

**TWELFTH KERALA LEGISLATIVE ASSEMBLY**

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

**TWENTY FIRST REPORT**

(Presented on 10th July, 2007)



**SECRETARIAT OF THE KERALA LEGISLATURE  
THIRUVANANTHAPURAM**

2007

TWELFTH KERALA LEGISLATIVE ASSEMBLY

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**On**

**Paragraphs relating to Water Resources Department, contained in the  
Reports of the Comptroller and Auditor General of India for the  
years ended 31st March 1990 No. 3 (Civil), 31st March  
1994 No. 2 (Civil), 31st March 1996 No. 3 (Civil) and  
31st March 1997 No. 3 (Civil)**

1038/2007.

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COMMITTEE ON PUBLIC ACCOUNTS (2006-2008)

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## INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report on their behalf, present the Twenty First Report on Paragraph relating to Water Resources Department contained in the Report of the Comptroller and Auditor General of India for the years ended 31st March 1990 No. 3 (civil), 31st March 1994 No. 2 (civil), 31st March 1996 No. 3 (civil) and 31st March 1997 No. 3 (civil).

The Report of the Comptroller and Auditor General of India for the years ended 31st March 1990 No. 3 (civil), 31st March 1994 No. 2 (civil), 31st March 1996 No. 3 (civil) and 31st March 1997 No. 3 (civil) were laid on the Table of the House on March 6, 1992 March 31, 1995, March 24, 1997 and April 23, 1998 respectively.

The Committee considered and finalised this report at the meeting held on May 30, 2007.

The Committee place on record their appreciation of the assistance rendered to them by the Accountant General in the examination of the Audit Report.

ARYADAN MUHAMMED,

Thiruvananthapuram,  
10th July, 2007.

*Chairman,*  
*Committee on Public Accounts.*

## REPORT

### WATER RESOURCES DEPARTMENT

#### AUDIT PARAGRAPH

#### *Unproductive establishment expenditure*

The Chaliyar River Valley Project envisaged the construction of a storage reservoir to enable irrigation of lands situated in Malappuram and Kozhikode districts through a network of canals. The original proposal was to construct a barrage, across the Chaliyar river near Areacode and divert the flow through two main canals to irrigate 3812 hectares of paddy fields. The creation of a Division with three Sub-Divisions and nine Sections having a total complement of 94 personnel was also sanctioned by Government for investigation work between January 1980 and November 1980. The investigation of the project revealed that the scheme was not economically viable. It was, therefore, decided to ascertain the feasibility of a major scheme in the upper reaches of the Chaliyar basin for which an investigation estimate amounting to Rs. 41.75 lakhs was also sanctioned by Government in October 1985. After some preliminary efforts, the investigation work was suspended from April 1986 due to paucity of funds.

The Division and the three Sub-Divisions, however, continued to exist with the full complement of the staff. Their establishment expenditure amounted to Rs. 44.03 lakhs for the period from April 1986 to May 1990. The Chief Engineer admitted in May 1990 that the entire staff were idling for the preceding few years without having any work.

The Division had collected 3500 full reservoir level stones and manufactured 1,200 concrete blocks (cost Rs. 1.48 lakhs) till May 1986, which could not be utilised due to the suspension of detailed investigations.

The matter was reported to Government in October 1990; their final reply had not been received (October 1991).

[Paragraph 4.12—Contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March 1990, No. 3 (Civil)].

Government notes on the above audit paragraph is included in Appendix II.

The Principal Secretary informed the Committee that the audit para related to the construction of a dam across Chaliyar River. When the investigation for the project was started objections were raised by the residents of the area due to the apprehension that their land would be submerged. The site for the dam

was, therefore, shifted two times i.e., first from Areacode to Pothukal and from Pothukal to Ambittampetty. Later when the investigation for constructing the dam at Ambittampetty was going on a proposal to change over to small weir check dams instead of a major dam came up. Investigation was now going on for the check dams. The Principal Secretary clarified that all cases where investigations were done need not materialize into execution. Most often due to change of concepts and ideas major projects would be changed to minor irrigation works. Hence it was due to change in concept that the investigation had not culminated into a specific project. At present one division was working over the project and they had completed some amount of work relating to the project.

2. The Committee wanted to be enlightened about the investigation procedures and about the rules that govern investigation and decision making process. The Chief Engineer, Water Resources Department explained the procedures involved in the investigation process as follows:—

3. Using the G.T.S. map, the ideal location for the dam, the suitability of the geographical condition of the site for construction of the dam, whether water is available, the area that would be submerged, whether water could be stored, how many chain of canals would be needed for irrigating the ayacut area etc. would be identified. Residential areas, forest land and other obligatory areas would be left out on priority basis and contour canals would be proposed. After identifying all the above a map would be prepared and that map would be forwarded to Survey of India for preparing a map at 3 m interval. After obtaining the map from Survey of India a preliminary estimate and report would be prepared. This preliminary report would be forwarded to Central Water Commission for their approval. Further proceedings would be done according to the Central Water Commission norms. As per the Central Water Commission norms the first step for construction of a dam was the hydrological study. Under hydrological study the rate of rainfall in the area for the last 30 years would be collected and the data regarding the rainfall obtained during the northwest monsoon and the south west monsoon in the catchment area as well as the neighbouring area would be separately analysed. Since 100% storage in the dam is impossible full reservoir level would be fixed on 70% dependability and stones would be planted in the dam site. Then the alignment of the dam would be fixed and preliminary estimate would be made. Then only technical study would be started. Only when the area for the dam was demarcated, could the area that would be submerged be identified and the total area that should be acquired could be calculated. The preliminary survey would be completed only after all the above process was completed.

4. The Committee pointed out that in a major irrigation project, the first stage was preliminary survey, the second stage was technical analysis and the third stage was design aspect. It was in the fourth stage that the catchment area was identified and land acquired and stones planted to demarcate the area. The Committee wanted to know at which stage objection would be raised by the local people. The Chief Engineer stated that people would come out with objections at the stage when 70% of the investigation was over and stones were going to be planted.

5. The Committee asked whether during the preliminary survey any discussion with the local people or panchayat would be held. The Chief Engineer, Water Resources Department stated that normally 80% of the headwork would be at the highest peak of Western Ghats and hence there was no question of interference from the local people or plantation workers. It was during the alignment of canals and contour canals that problems arise. At this stage the local M.L.A. and Panchayat would be consulted about the laying of the canals.

6. The Committee wanted to know at which stage it was decided to change the dam site thrice in this particular case. The witness stated that the dam site was changed first from Areacode due to local pressure, secondly from Pothulal due to the requirement of forestland.

7. The Committee enquired whether there was any pressure from any quarters to select Areacode for construction of dams or whether it was a suo moto decision of the Department. The Committee further enquired whether Areacode was specifically selected keeping in mind the World Bank scheme for water supply for Areacode Panchayat, if so then, the Department should have realised that water supply scheme and irrigation scheme are two entirely different projects. The witness did not give a satisfactory reply to the query of the Committee.

8. The Committee pointed out that the site finally selected was not midland and that it was a thickly populated coastal area. It was in this area that the eucalyptus plantation of around 300 acres of Gwalior Reynolds Company was situated. The Additional Secretary, Water Resources Department informed the Committee that the master plan for irrigation projects in the state was prepared in 1970 and that Areacode Barrage was one of the schemes in the master plan. A Sub Division was started for the above irrigation project and the survey work for the reservoir was done. It was and at this stage that the local protest arose. The Committee pointed out that during 1970 there was not much encroachment and hence if the work had been started then there would not have been any problem. But it was after 10 years that the preliminary survey was started and further after 5 years when the survey reached this stage that the local protest arose.

9. To a question of the Committee, the witness, the Chief Engineer (Water Resources) elaborated the procedures followed in the final investigation. In the final investigation preparation of detailed estimate, identification of total area of the ayacut, feasibility calculation etc. were to be looked into. The project plan should be sent to Government of India for getting Techno Economic Clearance and approval of Planning Commission.

10. In the written reply the Principal Secretary had disclosed that the dam site survey at Ambittampetty had been completed and the map of the dam site was prepared. Areal survey done by the Survey of India was in progress. River survey of more than 75% for 10 k.m. upstream and 10 k.m. downstream had been completed. Areal survey of 1160 sq. k.m. in the Command Area and 51 Sq.k.m. in the catchment area had been completed. The Canal survey of Main Canal and 14 k.m. length of Branch Canal had been completed.

11. The Committee opined that unjustifiable delay was caused in the investigation work of the project and the reasons adduced for the delay by the Department like lack of sufficient funds, adequate Budgetary provision and other infrastructure facilities hindered the steady progress of the work were not acceptable to the Committee.

12. To another question of the Committee, the witness replied that out of the 94 personnel sanctioned by Government in 1980, 33 were still working for the project. One sub division with staff was deployed to Irrigation Division, Malampuzha with effect from 14-6-91 to avoid idling of staff. Later, another division was formed at Nilambur with effect from 20-9-1991 for the speedy implementation of the work.

13. The Principal Secretary appraised the Committee of the latest position of the project. There were 7 medium-scheme investigations going on and they were diversion weir at Thalappally across Chaliyar, Regulator-cum-Bridge at Kaippinikkadavu, Chaliyar, Diversion weir at Moolappadam across Kurumanpuzha—a Tributary of Chaliyar, diversion weir at Pottikkallu of Chaliyar, Regulator at Panamkayam across Chaliyar, Lohayak Dam at Malakam across Chaliyar, Lohayak Dam at Punchakkolly across Punnappuzha—a tributary of Chaliyar. The investigation report on two of the above projects had been already submitted.

14. To a question regarding the completion and expenditure on investigation work till date, the Chief Engineer (IDRB) disclosed that the investigation was completed in the year 2002 and an amount of Rs.7.7 crores including the establishment cost had been spent for the investigation. The Committee could find that even after spending a huge amount and completing

the investigation work, the approval of the Central Water Commission for the projects had not been received till date. The Chief Engineer (WR) deposed that the industrial clearance and forest clearance had to be obtained before submitting the proposal before the Central Water Commission for approval. He further added that those projects could be included under the NABARD Schemes or any other similar schemes like Chaliyar Kavanakallu Regulator-cum-bridge which was proved very effective. He also said that Rs.15 lakhs would be needed for the completion of the investigation process.

15. The Committee pointed out that Tamil Nadu had a proposal to construct a hydel project in Nilgiri and that if such a project is constructed the availability of water to the Chaliyar dam should be ensured. The Principal Secretary Water Resources Department stated that Kerala Government had asked for the details of the Tamil Nadu Project but they have not so far provided it. Hence Kerala had not so far agreed to the proposal of Tamil Nadu.

