three out of nine capital repair works during the entire contract tenure including extension period of six months.

No specific mechanism was put on the rail to monitor the work of SA. Mere outsourcing of some activities of the port does not relieve itself from its obligation or responsibility, as a matter of case, to oversee not only the operations, which is correlated with the good will, but also the well being of dear capital assets of the

country, in general.

Due to poor performance of SA, the MP faced severe criticism from its customers, which is a matter of serious concern, keeping in the mind ever increasing competitive market scenario. This has a direct bearing on future business development of the port under study.

After taking over the plant from SA, the MP could only handle single ship using the said plant due to severe condition of the plant. The condition of the capital asset, one of the scarce resources of a developing country like India, deteriorated drastically during the contract period of forty months due to sub-optimal maintenance practices that followed and lack of capital repair work.

The contract, surprisingly enough, even after recorded poor performance of the contractor (SA), was extended for 6 months, which in turn shows lack of strategic intent in contract management. This very action, later on, substantiated by SA during arbitral trial as an indication of its satisfactory performance.

Minimum cargo guarantees of 0.9 MMTPA, mentioned in the tender as an approximate/estimated quantity, induced the SA to believe that variation from the estimate would be within (+/-) 10% as per usual trade practice. Cargo volatility, as argued by SA, forced the contractor (SA) in financially offsetting position leading to poor performance on the ground.

Recommendations (Generic):

[* ‘Outsourcing’ and ‘Operation & Maintenance (O&M)’ are used interchangeably hereunder]

A. Pre-Contract stage

- (i) During in-principle approval (outsourcing) a sustainable ‘need statement’ may be prepared and put forth. Need statement should address strategic alignment factors, financial factors, human resource factors, etc. During this very stage, ‘liability sharing matrix’, proposed BoQ & ‘outsourcing benchmarking’ shall be coined for detailed deliberation and approval of competent authority. A comprehensive risk statement also to be furnished mentioning clearly the perceived risk associated with the outsourcing and their respective mitigation plan.
- (ii) On the basis of above, a cost estimate shall be prepared along with assessing ‘suppliers base’ in the market. Different strategic procurement tools & techniques (kraljic matrix, van weele matrix, etc.) may be put

into action at this stage, which would help to understand the supplier risk and suppliers' collective bargaining power. This understanding will be of great help in the time of framing contract specific terms & conditions. A cost benefit analysis must be carried out to justify the outsourcing financially.

- (iii) Needless to mention that estimate creates a level playing field in any procurement activity. Therefore, estimate should always be prepared by averaging all the budgetary offers received.
- (iv) Outsourcing Tender documents should be scrutinized by different internal stakeholders including 'legal department' as the procurement will have a strong demeanor on port operations, customer satisfaction and legal risk.
- (v) To speak to customer satisfaction inter alia good will of the port, the port should explicitly incorporate default clause for continuous sub-standard performance by the contractor.

B. Post Contract:

- (i) An 'Outsourcing Contract Monitoring Committee (OCMC)' shall be framed to overlook the contract and submit a 'quarterly' report to the appropriate authority. The report should be inclusive of progress, bottlenecks, anticipated risks & their preventions, breach of contract, if any, and remedies thereto.
- (ii) A mechanism for field level supervision must be chalked out and placed on the ground.
- (iii) 'Asset Health Card' concept may be introduced wherein health condition of the asset that have been outsourced for operations & maintenance can be recorded from time to time, both in quantitative & qualitative terms, by any competent independent agency. Any abnormal deterioration of assets should be flagged by OCMC.

C. Post Completion of Contract:

- (i) After completion of the contract, a comprehensive study should be conducted and findings/learning outcomes from the study should be made available to the different verticals of the organization to disseminate the organizational learning. This will substantially take a good care of organizational learning curve.

Vigilant India, Prosperous India

By ***Shashwat Sankrit***

Asst. Manager, Haldia Dock Complex

Eternal Vigilance is the price of democracy. -*Thomas Jefferson*

Building a progressive India is almost impossible as long as there is the cancer of corruption in it. Corruption is an obstacle that the people of a country must overcome to become a prosperous, equitable nation. The national goals of poverty reduction, economic prosperity, infrastructural development, and overall advancement will remain elusive until corruption is wiped out from our country. Eliminating corruption is impossible without the collective will of the people and the Government.

In order to eliminate the evil of corruption from the country, the Central Vigilance Commission is observing Vigilance Awareness Week throughout the nation. The theme for the same is ‘Vigilant India, Prosperous India’.

As we are well aware, there is an increasing concern about corruption eroding the basic values of our life. It not only has a negative effect in social dynamics but also erodes the value system established in the country. It is important that the younger generation, which has to play a pivotal role in the development of the country, needs to be educated on the urgency to fight against such unethical practices.

In general, Vigilance awareness means awareness about the rights and duties of the individual in curbing corruption - both social and economic. It is a precaution to break corruption by being aware of the corruption. Now-a-days, vigilance awareness week is celebrated for developing the social awareness amongst the people. When we are cheating in exams, we think that we are being brilliant. But we don't realize that we are leading a step towards an evil – corruption at our individual level. We are not aware of the effects of our works, which may lead to devastate the social and economic conditions of our country.

Now the question arises, why we have to be aware from this corruption? Why corruption is compelling us to be more and more aware. Because corruption is found to be one of the most damaging consequences of poor governance system. It is characterized by lack of both transparency and accountability. Corruption lowers investment, hinders economic growth and human development. It is one of the factors responsible for poverty. That's why we have to be vigilantly aware. If we

found a cheating anywhere, we should immediately lodge a complaint. But many of us think that what is the need of lodging a complaint. If we oversight the corruption, it will be repeated again & again and lead to big scam. Hence, vigilance awareness is required to identify and check the fraud and disorderness.

Corruption and Development

We have all resigned, or so it seems, to the fact that we live in a corrupt nation.

India is ranked 80 out of 180 nations by the Berlin based corruption watchdog Transparency International (TI) in its Corruption Perception Index. If it's of any comfort to us, corruption is also a global problem. Graded on a scale of 0 to 100, where '0' indicates maximum corruption and '100' means least, India scores 41 (about the same as China) while Iceland, Denmark score the highest at 87. India's score has improved very slightly from 36 in 2012 to 38 in 2015. This indicates that nothing much has really happened to make India less corrupt. Except for North America, Australia and most of North-West Europe, all other continents are in the bottom half of the index. Japan, Singapore being exceptions in Asia. While corruption perception is one of the many ways to understand a nation, we have always wondered about what drives corruption, or its absence. Is it governance? Fear of reprisal? Is it stability? Is it culture? Is it about the way a people see themselves? Is it about the general degree of wealth? Is it about inequality? Is it about development? The answer is probably a complex aggregation of many different factors with one or more factor playing a more dominant role in a particular nation. If we look at our immediate neighbourhood of Pakistan, Bangladesh, Nepal, Afghanistan, Sri Lanka, we see a certain co-relation between the Corruption Perception Index (CPI) and Human Development Index (HDI). The table below illustrates the point:

Country	CPI Rank	CPI Score	HDI Rank	HDI Score
India	80	41	129	0.647
Pakistan	120	32	152	0.560
Afghanistan	173	16	170	0.496
Sri Lanka	93	38	71	0.780
Bangladesh	146	26	135	0.614
Nepal	113	34	147	0.579

From the above table, it is evident that countries with very high corruption, like Afghanistan, Pakistan, are also among the worst in terms of human development factors. Rather, countries that are unable to provide a decent standard of life and living to their citizens are also countries where corruption thrives. If we compare the corruption map of the world with the human development indicator map of the world, we see a striking similarity between the two. North America, Australia, Japan, North-West Europe indicate the areas where higher standards of human development results in less corruption in society. However, Russia and China, despite doing poorly in the corruption scale, do better in the development scale, when compared to India, for example. This could be due to the following reasons: Russia, as part of erstwhile USSR, is an ex-superpower, which means that it had been able to establish higher standards of life for its citizens, which, to some extent, continues to exist, despite corruption. China's corruption levels, though almost at par with India, has certain qualitative social differences.

Way Forward

Perhaps radically different and creative ideas have to be implemented to bring India at par with other developed countries. The entire tax structure needs to be overhauled to widen the tax base. With just 3% of the population paying income tax, maybe we need to do away with income tax altogether! Bring in more efficient indirect taxation methods. The GST could be a right step in this direction. Let the government fund all state and central level elections, a root cause of most of the corruptions, ban all cash-transactions beyond a lakh of Rupees, use UID to cover all transactions, fix and implement time frames for getting government services executed..... The list can go on and I am sure experts in the field already have the answers.

Good and efficient governance, building of trust by use of technology, lesser layers of policing, getting rid of archaic - inefficient rules, greater specificity in application of guidelines, can bring about a sea-change. The judiciary's inability to deliver verdict on time means justice is denied to many and this takes away the sting from any corruption investigation case. Thus, judicial reforms will be a key to deliver governance, reduce corruption and promote development.

Unless we speed-up the development process, create more jobs, value entrepreneurs over netas and babus, we are treading down a dangerous path where the poor are getting increasingly marginalized, the rich-poor chasm is widening everyday and social unrests, including terrorist activities, be it Kashmir or Chattisgarh, are becoming all too common. This is an extremely dangerous situation that needs to be addressed with the topmost priority.

सतर्कता से समृद्धि की ओर

अशोक कुमार ठाकुर

वरिष्ठ सहायक सचिव (राजभाषा)

“सतर्क भारत : समृद्ध भारत” के प्रसंग के साथ इस वर्ष सतर्कता सप्ताह/पखवाड़ा का अनुपालन किया जा रहा है। यह नारा महज एक नारा नहीं बल्कि वास्तविकता है। यहाँ यह बताने का प्रयास किया गया है कि सतर्कता समृद्धि का द्योतक है। समृद्धि तभी आएगी जब राष्ट्र के निर्माण की सबसे छोटी इकाई, यानी, व्यक्ति समृद्ध होगा और इस समृद्धि में सतर्कता की भूमिका महत्वपूर्ण है। व्यक्ति से परिवार, परिवार से समाज और समाज से राष्ट्र परस्पर समृद्ध होगा। समृद्धि का अर्थ यहाँ सिर्फ आर्थिक समृद्धि नहीं है बल्कि, समग्र समृद्धि यथा नैतिक समृद्धि, ज्ञान, विद्या, शिष्टाचार, सभ्यता और संस्कृति से समृद्धि ही वास्तविक समृद्धि है।

सतर्कता समृद्धि की आधार-शिला है। यदि व्यक्ति अपने कर्तव्यों के प्रति सतर्क रहता है तो अवश्य ही समृद्धि की ओर उन्मुख होगा। विद्यार्थी अपने विद्याध्ययन के प्रति, अभिभावक अपने पारिवारिक दायित्वों के प्रति, पेशेवर अपने पेशे के प्रति, शिक्षक, डॉक्टर, अधिकारी, कर्मचारी यदि अपने कर्तव्यों के प्रति सतर्क रहेंगे तो जिम्मेवारी के साथ सुचिता और पारदर्शिता सहित, भेदभाव रहित और न्याय पूर्वक अपने कर्तव्यों का निष्पादन कर सकेंगे। इससे स्वस्थ और सबल समाज की उत्पत्ति होगी जो समता-मूलक समृद्ध राष्ट्र का निर्माण करने में महत्वपूर्ण भूमिका निभाएगा।

समाज से ही राष्ट्र का निर्माण होता है। समाज समृद्ध होगा तो राष्ट्र अवश्य ही समृद्ध होगा। समाज ही देश को कुशल नेतृत्व प्रदान करता है। चाहे वह किसी भी क्षेत्र में हों – राजनैतिक या सामाजिक क्षेत्र हों या प्रशासनिक क्षेत्र।

देश के निर्माण में इसकी आधारभूत संरचनाओं का मजबूत होना आवश्यक है और ये आधारभूत संरचनाएँ मजबूत तभी होगी जब हम अपनी कर्तव्यों को पालन ईमानदारी के साथ करेंगे।

अपने कर्तव्यों के प्रति सतर्कता ही देश के बुनियादी ढांचे को सुदृढ़ करती है। हमारी संवैधानिक संस्थाएँ, हमारे उपक्रम जैसे सरकारी संगठन तभी मजबूत हो सकते हैं जब इसका नेतृत्व और उनके कार्यपालक सतर्कता के साथ पारदर्शी प्रशासन देने में सक्षम होंगे। देश की लोकतान्त्रिक प्रणाली को मजबूत रखने, जीवंत रखने के लिए यह आवश्यक है। इसकी आवश्यकता बहुत पहले-ही महसूस की गई थी और 1964 में इनकी निगरानी हेतु सतर्कता आयोग की गठन की गई थी। सरकारी महकमों में स्वच्छ और पारदर्शी प्रशासन सुनिश्चित करना ही इसका दायित्व था ताकि लोकतंत्र में जनता के साथ न्याय हो सके, भ्रष्टाचार का निवारण हो सके। रिश्वत लेना भ्रष्टाचार है, लेकिन रिश्वत देने की पेशकश करना भी अपराध है। यदि किसी सरकारी महकमे या अधिकारी के विरुद्ध कोई शिकायत की जानी हो तो वह तथ्यात्मक होनी चाहिए। जहाँ कार्य किए जाते हैं वहाँ गलतियाँ होना स्वाभाविक है लेकिन हमें हमेशा अपने काम में पारदर्शिता बरतनी चाहिए और अपने संगठन,

राज्य और देश को समृद्धि की शिखर की ओर उन्मुख करना चाहिए। सकारात्मक दृष्टिकोण ही इस बीमारी की दवा है।

आज ईमानदारी और भ्रष्टाचार उन्मूलन ऐसे मुद्दे हैं जो हमारे समाज में चिंता के विषय बने हुए हैं। महात्मा गांधी का सपना था कि हमारे देश में सच्चाई और ईमानदारी के साथ समझौता नहीं होना चाहिए। अतएव साहसी बने और ईमानदारी की पैरवी करें। अपने आसपास विश्वास और आपसी समझ का माहौल पैदा करनी चाहिए। आज अपनी बाधाओं को तोड़ने का प्रयास करने की आवश्यकता है। कुछ हटकर करने का मन में साहस होना चाहिए तभी समस्याओं का समाधान मिल सकता है।

आज देश एक ऐतिहासिक मोड़ पर खड़ा है। यह स्पष्ट है कि आने वाले कुछ वर्षों में भारत में समृद्धि का विस्तार होगा। लेकिन वास्तविक खुशहाली तभी आएगी जब प्रशासनिक सुधार किए जाएं और शासन-व्यवस्था में पारदर्शी बने।

COAL THEFT – A NEW LEARNING

*By Dr. Preeti Mahto
Chief Vigilance Officer*

I. Introduction

We've heard about gold theft, but coal theft is the biggest game. You might wonder who would bother stealing coal, rather than gold or platinum. But, precious metals are highly controlled and not easy to steal. Coal is a cinch. Steal enough of it and you can make a fortune – and many people do.

Coal theft is highly organised, backed by big money and has many factors involved. Here is a case study which undertakes a different perspective of coal theft incident.

II. The incident of theft

The story starts with M/s AAA, an import-export certificate holder firm, which started importing dry bulk cargo like coal & manganese ore through a Port. For transit storage of such cargo, plots were allotted to the said port user in the Dock Interior Zone.