16. The Committee wanted to know whether the department had any norms regarding per acre cost or per capacity cost by which the efficiency could be measured. The Principal Secretary (Water Resources) admitted that no such norms were fixed yet. However, the NABARD had fixed norm of Rs. 50,000 as the cost per hectare for minor irrigation works under the R.I.D.F. Schemes. But unlike in the norm, the actual cost of the projects in our State would be higher since the ayacuts of the projects was comparatively small in area.

17. The Committee observed that the preliminary investigation for the Areacode barrage was conducted by the department based on the 1970 irrigation potential suggestion. In the 1970 master plan itself it was pointed out that the area was thickly populated. The Department had ignored this aspect completely while starting the preliminary investigation in 1980 i.e., after 10 years of the preparation of master plan. Hence the Committee came to a conclusion that the Water Resources Department had not undertaken the preliminary survey seriously and properly. If the department had borne in mind that the master plan was prepared in 1970 based on the surveys dating back to sixties and that the habitation settlement etc. in the area had undergone a total change, then it would have become clear that a dam as envisaged could not be constructed there.

18. The Committee pointed out that there was no transparency in the investigation process. It was only when the construction of canals are started that the residents of the area realise that they would be affected if the project was implemented. At no point the local people were taken into confidence and involved in the project. The Committee did not accept the reply that paucity of funds hindered the investigation because from the evidence tendered by the

officers, the Committee learnt that only Rs.15 lakh. more was needed for completing the investigation. The Committee did not agree with the reply submitted by the Department regarding the deployment of the idling staff. The suggestion of the Committee was that Government must very seriously make a survey of the idling human resources in the Irrigation Department in the Projects which would never be completed or which never would be started. There was no system for monitoring the developments in the investigation process. The Committee drew the attention of the officers to the practice followed in the Public Works Department in which when works were awarded, necessary provisions for the conduct of investigation was also incorporated in the agreement. The Principal Secretary (WR) stated that the task of investigation work could be entrusted to an expert agency who could also act as a consultant. This procedure has not yet been implemented in the Irrigation Department.

#### **Conclusions/Recommendations**

19. **The Committee understands that there was an unproductive establishment expenditure of Rs. 44.03 lakh in the Irrigation Department on the creation of an Irrigation Division with three sub-divisions and nine sections for the implementation of Chaliyar River Valley Project which remained idle for years from April 1986 to May 1990. The Chaliyar River Valley Project envisaged, on the basis of Master Plan for Irrigation Projects in the State in 1970, for the construction of a storage reservoir to irrigate lands situated in Malappuram and Kozhikode districts through a net work of canals. Though the project was envisaged in 1970 the investigation work of the Project was started only in 1980. After some preliminary efforts the process of investigation was suspended from April 1986 due to paucity of funds. Moreover the Dam site was shifted thrice due to protest from local people at the forest site Areacode and due to the problem of submergence of forest land in the 2nd site, Pothucal. Though the proposal of the project was envisaged in 1970, the investigation and preliminary work were started only after a decade or more. The reasons adduced for the unjustifiable delay-the lack of sufficient fund, inadequate budgetary provisions and insufficient infrastructure facilities—are not acceptable to the Committee. Had the survey been started in earlier days when not much encroachment problem persisted protest from local people could have been averted.**

20. **When constructing a major project like a dam across a river, the winning of the minds of the local people, clearing their apprehension about submergence of their habitat, their rehabilitation problems etc., and taking them into confidence are the factors that require much attention of the**

authorities. But during this project, it seems that the local people were not taken into confidence at any point of time and there was no transparency in the investigation process.

21. The Committee pointed out that the site finally selected for the project was not midland and that it was a thickly populated coastal area.

22. The Committee feels that Water Resources Department had not undertaken the preliminary survey seriously and properly. If the department had shown certain degree of prudence or outlook prospectively enough to see whether a dam, envisaged as such under the Master Plan in 1970 based on surveys on datas like habitation settlement etc dating back to sixty's, could be practically possible to construct a decade after, much wastage of money from the public exchequer could have been saved.

23. The Committee learns that the investigation process of the project was completed in the year 2002 and an amount of Rs. 7.7 crore had been spent for the project. Even after the expenditure of such a huge amount on the project, the approval of the Central water Commission for the project had not been received till date. The Committee wants to know the reasons for not obtaining the approval of the Central Water Commission and to furnish the details of the present position in this regard. The Committee recommends to take stringent action against the officers who were responsible for continuing the work of the project, knowing that the work was stopped at different stages of its progress and when they were well aware that obtaining clearance from Industries and Forest Department was not easy.

24. The Committee recommends that the Water Resource Department adopt the practice that followed in the Public Works Department for the work related to investigation process where the works were awarded with incorporating necessary provision for the conduct of investigation.

AUDIT PARAGRAPH

***Kallada Irrigation and Tree Crop Development project-Arbitration awards***

**Introduction**

According to a general policy decision taken by the Government in May 1978, the procedure of resolving disputes between contractors and Government by recourse to arbitration proceedings was dispensed with in public works contracts for amounts exceeding Rs. 2 lakhs. In May 1985, the provision for arbitration in respect of works estimated to cost Rs. 2 lakhs and below also was dispensed with. The reasons which weighed with Government in taking the

step was the large scale misuse of the provisions for arbitration entailing substantial loss to Government. Nevertheless, the provision for arbitration was not discontinued in respect of the work contracts under the World Bank aided Kallada Irrigation and Tree Crop Development Project as the conditions of contract under the Local Competitive Bidding (LCB) procedure approved by the World Bank, included provision for arbitration as well.

The Chief Engineer (Kallada) requested Government in December 1986 and again in August 1987 to modify the arbitration clause under the LCB specifications so as to safeguard the interest of Government and to curb the tendency on the part of arbitrators in passing awards allowing claims of contractors for fabulous sums disproportionate to the contract amounts. He pointed out that in most cases, the arbitrators happened to be men unfamiliar with the project works and suggested (September 1987) to adopt the arbitration procedure in vogue in Andhra Pradesh for settling disputes arising in contract works for World bank aided projects under which disputes for amounts up to Rs. 50,000 were to be referred for adjudication by Superintending Engineer/Chief Engineer and those for amounts above Rs. 50,000 to a Court of competent jurisdiction. The Chief Engineer also reported that the World Bank authorities were not averse to any modification to the arbitration clauses in the LCB conditions. However, no decision was taken by Government and consequently the disadvantageous arbitration clause remained unchanged for the remaining period for which assistance for the project was available from the World Bank (i.e. up to 3 March 1989).

#### **Organisational set up**

The project is under the exclusive charge of a Chief Engineer with headquarters at Kottarakkara. There are 4 circles and 15 divisions under the Chief Engineer (March 1993).

#### **Audit coverage**

Mention was made in paragraph 4.1.2 (4) (ii) of the Report of the Comptroller and Auditor General of India for 1984-85 (Civil) on the pendency of the arbitration cases and the huge extra expenditure involved. The Public Accounts Committee in its 85<sup>th</sup> Report recommended (December 1990) that Government should conduct a detailed investigation into the manner in which the cases of the department were presented before the arbitrator and should keep a regular watch over the conduct of cases in arbitration in future. An audit review of the arbitration awards passed by the arbitrators during April 1985 to March 1993 was conducted in three circles during April-June 1993 and the following points were noticed.

## HIGHLIGHTS

Even after receipt of specific proposals from the department in December 1986/September 1987 for modification of the arbitration clause suitably on the lines of similar conditions included in the work contracts of World Bank aided projects in the neighbouring States indicating *inter alia*, that the World Bank was not averse to modification, no decision was taken by Government till March 1989 when the period of assistance of World Bank was over with the result that the disadvantageous arbitration clause remained in force.

(Paragraph 4.2.1)

From October 1984, to March 1993, 258 cases were referred for arbitration by virtue of arbitration clause included in the LCB specifications approved by the World Bank. Awards were passed in 172 cases and 86 cases were pending with the arbitrators as of March 1993. Out of the 172 awards passed as on March 1993, a net amount of Rs. 2,022.75 lakhs was awarded to the contractors in 171 cases. In one case, the award was in favour of neither of the parties.

(Paragraph 4.2.5)

Owing to various departmental lapses almost all the awards passed, favoured the contractors.

(Paragraph 4.2.6)

Officials on the verge of retirement from service were appointed as arbitrators and arbitration awards were passed by them long after their retirement. The contractor's claims allowed in 88 awards by such retiree-arbitrators amounted to Rs. 12.48 crores.

(Paragraph 4.2.8)

Despite LCB condition prohibiting appointment of arbitrators after 30 days from the expiry of the defect-liability period, arbitrators were appointed by the department itself after that period. The awards passed by those arbitrators amounted to Rs. 408.30 lakhs.

(Paragraph 4.2.10)

An amount of Rs. 5.32 lakhs paid to the contractor in satisfaction of an award was not recovered though the award was set aside by the High Court in March 1991.

(Paragraph 4.2.12)

The High Level Committee (HLC) failed to consider contractor's offer to scale down their claims and the loss sustained by the department due to this in 2 cases, amounted to Rs. 16.15 lakhs.

(Paragraph 4.2.14)

Owing to delay on the part of Government in accepting the recommendations of the HLC communicated to them in January 1989 for payment of Rs. 17.14 lakhs being 60 percent of the amount awarded in July 1988, additional expenditure of Rs. 18.25 lakhs had to be incurred.

(Paragraph 4.2.15)

#### **Financial impact of arbitration awards and pendency of arbitration cases**

From October 1984 to March 1993, 258 cases were referred to arbitration in the three project circles and awards were passed in 172 cases. Out of these 172 awards 171 awards were against the Government causing a total liability of Rs. 2053.51 lakhs (Gross). In 23 of these 171 cases, the arbitrators awarded a total amount of Rs. 30.76 lakhs in favour of Government also towards cost of materials, etc. In one case, the award was in favour of neither the contractor nor the department. The arbitrators had not passed awards in 86 cases as of March 1993. The circle-wise break-up of the cases and net liability caused are given below:

<i>Sl.No.</i>	<i>Name of Circle</i>	<i>Position as of March 1993</i>			
		<i>No. of cases referred for arbitration</i>	<i>No. of award passed</i>	<i>Award amount (Rs. in lakhs)</i>	<i>No. of cases pending</i>
1.	Kollam Circle	85	59	745.10	26
2.	RB Circle, Kottarakkara	72	38	443.64	34
3.	LB Circle, Kottarakkara	101	75	834.01	26
	Total	258	172 <sup>2</sup>	2022.75	86

#### **Trend of awards**

An analysis of the arbitration awards revealed that departmental lapses/ failures contributed mainly to most of the adverse awards. Some of the important lapses pointed out by the arbitrators were defective investigation resulting in unrealistic estimates, change of alignment, change of design leading

to execution of extra items or variation in quantities, delay in finalisation of design, delay in handing over site, failure to provide dumping yards, non-supply of electricity, delay in issue of departmental materials, etc. A cause-wise<sup>3</sup> analysis of the awards passed as of March 1993 is given below:

Sl. No	Nature of major reasons stated in the awards	No. awards in which claims were allowed for the stated reasons Amount involved (Rs. in lakhs)			
		Kollam Circle	RB Circle	LB Circle	Total
1.	Defective investigation	<u>52</u> 443.57	<u>32</u> 176.99	<u>66</u> 434.88	<u>150</u> 1055.44
2.	Delay in handing over site, etc	<u>20</u> 76.22	<u>25</u> 140.97	<u>32</u> 87.64	<u>77</u> 304.83
3.	Delay in issue of departmental materials	<u>14</u> 105.76	<u>17</u> 64.49	<u>24</u> 84.85	<u>55</u> 255.10
4.	Failure to provide dumping yards	<u>18</u> 55.87	<u>11</u> 26.58	<u>20</u> 79.40	<u>49</u> 161.85
5.	Non-availability of power supply	<u>7</u> 30.71	<u>2</u> 2.94	<u>15</u> 119.77	<u>24</u> 153.42
6.	Delay in finalisation of design	<u>4</u> 15.02	<u>5</u> 15.28	<u>5</u> 14.29	<u>14</u> 44.59
7.	Miscellaneous counts	<u>36</u> 17.94	<u>25</u> 16.41	<u>36</u> 13.17	<u>97</u> 47.52

A split up of the 171 cases on the basis of the number of causes involved in the awards is given below:

Number of cases with any one of the seven causes mentioned	...	29
Number of cases with any two causes	...	50
Number of cases with any three causes	...	51
Number of cases with any four causes	...	27
Number of cases with any five causes	...	13
Number of cases with any six causes	...	1
Number of cases with all the seven causes	...	Nil
<b>Total</b>	...	<b>171</b>

3. Most of the awards were based on more than one ground.

### **Awards for amounts exceeding Probable Amount of Contract**

The amount of awards passed by the arbitrators exceeded the Probable Amount of Contract for the whole work in 12 cases as indicated in the list given in Appendix 15.

### **Appointment of arbitrators on the verge of retirement**

According to the arbitration clause in the LCB specifications, the arbitrator should be an officer of the rank of Superintending Engineer or higher. It implies that no retired official should be engaged as arbitrator and that the arbitrator should be a Government officer during the tenure of arbitration. While appointing a Superintending Engineer or higher grade official as arbitrator, length of service available to the incumbent before retirement was not at all taken in to account. Consequently, officials on the verge of retirement appointed as arbitrators had to be retained perforce as arbitrators even after their retirement. In the case of 88 awards the verdicts were pronounced by the arbitrators long after their retirement. The amount of such awards totalled Rs.1248 lakhs (of the total award amount of Rs. 2023 lakhs in 172 cases). In 29 cases out of the 88 awards, officers having less than 4 months service for retirement were appointed as arbitrators. In 9 out of 12 cases (vide Appendix III) where the amount of award exceeded the Probable Amount of Contract for the whole work, the awards were pronounced by the arbitrators after their retirement.

### **Retention of a Superintending Engineer as arbitrator even after his suspension from service on corruption charges**

A Superintending Engineer was appointed as sole arbitrator in June 1987 to settle the disputes in the work "RBC formation of Chavara distributary from chainage 7440 metre to 9440 metre and 10475 metre to 14767 metre including CD works". It was noticed that after appointment as sole arbitrator, the officer was suspended from service in August 1989 on charges of corruption and therefore Government had observed that he was not competent to hold the position as arbitrator. But the department/Government did not move the court for the removal of the officer as arbitrator. In September 1989, the arbitrator passed an award for Rs. 42.21 lakhs in favour of the contractor and Rs. 48 lakhs (including interest) was deposited in the Sub Court, Kottarakkara in June 1991 in pursuance of the decree of the Court and the sanction issued by Government in March 1991. The court released the amount to the contractor on collateral security. An appeal filed by the department was pending in the Honourable High Court of Kerala (December 1993).

**Irregular appointment of arbitrators after the defect liability period**

The LCB conditions prohibit appointment of arbitrators after 30 days from the expiry of defect liability period. However, contrary to the LCB conditions, the department appointed arbitrators in 41 cases after the expiry of the stipulated period. The department then raised objections before the arbitrators on their belated appointments in the course of proceedings in 23 cases. However, the objections were rejected on the ground that the department failed to consider this aspect while appointing the arbitrators. The action of the department in appointing the arbitrators after the expiry of the prescribed time limit resulted in awards against Government amounting to Rs. 408.30 lakhs.

**Defective presentation of facts before the arbitrator by the department and consequent excess payment to the contractor**

(i) To settle the disputes in the work “Formation of R.B. Main canal from chainage 65300 metre to 67380 metre”, an arbitrator was appointed in September 1989 who passed an award for Rs.20.29 lakhs in March 1992. The award included a sum of Rs. 9.75 lakhs towards compensation for price escalation. The contractor had on an earlier occasion preferred a similar claim in respect of price escalation before the arbitrator appointed in October 1986 and the arbitrator rejected it owing to the non-existence of the price adjustment clause in the agreement. But the fact of rejection of the claim earlier by the first arbitrator was not brought to the notice of the second arbitrator by the department which resulted in a liability of Rs. 9.75 lakhs to Government.

(ii) The disputes in the work “Formation of Oyoor Branch Canal from chainage 7000 metre to 17607 metre excluding aqueducts—Part V— from chainage 15073 metre to 16804 metre” relating to the up-to-date quantity of work done, measured and paid for the part bill paid in March 1986 were referred to an arbitrator. Though the arbitrator himself had taken note of the limitation on period of work done, viz., 31 March 1986, the award allowed higher rates for 2402.5 cubic metres of rock blasting done after the crucial date. The department did not point out this either to the arbitrator or to the court, but paid the amount awarded which included the blasting charge for the quantity of 2402.5 cubic metres also. The extra payment due to the lapse on the part of the department in not pointing out the factual position was Rs. 0.42 lakh.

### **Non-recovery of amount paid on an award set aside by the High Court**

The disputes in the work “Formation of Left Bank Main Canal from chainage 19500 metre to 20000 metre” were referred to an arbitrator who passed an award for Rs. 5.09 lakhs in favour of the contractor in April 1985. On passing of the decree of the award by the Sub Court, the department deposited a sum of Rs.5.32 lakhs (including interest) in the Sub Court in March 1987 and the court released the amount to the contractor. Simultaneously, the department challenged the award and the decree in the High Court. The High Court set aside the award in March 1991 with direction to the arbitrator to consider all pieces of evidence in respect of certain claims and give separate reasons for his conclusions and to pass the award within four months from the date on which the parties appeared before him. The parties were directed to appear before the arbitrator on 25<sup>th</sup> March 1991. Accordingly a sitting was held on 25<sup>th</sup> March 1991. But a fresh award was not passed by the arbitrator as of August 1994. The department did not refer back the matter to the High Court so far (August 1994). The department initiated action for the recovery of the amount of Rs. 5.32 lakhs paid to the contractor as far back as in September 1991. The amount was, however, not recovered as of August 1994.

### **High Level Committee**

Finding that the arbitration awards generally went against the interest of Government, a High Level Committee (HLC) consisting of the Secretaries of Irrigation, Finance and Law Departments and the Chief Engineers was constituted by the Government in February 1988 to go into unsettled claims of contractors and exploring the prospect of out of court settlement of arbitration awards. The Department did not utilise this facility for settlement of disputes with contractors. The HLC was confined mainly to out of court settlement of arbitration awards. So, the intention of government in constituting the committee to safeguard the interest of Government was not served completely.

### **Extra expenditure due to inaction of the High Level Committee**

One of the functions of HLC was to explore possibilities for negotiation with the contractors with a view to reducing the amount of awards. But in the following 2 cases, though the contractors specifically mentioned the extent to

which they were agreeable to reduce the amount of award provided payment was made within two to four months, the Committee did not consider the case and no decision was taken during this period.

<i>Sl. No.</i>	<i>Name of work</i>	<i>Amount of award</i>	<i>Payment sanctioned by the Government</i>	<i>Reduction proposed by the contractor</i>
<i>(Rupees in lakhs)</i>				
1.	Formation of Pandalam branch canal from Chainage 2220 metre to 4000 metre (Agt.No.3/SE/KCQ/82-83 dated 23 April 1982.	14.83 plus 12 per cent interest	14.83 plus interest up to 31 March 1992	6.03 (25 per cent of the award amount with interest up to 31 March 1992)
2.	Formation of Paravoor distributory from chainage 0 to 5150 metre including CD works (Agt. No. 32/SE/KCQ/85-86 dated to February 1986.	39.67 plus 12 per cent interest	39.67 plus 12 per cent interest from 28 November 90 to 16 September 92 and 6 per cent thereafter	10.12 (Interest amount agreed to be forgone)

Owing to inaction of the Committee, the award amounts in full were sanctioned resulting in avoidable loss of Rs.16.15 lakhs to the Government.

**Excess payment due to delay in acceptance of recommendations of the High Level Committee by Government.**

The arbitrator appointed to settle the disputes in the work "Formation of LBMC constructing cut and cover between chainage 18283 metre and 18813 metre" passed an award on 11 July 1988 for an amount of Rs. 28.57 lakhs with interest at 12 per cent from the date of award till the date of decree/payment. The HLC in its meeting held on 29 November 1988 decided to settle the matter out of court if the contractor agreed to reduce 40 per cent of the award amount and to forgo the entire interest. The contractor on 16 January 1989 expressed his willingness to accept the decision of HLC and the Chief Engineer, Project III on the same day requested Government to take a decision in the matter. But the

Government did not take a decision till a decree from the court was received on 12 February 1990 and Rs.35.39 lakhs (including interest) was paid to the contractor on 30 November 1990 as ordered by Government on 23 November 1990.

Avoidable payment on account of the delay in taking a decision by Government in this case was Rs.18.25 lakhs, (Principal : Rs.11.43 lakhs and interest: Rs.6.82 lakhs).

The matter was referred to Government in April 1994; reply has not been received (October 1994).

[Paragraph 4.2—Contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March 1994 (Civil)]

Government notes on the above audit paragraph is included in Appendix II of this Report.