M/s BBB was engaged by Port for Supply and Operation of equipment like Pay loader, Excavator, Front end Loader-cum-backhoe, Dumper and Bulldozer, etc. on hire basis. These equipment may be used inside the Dock zone for loading, unloading and movement of cargo or exported/imported material by various port users.

The said Port received a complaint that they have found that cargo may have been pilfered from their plot within the Dock Interior Zone of HDC by some miscreants.

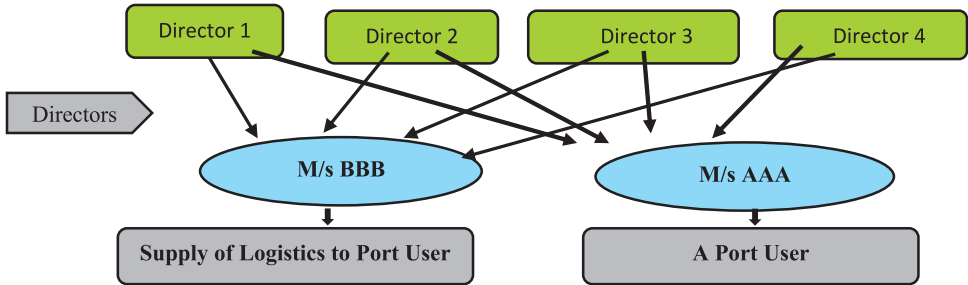
In view of customer complaints, patrolling was started inside the dock area of the Port discreetly and during one such inspection, they caught an incident red handed. They noticed that an attempt of shifting of coal from an adjoining plot of ZZZ company to the plot of AAA with the equipment of BBB.

The case was initially investigated by Security placed at Port and subsequently given to State Police lodging FIR against M/s AAA and M/s BBB.

III. The story Unfolds

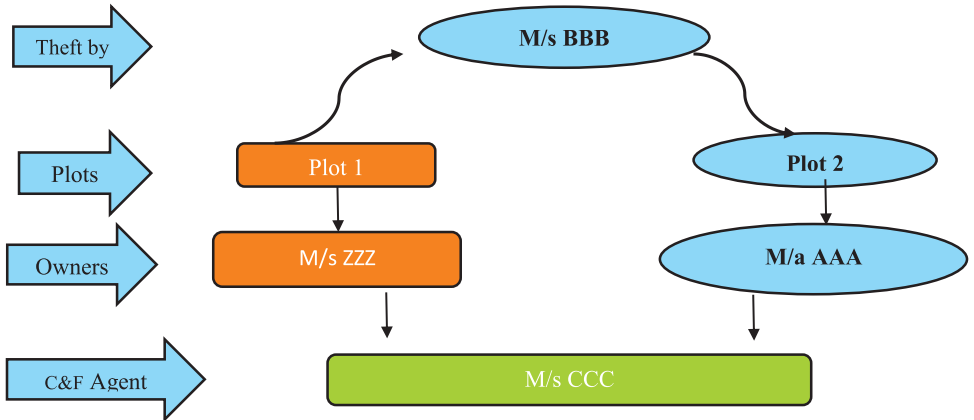
A. First Catch:

From the Memorandum and Articles of Association of M/s AAA, the coal importer and M/s BBB, the Logistic provider, it was found that the owners/Directors and Independent Auditors are same for both of these companies i.e. both are sister concerns.



This implies that the dumpers and pay loaders supplied by M/s BBB for various Port activities were used by its sister concern, M/s AAA, to pilfer coal stacked in adjacent plots of other parties at odd hours, to its own plots, thereby adding to its own imported coal.

B. Next Player- The role of Clearing and Forwarding Agent :



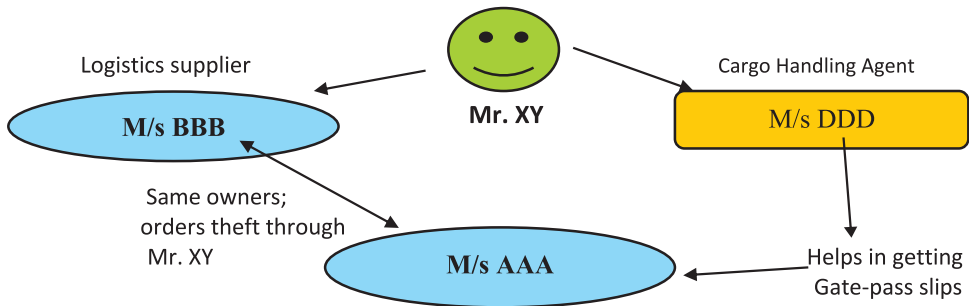
M/s CCC was found to be the C&F Agent for both M/s AAA (the pilferer) and M/s ZZZ (whose cargo was being pilfered), confirmed displacement / loss of cargo from Plot 1 to Plot 2. The role of M/s CCC was found to be dubious and connivance of C&F with M/s BBB, which is sister concern of M/s AAA, could not be ruled out. As M/s CCC was

maintaining the import and export accounts of both the companies, it was very easy to have control on import quantities and to let the clients refrain from complaining against the other client of same agent against thef.

C. Turning Point- Role of a Key Player:

The turning point in the case came when the role of a person named XY came in picture. Mr XY was an employee of two companies; M/s BBB (the Logistic supplier and sister company of M/s AAA) and M/s DDD (which is a cargo handling agent). After shifting of cargo illegally from others' to their own plot, Mr XY used to complete all port formalities and being the employee of M/s DDD, used to get the genuine pass out slip and thus, take the stolen cargo out, along with their own cargo from the Dock.

While going into documentations available in Port in detail, it was found that Mr XY filled up the application of permit for the dumpers and pay loader on the night of incident to carry out the theft attempt.



IV System Improvements Suggested and Implemented:

A. Web based surveillance system:

IT enabled surveillance system based on integration of GPS-GIS which can provide fool proof tracking system similar to the manner we monitor the movement of app vehicle. The system should not only enable tracking of the movement of vehicle inside the dock but also capturing all the details related to entry, weighment, movement and gate pass, etc. in a centralised manner.

B. Ear marked Parking Location:

All equipment used inside Dock for various engineering and / or maintenance projects, are to be parked invariably at a location specifically

earmarked for the same. This will help in easy marking of idle vehicle or vehicle parked overtime or illegal activities.

C. Accountability of application for permit:

While generating the entry permit, like registration and other details of vehicle, AADHAR number should be captured for confirming that a person is mapped only with one company. AADHAR number along with antecedent verification will act as a vulnerability check towards Security threat and other criminal activities inside the Port. In present case, Mr XY was a signatory authority for M/s BBB as well as M/s DDD, which could have been pointed out if AADHAR number was captured while generating permit. Further, the permit should be time bound and should necessarily get cancelled at the end of the validity period generating exception report.

D. Cent Percent linkage of weighment with permit and gate slip:

All the black dry bulk cargo are to be essentially weighed prior to delivery instead of “Said to contain” basis system. Further, the weighment slip issued by the weighbridge must be linked with entry permit as well as the details of plot, LOT number, type of cargo, all the parties including C&F, Cargo handling agency, gate slip details, etc. This will help in keeping the pilferage under check.

E. Fool proof system for verification and error recognition:

Unauthorized stoppage, abnormal delay in reaching destination, abnormally excess distance travelled inside the dock, unauthorized stay beyond permissible time, overloading, etc. should be detected and error/exception report to be generated in MIS form through web based application on daily basis to port management.

F. Online Loading order and sharing with Security:

An advance information should be provided for loading of Cargo/taking delivery with vehicles details, plot locations, cargo, vessel name, C&F Agent’s name, etc., and these details should also be shared with Port security to prevent any illegal activities.

G. Installation of CCTV:

Presence of closed circuit cameras, fixed as well as Pan-Tilt-Zoom type, covering the entire Dock area to keep surveillance and prevent

unauthorized loading/activities. The positioning and resolution of the cameras should be such that the registration numbers of the vehicles is captured clearly even in dark and can be remotely accessed especially at entry/exit gate and in the parking location.

V The Lesson Learnt

The System improvement and implementation are the part of preventive vigilance. However, for academic interest, the major lessons learnt from the said coal theft incident can be phrased as “**Mutual Inclusiveness may lead to Potential Conflict of Interest**”, **giving unfair competitive advantage to one factor.**

Mutually inclusive, in present incident, has occurred in terms of:

1. **Organisation** (M/s AAA, the coal importer, and M/s BBB providing logistic solutions inside Dock area, were governed by same set of Directors and thus, were working towards same interest, i.e., pilfering coal through own logistics and making own cargo in excess) and/or,
2. **Individual** (Mr XY working for M/s BBB as well as for M/s DDD, the cargo handling agent in Dock and therefore, could pilfer through logistics and get gate pass through handling agent for exit of stolen cargo) and/or,
3. **Function** (M/s CCC being Clearing and Forwarding agent of M/s AAA as well as M/s ZZZ was handling imports, which makes easy for him to reshuffle the quantity and quality of imported coal and his role was found to be dubious)

As a part of Management, we can always avoid such situations which enables mutual inclusiveness and thus, resulting in such conflict of interest. In case of organisations, the tender selection/evaluation committee may be constituted by inducting multi-divisional members and an undertaking may be sought from the bidder to declare conflict of interest, if any.

In case of individuals, unique identification number may act as primary key for the system to recognise in case any duplication of records exist in application software.

Cargo clearance, forwarding, handling, delivery, etc. are the functions handled by a handful of agents in any port. For transparency, the number of importers/exporters handled by any agent may be declared by latter so that the port users can take an informed decision.

Another notable learning is having a planning application in conjunction with GPS and GIS to manage logistic and cargo delivery related operations with minimum human intervention leading to a fool proof system. This web based integrated application tool must contain potential to generate many reports thus helping port administration to take timely decision and have complete control on movement of vehicle inside the Dock Area. Let us hope that with the learnings and advancement in IT sector, such incidents will be nipped in the bud.

Systemic Improvement Road Map to Counter the Menace of Encroachment of Land Owned by Syama Prasad Mookerjee Port (SMP), Kolkata [erstwhile Kolkata Port Trust (KoPT)]

A. Terms of reference :

While tendering First Stage Advice in a Vigilance case related to Estate Division of Kolkata Dock System (KDS), SMP, the following had, inter alia, been mentioned in letter vide no. 019/SHT/027/442450 dated 27.12.2019 of CVC:

“The Commission further advises CVO, KoPT to devise a robust system to monitor encroachment of large chunks of land owned by KoPT by unauthorized tenants in the Port and send a practical systemic improvement road map within two months to counter these deficiencies in the Estate Division.”

It may be appreciated that the Estate Module of KDS, SMP contains information on 4543 acres of land pertaining to KDS, out of which a total area of 2916 acres is awarded to 2207 tenants under various type of short term licenses, long term leases and way leave permissions. Excluding way leave land parcels, which comprise very small area, the area reduces to 2905 acres under possession of 2126 tenants.

As such, keeping in view the enormity of the exercise required to devise an effective systemic improvement road map as well as the necessity to adopt a holistic approach in the matter, the Commission had been requested to kindly consider extension of time by another 1 (one) month for submission of the aforesaid systemic improvement, i.e., up to 31.03.2020. The same had been considered by CVC and accordingly, a preliminary report had been sent to CVC in March 2020 itself.

The instant final report on the subject has been prepared after protracted discussion with the top management of SMP, deliberations with Officers of Estate Division of SMP, brainstorming with Officers of Legal Division of SMP, various Estate-related cases earlier handled as well as being handled by Vigilance Department, different Estate-related systemic improvements previously issued by Vigilance Department, etc.

The instant systemic improvement final report covers the following aspects :

I. SMP: A BRIEF INTRODUCTION

- (A) Terms of reference (already covered pre-page),
- (B) Quantum of land asset possessed by KDS, SMP,
- (C) Revenue generation potential vis-à-vis actual scenario,
- (D) Legacy issues,

II. ENCROACHMENT: A MENACE

- (E) Encroachment: A brief,
- (F) Few case studies on encroachment,
- (G) Salient Statistical information,

III. APPROACH MADE TOWARDS IMPROVEMENT

- (H) Systemic improvement suggestions already issued by Vigilance Department,
- (I) Steps already taken by Port management,

IV. SYSTEMIC IMPROVEMENT ROAD MAP TO COUNTER ENCROACHMENT: A PRACTICAL APPROACH

V. CONCLUSION

The Fourth (IV) Section encompasses various practical suggestions being submitted by the present CVO to CVC, on monitoring and countering encroachment, as per the instructions contained in the CVC letter dated 27.12.2019. The details are placed at page 20 onwards of the report and a road map in the form of flow chart is placed at page 31 of the instant report. There are only three annexures with this report.

I. SMP: A BRIEF INTRODUCTION

B. Quantum of land asset possessed by KDS, SMP :

Among all the Major Port Trusts, Kolkata and Mumbai are blessed with a very important source of revenue that does not directly concern their core function of merchandize import & export. This is the revenue accessible to them from utilization of vast tracts of urban land owned and managed by them historically, spread over prime residential/business locations of these 2 (two) densely populated Metropolis. Out of the total estate owned by these 2 (two) Ports, and

even after meeting their own operational and expansion requirement, a substantially large portion of land - located often in prime business district and residential hubs - is available for renting out to Government entities, private concerns and individuals, in the form of licences & leases.

Table 1: Break-up of the quantum of land asset possessed by KDS, SMP

Estate asset by jurisdiction	Area (Acres)
(1) Land under Kolkata Dock System (KDS)	4543
(i) Under KMC, HMC & Budge Budge	3326
.... Kolkata River Front 126.7
.... Kolkata Dock Land 2646.7
.... Howrah 345.9
.... Budge Budge 206.7
(ii) Outstation properties	1217
Estate resource by usage	Area (Acres)
(a) Land inside Dock (including Dock Basins)	421
(b) Land outside Custom Bond	3702
(c) Land earmarked for Township	420
TOTAL	4543
Estate asset located in Metropolitan areas of Kolkata , Howrah and Budge Budge	Area (Acres)
1(i)-(a) = 3326 Acres – 421 Acres	2905
... Howrah	... 345.9
... Howrah	... 2559.1

The KDS unit of SMP manages an Estate of 4,543 acres of land. Excluding land currently under use of the Port and that reserved for future use, nearly 2,905 acres of land – located in Metropolitan areas of Kolkata, Howrah and Budge Budge – are available for leasing and licensing (Table 1). Out of this, Kolkata City accounts for 2,559 acres, while tenanted land under various leases and licenses (on the date of analysis) amounts to nearly 2,342 acres, comprising 3,002 plates.

C. Revenue generation potential vis-à-vis actual scenario:

The method of valuation of land asset and the manner in which lease and licensees are required to be awarded by a Port are controlled by the Land Policy Guidelines

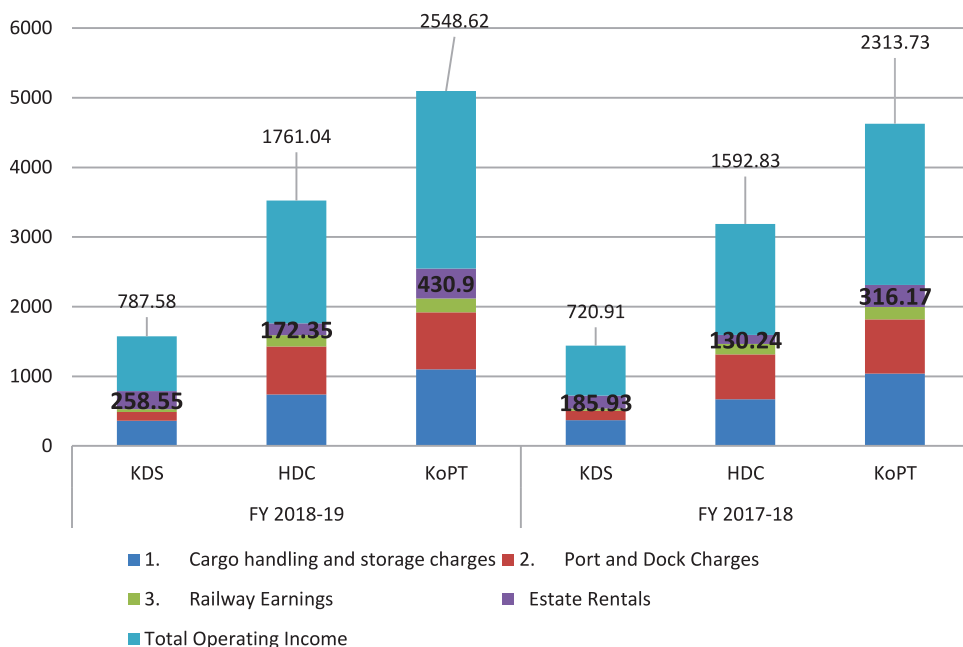
issued by Ministry of Shipping from time to time, while fixation and revision of rental charges [Schedule of Rent (SoR)] for land & structures is determined by Tariff Authority for Major Ports (TAMP). The frequency of revision of SoR by TAMP is once in every 5 (five) years. As per the latest Land Policy of 2014, annual rent to be charged for a plot of land should not be less than 6% of its latest market value, with a minimum escalation of 2.0% per annum.

It is pertinent to note that all Major Port Trusts have been empowered to realize maximum possible commercial value from their land assets, unlike other Port services whose pricing is aimed at providing services to Port Users, at affordable cost, for facilitating Maritime trade. The latest Land Policy clearly envisages realisation of yearly rent from tenanted assets to be at least 6% of its “market value”. Value of land in any city varies from location to location. For instance, as per West Bengal Land Registration Department, 1 (one) acre of land in the Central Business District of Kolkata, located 1 (one) or 2 (two) kilometres away from Howrah Station, is presently valued at Rs. 70 to 80 Crore, while further 8 (eight) to 9 (nine) kilometres down, it can drop down to Rs. 5 to 10 Crore per acre.

Considering on conservative basis and the inherent legacy issues of the 150-year-old Port and consequent constraints arising there from, like poor infrastructure, the market value of the currently tenanted land would be in the region of **Rs. 20,000 Crores**, as per an estimate made by Vigilance Department. Consequently, as per latest Land Policy, the annual lease rental income from tenanted land under KDS alone is expected to be up to 6% of this market value, i.e., up to **Rs. 1,200 Crores, in ideal situation.**

The annual income of SMP, Kolkata, which operates 2 (two) separate Dock Systems, i.e., Kolkata Dock System (KDS) and Haldia Dock Complex (HDC), comes from 4 (four) different revenue streams: (a) Income from cargo handling & storage charges, (b) Income from vessel related charges, (c) Income from Railway operations, and (d) Estate Rental. The above Chart and the Table 2 (below) clearly

Chart 1: Distribution of total operating income in various streams (Fig in Crores)



depict that Estate Rental forms not so significant part of the Total Operating Income, despite having huge potential. To be specific, Estate Rental contributes 6-8% of the revenue of the respective Docks (which is statistically considered non-significant) and collectively around 13-17% of SMP’s Total Operative Income.

Table 2. Estate Rentals in SMP vis-a-vis Total Operating Income in various FY (Rs. in Crore)

Details	2019-2020 (unaudited)			2018 -2019			2017 -2018		
	KDS	HDC	SMPK	KDS	HDC	SMPK	KDS	HDC	SMPK
Estate Rental (ER)	166.13	149.36	315.49	258.55	172.35	430.90	185.93	130.24	316.17
Total Operating Income (TOI)			2443.87			2548.62			2313.73
ER as % of TOI	6.8%	6.1%	13%	10%	6.7%	17%	8%	5.6%	13.6%

Even the figures of rental income from Estate, shown pre-page, are the accrued ones and are not the actual earnings, as they represent only the amount billed to lessees and licensees - not what actually gets realised from them during the year. Data of past years show that the actual realization vis-a-vis billing has always been low, with historical trend pointing to hardly 60% - 70% as given in one of the systemic

improvement issued by Vigilance Department. Investigation has revealed that such low realization is principally due to numerous tenants (mainly traders/proprietors and private limited companies) enjoying extensive land in prime locations of the city, without paying anything or paying meagre amounts against the amount billed by the Port, after conveniently embroiling the Port in some form of litigation or the other.

D. Legacy issues:

SMP, Kolkata, the only riverine Port in India, is also the oldest Port of India. This 150-year-old Port, especially the Land Department/Estate Division thereof, has been suffering from a host of legacy issues, which have been putting various constraints in the path of proper land management of this historical Port. Some of the salient legacy issues of SMP are furnished hereunder:

- 1) There has been **no Master Plan** in the Port regarding usage of the enormous tracts of prime land available to this 150-year-old Port. As such, in the absence of any clear road map, utilisation of Port land has been in a more ad hoc manner, rather than in a comprehensive and well strategized fashion. This has not only led to severe constraints in subsequent management of huge land assets of the Port, but has also given rise to a plethora of disputes regarding land parcels.
- 2) Subletting/mortgage of Port land by lessees/licensees required approval from the Port, which involved **cumbersome processes** and enormously inflated rates. This led to a tendency in lessees/licensees to sublet/mortgage Port land, without approval of the Port, which not only resulted in non-regularisation of such subletting/mortgage, but also gave rise to unauthorised occupation by rank outsiders, who were unwilling to let go of precious Port land, even after the original lease/license had long expired. This had led to encroachment of numerous land parcels and consequent disputes with respect to the same.
- 3) **Lack of proper adjudication** of land related disputes has also been a major issue impeding proper Estate management in the Port.
- 4) There have been numerous cases where a single party has filed a Court **case in multiple Courts** with respect to the same parcel of land. This has resulted in huge avoidable delays, since getting a Court verdict in favour of the Port could not close the case, as other cases on the same matter have been pending in other Courts.

- 5) With introduction of the Special Court, constituted under the Public Premises Act, 1971 (referred as PP Court hereafter), Estate Officers came to be engaged routinely by the Port from Port Officers only. This resulted in avoidable delays in resolution of disputes, since most of the **Estate Officers**, coming from Port cadre, **lacked knowledge** of conducting and disposing such quasi-judicial processes expeditiously.
- 6) Land Department/Estate Division of SMP, Kolkata has been suffering from **lack of specialized manpower** as well as **acute shortage of staff** vis-à-vis the enormous quantum of land assets owned by the Port.
- 7) Historically, areas surrounding any Port in the world are always dominated by **presence of history-sheeters and other disruptive elements**. This Port has been no exception. Large parcels of land have been subject to grabbing, often by developing a religious construct, thereby making recovery of such encroached land virtually impossible.

II. ENCROACHMENT: A MENACE

E. Encroachment: A brief

Encroachment is defined as “intrusion on a person's territory, rights, etc.” It can also mean “a gradual advance beyond usual or acceptable limits.”

In Estate management parlance, there can be 3 (three) types of encroachment, as detailed hereunder:

- i) encroachment of **vacant** SMP land by unauthorised occupant(s) or “rank outsider(s)”,
- ii) encroachment of SMP land by unauthorised occupant(s) or “rank outsider(s)” to whom such land has been **transferred/assigned/sublet** by the original licensee or lessee of the said land, **without obtaining permission from SMP**, and
- iii) encroachment of SMP land by unauthorised occupant(s) who had once been the original **licensee or lessee** of such land, but whose period of license or lease for the said land has **already expired**.

In KDS, SMP, all the aforesaid 3 (three) types of encroachment are rampant, as has been encountered by Vigilance during the course of various investigations, surprise inspections as well as analysis of data obtained from Estate Division.

Encroachment of large chunks of SMP land by unauthorised occupant(s) or “rank outsider(s)” has a 2 (two) fold impact.

*Firstly, unless the unauthorised occupant(s) or “rank outsider(s)” are evicted from the encroached lands, such lands **cannot be put up for tender/auction** for license/lease, thereby preventing bringing such lands within the revenue stream of SMP and resulting in opportunity loss, i.e., loss of revenue from such lands.*

Secondly, substantial loss of manpower, money, time and other resources in the process of eviction of the unauthorised occupant(s) or “rank outsider(s)” from the encroached lands.

Since attempts of eviction of such unauthorised occupant(s) or “rank outsider(s)” from the encroached lands inevitably involve quasi-judicial (PP Court), judicial (City Civil Court/High Court/ Supreme Court) as well as law enforcement (Police) processes, the same are likely to take substantial time. Ultimately, the Port continues to lose revenue, which would otherwise have generated from giving such lands on license/lease, through tender/auction.

F. Few case studies on encroachment:

Estate management processes in SMP had attracted the attention of Vigilance Department for quite some time, mainly due to the inherent revenue generation potential of Estate. Analytical studies as well as analysis of the existing processes pertaining to various aspects of Estate management functions had been carried out by Vigilance Department and vulnerabilities of the “As is” processes had been studied in detail. During the same, origination of unauthorised occupation of Port land in SMP and how it surfaces before Port administration was an intriguing aspect. A few case studies (without naming the actual companies) are sketched below to showcase various instances of encroachment:

(a) Case study 1:

The case has surprising twist and turns. In this case, a go-down in the prime business district of Kolkata-1 Zone, a stone’s throw distance from SMP’s HQ Office, had been awarded to M/s. XXX Ltd., a Private Limited Company in the year 1976, on monthly license basis. Within 3 years of getting the license, Port Authorities noticed that M/s. XXX had sublet it to M/s. YYY, another Proprietary Concern, without the Port’s permission, and issued stern warning to M/s. XXX.

But, subsequent events in this case, as recorded in the file, became more and more bizarre, as narrated below:

- (a) Bills sent at the recorded address of M/s. XXX Ltd. were being returned back by postal authorities since 2016. Current outstanding amount against M/s. XXX Ltd. is more than Rs. 1.0 Crore.
- (b) Three (3) Quit Notices were sent to M/s. XXX Ltd. alleging payment default, encroachment and unauthorized construction, the last one being in 1990. Eleven (11) years after the last "Quit Notice", a Plaint was finally filed before the Estate Officer (EO) in 2001 for evicting M/s. XXX under the relevant provision of PP Act. Mysteriously, no document was attached with the plaint by Estate Division substantiating the grounds for which they sought eviction. The Ld. EO took notice of this Plaint after 6 Years, in 2007, and asked Estate Division to provide documents substantiating their claim of unauthorized occupation. These documents were submitted by Estate Wing after another 7 years, i.e., in 2014, following which a Show Cause was despatched to M/s. XXX Ltd. The Show Cause Notice sent by Registered Post returned back "undelivered".

The PP Court proceedings were adjourned several times as no one from M/s. XXX Ltd. appeared initially. An inspection by a land inspector during the same time revealed that neither the original lessee, M/s. XXX Ltd., nor his subtenant M/s. YYY were occupying the premises. Instead, a rank outsider, one Mr. ZZZ was found to be conducting business there.

- (c) Mr. ZZZ was allowed to participate in the PP Court proceeding, through a Lawyer, although he carried no authorization from any Director/Owner/Promoter of the original licensee, M/s. XXX Ltd.
- (d) No one cared to verify where the original lessee was and whether at all they had legally authorized Mr. "ZZZ" to represent them before PP Court proceeding. At one stage, this individual audaciously declared himself to be the "Proprietor" of M/s. XXX Ltd. since 1986.
- (e) Every unlisted limited company is required make certain disclosure before Ministry of Corporate Affairs (MCA) about their finances,

ownership and shareholding details once every year. When these were obtained and checked by Vigilance, it was found that far from being the owner or director of “M/s. XXX Ltd.,” this individual (M/s. “ZZZ”) was not even a shareholder. Interestingly, it was found that several minority shareholders of M/s. XXX Ltd. had their addresses in Karachi, Lahore, Rawalpindi and Rangoon.

Thus, the above was a case where not only bills raised against “M/s. XXX Ltd.” were coming back undelivered, but even an imposter succeeded in participating in and prolonging a quasi-judicial process for nearly 3 years, representing himself as the real “owner” of the licensee company, all the while enjoying the licensed premise without payment.

(b) Case study 2:

A plaint was filed by Estate Division, before PP Court in 2012, to evict a tenant who was occupying a piece of land, without making any payment since previous 8 years, and to recover pending dues from him.

Although the Public Premises Act, 1971 stipulates that the Estate Officer (EO) must issue an Eviction Notice within 7 days of receiving a plaint about unauthorized occupation, he could not do so because of a simple reason - while the plaint filed by KoPT mentioned the area of the plate under unauthorized occupation to be 6.69 m², a Lease Deed accompanying the plaint said it was 66.9 m². The Estate Division continued to insist that the area of the plate in question to be 6.69 m² only and stated to the EO that the area shown in the attached Lease Deed was instead wrong and not 66.9 m².

When the computerized billing history of the “unauthorized plate” was examined, the area was found to be 6.69 m² and the rent was actually being calculated since last 30 years, based on such area, although the tenant had stopped paying since last 15 years. Being suspicious of the confusion between the plaint and the Lease Deed as well as with the motive to send a correct Eviction Notice to the unauthorized tenant, the Ld. Estate Officer wanted the area to be physically inspected/verified once for all by the Estate Division. However, for the next 4 years, the Estate Division could not provide this simple information, i.e., whether the area described in the Lease Deed or the plaint was correct. As a result, an Eviction Notice that

should have been served within 7 days, as per the PP Act, is still waiting to be served, i.e., even after 7 years of the plaint.

Surprisingly, when the file was examined by Vigilance, it was detected that the area of 66.9 sq.m reflected in the Lease Deed actually pertains to a different (adjacent) plate, awarded to the same lessee. This simple information that there are two plates – one with an area of 6.69 sq.m while the other having an area of 66.9 sq.m – has not been provided to the Estate Officer by Port during the last 4 years, after EO ordered to verify the same.

When the Estate Module was checked, it was found that no rental bills have ever been sent to the tenant for the larger plate, i.e., of 66.9 m² area. For all practical purposes, this larger plate has dropped out of sight of Port Trust, while being under the possession of a tenant free of cost, and when all the while an infructuous legal storm was raging over the much smaller adjacent plate of 6.69 m². When Vigilance went to the actual plate location, they discovered that the lessee had died long ago and his next generation has constructed a residential building (the lease was given by Port for constructing a Restaurant), happily collecting significant monthly rent from “his own tenants”.

(c) Case study 3:

In this case, a company [say “X”] had been awarded a 10-year long term lease in 1990, for several plots of land measuring nearly 22,000 m² area, at a location called Sonai, adjacent to the Dock area of KDS.