25. The Principal Secretary, Water Resources Department informed the Committee that the project was started in 1961-62 with a total estimate of Rs. 13 crores. The total expenditure so far incurred for the project was Rs.686 crore 89 lakhs, he added. The breakup was Rs. 196 crores establishment expenditure and Rs. 490 crores for works. If the work had been completed as estimated in 2003, the total cost would have come to Rs. 714 crores. The Committee invited the attention of the witness on the audit observation regarding the arbitration cases that had arose in the execution of the Project with the connivance of the department officials. The Committee asked the witness to explain the action taken by the department on the findings of the Mohankumar Commission, which was appointed to look into the irregularities relating to arbitration cases. The Principal Secretary (WR) intimated the Committee that the Commission had pointed out the defects in the arbitration procedures and the role played by the officers, arbitrators, Law Officers and Government Pleaders in awarding excess amount through arbitration. The findings of the Mohankumar Commission also agree with the findings of Accountant General. On the basis of the recommendation of the Commission, the Government had decided to pursue the arbitration cases. Reviews and appeals were filed upto the level of Supreme Court, but in most cases all efforts of the Government had proved to be in vain. Almost every day court attachments relating to arbitration awards were being made. A special cell headed by the Chief Engineer was constituted in the department to study and rectify the defects and short comings in conducting the arbitration cases. After that, a one-man Commission was appointed to unearth the extend of connivance of officers in the arbitration cases. To take follow-up action, a Cell was created in the Government level. He added that the cell was

wound up in 2002 and in fact; he was pursuing the arbitration cases in the court and in the Vigilance with the aid of that Cell. The winding up of the cell had caused many difficulties in pursuing the cases.

26. The Committee wanted to know whether arbitration clauses were still being included in contracts. The Principal Secretary, Water Resources Department informed the Committee that the practice of following provisions for arbitration was stopped with effect from 1978. But the provision was still being included in projects aided by World Bank. Enquired about the rationale behind allowing such a clause, the witness stated that the provision was allowed as a dispute resolving mechanism. But in Kallada Irrigation Project the provision had been largely and extensively misused. The one man Commission viz. Justice Mohankumar Commission had recommended for the abolition of arbitration provision in departmental works and in 1998, "The Abolition of Arbitration Act" was passed by the Legislative Assembly. At present arbitration is allowed only in cases where the Courts specifically appoint an arbitrator.

27. To a question of the Committee whether arbitrators were usually departmental officers, the witness clarified that as per the provision departmental officers not below the rank of Superintending Engineer were to be appointed as arbitrators. Arbitrator was to be appointed within one month of preferring petition before the Chief Engineer by the contractor. The Chief Engineer had to prepare a panel of 3 officers and had to consult the contractor and the final choice would be made taking into consideration the opinion of the contractor. The arbitrator had to complete the arbitration procedures and pass the award within 4 months. But in many cases arbitration procedures had been delayed indefinitely and it was when Government became convinced that the arbitration provision was being misused that a one-man commission was appointed to look into the matter. The Principal Secretary could not offer a reply to the question of the Committee regarding the Communication sent by the then Chief Engineer to Government suggesting to adopt the arbitration procedure followed by the Andhra Pradesh Government for setting disputes and informing the willingness of the World Bank authorities in the modification of arbitration clause.

28. The Committee wanted to know in how many cases Government had filed review petition and in how many of them the final outcome was in favour of Government. The Principal Secretary stated that there were about 150 cases and submitted that he could give the details relating to the cases only after examining them. He added that in some cases settlement was made outside court without filing appeals through negotiation with the contractors. A high level Committee was appointed for the purpose. But all these cases had gone against Government, when appeals were preferred in courts Government had landed in a situation where the entire award amount with interest till date had to be paid.

29. The Committee wanted to be apprised of the modification that had been made in the procedure and rules to avoid arbitration. The Principal Secretary stated that since arbitration had been stopped chances of going on for arbitration raising defects in tendered work were nil. Tender condition had been modified to the effect that no claim would be allowed to contractors in cases where delay in acquisition of land occurs. Besides in the agreement itself a condition had also been included stipulating that in cases where there was delay in acquiring land, Government would not be liable to pay interest. The Committee asked the witness to submit a statement showing the details of changes/modification made in tender form to avoid/minimise arbitration/disputes.

30. The Committee made enquiries about the financial impact of arbitration awards and pendency of arbitration cases. The Principal Secretary (WR) informed that the arbitrators had not passed awards in 86 cases as of March 1993. Out of the 172 awards, 171 awards were against the Government causing a total liability of Rs.2053.51lakhs. In 23 of these 171 cases, the arbitrators awarded a total amount of Rs.30.76 lakhs in favour of Government towards cost of materials etc. In one case, the award was neither in favour of the contractor nor of the department.

31. The Principal Secretary informed the Committee that the main reasons which led to arbitration awards were defective investigation, delay in handing over site, delay in issue of departmental materials, failure to provide dumping yards, non-availability of power supply, delay in finalisation of design, miscellaneous reasons and delay in completion of work. The Committee observed that in almost all the arbitration cases, in Kallada Irrigation Project, among the reasons which led to arbitration, four reasons are common to all. The Committee wanted to know whether the Department had examined this aspect. The Principal Secretary stated that in all the arbitration cases, the reasons would be the same. The fact is that in Kallada Irrigation Project the contractors were able to encash these reasons because of the special provision regarding arbitration. In most of the cases in Kallada Irrigation Project, the Department was not able to prove that the argument of the contractors were not correct since the points put forth by them were legally sustainable.

32. The Committee pointed out that in the 171 cases of arbitration in Kallada Irrigation Project, the Department was not able to prove that the argument put forth by the contractors were wrong and asked whether this was a total failure on the part of the Department in protecting Government interest. The Principal Secretary, Water Resources Department submitted before the Committee that none of the arbitrators had accepted the pleadings of Government. The statement of facts and affidavit of the Department would be

prepared by the Finance Officer and the Law Officer of the Office of Chief Engineer in consultation with the Additional Government Pleader who was specially appointed to handle the arbitration cases. Yet the arbitration awards went in favour of the contractors. To a question of the Committee as to why the Department had not filed appeals in High Court in such cases, the witness stated that review petition was filed in sub courts. In cases where the sub courts rejected the appeals the High Court and Supreme Court were approached but to no avail.

33. The amount of awards passed by the arbitrators exceeded the Probable Amount of Contract for the whole work in 12 cases as indicated in the list given in Appendix 15 of the Comptroller and Auditor General Report. Even though the Principal Secretary elaborated the follow-up done in these cases, the Committee desired to have a detailed report regarding the verdicts of the court and the present position of the cases under adjudication.

34. The Committee could find that in many of the arbitration cases, the officers on the verge of retirement were appointed as arbitrators. The Principal Secretary said that there had been so many such instances. But, as there was no restriction in the relevant specification about the period of service left for the arbitrator any competent officer (Superintending Engineer) could be appointed as arbitrator. The witness could not offer a convincing reply about the precautions taken to safeguard the interest of the State with regard to terms and conditions under which arbitrators were appointed in the World Bank aided Projects. The Committee remarked that there was a possibility of repeating the mistakes similar to those committed in earlier occasions and hence the Committee strongly recommended that extreme caution must be taken while appointing arbitrators in future for the World Bank Aided Projects.

35. The Committee enquired about the audit observation that a Superintending Engineer was retained as arbitrator even after his suspension from service on corruption charges. The Principal Secretary deposed that in this case the arbitrator passed the arbitration award well before his suspension order came into force. Against the award, Government moved the sub-court but the Court did not accept the argument. The Contractor filed an Execution Petition in the Sub Court. Against this, appeal was filed before the High Court by the Government. The delay in filing appeal was condoned by the High Court. High Court set aside the judgement and decree of the Sub-Court to the extent of claim of Rs.32,35,000 and upheld the balance claim in favour of the contractor. The Department filed E.P. in the Sub Court, Kottarakkara for its claim. In the meanwhile, the contractor filed a SLP before the Supreme Court. The Supreme Court granted leave and directed the petitioner to furnish bank guarantee for an

amount of Rs. 32 lakhs already deposited by the department and released by the contractor. The witness added that the matter was pending before the Supreme Court.

36. While considering the audit observations regarding the irregular appointment of arbitrators after the defect liability period the Committee could conclude that the possibility of even the Chief Engineers having connived with the contractors could not be ruled out. The Principal Secretary, Water Resources Department told that the one-man Commission which went into these aspects also reiterated that, had the Chief Engineers who were the appointing authorities judiciously examined the cases before appointing the arbitrators, many arbitration cases could have been avoided and many matters could have been settled at the Chief Engineer's level itself.

37. The Committee was convinced that the department had utterly failed to present the facts before the arbitrators, which led to payment of excess amount to contractors. The Principal Secretary disclosed that laxity on the part of the Government Pleaders had led to the improper presentation of cases. Even in cases where argument was carried out properly, the arbitrator did not give adequate importance to the Government stand. He admitted that the process of taking suitable action against these persons, who had played their part with the fraudulence to pave way for arbitration, was not satisfactory. Hence, the Committee directed the Principal Secretary to forward a detailed list of officers against whom Government had taken action.

38. On enquiry whether the department had recovered the amount of Rs. 5.32 lakh paid to the Contractors as per an award which was later set aside by High Court on appeal, the Committee was told that the Government had to pay some amount and it was intended to make this payment to be adjusted with interest due to Government. Thus, the Committee understood that the final settlement had not been done till date.

39. The Principal Secretary informed that the High Level Committee was constituted to negotiate with the contractors and reduce the award amount by at least 30% and waive the interest. The Committee was told that in several cases, Government had been benefited by such a negotiation. The Principal Secretary disclosed that the High Level Committee was not functioning for the last few years. In the arbitration awards in which huge amount was involved, the Government had taken decision to pursue the case, even though the High Level Committee had agreed to settle the amount to some extent. The witness admitted that Government had to pay the full amount of decree in one case due to the delay on the part of the High Level Committee to settle the payment. When

asked about the audit observation that excess payment was made due to delay in acceptance of the recommendations of the High Level Committee by Government, the Principal Secretary could not offer a convincing reply. Hence, the Committee requested him to forward a detailed note in this regard.