When the said lease expired in the year 2000, the company “X” declined to continue the lease and intimated their desire to surrender it to KoPT. However, their request for surrender was for only one of the occupied plates and not the entire leased area. The ensuing dispute saw the then Deputy Chairman, KoPT ordering to get the tenant evicted by serving “Ejectment Notice”, which strangely was not sent to the company “X” till 2002. At this point of time, a different entity [say “Y”] manifested and approached KoPT with a request that they be granted the tenancy on a monthly licence basis against some paltry deposit amount that did not cover the outstanding dues left pending by the company “X”. The request letter of “Y” contained this classic paragraph

“In this connection it is to be mentioned that the unauthorized encroachment in Sonai is extremely rampant and it is only due to our existence that the plots of land leased/licensed to M/s. “X” could not be encroached by others. If CPT decides to hand over lesser area we will have to vacate the remaining area in our possession now. In that case the likelihood of encroachment is very high. It is relevant to state that we are not the encroachers in the strict sense and actually were the handling agent of M/s. “X” by virtue of which we were safeguarding the lands licenced/leased to M/s. “X” at Sonai, in the right interest of the Port.”

The audacity of 'Y' is noticeable and depicts the justification of encroachment as well as threat about the outcomes if licence is not granted to him.

(d) Case study 4:

This is an interesting case of encroachment of a huge portion of prime SMP land by a “rank outsider”.

More than 13,000 sq.m prime SMP land, in an area adjacent to Dock Zone, had been granted to 5 (five) parties, on lease basis.

Upon a query by Vigilance, it was observed that out of the total land mentioned here above, more than 3,500 sq.m land had been lying with the Port since long and the said land was free from any litigation.

However, the Port was unable to bring the said land within the revenue stream of SMP, by putting up the said land for lease/ licence, since almost the entire land had been captured by an unauthorized occupant by certain “Mr. X” for a substantially long time, running a thriving business of Tractor-trailers for Container handling as well as handling of other cargo.

For the remaining land (out of the total land, i.e., more than 13,000 sq.m), which had been divided into 4 (four) plates, eviction orders existed since 2005, 2011, 2013 and 2013. In spite of the same, SMP was unable to recover possession of such land, since majority of the said land was embroiled in litigation. A large portion of the said area had been encroached by the same “Mr. X”. What is all the more intriguing is that in a Court case filed against the actual lessee of a certain parcel of land, “Mr. X” had appeared as a party to the case, and the Court had, in fact, passed a judgement directing SMP to continue to accept payment for the said land parcel from “Mr. X”.

The above matter had come to the notice of Vigilance Department, while inquiring into a complaint filed by a certain “Mr. Y” with respect to encroachment of the aforesaid land by the said “Mr. X”. It was surprising that the complaint was made on CPGRAM as well as to PMO and Ministry of Shipping. Despite that, Estate Department was sitting silently on the case for years. Upon prodding by Vigilance, Estate Division has started to co-ordinate with Legal Division so that the Court cases could be expedited by SMP Advocates towards logical conclusion. Where no Court case exists, Estate Division is in the process of seeking Police assistance to evict encroachment of such land by “Mr. X”.

D. Salient Statistical information:

While preparing the instant final report on systemic improvement, Vigilance Department collected data related to encroachment in KDS and PP court proceedings. The picture that emanated from data made available by Estate Division of Port was not much encouraging. Some salient features of Statistical information received and compiled are:

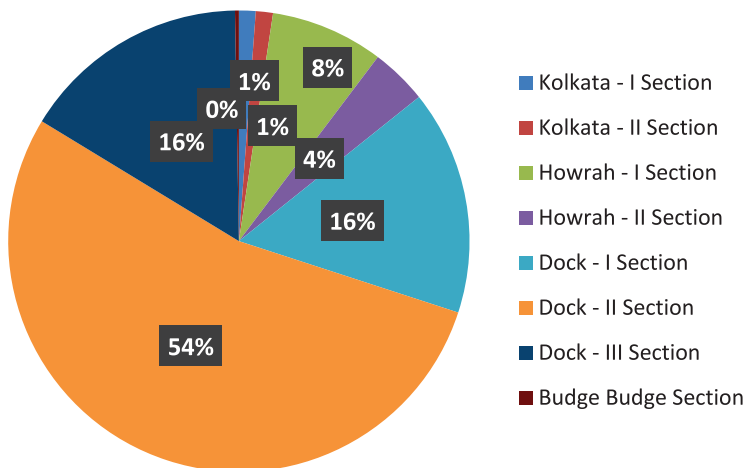
- (i) Cases pending before Estate Officers in PP Court: At least **369** cases are pending in PP Court, at various stages of proceedings.
- (ii) Encroachment in various Sections under SMP: Table 3 below.
- (iii) Extent of execution of Eviction Orders passed in PP Court proceedings: Discussed on the next page.

Table 3: Section-wise encroachment in (area in sq m)

Name of Tenancy Section	Area of land found encroached (sq.m)
Kolkata - I Section	9166
Kolkata - II Section	9407
Howrah - I Section	62062
Howrah - II Section	31083
Dock - I Section	123388.7
Dock - II Section	420588
Dock - III Section	125614.5
Budge Budge Section	2104.3
TOTAL	783413.5 sq.m say 193.6 acres

The data collected from the various Sections (presented in Table 3) clearly depicts that Dock Area, being commercially significant location and having large chunk of land in each parcel, is more prone to encroachment. Section-wise distribution of encroachment in Pie Diagram is given below to present the focus area in the exercise to eradicate encroachment:

Chart 2. Tenancy Section wise Distribution of encroachment



- (iii) Extent of execution of Eviction Orders passed in PP Court proceedings: Vigilance has already stated in one of the systemic improvement on Estate that an average time taken in SMP from filing the plaint in PP Court to issue of eviction order takes an average of six years and further three years to appoint an Authorized Officer for execution of eviction. A Section-wise latest Statistical information of the same is furnished hereunder:

Table 4. Execution of Eviction Orders

Section	No. of cases where Eviction Order has been passed	No. of cases pending for execution of Eviction Order
Kolkata - I Section	49	43
Kolkata - II Section	17	16
Howrah - I Section	20	20
Howrah - II Section	25	23
Dock - I Section	44	44
Dock - II Section	34	34
Dock - III Section	24	21
Budge Budge Section	1	1
TOTAL	214	202 (94.4% of 214)

III. APPROACH TOWARDS IMPROVEMENT

H. Systemic improvement suggestions already issued by Vigilance Department:

The enormous potential for revenue generation from the vast quantum of land asset possessed by KDS, SMP naturally poses a threat of substantial revenue leakage. As such, Estate management processes in KDS, SMP had attracted the attention of Vigilance Department for quite some time. In the last couple of years, analytical studies as well as analysis of the existing processes pertaining to various aspects of Estate management functions had been carried out by Vigilance Department and vulnerabilities of the “As is” processes had been studied in detail. Thereafter, as many as **17 (seventeen) nos. System Improvement** suggestions, encompassing different spheres of Estate management, have been issued by Vigilance Department, to the Port Management, for consideration and implementation.

The areas covered by such System Improvement suggestions include leasing/licensing of SMP land, inspection and its information system, billing system, missing tenants and undelivered bills, tenants with outstanding dues facing Corporate Insolvency Resolution Process (CIRP), conflict management in Estate related cases, litigation management of Estate matters, digitization of files/land records, compensation billing, valuation of land and determining its escalation, PP Court processes, etc.

I. Steps already taken by Port management:

Keeping in view the state of Estate management, the analytical studies and system improvements suggested by Vigilance Department and the tremendous potential for revenue augmentation, the Port management has been devoting considerable time to this particular area, in recent times, by conducting full scale Review Meeting on all Estate issues once every week.

A number of steps have already been taken by the Port management towards making Estate management more efficient and effective (including steps to counter the menace of encroachment of large chunks of prime SMP land). Some of the salient measures are enumerated hereunder:

- I. **Creation of 2 (two) Verticals in Estate Division:** In line with the recommendations made in the Report of Indian Institute of Management (IIM), Lucknow regarding “Streamlining of Estate

Department related processes at Kolkata Port Trust”,2 (two) separate Verticals have been created in Estate Division – Revenue & Development (R&D) [dealing with revenue management] and Resolution & Recovery (R&R) [dealing with conflict management]. The R&R Vertical is primarily engaged in resolving pending cases in the PP Court (which include encroachment cases) as well as recovery from non-paying tenants.

- II. Engagement of JLL for GIS based survey:** JLL has been engaged to create a comprehensive database of SMP properties by carrying out extensive survey of SMP land and by capturing various spatial and non-spatial properties of land. A couple of exhaustive sketches on encroachment, prepared in the process, are enclosed as “Annexure – 1”.
- III. Augmentation of manpower:** In order to boost up the activities performed by Assistant Estate Managers (AEMs) [Land Inspectors] and Resolution Officers, recruitment has been/is being carried out for engagement of more AEMs and Resolution Officers, on contract basis.
- IV. Consolidation of Court cases:** Legal Division has been advised to engage Legal Counsels, each of whom would be responsible for consolidation of various Court cases filed by a particular company/firm/entity in different Courts and take expeditious action to dispose such Court cases in a consolidated manner.
- V. Expeditious disposal of Court cases:** Legal Division has also been advised to co-ordinate with Legal Counsels to expedite disposal of the ongoing cases in City Civil Courts as well as High Court, through regular hearing, as far as practicable. Some of the Estate-related cases – where favourable verdicts have been given by Courts, during the period from 01.01.2020 to 10.08.2020, with respect to eviction of unauthorised occupant(s) from SMP land parcel(s) that had been encroached – are listed at “Annexure – 3”.
- VI. Early disposal of P.P Court cases:** A substantially large number of PP Court cases are pending before the PP Court. In order to address the issue, it is being explored whether a roster of the existing Estate Officers can be prepared, so that regular PP Court sessions are conducted for early disposal of the cases. There has been a dedicated

High Court Bench (in Calcutta High Court) for expeditious disposal of PP Court cases.

Under PP Act, the Appellate Forum is the Ld. District Judge of the District where the premise is situated. As such, matters challenging Section 5 or Section 7 Order under PP Act are first challenged before Ld. District Judge and it travels up to Hon'ble Supreme Court of India, going through Hon'ble High Court at Calcutta. At times, matters are directly filed before Hon'ble High Court and/or any Order or Notice of Estate Management or Ld. EO or Daily Order of Ld. District Court is challenged under Article 226/227 of the Constitution of India. As such, there are multiple instances where cases of the same party are pending before District Court and High Court, with pending case before Ld EO. In all these matters before Courts, SMP is engaging reputed and experienced Counsels to protect the interests of the Trustees.

VII. Achievement of Estate Division in regaining possession of SMP land parcel(s) under unauthorised occupation for a long time:

In the recent past, Estate Division of SMP has been successful in regaining possession of SMP land parcel(s), which had been under unauthorised occupation for a long period of time. Some of the success stories are furnished hereunder:

- 1) **West Bengal Small Scale Industries:** A plot of land at Sonai, measuring about 21,000 sq.m, was under long term lease since 1980 to West Bengal Small Scale Industries. Ejectment Notice had been served with effect from 03.05.2011 for non-payment and unauthorised sub-letting. The plot was under unauthorised occupation of one G.Q. Mondal for the last 20 years. Ultimately, after protracted litigations, this plot has been taken over by Estate Division, with active support of Police personnel, in and around August 2019, seizing near about 750 empty Containers.
- 2) **Badri Prasad Ashoke Kumar:** A plot of land at Sonai, measuring about 8,017.28 sq.m, had been allotted on long term lease for a period of 35 years with effect from 08.08.1966 to Badri Prasad Ashoke Kumar. Ejectment Notice dated 16.11.2005 had been served for non-payment, unauthorised sub-letting and

unauthorised construction with effect from 01.06.2005. The plot was under unauthorised occupation of one Uday Singh for the last 15 years. After prolonged legal battle, the subject premises were recovered on 07.09.2019, with Police help.

- 3) **Krebs & Cie:** A plot of land at Taratala Road, measuring about 30,000 sq.m, under Plate No. D-161/2 had been allotted on a long term lease with effect from 04.06.1974 for a period of 22 years 10 months and 8 days and under Plate No. D-161/1/A had been allotted on a long term lease with effect from 10.04.1967 for a period of 30 years to Krebs & Cie. Ejectment Notices dated 07.05.1992 and 05.12.2006, respectively against Plate Nos. D-161/2 and D-161/1/A, had been served with effect from 15.06.1992 and 12.04.1997 respectively, for non-payment and unauthorised sub-letting. The plot was under unauthorised occupation of different parties like M/s. Siddhartha Logistics Ltd, Metro Emporium LLP, etc. for more than 12 years.

After long standing legal cases, possession of the subject plot of land was recovered by Estate Division, with the co-operation of Police personnel, on 06.03.2018 and 07.03.2018, with a huge number of different kind of materials/goods.

VIII. Township Policy: SMP has revamped the Township Policy, which is going to the Cabinet for approval. This will serve as an important step towards optimal utilization of SMP land. In the proposed Township Policy, issues related to sub-letting, transfer and change of purpose in lease have been eased out. Moreover, emphasis has been given on simplification of procedures involved. Furthermore, in the event of disputes, provision has been proposed for adjudication by a committee.

- IX. Physical protection of land:** Action has been taken towards providing boundary wall/fencing of SMP land, especially those acquired after eviction. A 3 (three) year contract has been entered into by SMP with a Contractor for construction



of boundary wall/fencing of SMP land parcels, as per requirement of Estate Division. Moreover, display boards are also being erected to indicate that a particular land parcel belongs to SMP, Kolkata.

- X. Wide publicity of tender:** Tenders for auction of SMP land are now being given wider publicity, by publishing the notices in newspapers having nationwide circulation, for better participation.
- XI. Tendering vacant land with “Ease of Doing Business” tag:** SMP currently has identified vast tracts of readily available land, which is suitable for industry, warehousing and logistics applications and efforts are being made to attract various industries for long term lease. It already has a good clientele, including, but not limited to IOCL, BPCL, HPCL, Hindustan Unilever Limited, Coca Cola, Exide, Britannia, Braithwaite, Mitsubishi Chemical, Tata Steel, ITC Limited, Aditya Birla, WBIDC, Tata Chemicals Limited, Haldia Petrochemicals Limited, GRSE, CWC, WBSIDC, IWAI, IFB Agro, etc.

The ease of access, coupled with subsidized rates as well as proximity to a thriving industrial ecosystem, makes the scheme attractive to the existing as well as potential investors. Allotment of such land parcels to bonafide investors, through tender/auction, on lease/licence basis, would preclude instances of encroachment.

SMP has also initiated measures to improve Ease of Doing Business, which includes simplification of documentation and processes, reduction of red tape as well as digital transformations such as GIS mapping, to improve speed and transparency.

The current opportunities for industrialization at SMP include clubbing its land asset wise industrialization like Clean Industry, Truck Terminal with Logistics Hub, Warehouse, Integrated Warehousing and Container Terminal, Liquid Cargo Storage facilities, Floriculture with Auction Centre, Auto-Warehousing, Warehousing for E-commerce and FMCG, MSME Park, Ship Yard, Ship Building and Port related Industries, Agri Hub (Food Processing, Cold Storage, etc.).