#### **Conclusions/Recommendations**

**40. The Kallada Irrigation Project, which was started in 1961 and partially completed in 2003, engulfing Rs. 700 crore from the State Exchequer was a shame not only to the Irrigation Department but to the Kerala State itself.**

**41. The estimated cost of 13 crores in 1961 was skyrocketed to 700 crores towards the end of the project and the saddest thing is that the project had not served its purpose. Perhaps this was the only project, which swallowed this much money. The Committee strongly feels that there was gross corruption on the part of the officers, arbitrators and law officers in awarding excess amount through arbitration.**

**42. Arbitration has turned out to be a method to siphon out states money. Referring any cases to arbitrators with the connivance of the department officials was a regular phenomenon in the department, during the course of this project. The Committee recommends that departmental officers should not be appointed as arbitrators even in projects aided by World Bank since corruption bug has devoured every nook and corner of the department. Appointing departmental officers for deciding arbitration cases will only add oil to fire. Some good practicing, private consultants with a stipulated year of standing can be appointed as arbitrators. Appointing commissions with retired Judges as chairman for deciding arbitration will also do something worthwhile.**

**43. The ignorance of the department officials about a letter from Andhrapradesh Government regarding modification of arbitration clause clearly reveals the plans of department officials to scuttle any methods to do away with arbitration. Awarding 171 cases out of 172 against the Government clearly reveals the laxity on the part of the department in defending cases properly. Disposing 171 arbitration cases against Government reveals nexus between the arbitrators and Government officials involved in KIP. Before giving the award the arbitrators did not take into consideration the recommendation of High level Committee. The Committee requires the vigilance department to speed up the enquiry and to re-examine the above 171 arbitration cases. Responsibility be fixed on the persons who were responsible for causing the loss. So the department must view matters connected with arbitration much more seriously and to think for an amicable settlement before giving out any case to arbitration.**

## AUDIT PARAGRAPH

***Loss on account of failure in defending a court case***

The work 'constructing bund between Veluthur and Manakody' was awarded (October 1978) to a Multipurpose Service Co-operative Society in Thrissur District (society) for Rs. 5.25 lakhs to be completed within 18 months from the date of handing over of the site. The site was handed over to the society in February 1979. But the society commenced the work only in the first week of March 1980 and after executing a small portion of the work for Rs. 1,036, stopped the work in the last week of the same month. As the society did not resume the work despite several notices issued by the department, the contract was terminated (July 1982) at its risk and cost. The liability was initially fixed at Rs. 4.58 lakhs and revenue recovery proceedings initiated (January 1987). Aggrieved by the revenue recovery proceedings, the society filed (March 1987) a suit in the Munsiff Court, Thrissur seeking permanent injunction against the recovery proceedings. The main prayer of the society was for a permanent injunction restraining the Government from taking or continuing steps under the Revenue Recovery Act for realisation of the amount without quantifying the amount by due process of law. As none of the respondents including the Government Pleader was present and counter affidavit not filed when the petition was heard on 24 October 1987, the court delivered judgement *ex parte* restraining the department temporarily from revenue recovery proceedings. The suit was finally heard on 19 December 1989 and the court passed *ex parte* decree in favour of the society as neither the counter affidavit was filed nor the representative was present at the time of hearing. The petition filed (March 1987) by the society to Government in this regard was also rejected (December 1990) as there was no ground to exempt the society from risk and cost.

Meanwhile the department refixed the liability at Rs. 15.79 lakhs consequent on awarding the balance work to another contractor in December 1990 for Rs.21.05 lakhs who completed the work in May 1992 at a cost of Rs.25.84 lakhs.

According to the standing instructions issued by the Law Department of Government, the Government Pleader was to apply for certified copy of judgement and decree on the same day it was pronounced to enable appeal being preferred in time. In this case, this was not done till September 1994. On 1 October 1994, Government pleader reported that he had applied for the copy of the judgement and decree on the same day and arrangements were being made to file appeal suit.

The Chief Engineer stated in June 1993 that the department was quite unaware of the case and due to non-receipt of notice or summons, the department was not in a position to attend the case or to file counter petition. The fact, however, remains that for want of proper co-ordination between the Government Pleader and departmental authorities in the conduct of the case, Government had to suffer a loss apart from delay in the completion of the work for more than a decade.

The matter was reported to Government in December 1992; reply has not been received (October 1994).

[Paragraph 4.5.—Contained in the report of Comptroller and Auditor General of India for the year ended 31 March 1994 (Civil)]

Government notes on the above audit paragraph is included in Appendix II of this report.

44. From the audit observation the Committee could find that in a contract work 'constructing bund between Veluthur and Manakody' awarded to the Arimpur Multi Purpose Co-operative Society Ltd., Thrissur, the Society could not complete the work owing to a notice received from an advocate on behalf of his client. The Society could complete only a portion of the work. Hence the Department terminated the contract at the risk and cost of the society by fixing a total liability of Rs. 1579321 on the society and proceeded Revenue Recovery actions against the latter. Against this the Society filed a suit in the Municipal Court impleading for an injunction order restricting the Department from the revenue recovery actions. The Munsiff Court passed an exparte order in favour of the society without serving summons or notice to the department. Both the Department and ADM, Thrissur, instructed the Government pleader many times to file an appeal against the order. But he did not take any action in this regard and hence there was a loss and subsequent delay in the execution of work due to the failure in defending the case in the court.

45. The service of the Government pleader was terminated by the Department and it was reported that he was now no more. Moreover, since the rules in the relevant provision (Appointment and conditions of service and conduct of cases Rules 1978) which deals with the loss sustained to Government due to the negligence of a Government Law Officer stands silent, the Department was not able to proceed against the pleader to realise the loss incurred due to his inaction. Therefore the Committee strongly opined that this was a serious state of affairs, which demand urgent attention of the Government over the matter of exparte decree and to take necessary policy decision in the remaining cases under adjudication.

### Conclusions/Recommendations

46. Even though there are Government pleaders to defend Government cases in a court of Law, it was not properly seen to be done as in the case of the work allotted to Arimpur Multi purpose Co-operative Society Limited. There was gross negligence on the part of the department officials in conveying information timely. It is doubtful whether this negligence was purposeful to help the society. The Committee recommends to take serious action against the officers concerned in the matter of exparte decree both in the Irrigation Department and Law Department.

47. Lack of proper Co-ordination, between department officials and Government Pleaders results in poor presentation of Government cases before Court. Therefore an Officer should be entrusted in the department to look into matters connected with court cases.

48. The Committee learns that there is absence of adequate provision in the 'Appointment and Condition of Service and Conduct of Cases Rules 1978' which enables to realise the amount of loss sustained to Government from Government Law Officers due to their negligence.

49. Therefore, the Committee strongly recommends to make appropriate amendments to the provision in the relevant Rules and to take a policy decision on the remaining cases under adjudication in the State.

#### AUDIT PARAGRAPH

#### *Infructuous expenditure on a minor irrigation work*

Malakayal Ela (*Ela*) spread over an area of about 110 acres of paddy fields in Kollam District has dry lands on its three sides and Ithikkara river on the fourth. As incursion of flood water during rainy season and saline water during summer into the Ela through the river affected the paddy cultivation, improvement to the existing flood bund between the *Ela* and the river as also some allied items of works were undertaken by the Minor Irrigation Division, Kollam in February 1983 at an estimated cost of Rs. 5.51 lakhs. The work was completed in October 1984 at a cost of Rs. 7.19 lakhs. However, the full utility of the work could be derived only on the installation of a pumpset for bailing out water from the *Ela* for which a platform was necessary. The construction of the platform proposed as far back as in 1985 was, however, held up on account of procedural delays and finally it was taken up in February 1990 and got completed in December 1991 at a cost of Rs. 0.27 lakh.

The Executive Engineer stated in May 1993 that the bund was removed more or less completely by miscreants and that the entire *Ela* having been dug deep by mud collectors, had become unfit for cultivation. According to him the

rectification of the damages to both the bund and the field was very difficult. Thus delay on the part of the department in arranging construction of a platform to erect the pumpset and the inability in preventing misutilisation of agricultural land resulted in denying the utility of improvements undertaken at a cost of Rs.7.46 lakhs, which ultimately remained unproductive.

The matter was referred to Government in July 1993; reply has not been received (October 1994)

[Paragraph 4.6—Contained in the report of the Comptroller and Auditor General of India for the year ended 31 March, 1994 (Civil)]

Government notes on the above audit paragraph is included in Appendix II of this report.

50. The Committee was alarmed to note that the construction of a small item of work namely the construction of platform which was proposed in 1985 was completed only in 1991. The whole expenditure incurred for the work became infructuous as the bund was damaged in 1991. The Committee was informed that the department had not filed any suit against the contractor. No enquiry had been seen conducted in the matter and hence, no reasonable explanation was there for the delay of 6 years in completing such a small work.

#### **Conclusion/Recommendation**

**51. The Committee finds that there was serious lapse on the part of the department in not taking legal action against the contractor who had delayed the work. It is deplorable to note that no legal action has been initiated against the contractor. The Committee suggests that action should be taken against the officer concerned and the contractor. The Committee also suggests that necessary steps be taken to avoid such recurrence of lapses in future.**

#### AUDIT PARAGRAPH

#### ***Idle investment on construction of a boat basin at Ponnani***

With a view to providing better facilities for loading and unloading cargo and also for embarking and disembarking passengers, the Executive Engineer, Irrigation Division, Thrissur proposed (November 1968) for the construction of a boat basin at Ponnani and providing office and quarters for canal staff at an estimated cost of Rs. 5.5 lakhs. After a lapse of 15 years, the Chief Engineer accorded administrative approval for the work in January 1984 at an estimated cost of Rs. 9.46 lakhs. Technical sanction for the work was issued (March 1984) by the Superintending Engineer for Rs. 10 lakh and the work was put to tender in March 1984. As the lowest quoted rate was very high, Government accorded

sanction in January 1985 to execute the work departmentally as piecemeal with an overall excess of 47 per cent above the estimated cost of Rs. 9.46 lakhs. The work was accordingly taken up in May 1985 but was stopped in June 1987, after incurring an expenditure of Rs. 4.07 lakhs, as the design of the jetty was ordered to be revised with piles and slabs since there was difficulty in constructing random rubble masonry at the proposed bed level. It was, however, noticed that as per the original proposal of 1968, the boat basin was to be constructed with pre-cast RCC piles, beams and slabs. The revised design and estimate for Rs. 13.75 lakhs forwarded by the Executive Engineer in April 1992 has not been approved as of September 1993. However, 75 numbers of RCC piles, found surplus in another work, costing Rs. 1.01 lakhs were transferred to this work as far back as in March 1987, even before proposing the change in design.

Thus due to defective planning and departmental delays an amount of Rs. 407 lakhs remained locked up for 7 years without serving any purpose and no benefit of the proposed work could be obtained.

The matter was reported to Government in February 1994; reply has not been received (October 1994)

[Paragraph 4.8—Contained in the report of the Comptroller and Auditor General of India for the year ended 31 March, 1994 (Civil)]

Government notes on the above audit paragraph is included in Appendix II of this report.

52. Regarding the audit observation in the idle investment on construction of a boat basin at Ponnani, the witness, the Principal Secretary, Water Resources Department contended that the expenditure on the incomplete work of the boat basin was not to be considered as idle since the work so far executed could be benefited for the construction of the Fishing harbour proposed subsequently.

#### **Conclusion/Recommendation**

**53. The department's reply that the boat basin can be used for the construction of the proposed fishing harbour is to be taken into confidence only after making sure of the viability of such a project. Therefore the Committee directs to submit the details of the proposed fishing harbour project. If such a project is not under the consideration of the department now, then the officers responsible for wasting money by constructing a boat basin should be brought to book and departmental action should be initiated against.**

## AUDIT PARAGRAPH

***Unintended benefit to contractor***

Mention had been made in paragraph 4.1.13 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 1995 (Civil) of the excess payment made for the work 'construction of main canal from chainage 600 metre to 1000 metre and from chainage 1000 metre to 1350 metre' of Idamalayar irrigation project. The rates of 17.1 per cent and 16.2 per cent above estimate on 1990 Schedule of Rates (SOR), at which the works were awarded to a contractor in December 1990, were enhanced to 35 per cent above estimate on 1992 SOR by Government in August 1994 as recommended by the High Level Committee (HLC) in July 1994 and time of completion was extended up to July 1995.

The contractor again in October 1995 represented that due to frequent side slips, untimely monsoon and heavy surface flow and other adverse situation prevailing in the site, he was not in a position to continue the work without further raising the rates at least by 85 per cent over the sanctioned rate of August 1994. The HLC having examined the case in December 1995 constituted a sub-committee to report whether it would be beneficial to retender the work after terminating the present contract or it would be advantageous to execute the work through the present contractor. The Sub Committee consisting 4 out of the 7 members of the HLC inspected the works on 5 January 1996, but did not make any specific recommendation on the subject. The HLC reconsidered the matter and recommended (January 1996) to Government to carry out the balance work as per the revised design through the same agency at 80 per cent above 1992 SOR after the expiry of the extended time of completion. Government accepted the recommendation of HLC in March 1996. Since the delay in completion of work was not due to any departmental lapse, the contract should have been terminated invoking the provisions in the agreement and the work rearranged at the risk and cost of the contractor. The decision to carry out the balance work through the same agency and payment of enhanced rate to the contractor was against the contractual provisions.

The enhancement as ordered in March 1996 alone would involve an excess expenditure of Rs. 30.67 lakh and Rs. 25.49 lakh over and above that agreed to in August 1994 in respect of the two works. The works were in progress and up to May 1996, excess payment of Rs. 3.65 lakh and Rs. 5.94 lakh were made to the contractor.

The matter was referred to Government in May 1996; reply had not been received (October 1997).

[Paragraph 4.3 contained in the report of Comptroller and Auditor General for the year ended 31 March 1997].

Government note on the above audit paragraph is included in Appendix II of this report.

54. The Principal Secretary stated that necessary orders were issued to terminate the contract at the risk and cost of the contractor. The contractor had moved the High Court, against this order. After that, no work had been done at the mentioned chainages under Idamalayar Irrigation Project and hence no payment was made. The final verdict of the High Court was awaited.

#### **Conclusions/Recommendation**

55. No Comments.

#### AUDIT PARAGRAPH

#### ***Extra Payment to contractor due to departmental lapses***

According to Kerala Public Works Department Manual, work should in no case be arranged without ensuring the availability of land required for construction and without a proper design. In terms of provisions in the Madras Detailed Standard Specifications, which formed part of the agreement for execution of works, the site was to be handed over to the contractor within two months of the agreement. Failure to adhere to the above provisions resulted in extra payment of Rs. 38.78 lakhs in the following work:

The Work “ Construction of a bridge-cum-aqueduct at Prayattukadavu across Manimala river” forming part of Kaviyoor branch canal of Pamba Irrigation Project was awarded to a contractor in June 1987 for Rs. 39.33 lakhs at 7.25 per cent below estimate. As per the terms of the agreement executed on 30 June 1987, the work was to be completed within 18 months, i.e., before 29 December 1988. The site to be handed over before 30 August 1987 was handed over to the contractor in December 1987 (left bank) and September 1988 (right bank) only. The delay of 15 months of the handing over of the site in the right bank was stated to be due to non-settlement of a litigation. The soil test to assess the bearing capacity of the soil was conducted after awarding the contract, as a result of which the earlier design had to be revised in March 1990. The work was completed in February 1993 at the cost of Rs. 96.28 lakhs and final payment made in November 1993.

Alleging delay in handing over of site and change of design etc., the contractor demanded (December 1988 and January 1989) enhancement by 50 per cent of the schedule rate for the items of work executed after 29 December 1988

and Rs. 8.60 lakhs towards form works and paid wages for idle staff till 23 December 1988. On 15 March 1990, the contractor further demanded Rs. 8.75 lakhs on account of idling charges of machinery and wages for the period from 24 December 1988. A High Level Committee constituted by Government for examination of the claims of the contractor recommended (February 1991) payment of 50 per cent over the schedule rate in respect of work done after 29<sup>th</sup> December 1988 and rejected the other two claims. Government accepted the recommendation (March 1991) and Rs. 17.23 lakhs were paid to the contractor in November 1993. Meanwhile, the contractor, in August 1991 claimed a total amount of Rs. 45.14 lakhs comprising Rs. 17.35 lakhs of the rejected claims and Rs. 18 lakhs for additional work with interest at the rate of 18 per cent per annum (Rs. 9.79 lakhs). When the High Level Committee decided not to pay any amount other than that already paid to the contractor, the contractor filed a petition in the High Court, which directed the Government (31<sup>st</sup> March 1993) to consider and dispose of the contractor's petition within two months. The High Level Committee, in May 1993 recommended payment of Rs. 21.55 lakhs comprising Rs. 17.35 lakhs towards compensation due to idling of men, materials and machinery upto 15<sup>th</sup> March 1990 and Rs. 4.20 lakhs against value of work done over estimated quantity due to change in design.

Thus, delayed handing over of the site and revision of design after award of the contract resulted in extra payment of Rs. 38.78 lakhs to the contractor.

The matter was referred to Government in December 1995; reply had not been received (October 1996).

[Paragraph 4.3—Contained in the report of the Comptroller and Auditor General of India for the year ended 31st March 1996, (Civil)]

Government notes on the above audit paragraph is included in Appendix II of this report.

56. The Principal Secretary informed the Committee that delay had occurred to make available the site of the bridge-cum-aqueduct at Prayattukadavu as there had been litigations on the land. Hence, the work was delayed and consequently, the Contractor demanded higher payment. The design had to be changed, in fact, the structures had to be strengthened after the IDR B had found out high water content in the soil. The Department could not anticipate the delay in taking over the site while tendering the work. The Committee was told that no liability had been fixed on any officer for the extra payment.

#### **Conclusions/Recommendations**

**57. The Committee finds that according to Kerala Public Works Department Manual, work in no case be arranged without ensuring the availability of land required for construction and without a proper design. But**

**in the case of the work “Construction of a bridge–cum–aqueduct at Prayattukadavu” across Manimala River under the Pamba Irrigation Project there was a delay of 15 months in handing over of the site for construction. The reason as said by the Department was the settlement of a litigation. Moreover, the design of the project has been subsequently changed in the finding of soil test, conducted by IDRB after awarding the contract. The Audit observes that because of the delay in handing over the site to the project and the change in the design resulted in an extra expenditure of Rs. 38.78 lakh to the contractor. The Committee therefore recommends to taken action against the officers who had invited tenders before acquiring the worksite.**

**58. The Committee opines that there was absence of a proper investigation for the project on the part of the Department, before awarding the work. Had the soil test by IDRB and investigation on the state of the land to be acquired for the project been done earlier, this extra expenditure could have been avoided.**

AUDIT PARAGRAPH

***Avoidable payment of interest on electricity charges***

Scrutiny of the records of Minor Irrigation (MI) Divisions revealed that Rs. 37.32 lakh was paid between June 1995 and January 1997 towards interest for the delay in payment of electricity charges in respect of 45 Lift Irrigation (LI) schemes in MI Divisions, Thrissur (19 LI schemes Rs. 1.36 lakhs) Malappuram (15 LI Schemes Rs. 34.47 lakh) and Sultan Bathery (11 LI schemes Rs. 1.49 lakh). Besides, non-remittance of electricity charges from November 1993 to March 1996 in respect of 27 LI schemes in MI Divisions, Thrissur (21 LI schemes Rs. 19.39 lakh) and Malappuram (6 LI schemes Rs. 6.68 lakh) would result in payment of interest amounting to Rs. 26.07 lakh till December 1996.

The matter was referred to Government in July 1997; reply had not been received (October 1997).

[Paragraph 4.5 contained in the report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March 1997].

Government notes on the above audit paragraph is included in Appendix II of this report.

59. The Committee was informed that during the period upto 1994-95, there was inadequate budget provision for payment of electricity charges. From 1994-95 onwards, separate provision was earmarked in the Budget for payment of Electricity charges and this step, to a large extent had ensured the payment of electricity charges in time. It was also stated that the outstanding dues under

electricity charges could be adjusted against the arrears of electricity duty to Government from the Board, as per the provisions in the G.O.(MS)35/97/IRD dated 23-9-1997. The Principal Secretary (Water Resources) told that separate allocation was provided each year for the department for the payment of electricity charges and necessary re-appropriation would be done as and when funds were needed.

#### **Conclusion/Recommendation**

**60. When there is a clear government order for effecting adjustment of electricity charges, against arrears due to government, timely consultation of department officials with the government would have served the purpose. That was not done in this case. The Committee strongly insists to avoid such instances as far as possible.**

AUDIT PARAGRAPH

#### ***Loss due to arrangement of anti-sea erosion work during off-season period***

According to the existing instructions, anti-sea erosion work should be started well ahead of the onset of monsoon and phased in such a manner that the construction of each segment of the work was completed or reached a safe stage during the working season (October to March).

Government accorded administrative sanction in July 1986 for construction of a 400 metre sea wall (from chainage 104.085 km to 104.485 km) at Mattool in Kannur District. The work was split into two reaches of 200 metres each and the first reach (from chainage 104.085 km to 104.285km) was awarded to a contractor in February 1987 for Rs.12.42 lakh (35 per cent above estimate) with November 1987 as the scheduled date of completion. The period of completion was subsequently extended up to May 1988. While the work was in progress, there was a severe sea attack\* during September 1987 causing heavy damage to the sea wall under construction.

The contractor expressed his willingness in May 1989 to execute the rectification work at his agreed rate. Due to abnormal delay in the preparation of the estimate for the rectification of work, the contractor backed out in December 1989. He was relieved of the work in January 1990 and was paid Rs. 12.48 lakh in February 1990. The revised estimate for the work, based on Schedule of Rates 1990 was finally approved by Chief Engineer in June 1992 and was sanctioned by Government in November 1992. The work was awarded to another contractor in April 1993 at 75 per cent above estimate and completed in October 1993 at a cost of Rs. 12.70 lakh.

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\* violent wave action of sea over sea shore due to storm.

Failure to comply with the departmental instruction to programme the anti-sea erosion work during working season resulted in avoidable expenditure of Rs.12.70 lakh on rectification work. Even if the offer of the original contractor to execute the work at the agreed rate had been accepted by the Department, an extra expenditure of Rs. 5.49 lakh could have been avoided.

The matter was referred to Government in March 1996; reply had not been received (October 1997).

[Paragraph 4.7—Contained in the report of the Comptroller and Auditor General of India for the year ended 31st March 1997].

Government notes on the above audit paragraph is included in Appendix II of this report.

61. The Principal Secretary informed the Committee that sea wall had been washed away by the sea as the work was done in off season. Usually sea wall would be constructed during working season from October to March and all works would be stopped in May well before the monsoon. In fact this work was done in September and the sudden change in climatic condition caused the damage of the sea wall. As this was beyond human control no action was taken against the persons who executed the work. But in the opinion of the Principal Secretary there is no justification for the action of the department in not awarding the work in the working season. But since this was a stray case and since the persons responsible for the case had long been retired from service, he requested the Committee to take a lenient view.