IV. SYSTEMIC IMPROVEMENT ROAD MAP TO COUNTER ENCROACHMENT: A PRACTICAL APPROACH

1. Know Your Land (KYL) – a pre-requisite:

In KDS, SMP, land assets possessed by SMP have been distributed, based upon geographical location, under various Tenancy Officers, for effective tenancy management. For instance, land parcels have been classified under zones named Dock – I, Dock – II, Dock – III, Kolkata – I, Kolkata – II, Howrah – I, Howrah – II and Budge Budge.

However, during the course of a Vigilance investigation, when a Tenancy Officer had been asked about a certain parcel of land in the zone under jurisdiction of the said Tenancy Officer, a peculiar reply had been given by the Tenancy Officer that for the first couple of years of functioning as the Tenancy Officer of the particular zone, the said Tenancy Officer had not even been aware of existence of such parcel of land in the said zone! This is a classic example why a comprehensive Geographical Information System (GIS) based database of the entire land area possessed by KDS, SMP is an inescapable necessity for mapping and monitoring the said land assets of the Port.

It is pertinent to mention herein that in Haldia Dock Complex (HDC), SMP, a GIS based Land Asset Management System (LAMS) is already in use for the purpose of allotment of land, on short term licence basis, inside the Dock Interior Zone (DIZ). This has made it extremely easy for both the Port as well as the Port Users to handle the entire process of allotment of land inside the DIZ, starting from application for allotment by the Port Users to vacation of the land by them after use. It is understood that GIS mapping of the remaining land area possessed by HDC, SMP has also been completed. Similar action as HDC, SMP may also be implemented in KDS, SMP at the earliest for effective monitoring of the vast land assets of KDS, SMP.

Detailed GIS mapping of the entire land possessed by KDS, SMP, both in the Dock Interior Zone (DIZ) as well as in the Metropolitan areas and other areas, may be carried out by the following:

- (i) Unmanned Aerial Vehicle (UAV) survey/Drone survey,
- (ii) Differential Global Positioning System (DGPS),

- (iii) Electronic Total Station (ETS) survey, and
- (iv) Ground Penetrating Radar (GPR) survey [for detection of underground utilities viz. storm water drains, sewer drains, water supply network, Electrical Cables, Telephone Cables, etc.].

Satellite images can also be procured and placed on GIS.

Once the orthorectified UAV images of plots and their detailed GIS mapping is completed, codification should be done and data of a given property should be mapped with non-spatial data. Then the property database would be required to be designed. The same shall reflect in the web portal also, so that it is readily accessible. Upon completion of the same, detailed information pertaining to each and every parcel of land of KDS, SMP would be accessible to the concerned officials of Estate Division and consequently, such land assets can be monitored more efficiently and effectively. In effect, each and every Tenancy Officer would be able to access information related to each and every land parcel under his/her jurisdiction with a few clicks of the mouse.

2. Inspection – only tool to detect breach (including encroachment):

Land is the driving factor behind the socio-economic progress of a Port. Monitoring of land granted/leased is important in ensuring the correct and efficient utilisation of the scarce land resource. It is also necessary to check compliance to the conditions laid down during grant/lease regarding its usage, payment of lease rent/interest, prohibition from sub-letting, etc. Maintenance of relevant records in respect of such grants/leases and periodical inspections, duly recorded, are key to achieving this objective.

Although several office orders have been issued by General Administration Department (GAD)/Estate Division with respect to inspection of land assets of KDS, SMP, the actual scenario remains rather grim. For instance, upon prodding by Vigilance, when a team of officials of Estate Division had gone to inspect a parcel of land in a prime location of Kolkata, it had been found that most of the said parcel of land had been encroached, helped by lack of any inspection - periodic or random - of the said land parcel by Port authorities in an astounding 22 (twenty-two) years!

One such joint inspection conducted by Vigilance with Estate officials (unsigned report placed as “Annexure – 2”), after receiving a complaint, shows complete lack of inspection for years together resulting in illegal

occupation of this land by a rank outsider and carrying out his personal business there from, even while SMP continued to lose financially by way of loss of regular rental income.

Since inspection of land parcels assumes such a critical role in Estate management, there should be a clear policy for conducting Estate inspection, with due regard to the following aspects:

- i) **Responsibility for inspection:** Which exact authority/authorities in Estate Division are to be involved in inspection must first be stipulated.
- ii) **Structure and content of Inspection Report:** The structure of the Inspection Report must be spelt out in a standardized format, preferably online, so that the same can be compiled and MIS can be periodically generated for the perusal of higher authorities.
- iii) **Periodicity/Frequency of inspection:** A programme for periodic inspection by respective Assistant Estate Managers (AEMs) [Land Inspectors] must be drawn up in the beginning of each year by the Tenancy Officer, duly approved by the Estate Manager. Apart from such scheduled/programmed inspection, there should be a scheme for conducting certain random inspection, by a different Inspector, in pre-determined interval. In a few cases, the Tenancy Officer must also be directed to make random checks. Such inspections should be made a part of their annual appraisal, where each Officer/official needs to report the number of inspections carried out in the reporting period.
- iv) **Inspection Register:** Before going out for inspection, the concerned AEM must make entries in a specific central Register, detailing the plates/area which he proposes to visit. On return, the visited plate codes should be recorded in the same Register, duly affixing the visiting Inspector's signature. No inspection should be conducted without informing the respective Tenancy Officer(s).
- v) **Quality of inspection and breach-evidence:** The format for conducting inspection should be structured and standardised. Every breach noticed at site must be elaborately and unambiguously described in the Report. If site measurement is needed for a particular type of breach, then the same should be recorded, by engaging the Port Surveyor immediately.

Collecting audio, photographic and video evidence of breach must invariably be employed by the inspecting authority, so as to be able to substantiate breach, if denied later by the licensee/lessee. If licensee is available at site, then he should be asked to jointly sign the Inspection Report. In case of tenant's non-availability on inspection day or refusal to sign a report, an Office Memo should immediately be sent to the tenant (by Registered Post) stating the findings during inspection as well as refusal to sign in the latter case.

- vi) Integration of inspection data with Estate Module: The structured Site Inspection Report must also be uploaded, along with photographic/video evidence, to the Computer database.

It is pertinent to note here that in the age of Mobile telephony, it is extremely easy to record audio/video images of any location and to transfer the same to a database, in a format suitable for easy storage and retrieval.

Whenever new licence/lease is awarded, detailed photograph of the site should be taken and kept in file. This will help in making comparison with photographs taken in later inspections, to determine encroachment/unauthorised construction by a tenant.

- vii) Development of user friendly multiple use mobile application: An app may be developed for site inspection by AEMs and surveyors. This would give real time information of site conditions, along with site photographs and Geo-coordinates of the site inspected. They can easily capture and upload their inspection related data and pictures on mobile app during inspection itself and in turn, the app would automatically prepare and submit the inspection report in requisite format based on the collected information.
- viii) One time whole inspection Exercise of entire land: A time bound video-graphed inspection of all tenanted plates under KDS must immediately be conducted by Estate Division to understand the current state of SMP's land as a whole. The minimum benefit that can accrue from such an exercise is a quick end to any litigation pending before PP Court or in any other judicial forum, with the help of Section 11 of PP Act. The same will also help SMP management to strategize the aim and vision in the long terms.

ix) Identification of persons defending the cases from OP side: Another important point is the need to verify the identity of the person/persons who are supposedly carrying out litigation on behalf of vanished tenants in PP Court. In a joint inspection carried out by Vigilance and Estate, at least 18 (eighteen) out of the 27 (twenty-seven) cases have been found to be rank outsiders, in which the original licensees have long gone, parting possession or even effecting fraudulent sale of the plates. The KYC of the defendants of these cases in PP Court and other Courts must, therefore, be immediately verified.

3. **Standard Operating Procedure(SOP) to be followed upon detecting encroachment:**

A Standard Operating Procedure (SOP), with clear road map and time lines to be followed upon detecting encroachment of SMP land, should be prepared and circulated to all concerned in the process of eviction of encroachers. This will eliminate any doubt in any individual regarding steps to be taken in such a scenario of encroachment.

4. **Measures against encroachment:**

There can be 2 (two) types of measures against the menace of encroachment of large chunks of SMP land, depending upon the status of the corresponding land parcels. For instance, various preventive measures (from possible encroachment) can be taken to protect those land parcels, which are lying vacant. However, for the plots those have already been encroached, only corrective measures are possible towards removal of such encroachment. The 2 (two) types of measures are discussed hereunder:

A. **Preventive measures [when land is lying vacant]:**

- i) **Identification of vacant land:** Upon implementation of GIS-based web portal, vacant land parcels can easily be identified by the officials of Estate Division who would be granted access to such web portal. As such, the Tenancy Officer of a particular zone can easily identify the plots lying vacant under his/her jurisdiction.
- ii) **Inspection of vacant land:** Once the vacant land parcels are identified through GIS-based web portal, the same are required to be inspected, to ensure that there has been no encroachment into such plots, which are supposed to be lying vacant. Subsequently, regular and frequent inspection of the same should be undertaken,

to ensure that such plots continue to remain unencumbered, till such time they are handed over to tenants on licence/ lease basis. Constitution of a Special Inspection Team (SIT) – comprising AEM(s), Surveyor(s), etc. – may be explored, to exclusively undertake such regular and frequent inspections of vacant land parcels.

- iii) **Physical protection of vacant land:** Upon identification of vacant land parcels through GIS-based web portal and inspection of the same to ensure that such plots are encroachment-free, the vacant land parcels are required to be provided with compound wall or chain link fencing or barbed wire fencing, along with board displaying that this property belongs to SMP and any trespasser will be prosecuted.
- iv) **Security of vacant land:** In addition to physical protection of vacant land parcels, it is imperative to ensure watch & ward of the same by security personnel. This can be done either by Port Security Organisation (PSO) of SMP or by handing over the same to private security agency(s) for watch & ward purpose.

Moreover, for a particular vacant land parcel, it will be the responsibility of the concerned Tenancy Section of Estate Division of SMP as well as PSO or the corresponding private security agency to certify every month that the particular land parcel is free of encroachments.

- v) **Tender/Auction of vacant land:** Since majority of SMP land parcels are situated in the Metropolitan areas of Kolkata and Howrah, i.e., prime locations, such plots are extremely prone to encroachment. The solution lies in fresh allotment of any vacant plot of land, on licence/ lease basis, through tender/auction. This will not only bring such vacant land parcels into the revenue stream of SMP, but will also save time, money and manpower – going into protecting such plots from encroachment – to a large extent.
- vi) **Public complaint receiving system:** Creating awareness among the public in general and encouraging reporting of encroachment of SMP land can be an effective method of monitoring

encroachment of SMP land. A mechanism for receipt of complaints from the public will have considerable effect in timely detection and eviction of encroachment, if acted upon prudently.

To achieve the above, a user-friendly system (including web based system for online submission of complaint in SMP website) needs to be devised for receipt of public complaints. A Nodal Officer may be nominated for compilation of a database of all such complaints and forwarding the same to the respective Tenancy Sections, at periodic intervals, for necessary action. The respective Tenancy Sections should then act as per the Standard Operating Procedure (SOP). This would involve genuineness of the complainant, field verification report of such complaint, and if found to be authentic, subsequent course of action to be initiated towards eviction.

B. Corrective measures [when land is already encroached]:

- i) Primary measures: Whenever a land parcel is found to be encroached [encroachment being any 1 (one) of the 3 (three) possible scenarios discussed in “E” above], through inspection, immediately the unauthorized occupant(s) may be called upon to make the said plot encumbrance-free, by issuing warning letter, failing which, necessary action will be initiated under PP Act.

This is presently being done through issue of “Quit Notice” or “Ejectment Notice”. The format of such “Quit Notice” or “Ejectment Notice” should be uniform & legally vetted and the same should be served through postal dispatch. Three (3) reminders may be given, with 15 (fifteen) days response time. An MIS can be created for internal consumption regarding how many “Quit Notice” or “Ejectment Notice” has/have been sent.

If the unauthorized occupant(s) does not vacate the premise in question and continue to encroach the land parcel, even after being served such Quit Notice, then the Port authorities should consider disconnection of utilities like power and water connections to the unauthorized occupant(s).

If the above actions fail to have any effect, the Port authorities should immediately take recourse to the Public Premises (PP) Act, 1971, for eviction by approaching the Estate Officer (EO),

who presides over the Public Premises (PP) Court, with a formal plaint, immediately after notice period of the aforesaid notice is over.

- ii) **P.P Court measures:** Whenever an unauthorized occupant defies the primary measures, as mentioned above, immediate recourse to PP Act should be taken. The concerned Tenancy Officer should closely monitor the PP Court proceedings for necessary action at each and every step.

Every effort should be made on the part of Estate Division to adhere to the stringent timelines mentioned in the PP Act.

Moreover, all requisite information for presenting the case appropriately, on behalf of SMP, should be arranged by Estate Division, so that there are no delays on account of non-availability of document(s)/information.

- iii) **Constitution of a Special Task Force (STF) for eviction:** Whenever an Estate Officer gives an “Eviction Order” or appoints an “Authorized Officer” for eviction, the Tenancy Officer/Authorized Officer [as the case may be] should be accompanied by a Special Task Force (STF), consisting of earmarked officials from Estate Division and other Division(s) of SMP [as may be deemed fit and proper] as well as Port Security Organisation (PSO). This STF will be involved in each and every eviction process, until the encroached land parcels are freed from all encumbrances.

- iv) **Dedicated Estate Officers:** At present, there are 14 (fourteen) Estate Officers in SMP, who are presiding over PP Courts. These Estate Officers are from various Departments/Divisions of SMP and are carrying out PP Court activities, apart from their normal duties and responsibilities in their respective Departments/Divisions. In effect, they are performing their role as Estate Officer on a part-time basis. Presently, the number of pending PP Court cases being handled by such Estate Officers total to a huge number, due to which SMP is being deprived of enormous revenue. Instead of having 14 (fourteen) Estate Officers on a part-time basis, it may be considered to have 3 (three) to 4

(four) Estate Officers, preferably having legal background/law degree, to exclusively handle PP Court matters, **on a daily basis**, assisted by earmarked Resolution Officer(s) for each Estate Officer. Such Estate Officers may be sent on training related to handling of such cases. This is likely to drastically decrease the number of pending PP Court cases.

- v) **Dedicated Officer from Legal Department:** Since a large number of unauthorized occupants of SMP land file suits in City Civil Court(s), High Court and Supreme Court, a Nodal Officer from Legal Department (with a small team) should be earmarked to exclusively handle all such Estate-related cases, in an end-to-end manner.

Responsibility of Nodal officer would encompass regular review of all such Estate-related cases in close co-ordination with the concerned Estate official(s), appointment of Legal Counsels, follow-up with Legal Counsels, close monitoring of the hearing dates so that SMP is represented in each and every hearing, ensuring that appeals (if and as applicable) are filed in a timely manner, etc., till final disposal of the case. In effect, this Officer of Legal Department will be the Single Point Of Contact (SPOC) for Estate related cases, as far as Legal Department is concerned, with obvious reporting to the Chief Law Officer (CLO).

- vi) **Special Planning Authority (SPA):** Prior to 2018, Mumbai Port Trust (MbPT) had no summary powers for demolition/removal of unauthorized construction/encroachment from its own land and had to depend on the Municipal Corporation Of Greater Mumbai for the same. However, on 23.04.2018, MbPT has been appointed as Special Planning Authority (SPA) and as such, the summary powers for demolition/removal of unauthorized construction/encroachment have come to MbPT since then. It needs to be explored whether similar action can be taken for SMP also. This will greatly reduce, if not eliminate, dependency of SMP on KMC and Police authorities for demolition/removal of unauthorized construction/encroachment from its own land.

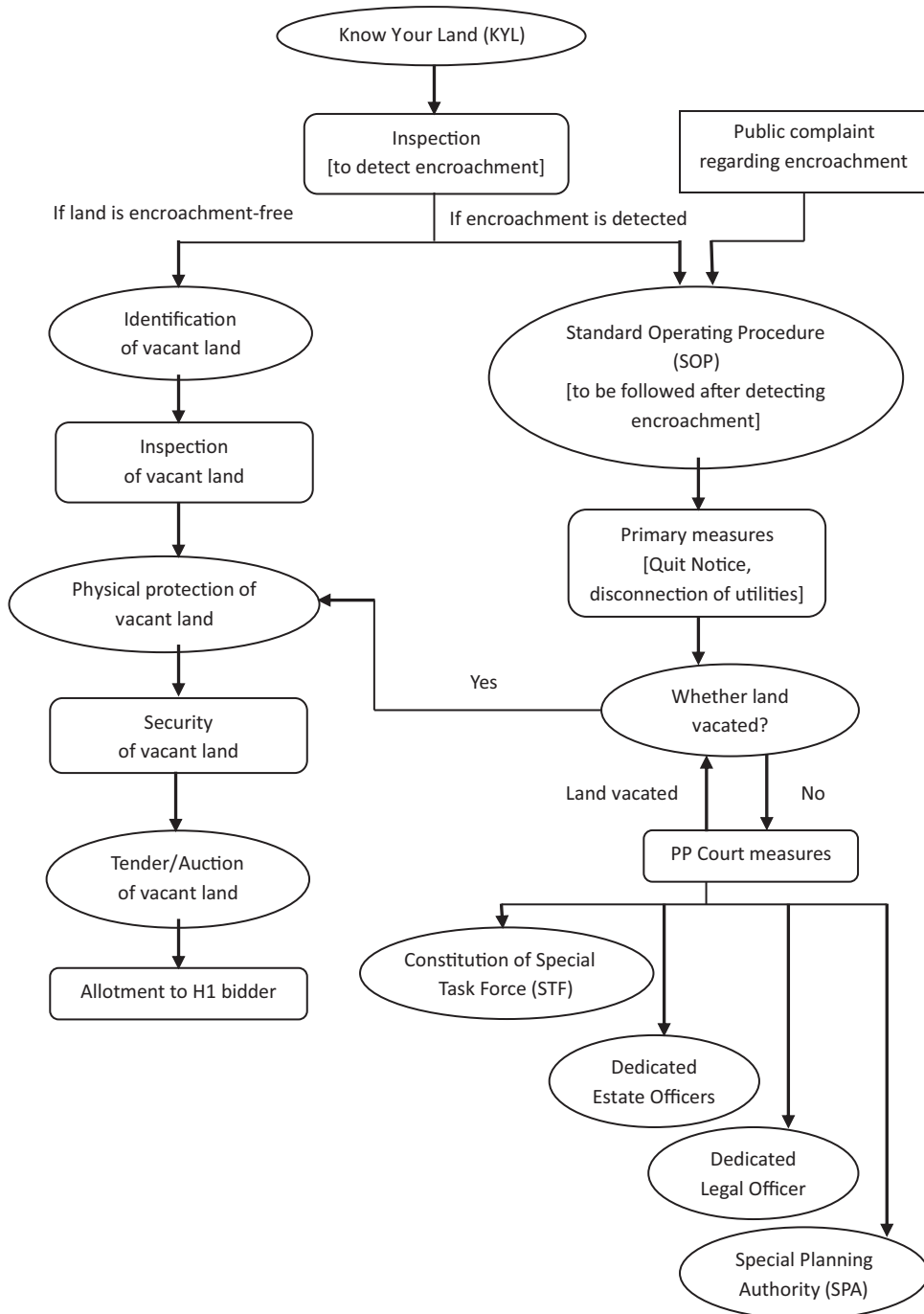
II. CONCLUSION

Encroachment of any Government land adversely affects the asset inventory and reduces the availability, disposal and equity in distribution of land resource and ports are no exceptions. For SMP, gifted with vast land resource, it is a sorrow affair that land management in SMP is historically unstructured, with conspicuous absence of maintenance of robust databases relating to land available for disposal or land disposed as grants/leases. No mechanism existed for periodic inspection, identification of new encroachments, reporting and MIS preparation for perusal of higher authorities. Monitoring of the land grants/leases was not satisfactory and consequently resulted in non-collection of lease rent, non-retrieval of land after expiry of lease period and more importantly, locking up of Port's limited land resources with the grantees/lessees without being used for the purpose for which it was granted.

Data on encroachment was never exhaustively compiled and glaring public complaints regarding encroachments remained pending for years. Lack of proper security to the land recovered after eviction of encroachment and non-transfer of the cases of encroachment to the Specially Designated PP Courts slackened the process of evictions. Further, the action on execution of eviction orders of PP court were never conducted in time-bound and systematic manner, and thus became ineffective in identifying further encroachments and timely possession of land for generating revenue.

Protection of Government land from encroachment is a continuous process and requires active and timely action in identification and eviction procedures. It is evident from the systemic improvement road map that the success of the measures suggested would depend not only on intra-divisional co-ordination [between R&D and R&R verticals] as well as inter-departmental/divisional co-ordination [between Estate, Legal, PSO, Vigilance, etc.], but also the role of the top management in implementation of the policy-related issues involved. Since the present Chairman is devoting a substantial portion of his time in addressing Estate related matters, and has already spearheaded implementation of a number of positive changes pertaining to Estate Division, it is expected that the suggested measures would be considered by the Port management for suitable implementation.

Flow Chart Representation of Systemic Improvement Road Map to Counter Encroachment



Preparation of Search List/Search-cum-seizure List while taking custody of articles/goods/cargo found during taking over possession of property of the Port from unauthorized occupant: System improvement suggestions

1.0 Background:

- 1.1 There are instances when custody of articles/goods/cargo found in the property of the Port is taken by the Port, while taking over possession of such property by an Authorized Officer of the Port, from the unauthorized occupant of the said property, in terms of order of the Estate Officer in the corresponding PP Court proceedings or against any Court order.
- 1.2 As per practice in vogue in Syamaprasad Mookerjee Port (SMP), Kolkata, valuation of such seized articles/goods/cargo is undertaken by a Valuer engaged by SMP, Kolkata and subsequently, such articles/goods/cargo are disposed of through e-auction conducted by MSTC on behalf of SMP, Kolkata.
- 1.3 Materials Management (MM) Division issues Block Gate Pass to Estate Division, which, in turn, ensures delivery of such articles/goods/cargo to the firm, which is found successful in such e-auction, after depositing the requisite amount of money with SMP, Kolkata and completing necessary formalities. Representatives of Estate Division, MM Division, Port Security Organization (PSO) and the firm are present during effecting such delivery of articles/goods/cargo. Individual Gate Pass(es) is/are issued by Estate Division for the corresponding vehicle(s) taking delivery of the said articles/goods/cargo.

2.0 Analysis:

- 2.1 In the recent past, Vigilance Department has undertaken surprise inspection in 2 (two) such cases, wherein articles/goods/cargo seized by SMP, Kolkata during taking over possession of Port land from unauthorized occupant were being delivered to the firm that was found successful in e-auction of such articles/goods/cargo.

- 2.2 In both the cases, a salient issue that has come to the notice of Vigilance Department is the conspicuous absence of any Search List/Search-cum-seizure List of articles/goods/cargo that had been seized by SMP, Kolkata. Absence of such Search List/Search-cum-seizure List not only violates the traceability aspect of the seized articles/goods/cargo, but also makes it impossible to determine whether the very quantum of articles/goods/cargo seized is actually being put up for e-auction.
- Preparation of a proper Search List/Search-cum-seizure List, immediately after seizing articles/goods/cargo, not only forms the basis of identification, inventorization and valuation of such materials, but precludes the possibility of subsequent dispute pertaining to delivery of articles/goods/cargo.
- 2.3 It has also come to the notice of Vigilance Department that although in the said 2 (two) cases possession of the plots had been taken over by the Port through execution of Eviction Order of 2017 and 2018, the seized articles/ goods/cargo were finally disposed of through e-auction in 2020. As such, non-disposal of such seized articles/goods/cargo for years together, and that too, without any Search List/Search-cum-seizure List prepared for the same, results in possibility of theft/pilferage of such seized articles/goods/cargo.
- 2.4 Vigilance Department has been given to understand that at times, when the Port makes an endeavour to take over possession of Port land under unauthorized occupation [either in terms of order of the Estate Officer in the corresponding PP Court proceedings or against any Court order], poor law and order situation in and around such Port premises makes it hardly possible for the Port to even put the area under lock and key. Such exigencies have come to the notice of Vigilance Department, either through Port sources or through news in the public domain.

3.0 System Improvement:

3.1 Preparation of Search List/Search-cum-seizure List:

- 3.1.1 Immediately after taking over possession of Port property by the Authorized Officer, he/she should inventorize the seized articles/ goods/cargo, in the form of a Search List/Search-cum-

seizure List, in the format enclosed as **Annexure – A**. In the event of poor law and order situation in and around the premises to be taken over, when the Authorized Officer is not in a position to secure the area under lock and key, the concerned Estate Officer should immediately be informed. A memorandum may be prepared by sealing the site, clearly stating (as is where is basis) the situation/ reason due to which seizure list could not be prepared. Subsequently, when it is possible for the Port to secure the property, the work of preparation of Search List/Search-cum-seizure List should be taken up by the Authorized Officer immediately thereafter.

- 3.1.2 The Search List/Search-cum-seizure List should be prepared by the Authorized Officer in the earliest possible time. A copy of memorandum prepared at the time of sealing should be appended with the same. Thereafter, the Authorized Officer should send the Search List/Search-cum-seizure List, thus prepared, to all concerned, with a copy to PSO to facilitate watch and ward of the seized articles/goods/cargo.

The Authorized Officer should also communicate to the concerned Department/Division for initiating action towards survey & valuation and subsequent e-auction.

- 3.1.3 If the Authorized Officer feels that technical/domain-specific expertise, with respect to the seized articles/goods/cargo, is essential for preparation of the Search List/Search-cum-seizure List, he/she should seek the assistance from the corresponding Department/Division, giving justification thereof.
- 3.1.4 The description of the seized materials should be concise but specific to the extent possible, while the quantity of the seized materials should be accurate to the extent possible. Expressions such as “approximately”/“nearly”/“to the tune of” should be avoided. In case it is not possible to ascertain the exact quantity of seized material(s), efforts should be made to ascertain the same either by weighment or subsequently during survey and valuation of the same.

- 3.1.5 The Search List/Search-cum-seizure List must be signed by the Authorized Officer and independent witness(es), who would be present during preparation of the said list. In case of emergent situation(s), when it is not possible to keep independent witness(es) during the process, efforts should be made to keep at least 2 (two) other Officers from Estate Division itself.
- 3.1.6 Preparation of Search List/Search-cum-seizure List should be accompanied by still photography and/or videography based evidence of the seized articles/goods/cargo. The minimum benefit that can accrue from such an exercise is a quick end to any litigation or dispute arising at any stage of the process.
- 3.2 Survey and valuation of seized articles/goods/cargo:**
- 3.2.1 While the Search List/Search-cum-seizure List, which will form the base document of inventORIZATION of seized articles/goods/cargo, shall be prepared by the Authorized Officer of the Port, survey and valuation of such articles/goods/cargo shall be carried out by a Valuer of repute – a professional agency with well-established credentials – to be engaged by the Port. The Search List/ Search-cum-seizure List will form the reference document for such survey and valuation by the Valuer engaged. If, during survey and valuation by the Valuer, it is found that one or more items of the Search List/Search-cum-seizure List is/are required to be modified, such modified document will form the reference document for the e-auction to be conducted.
- 3.2.2 While it is preferred to engage MSTC for such valuation, other renowned companies are also acceptable. However, for engaging companies other than MSTC (or any other similar PSU/Govt. organization) for such valuation, specific administrative approval has to be obtained on a case-to-case basis.
- 3.3 Delivery of auctioned articles/goods/cargo:**
- 3.3.1 The existing system with respect to delivery of auctioned articles/ goods/cargo will continue to be followed, i.e.,

Materials Management (MM) Division will issue Block Gate Pass to Estate Division, which, in turn, will ensure delivery of the auctioned articles/goods/cargo to the firm, which is found successful in the e-auction, after depositing the requisite amount of money with SMP, Kolkata and completing necessary formalities. Representatives of Estate Division, MM Division, Port Security Organization (PSO) and the firm are required to be present during effecting such delivery of articles/goods/cargo. Individual Gate Pass(es) will be issued by Estate Division for the corresponding vehicle(s) taking delivery of the auctioned articles/goods/cargo.

- 3.3.2 Vigilance Department will have to be informed well in advance of such date(s) of delivery.

Encl.: Annexure – A.

SEARCH LIST / SEARCH-CUM-SEIZURE LIST

1. Name of Dept. /Divn. of SMP : 2. Office order ref. :
3. Date & hour of search : (i) 4. Name & address of place where search :
is conducted/unauthorized occupant (ii)
5. Name & designation/address of witness(es) present during search : (i)
(ii)

Sl. No.	Description of article(s) seized	Quantity of article(s) seized [where applicable]	Description of place where seized article(s) found	Remarks
(1)	(2)	(3)	(4)	(5)

[Signature of witness(es) present during the search]

[Signature, name & designation of Authorized Officer of SMP conducting the search]

Date :
Place :

Date :
Place :

[* Note: (a) This form must be signed by the Authorized Officer of SMP and witness(es) present during the search.

(b) Article(s) seized should be numbered & labelled and should be attested by signatures of the Authorized Officer of SMP and witness(es).

(c) If required, additional page(s), in the same format, should be used.]

Systemic improvement pertaining to rotational transfer

Central Vigilance Commission (CVC) has emphasized on periodic rotation of officials and has asked Heads/CVOs of all Departments/Organisations to strictly adhere to the same. CVOs have to report the compliance of rotational transfer to CVC in their Quarterly Reports.