#### **Conclusion/Recommendation**

**62. In the case of anti-sea erosion work during the season period, there was serious lapse on the part of the Department in not awarding the sea wall work in the working season i.e. from October to March. Lame excuses on the part of department like 'persons responsible for the case had long been retired from service' are not acceptable to the Committee. The Department should take stringent measure in such cases so that it could be a warning to other departments and also to ensure that such cases are not repeated in future.**

#### AUDIT PARAGRAPH

#### ***Idling of motor and pump sets***

Under Lift Irrigation schemes (LIS) implemented throughout the State by the Minor Irrigation (MI) wing of the Irrigation Department, electric motor and pump sets were used for lifting water from rivers and ponds and feeding the ayacuts through well laid pipes and cut channels. The purchase of motor and

pump sets was made by the MI Divisions concerned on the basis of supply orders placed by the Chief Engineer (Mechanical) who determined the design of the motor and pump set required for the scheme taking into account the actual necessity and site condition. It was noticed that due to the failure of the Department in executing agreement/remitting cost of providing High Tension Power connection as advance to the Kerala State Electricity Board, the capacity of pump house had to be reduced in Palankara LIS and Mochiparatha LIS in MI Division, Malappuram resulting in idling of two 50 HP motors costing Rs. 1.32 lakh and five 120 HP motors costing Rs. 4.69 lakh from June 1987 and July 1984 respectively. In respect of Thanampara LIS under Palakkad MI Division, five 110 HP motors costing Rs. 3.95 lakh purchased in 1994 were also idling for which no reasons were on record.

Thus, 12 motor and pump sets worth Rs. 9.96 lakh purchased for the above 3 LIS were idling for three to ten years.

The matter was referred to Government in July 1997, reply had not been received (October 1997).

(Paragraph 4.8—Contained in the report and the Comptroller and Auditor General of India for the year ended 31st March 1997.)

Government notes on the above audit paragraph is included in Appendix II of this report.

63. The Committee was informed that the motor and pump sets purchased for the three Lift Irrigation Schemes mentioned in the audit para which were idling for three to ten-years, had been shifted to the other Minor Irrigation Schemes. The Committee thus understood that the Department did not anticipate the exceptional power shortage during that year and failed to remit the cost for providing High Tension Power connection as advance to Kerala State Electricity Board. Committee opined that though there was no loss sustained on account of the shifting of motor and pump sets, the undesirable situation of the idling of machines for 3 to 10 years and also the consequent delay in the operation of the scheme could have been avoided had the Department made a proper planning in the matter.

#### **Conclusion/Recommendation**

**64. The Committee observes that the Lift Irrigation Scheme was introduced in the State with a view to augment the irrigation facilities in the State. The motor pumps installed for the purpose could not be put into operation and were remained idle for 3 to 10 years due to inaction on the part of the department officials. The Committee finds that there was a failure on**

**the part of the department to execute an agreement with KSEB and not remit the amount of cost of High Tension Power facility, to KSEB as advance, that resulted in the reduction of the capacity of pump houses and consequently idling of motor pumps. This shows the absence of a planning mechanism in the Department while implementing a new scheme. Had the Department acted timely without negligence, the situation of idling of pump sets for 3 to 10 years and consequent delay in the operation of the scheme could have been avoided. The Committee suggests that, necessary caution be exercised while implementing new schemes in the Department and to ensure that such lapses not occur in future.**

AUDIT PARAGRAPH

***Payment of inadmissible tender excess***

Mention was made in paragraph 3.4 of the Report of the Comptroller and Auditor General of India for the year ended 31st March 1988 (No. 6 of 1989 civil) of the delay in completion of the canal work under Kurumassery Lift Irrigation Scheme in Parakkadavu block in Ernakulam District arranged in February 1982 and termination of the contract due to non-supply of pipes by the Department. The balance work was rearranged for Rs. 5.07 lakh in February 1990 without procuring/ensuring the availability of required pipes. In September 1990, supply order was placed with Premo Pipe Factory, Chavara (a State Government Undertaking) for procuring the available size of pipes and the design of the distributary system was changed accordingly. During execution, 450 mm diameter premo pipe was changed to 315mm diameter Poly Vinyl Chloride (PVC) pipe in certain reaches due to non availability of premo pipe. In arriving at the rates for this extra item of work, the then market rate of PVC pipe (Rs. 830.05 per metre) was taken into account. Though tender excess was not admissible over market rate, the contractor was paid 53 per cent tender excess over and above the market rate. The extra liability in purchasing 1495 metres of PVC pipe was Rs. 6.58 lakh. The work which commenced in February 1982 remained incomplete (March 1997) due to failure on the part of the Department to supply the balance quantity of 265 metres of pipe and the expenditure of Rs. 38.81 lakh incurred on the scheme remained idle.

The matter was referred to Government in July 1997, reply had not been received (October 1997)

[Paragraph 4.9 contained in the report of Comptroller and Auditor General of India for the year ended 31st March 1997]

Government notes on the above audit paragraph is included in Appendix II of this report.

65. The Committee could find that inordinate delay had occurred in the completion of the canal work under the Kurumassery Low Tension Scheme, which was commenced in 1982. The Principal Secretary (WR) deposed that Premo Pipe was used in the Irrigation Department and Kerala Water Authority. But later, leakages were found in this type of pipe and hence, this pipe had to be replaced by the PVC pipe for the aforesaid scheme. He disclosed that, as no scheduled rate was specified in PWD schedule market rate was taken for the purchase of PVC pipes. Hence, the Empowered Committee had to sanction excess amount over estimate for the execution of the work. The witness could not offer a convincing reply regarding why 53% above estimate rate was allowed for extra items for which scheduled rate was there. The Principal Secretary contended that had a decision been taken for a fresh estimate, the expense would have been Rs.35 lakh and thus the Empowered Committee had to revise the estimate by sanctioning Rs.29 lakhs, in public interest.

#### **Conclusions/Recommendations**

**66. Inordinate delay in completion of work and thereby causing retendering of work, leading to escalation of cost should be avoided at any cost.**

Thiruvananthapuram,  
10th July, 2007.

ARYADAN MUHAMMED,  
*Chairman,*  
*Committee on Public Accounts.*

## APPENDIX I

## SUMMARY OF MAIN CONCLUSION/RECOMMENDATION

<i>Sl. No.</i>	<i>Para No.</i>	<i>Department Concerned</i>	<i>Conclusions/Recommendations</i>
(1)	(2)	(3)	(4)
1.	19	Water Resources	The Committee understands that there was an un-productive establishment expenditure of Rs. 4403 lakh in the Irrigation Department on the creation of an Irrigation Division with three sub-divisions and nine sections for the implementation of Chaliyar River Valley Project which remained idle for years from April 1986 to May 1990. The Chaliyar River Valley Project envisaged, on the basis of Master Plan for Irrigation Projects in the State in 1970, for the construction of a storage reservoir to irrigate lands situated in Malappuram and Kozhikode districts through a net work of canals. Though the project was envisaged in 1970 the investigation work of the Project was started only in 1980. After some preliminary efforts the process of investigation was suspended from April 1986 due to paucity of funds. Moreover the dam site was shifted thrice due to protest from local people at the forest site Areacode and due to the problem of submergence of forest land in the 2nd site, Pothucal. Though the proposal of the project was envisaged in 1970, the investigation and preliminary work were started only after a decade or more. The reasons adduced for the unjustifiable delay-the lack of sufficient fund inadequate budgetary provisions and insufficient infrastructure facilities-are not acceptable to the Committee. Had the survey been started in earlier days when not much encroachment problem persisted protest from local people could have been averted.
2.	20	„	When constructing a major project like a dam across a river the winning of the minds of the local people clearing their apprehension about submergence of

(1)	(2)	(3)	(4)
			their habitat, their rehabilitation problems etc., and taking them into confidence are the factor, that require much attention of the authorities. But during this project, it seems that the local people were not taken into confidence at any point of time and there was no transparency in the investigation process.
3.	21	Water Resources	The Committee pointed out that the site finally selected for the project was not midland and that it was a thickly populated coastal area.
4.	22	„	The Committee feels that Water Resources Department had not undertaken the preliminary survey seriously and properly. If the department had shown certain degree of prudence or outlook prospectively enough to see whether a dam envisaged as such under the Master Plan in 1970 based on surveys on datas like habitation settlement etc. dating back to sixty's could be practically possible to construct a decade after much wastage of money from the public exchaquer could have been saved.
5	23	„	The Committee learns that the investigation process of the project was completed in the year 2002 and an amount of Rs. 7.7 crore had been spent for the project. Even after the expenditure of such a huge amount on the project the approval of the Central Water Commission for the project had not been received till date. The Committee wants to know the reasons for not obtaining the approval of the Central Water Commission and to furnish the details of the present position in this regard. The Committee recommends to take stringent action against the officers who was responsible for continuing the work of the project, knowing that the work was stopped at different stages of its progress and when they were well aware that obtaining clearance from Industries and Forest Department was not easy.

(1)	(2)	(3)	(4)
6.	24	Water Resources	The Committee recommends that the Water Resources Department adopt the practice that followed in the Public Works Department for the work related to Investigation process where the works were awarded with incorporating necessary provision for the conduct of investigation.
7.	40	„	The Kallada Irrigation Project, which was started in 1961 and partially completed in 2003, engulfing Rs. 700 crore from the State Exchequer was a shame not only to the Irrigation Department but to the Kerala State itself.
8.	41	„	The estimated cost of Rs.13 crores in 1961 was skyrocketed to 700 crores towards the end of the project and the saddest thing is that the project had not served its purpose. Perhaps this was the only project, which swallowed this much money. The Committee strongly feels that there was gross corruption on the part of the officers, arbitrators and law officers in awarding excess amount through arbitration.
9	42	„	Arbitration has turned out to be a method to siphon out states money. Referring any cases to arbitrators with the connivance of the department officials was a regular phenomenon in the department during the course of this project. The Committee recommends that departmental officers should not be appointed as arbitrators even in projects aided by World Bank since corruption bug has devoured every nook and corner of the department. Appointing departmental officers for deciding arbitration cases will only add oil to fire. Some good practicing private consultants with a stipulated year of standing can be appointed as arbitrators. Appointing commissions with retired Judges as Chairman for deciding arbitration will also do something worthwhile.