In such scenario, a system needs to be developed at SMP, Kolkata for proper supervision by Administration regarding rotational transfer. Vigilance Department of SMP, Kolkata has already issued letters in this regard. In continuation, following suggestions are placed below from Vigilance:

- 1) All the posts from Class - I to the lowest level may be declared as sensitive, unless it is the lone post in the said Department or Division.
- 2) The rotational transfer as per CVC is due after 2 - 3 years of occupying a post and as per SMP, Kolkata policy, it is 4 (four) years. Therefore, it is proposed that the rotation may become due after completion of 3 (three) years and must be carried out before or by completion of 4 (four) years of occupying the post.
- 3) In case of only 2 (two) posts like Deputy CME, rotation may be carried out by reshuffling, i.e., interchange between Dy. CME - I & Dy. CME - II.
- 4) In extreme case, where it is not possible to transfer the official even after 4 (four) years of occupying a post due to administrative exigencies, in such cases, permission may be taken from Dy. Chairman or Chairman level, as decided by the Chairman, SMP, Kolkata.
- 5) An Establishment Register on Rotation, which will be of permanent nature, may be maintained in each Department/Division with Index, Page Details & END Page as suggested. In case of large number of employees in a Department, post-wise such registers may be maintained at Class - III level, as decided by HoD.
- 6) Every Department/Division has to send a Quarterly Report as on 1st March, 1st June, 1st September & 1st December to Chairman, Dy. Chairman, CVO & Secretary, SMP, Kolkata in following format latest by 5th of said month:

Quarterly Report as on _____ (Due date to be filled)

Name of Department/Division _____

Report for last 3 (three) months

Class	Total no. of incumbents	No. of officials due for transfer as per last Quarterly Report (OB) (2)*	No. of officials due for transfer in this Quarter	Total no. of officials due for transfer	No. of officials transferred in the Quarter	No. of officials not transferred (CB)
Class - I						
Class - II						
Class - III						

* OB will be the CB of last Quarter's report.

Systemic improvement pertaining to e-auction for unclaimed cargo

A complaint pertaining to e-auction for unclaimed cargo was received from M/s. “XXX”. The issue was investigated by Vigilance Department and following recommendation for systemic improvement was suggested by Vigilance and the same was approved by the competent authority.

Recommendation for systemic improvement:

1. One Register may be maintained in appropriate place under Traffic Department for maintaining records in respect of inspection of materials by the prospective bidders within a specified period and time. The same should be clearly indicated under the “Special terms and condition for E-Auction Sale for ready cargoes” for e-auction and the name of custodian of such Register, along with his contact details, to avoid any future complication.
2. Delivery of materials may be completed within general working hours, as far as possible and practicable. Customs authority may be informed well in advance and in written form for delivery of materials.
3. In the Sale Catalogue, weights of all the lots were mentioned, though some of the lots would have to be sold on “lot basis”. The authority concerned of Traffic Department may like to examine this issue and if possible, indication of weight in the Sale Catalogue and in other documents including Bill of Entry against the items, which is to be sold on “lot basis”, may be discontinued to avoid any complication or different interpretations.
4. Rotational transfer of staff should be adhered to by all the Departments.
5. Action, as per SMP, Kolkata’s rules and orders in vogue, needs to be taken against the complainant M/s. “XXX” to set an example as a deterrent for such complainants on false issues/pretexts to avoid wastage of time, energy and resources of SMP, Kolkata as well as making the auction process effective.

Systemic improvement in respect of Deposit Work executed by outside agency for SMP, Kolkata

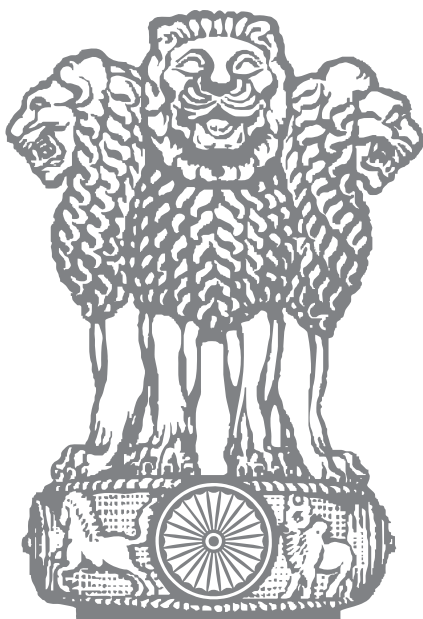
Concept Note

In the recent past, SMP, Kolkata had engaged CPWD to execute a work as deposit work. While studying the work, it has been observed that some specific preventive measures should be put in place to protect the interest of SMP, Kolkata. Accordingly, following actions are required to be taken by the department concerned.

- 1. Execution of Memorandum of Understanding with CPWD:** As per CPWD Works Manual 2019 and Standard Operating Procedure (SOP) for CPWD Works Manual 2019, Memorandum of Understanding (MoU) is required to be signed between CPWD and SMP, Kolkata. But, the same has not yet been executed. SOP Document states that the onus of preparing and submitting the MoU to their client, i.e., SMP, Kolkata, in the instant case, lies with CPWD. Hence, it is recommended to take up with CPWD for execution of MoU at the earliest.
- 2. Quality of work to be ensured:** Quality of work, as intended, to be ensured by SMP, Kolkata. Further, regular, periodic as well as surprise inspection should be scheduled to keep a check on performance of work.
- 3. Reconciliation of work:** After completion of Phase-I work, reconciliation of the executed work to be carried out as per SOP for CPWD Works Manual 2019.

In all future cases, while engaging CPWD or any outside agency for carrying out deposit work for SMP, Kolkata, Memorandum of Understanding/Agreement should be executed before releasing the deposit money. Similarly, quality of work should be ensured by carrying out regular, periodic as well as surprise inspections (as applicable) and reconciliation of work should be done after completion of work to protect the interest of SMP, Kolkata.

**ILLUSTRATIVE CHECK POINTS
FOR
VARIOUS STAGES OF PUBLIC PROCUREMENT**



सत्यमेव जयते

**CENTRAL VIGILANCE COMMISSION
CHIEF TECHNICAL EXAMINER'S ORGANISATION**

Preamble

This compendium lists illustrative check-points in public procurement for the purpose of ensuring fairness, equity and transparency. These check lists are illustrative. There could be certain specific cases, which may involve other areas requiring more focused attention. Such areas need to be determined on case to case basis.

The compendium is intended to serve as a guide to both executives dealing with procurement as well as vigilance officials.

1.0 Works/Purchase Manual

1.1 Cardinal principle of public procurement is to procure the material/ services/ works of the specified quality, at the most competitive prices and, in a fair, just and transparent manner. To achieve this end, it is essential to have uniform and well documented policy guidelines in the organization, so that this vital activity is executed in a well-coordinated manner with least time and cost overruns. In some organizations, Procurement Manual is either not in place or has not been updated for years together, which renders the system of procurement ad-hoc and arbitrary.

A codified Procurement Manual containing the detailed procurement procedures and guidelines needs to be prepared by the organizations so that there is systematic and uniform approach in the decision-making. Delegation of power and commensurate accountability at various levels of decision-making should be essential feature of the Procurement Manual. An integrated procurement policy in the form of Procurement Manual helps the Organisations in circumventing the possibility of corruption and would also ensure smoother and faster decision making.

1.2 Following check-points are suggested:

- i. Whether procurement (work/purchase/services) manual are in place. If yes, whether updated regularly or not! When were these updated last time?
- ii. Whether the provision in the work/purchase/services manual are consistent with CVC guidelines, General Financial Rule (GFR) and Cannons of public procurement?
- iii. Whether the provisions in work/purchase/services manual cover the entire gamut of procurement activities of the organization?
- iv. Whether the procurement/contract/works manuals are uploaded on intranet/internet?
- v. Whether officials concerned are conversant with procurement manual or not?

2.0 Scope of Work

2.1 It is important for any scheme that the scope of work is properly defined. A well defined scope of work giving an overview of the proposed procurement needs to be put up to the Competent Authority at the time of seeking approval/

sanction. The objective of the procurement needs to be clearly brought out in the scope.

3.0 Administrative Approval & Expenditure Sanction (AA & ES)

3.1 Administrative Approval & Expenditure Sanction is an important component of procurement process. This provides an opportunity to the Competent Authority to have a comprehensive overview of the project. If the scheme is approved by the Competent Authority, suitable provision for expenditure to be incurred on the project is also to be made at this stage. There are situations, where projects/scheme is sanctioned by the authority, who is not competent. The importance of this aspect in public procurement can be gauged from the facts of a case, wherein the Competent Authority that was vested with the power to sanction an original scheme/project of Rs. 10 crores only had sanctioned the project of more than Rs. 300 crores.

3.2 Following check-points are suggested:

- i. Whether 'Feasibility Study' has been done before formulating the project?
- ii. Whether, proposal for A/A&E/S has been prepared after considering aspect of mandatory clearances such as Environmental, Land Use etc.?
- iii. Whether A/A&E/S is based on proper estimate?
- iv. Whether administrative approval and expenditure sanction has been accorded by the Competent Authority?
- v. Whether the authority, which accorded the administrative approval and expenditure sanction, is competent to do so or not as per the delegation of power?
- vi. Whether necessary budget provision has been made for the instant project or not?
- vii. Whether scope of work in the instant contract matches with corresponding provision in the A/A & E/S?
- viii. Whether there is any excess expenditure over the corresponding sanctioned amount?
- ix. Whether in case of excess expenditure or change in scope, approval of the Competent Authority has been taken?

4.0 Consultancy

4.1 Earlier public organizations were undertaking planning and supervisory activities inhouse. Now-a-days, in the era of large-scale infrastructure development, the in-house resources available with public organizations are gradually being found to be inadequate. Therefore, there has been substantial outsourcing of services such as Architectural services, Preparation of DPR, Project Management Consultancy, and Quality Assurance, etc. The Commission has issued instructions regarding appointment of Consultants vide circular No. 3L PRC1 DT.12.11.1982 and the same were reiterated vide circular No. OFF1-CTE-1 Dt. 25.11.2002. Gist of the above circulars is given below-

The consultant should be appointed in a transparent and competitive manner for need based and specialized jobs. The agreement should contain adequate provisions for penalizing the defaulting consultant keeping in view the fact that a consultant's role is only advisory and recommendatory. Consultant's fee should be based on some fixed value of the contract.

4.2 Commission, in supersession of its earlier circular [No. No.98/DSP/3 dt. 24.12.2004], has issued detailed instruction on the possible 'Conflict of Interest' in appointment of Consultants and 'Professional Liability' of the Consultants, vide circular No. 08/06/11 dated 24th June, 2011.

4.3 Following check-points are suggested:

- i. Whether guidelines for appointment of consultants are in place in the organization?
- ii. Whether the guidelines are updated regularly or not and when were these last updated?
- iii. Whether the guidelines for appointment of consultants are covering various aspects of the consultancy contracts such as provision of 'Professional Liability', upper sealing of consultancy fee, work performance linked payment, panel clauses for frequent change of staff, panel clauses for deficiency in services, clauses to deal with professional misconduct, panel clauses to deal with delay in services, etc.?
- iv. Whether the qualifying requirement fixed for the selection of the consultant is commensurate with the importance and size of the project?

- v. Whether the qualifying requirement is unambiguous and also fixed before inviting the offers for the consultancy work?
- vi. Whether wide and adequate publicity, including web-publicity, has been given for inviting the offers for the consultancy work?
- vii. In case of limited tender enquiry, whether the panel has been prepared in a fair and transparent manner or not! Whether this panel is being updated regularly or not?
- viii. Whether the bid(s) are in conformity with the terms of the tender document?
- ix. Whether the evaluation of the bids is done as per the notified qualifying criteria and all bidders are treated at par?
- x. Whether all the issues relating to the service tax, professional tax, traveling allowances, etc. are taken into account at the time of bid evaluation?
- xi. Whether during performance of the consultancy contract, the contract conditions are being complied with?
- xii. Whether the quality of project management by the Project Management Consultant is up to the mark?

5.0 Detailed Project Report (DPR)/Detailed Estimate

5.1 Successful contract performance depends on the quality of Detailed Project Report (DPR). If DPR is prepared on ad-hoc basis, not based on site conditions, there is likelihood of delays and deviations resulting in time and cost overrun. It is imperative for trouble free execution of the contract that there is consistency among schedule of items, drawings and specifications. Any such ambiguity and inconsistency adds to time and cost overrun of the project besides leading to legal complications. Poor DPR leaves opportunity for the contractor to exploit the situation and gain profits out of ambiguity in the contract.

Designing of the products/structures of a Project is one of the most important activities in the project formulation. It is important that structures are designed using the latest codal provisions and latest engineering practices.

5.2 Following check-points are suggested:

- i. Whether detailed site investigation has been carried out before finalizing the items/materials and their corresponding quantities to be used in the project?

- ii. Whether proper specification suiting to the site conditions have been selected or not?
- iii. Whether all the items required for successful completion of the project have been taken into account?
- iv. Whether there is consistency among description of items in 'schedule of items' / bill of quantities, drawings and specifications?
- v. Whether rates supported with proper documents (genuine market rate quotations or standard schedule of rate) have been considered in the preparation of the estimate?
- vi. Whether detailed analysis of rate has been carried out before arriving at the rate of a particular item?
- vii. Whether DPR has been reviewed as a whole to assess its conformity with local bylaws, Archaeological Survey of India guidelines, environmental norms, to other mandatory regulations or otherwise by an independent agency or in-house?
- viii. Whether the structural design has been proof checked by an independent agency or in-house?

6.0 Design and Drawings

6.1 Designing of products/structures/service modules is an important aspect of any procurement. It is important that various elements of the project are scientifically designed using the latest practices and should be economically efficient. Design should suit to the prevailing site conditions. Similarly, drawings should be prepared indicating all necessary details, leaving no room for ambiguity.

6.2 Following check-points are suggested:

- i. Whether proper design has been carried out considering the relevant parameters prevailing at site?
- ii. Whether design has been proof checked?
- iii. Whether any deficiency is observed in the design?
- iv. Whether any review of the design has been done! If so, reasons for the same?
- v. Whether 'good for construction' drawings contain all necessary elements?

7.0 Tender Document

The tender after acceptance becomes 'the contract'- a legal document. An ambiguous agreement leads to poor contract performance and litigations. It also gives an opportunity to a contractor to make profit out of ambiguous conditions. It has been observed that often the tender document is prepared in a hurried manner without checking for consistency among Schedule of Items, Drawings, Specifications and Contract Conditions, etc. This can happen due to different parts of the tender document like Schedule of Quantities, Specifications, Drawings and General Conditions, etc. being prepared by different set of people without correlating them. Sometimes they are copied from old tender cases without giving a thought to the applicability of the conditions to the present work.

7.2 Following check-points are suggested:

- i. Whether complete tender document containing General/Special Conditions of Contract, specifications, Bill of Quantities, all Addenda, etc. is approved by the Competent Authority?
- ii. Whether standard approved tender document has been used? If not, whether the tender document would be legally sustainable?
- iii. Whether all the prevailing guidelines of Govt./CVC organization have been made part of the tender document?
- iv. Whether relevant modality to deal with any ambiguity in the bid has been provided in the tender document?
- v. Whether all the documents/drawings stated to have been attached with the tender documents have actually been attached or not?
- vi. Whether proper place of tender receipt has been notified in the NIT or not?
- vii. Whether the provision of additional bank guarantees or other securities have been made in case of bid being unbalanced or front-loaded?
- viii. Bank Guarantees from Nationalised Banks only should be accepted. Under no circumstances bank guarantees from Co-operative Banks should be accepted.

8.0 Pre-qualification

8.1 The success of a project largely depends on the capability of the

contractor/vendor. Prequalification is a process to select competent contractors having technical and financial capability commensurate with the requirements of the particular procurement (work/supply of goods/hiring of services). The pre-requisites of pre-qualification process are:

- Transparency
- Fairness
- Maintenance of fair competition

8.2 The Commission had issued guidelines vide circular No12-02-1-CTE-6 dated: 12.12.2002 and 07.05.2004 advising the organizations to frame the pre-qualification criteria in such a way that it is neither too stringent nor too lax to achieve the purpose of fair competition.

8.3 During intensive examinations of the works of the organizations dealing with the power projects, following deficiencies were observed:

- Stringent PQ Criteria resulting in poor competition.
- Unduly restrictive criteria, creating entry barrier for potential bidders.
- Evaluation criteria not notified to the bidders, making the PQ process non-transparent.
- PQ Criteria relaxed during evaluation, thus creating entry barrier to the other potential bidders fulfilling the relaxed criteria.
- Credentials of the bidders not matched with the notified criteria.
- Credentials of the bidders not verified.

8.4 Following check-points are suggested:

- i) Whether there are proper guidelines on pre-qualification of contractors/suppliers in the procurement manual of the organization?
- ii) Whether pre-qualification criteria for the instant procurement has been framed objectively commensurate with importance and size of the project/procurement?
- iii) Whether the pre-qualification criteria was frozen before inviting pre-qualification bids?
- iv) Whether the pre-qualification criteria has been approved by the Competent Authority as per the provision in the procurement manual of the organization?

- v) Whether there is any deliberate attempt to make the pre-qualification criteria suiting to particular bidder(s)?

9.0 Inviting & Opening of Tenders

9.1 The award of Public Contract through open tender is to ensure - transparency in public procurement, to maximize economy and efficiency in public procurement, to promote healthy competition among tenderers, to provide for fair and equal treatment to all the tenderers and to eliminate irregularities, interference and corrupt practices by authorities concerned. This is also required by the Article 14 of the Constitution of India.

9.2 Normally three modes of tendering are adopted. Namely:

- Open Tenders
- Limited Tenders
- Single Tender/Nomination Basis

In an open tender, bids are invited giving wide and adequate publicity. This is the most preferred mode of tendering.

In the case of small value works, urgent works and in case only a few bidders are available in the market, limited tenders from such bidders who have been empanelled are invited. In case of Limited Tenders the empanelment should be done in a transparent way and updated periodically.

Award of contracts on nomination basis, which is also called a single tender is to be resorted to only under exceptional circumstances such as natural calamities and emergencies or there were no bids to repeated tenders or where only one supplier has been licensed (proprietary item) in respect of goods sought to be procured.

9.3 In a judgment of the Hon'ble Supreme Court [Meerut Nagar Nigam, Meerut Vs Al Faheem Meat Exports Pvt. Ltd.] it has been emphasized that all the public tenders should be in an open and transparent manner with adequate publicity. Consequent to this judgment, the Commission has issued Office Order No. 23/7/07 dated 05.07.2007 laying down the circumstances where award through nomination is admissible.

9.4 The Commission vide its Circular No. 06-03-02-CTE-34 dt. 20.10.2003 and Circular No. 15/5/06 issued vide letter no. 005/CRD/19 dt. 9th May 2006 has emphasized upon open tendering as the most preferred mode of tendering and insisted on transparency in the preparation of panel in case of limited

tenders.

9.5 Widest possible publicity is essential for greater transparency in open tenders.

In addition to the existing rules and practices regarding publicity, the Commission vide their circular No. 98/ORD/1 dt.18.12.2003 has instructed for up loading the Notice Inviting Tender and also tender documents in a down loadable form on the web site. The web site publicity is to be given even in the case of limited tenders.

9.6 In the various booklets issued by the CTE Organization of the Commission, the need to maintain transparency in receipt and opening of tenders has been emphasized and it has been suggested therein that suitable arrangements for receipt of sealed tenders at the scheduled date and time through conspicuously located tender boxes needs to be ensured. The Commission vide their Circular No. 05-04-1-CTE-8 dt. 8.6.2004 has further instructed that in case of bulky tender documents the provision for submission of bids to designated officials by hand should be made in the tender document itself.

To maintain transparency in the opening of tenders, the Commission in its circular dated 8.6.04 has instructed to open the bids in the presence of bidders.

9.7 Following check-points are suggested:

- i. Whether proper publicity has been given to the tender as per the guidelines of the organization?
- ii. Whether the guidelines of the organization for publicity of the tender are adequate?
- iii. Whether NIT has been posted on the organization's website?
- iv. Whether place of tender receipt as notified in the NIT is conspicuous?
- v. Whether the committee to open the tenders has been duly notified by the Competent Authority?
- vi. Whether the tenders are opened in presence of the bidders or their authorized representatives?
- vii. Whether cutting/overwriting /insertions are accounted for on each page of the price bid?
- viii. Whether the members of the Tender Opening Committee have signed on each page of the price bid?

10.0 Tender Evaluation and Award of Work

10.1 This is the most sensitive area susceptible to corruption. Corruption is inversely proportional to transparency and fairness. To ensure that evaluation is done in most transparent, fair & open manner, following points should be taken care of:

- Evaluation of tenders needs to be done as per pre-notified criteria.
- Timely decision within validity period.
- Complying with commission's circular regarding negotiations.
- Ensuring that conditions / specifications are not relaxed in favour of contractor to whom the work is being awarded.
- Ensuring that L1 is not ignored on flimsy grounds.
- Compliance with the purchase preference policy of the govt.
- Ensuring that work order / supply order is placed within justified rates.

10.2 CVC guidelines in this regard have been issued vide following circulars:

- Circular No. 8(1)(H)/98(1) dated 18.11.98,
- Circular No. 98/ORD/1 dated 24.8.2000 / 15.3.99,
- CVC'S Office Order No. 13/3/05 (005/VGL/4) dated 16.3.2005,
- Circular No. 06-03-02-CTE-34 dated 20.10.03,
- Circular No. 004/DSP/11-6594 dated 24-2-2005
- Circular No. 005/CRD/012 dated 3.03.2007

10.3 Following check-points are suggested:

- i. Whether the Tender Evaluation Committee has been duly notified by the Competent Authority?
- ii. Whether members of the Tender Evaluation Committee are competent enough to deal with the subject matter?
- iii. Whether the bids are evaluated as per the terms of the tender document or not?
- iv. Whether the tender evaluation committee has commented upon the aspect of the bid being unbalanced or front-loaded?

- v. Whether ambiguity clause has been properly applied to deal with any inconsistency in the bid during evaluation?
- vi. Whether there has been any inordinate delay in processing the tender for award of the work?

11.0 Contract Agreement

11.1 During course of technical examination of various contracts by CTE's Organisation, it was observed that officials, who are otherwise expert in their own technical domain, do not go through the complete contract document. During performance of the contract, their main focus could be on BOQ/specifications for various items. In other words, at times, the officials are more concerned with the technical aspects of the contract and as such, other important contract provisions, which are also essential for smooth operation of contract, get ignored. The contractors/vendors tend to take advantage of the ignorance of the officials for their benefit. Many a times, major financial irregularities occur during the performance of the contract because of the officials not being thorough with the contract conditions/provisions. Besides quality, timely completion of the work is also the essence of the contract. While examining the correspondence files of some power projects, it was observed that many projects get unduly delayed due to contractor's fault such as non deployment of adequate plant & machinery, technical staff, material, labour, etc. Officials have been found wanting in their action against the contractors/suppliers. Such actions in many cases lead to recoveries from the contractors/suppliers. In some projects, it was further observed that 'Extension of Time' was granted without claiming compensation, i.e., 'Liquidated Damages', ignoring correspondence that could pin the delay to the account of contractor.

11.2 Following check-points are suggested:

- i. Whether proper agreement between the organization and the contractor / supplier has been entered into within the prescribed period or not?
- ii. Whether the contract agreement containing all the relevant papers has been properly sealed or not?
- iii. Whether irrelevant documents/papers have been made part of the agreement?

- iv. Whether various contract provisions such as labour laws, insurances, guarantees, etc. are being complied by the contractor or not?
- v. Whether action has been taken against the contractor for non-compliance of the contract conditions?
- vi. Whether the payment is being made to the contractor strictly as per the contract?
- vii. Whether any overpayment/inadmissible payment?
- viii. Whether Bank Guarantees submitted by the contractor/supplier have been duly verified for their genuineness from the issuing bank?
- ix. Whether action has been taken/proposed against the contractor/supplier for delay?
- x. Whether the work is being carried out as per the detailed procedure/protocol for quality of the material/product provided in the contract and in case of any deviation, whether approval of Competent Authority highlighting the financial implication has been obtained?
- xi. In case of the contractor being a Joint Venture of two or more firms, whether representatives are being shared by each of the partner as per their disclosure at the time of bidding?
- xii. Whether sub-contracting of the work is allowed in the contract and if so to what extent? Proposal for sub-contracting should be scrutinised scrupulously to assess the competence of the sub-contractor. Indiscriminate sub-contracting, that too the inexperienced/incompetent sub-contractors, may lead to serious quality compromises besides delay in execution of the work?

12.0 Payment to the Contractors

12.1 Payment to the contractors/suppliers should be made strictly as per the terms of contract. Any payment outside the contract agreement should have proper & specific approval of the Competent Authority highlighting the need/necessity for the same as well as rule position. Various types of advances such as Mobilization Advance, Plant & Machinery Advance, Advance on Materials (Secured Advance), etc. may have been provided in the contracts, which need to be paid and recovered as per the stipulation in the contract agreement. The basic purpose of Mobilization Advance is to extend financial assistance within the terms of contract to the contractor to

mobilize the man and material resources for timely and smooth take off of the project or procurement of equipment, material or other services contract. There could be possibility of misuse of Mobilization Advance, especially the interest free advance, either due to absence of necessary safeguards or due to non-implementation of these safeguards provided in the contracts. The Mobilization Advance so paid could be misused by the contractors either in building their own capital or for the purpose other than the one for which it was disbursed, rendering to be counter-productive. In view of the susceptibility of its misuse, Commission vide its Circular No. NU/POL/19 dated 8th December 1997, banned the provision of interest free Mobilization. However, in view of representations from various organization, Commission has reviewed the earlier instructions and allowed the organizations to stipulate interest free advance with elaborate mechanism for safeguards against its misuse vide circular No.10/4/07 issued vide letter No.4CC-1-CTE-2 dated 10.04.2007. More importantly, the BGs taken in lieu of Mobilization Advance need to be properly examined within respect to the acceptable format and any condition deterrent to the Govt.'s interest should be got withdrawn before acceptance besides verifying the genuineness of the Bank Guarantees from the bankers. Timely action for revalidation/ encashment of BGs also needs to be taken so as to protect the Govt. interest. Similarly, Plant & Machinery Advance should be allowed only for the purchase of Plant & Machinery for the bona-fide use in the project and it should be allowed only on the production of genuine documents.

Tax evasion in the procurement contracts could be another area of concern; therefore, it is necessary that tax liability of the contractors/suppliers is examined properly with reference to as per the extant instructions of the Government.

12.2 Following check-points are suggested:

- i. Whether the payment is made as per the terms of the contract?
- ii. Whether there is any possibility of duplicate payment being made to the contractor/supplier?
- iii. Whether any over payment is being made to the contractor/supplier?
- iv. Whether the rates for extra/substituted items have been derived as per the provision in the contract agreement/Procurement Manual?

- v. Whether the payment for extra/substituted items have been made after due approval of the Competent Authority?
- vi. Whether advances are paid to the contractors/suppliers for the amount specified in the contract agreement?
- vii. Whether recovery of advances is being made as per the terms of the contract agreement?
- viii. Whether recovery of mandatory taxes and duties is being done as per the extant instructions of the Government and as per the terms of the contract agreement?
- ix. Whether reimbursement of service tax, excise duty, etc. is being done after obtaining the actual proof of depositing the same with authorities concerned?
- x. Some of the contracts provide escalation clause, with detailed formula in order to compensate the contractors for increase in the material cost during the contract period. Whether the formula for escalation is applied correctly or not?
- xi. Whether hire charges of Plant and Machineries are being recovered from the contractor as per the specified rate?

13.0 Site Records

13.1 Records connected with the execution of the work should be maintained in a proper manner. The registers/files, wherein important data such as record of the mandatory test, record of hindrances, record of receipt and supply of materials, record of issue of drawings/design, etc. are kept should be properly bound and page numbered. These records should be maintained under the signature of designated senior officials. This will guard against the possibility of manipulation/tampering of these records at any stage.

13.2 Following check-points are suggested:

- i. Whether the registers are properly bound and having machine numbered pages?
- ii. Whether the registers to keep record of important data like mandatory test, hindrances, etc. are being issued under the signature of designated senior officer?

- iii. Whether these records are being maintained properly with signatures and attestation of the designated officers?
- iv. Whether any tampering/manipulation is noticed in these records?

14.0 Site Inspection

14.1 Site inspection is basically to assess the quality of work being carried out. All the stages discussed previously are the means, whereas the quality/quantity is the end product. One of the cardinal principles of public procurement is to procure works or goods or services of specified quality. For this purpose, detailed quality standards are stipulated in the contracts. Any compromise in the quality will not only defeat the very purpose of stipulating such elaborate quality standards, but also cause irreversible loss to public exchequer.

To maintain the quality of the work, testing of the material at various stages of the work is required. The contract documents stipulate mandatory tests to be carried out for ensuring that the materials represented by the sample conform to desired quality standards. It has been observed that at times, aspect of testing at specified frequency & interval is ignored. This not only defeats the objective of mandatory testing of input materials/products, but also gives opportunity to the contractors/manufactures/vendors to supply sub-standard materials and save on the testing charges.

It needs to be examined whether the work is being carried out with the specified quality standards? Site inspection should highlight the specific quality compromises w.r.t. the benchmark, i.e., specified standards/specifications rather than general observation.

15.0 Leveraging information technology

15.1 The Government is promoting E-Governance to improve transparency in government functioning. As regards public procurement, the modern IT tools can be used in enhancing transparency in the form of E-Tendering, E-Procurements, E-Payments & uploading of post tender details on the website. CVC has issued instructions in this regard from time to time.

15.2 Following check-points are suggested:

- i. Whether e-payment is being made to the contractors/suppliers in general in the organization?
- ii. Whether e-payment is being made in the instant contract?

- iii. If the e-payment is not being made then reasons for the same?
- iv. Whether CVC's instructions on e-tendering/e-auctions/reverse-auctions are being complied with?
- v. Whether post-tender details are being uploaded on the organization's website?

16.0 Integrity Pact

16.1 As part of its endeavour to promote transparency in public procurement, the Commission has issued instructions for putting in place the mechanism of Integrity Pact. Among the important provisions in the instructions of the Commission are mandatory provision of Integrity Pact in the procurement contracts and appointment of Independent Monitors in the organisation.

16.2 Following check-points are suggested:

- i. Whether the provision of Integrity Pact as approved by the Management has correctly been incorporated in the tender documents/contracts?



**Inauguration of “Aloke – 2019” on 2nd November, 2019
during the Closing Ceremony of Vigilance Awareness Week – 2019**

[From Left to Right : **Dy. Chairman, HDC, SMP, Kolkata; Chief Vigilance Officer, SMP, Kolkata; Chief Post Master General, West Bengal Circle; Secretary, CVC; Chairman, SMP, Kolkata; Dy. Chairman, KDS, SMP, Kolkata**]



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