(1)	(2)	(3)	(4)
10.	43	Vigilance	<p>The ignorance of the department officials about a letter from Andhrapradesh Government regarding modification of arbitration clause clearly reveals the plans of department officials to scuttle any methods to do away with arbitration. Awarding 171 cases out of 172 against the Government clearly reveals the laxity on the part of the department in defending cases properly. . Disposing 171 Arbitration cases against Government reveals nexus between the arbitrators and Government officials involved in KIP. Before giving the award the arbitrators did not take into consideration the recommendation of High level Committee. The Committee requires the vigilance department to speed up the enquiry and to re-examine the above 171 arbitration cases. Responsibility be fixed on the persons who were responsible for causing the loss. So the department must view matters connected with arbitration much more seriously and to think for an amicable settlement before giving out any case to arbitration.</p>
11.	46	Water Resources, Law	<p>Eventhough there are Government pleaders to defend Government cases in a court of Law it was not properly seen to be done as in the case of the work allotted to Arimpur Multi purpose Co-operative Society Limited. There was gross negligence on the part of the department officials in conveying information timely. It is doubtful whether this negligence was purposeful to help the society. The Committee recommends to take serious action against the officers concerned in the matter of exparte decree both in the Irrigation Department and Law Department.</p>
12.	47	Water Resources	<p>Lack of proper Co-ordination between department officials and Government Pleaders results in poor presentation of Government cases before Court. Therefore an Officer should be entrusted in the department to look into matters connected with court cases.</p>

(1)	(2)	(3)	(4)
13.	48	Water Resources, Law	The Committee learns that there is absence of adequate provision in the 'Appointment and Condition of Service and Conduct of Cases Rules, 1978 which enables to realise the amount of loss sustained to Government from Government Law Officers due to thier negligence.
14.	49	Water Resources	Therefore the Committee strongly recommends to make appropriate amendments to the provision in the relevant Rules and to take a policy decision on the remaining cases under adjudication in the State.
15.	51	„	The Committee finds that there was serious lapse on the part of the department in not taking legal action against the contractor who had delayed the work. It is deplorable to note that no legal action has been initiated against the contractor. The Committee suggests that action should be taken against the officer concerned and the contractor. The Committee also suggests that necessary steps be taken to avoid such recurrence of lapses in future.
16.	53	„	The department's reply that the boat basin can be used for the construction of the proposed fishing harbour is to be taken into confidence only after making sure of the viability of such a project. Therefore the Committee directs to submit the details of the proposed fishing harbour project. If such a project is not under the consideration of the department now, then the officers responsible for wasting money by constructing a boat basin should be brought to book and departmental action should be initiated against.
17.	57	„	The Committee finds that according to Kerala Public Works Department Mannual, work in no case be arranged without ensuring the availability of land required for construction and without a proper

(1)	(2)	(3)	(4)
			design. But in the case of the work “Construction of a bridge-cum-aqueduct at Prayattukadavu” across Manimala River under the Pamba Irrigation Project there was a delay of 15 months in handing over of the site for construction. The reason as said by the Department was the settlement of a litigation. Moreover, the design of the Project has been subsequently changed in the finding of soil test, conducted by IDRB after awarding the contract. The Audit observes that because of the delay in handing over the site to the project and the change in the design resulted in an extra-expenditure of Rs. 38.78 lakh to the contractor. The Committee therefore recommends to taken action against the officers who had invited tenders before acquiring the worksite.
18.	58	Water Resources	The Committee opines that there was absense of a proper investigation for the project on the part of the Department, before awarding the work. Had the soil test by IDRB and investigation on the state of the land to be acquired for the project been done earlier, this extra expenditure could have been avoided.
19.	60	„	When there is a clear government order for effecting adjustment of electricity charges against arrears due to government, timely consultation of department officials with the government would have served the purpose. That was not done in this case. The Committee strongly insists to avoid such instances as far as possible.
20.	62	„	In the case of anti-sea erosion work during the season period, there was seroius lapse on the part of the Department in not awarding the sea wall work in the working season. i.e. from October to March. Lame excuses on the part of department like ‘persons responsible for the case had long been retired from service’ are not acceptable to the

(1)	(2)	(3)	(4)
			Committee. The Department should take stringent measure in such cases so that it could be a warning to other departments and also to ensure that such cases are not repeated in future.
21	64	Water Resources	The Committee observes that the Liff Irrigation Scheme was introduced in the State with a view to augment the irrigation facilities in the State. The motor pumps installed for the purpose could not be put into operation and were remained idle for 3 to 10 years due to inaction on the part of the department officials. The Committee finds that there was a failure on the part of the department to execute an agreement with KSEB and not remit the amount of cost of High Tension Power facility, to KSEB as advance that resulted in the reduction of the capacity of pump houses and consequently idling of motor pumps. This shows the absence of a planning mechanism in the Department while implementing a new scheme. Had the Department acted timely without negligence the situation of idling of pump sets for 3 to 10 years and consequent delay in the operation of the scheme could have been avoided. The Committee suggests that necessary caution be exercised while implementing new schemes in the Department and to ensure that such lapses not occur in future.
22	66	„	Inordinate delay in completion of work and thereby causing retendering of work, leading to escalation of cost should be avoided at any cost.

## APPENDIX II

STATEMENT OF ACTION TAKEN ON THE COMMITTEE ON PUBLIC  
ACCOUNTS REPORT OF THE COMPTROLLER AND AUDITOR GENERAL  
OF INDIA FOR THE YEAR ENDED 31-3-1990 NO. 3 (CIVIL)

<i>Department</i>	<i>Para No.</i>	<i>Recommendation</i>	<i>Action Taken</i>
(1)	(2)	(3)	(4)
Irrigation	4.12 1989-90	<i>Unproductive establishment expenditure</i>  The Chaliyar River Valley Project envisaged the construction of a storage reservoir to enable irrigation of lands situated in Malappuram and Kozhikode districts through network of canals. The original proposal was to construct a barrage across the Chaliyar River near Areacode and divert the flow through two main canals to irrigate 3812 hectares of paddy fields. The creation of a Division with three sub division and nine sections having a total complement of 94 personnel was also sanctioned by Government for investigation work between January 1980 and November 1980. The investiga-	The Chaliyar River Valley Project according to the earliest proposal was to construct a barrage across Chaliyar river near Areacode and divert its flow through two main canals to irrigate 5812 hectares of paddy fields in Malappuram and Kozhikode districts. Most part of the submergible area was densely populated and well developed lands with fair yielding. The scheme could not be take up for execution for the reasons and hence investigation to find out suitable alternate site at upstream side of the river was stand. A site in between Areacode and Edavanna was investigated and this was also inherent with similar draw backs. It was decided to investigate the possibility of a major scheme in the upper reach of Chaliyar River. The preliminary investigation had been carried out and a feasibility report was submitted in 1985 proposing the dam site at Pothukal. This proposal was also having certain

(1)	(2)	(3)	(4)
		<p>tion of the project revealed that the scheme was not economically viable. It was therefore decided to ascertain the feasibility of a major scheme in the upper reaches of the Chaliyar basin for which an investigation estimate amounting to Rs. 41.75 lakhs was also sanctioned by Government in October 1985. After some preliminary efforts the investigation work was suspended from April, 1986 due to paucity of funds.</p>	<p>shortfalls like submergence of extensive area of the Government Seed Garden Complex at Munderi, eviction of a large number of settlers including Bhoodan Colony, submergence of vast area of forest land etc., Again, it was decided to investigate the possibility of having smaller diversion schemes in the river basin. Alternate site for the dam further upstream was also suggested to be investigated for. Finally a detailed investigation of a major project with an alternate site for Pothukal was identified at Ambittampetty about 3 km. upstream to Pothukal.</p>
		<p>The Division and the three Sub Division however, continued to exist with the full complement of the staff. Their establishment expenditure amounted to Rs. 44.03 lakhs for the period from April 1986 to May 1990. The Chief Engineer admitted in May 1990 that the entire staff were idling for the preceding few years without having any work.</p>	<p>Dam site survey at Ambittampetty has been completed and the map of the dam site is prepared. Areal survey by the survey of India is in progress. River survey of more than 75% for 10 km. upstream and 10 km. down stream has been completed. Preliminary geotechnical survey has been completed. Areal survey of 1160 sq.km. in the command area 51 sq.km. in the catchment area has been completed by the survey of India. Canal Survey of Main Canal and 14 km. length of Branch Canal has been completed. Survey of dam site was also completed.</p>
		<p>The Division had collected 3500 full</p>	

(1)	(2)	(3)	(4)
	<p>reservoir level stone and manufactured 1,200 concrete blocks (cost Rs. 1.48 lakhs) till may 1986, which could not be utilised due to the suspension of detailed investigations.</p> <p>The matter was reported to Government in October 1990 the final reply had not been received (October 1991).</p>		<p>The investigation projects are time consuming expensive and labourious work when compared to execution of projects. It is done by co-ordinating officers of different departments like Irrigation, Agriculture, Statistics, Survey of India etc. In some cases, it is possible that the investigation work may prove that the proposed project is not at all viable in which case, the proposal has to be left without yielding a proportionate achievement, i.e. to say that the establishment expenditure may be unproductive, is a minority of the total number of investigation projects. In the case of Chaliyar River Valley Projects the investigation work is progressing and the result can be achieved only on completion of the project. The amount expended on buildings, approach roads etc. cannot be treated as wasteful even in case the project is given up since these can be further utilised for other Government/Public purposes.</p> <p>Lack of sufficient funds/budget provision and other infrastructural facilities have caused hindrance to the steady progress of the investigation work already taken up and it was on one of such occasions that the Chief Engineer, Project I has requested Government to sanction sufficient funds for the</p>

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(1)	(2)	(3)	(4)
			<p>work and to convince the necessity of providing sufficient funds, it is reported that the staff were idling for the past few years. It is seen that one sub division with staff was deployed to Irrigation Division, Malampuzha with effect from 14-6-1991 to avoid idling of staff. Later another division was formed at Nilambur with effect from 20-9-1991 for the speedy implementation of the work. Now the situation has changed the work has progressed much as already explained above. The work so far completed is an asset to Government.</p>

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STATEMENT OF ACTION TAKEN ON THE RECOMMENDATION OF THE  
COMMITTEE ON PUBLIC ACCOUNTS OVER REPORT OF THE  
COMPTROLLER AND AUDITOR GENERAL OF INDIA  
FOR THE YEAR ENDED 31-3-1990 NO. 3 (CIVIL)

<i>Department</i>	<i>Para No.</i>	<i>Audit Remark</i>	<i>Reply</i>
(1)	(2)	(3)	(4)
Irrigation	4.12 1989-90	<i>Unproductive Establishment expenditure</i>  The Chaliyar River Valley Project envisaged the construction of a storage reservoir to enable irrigation of land situated in Malappuram and Kozhikode districts through a network of canals. The original proposal was to construct a barrage across the Chaliyar River near Areacode and divert the flow through two main canals to irrigate 3812 hectares of paddy fields. The creation of a Division with three Sub Division and nine sections having a total complement of 94 personnel was also	The Chaliyar Valley Project according to the earliest proposal was aimed to construct a barrage across Chaliyar River near Areacode for irrigating 5812 Ha. of land laying in Malappuram and Kozhikode Districts. Most part of the area assessed to be submerged due to the Project was densely populated and well developed. The Scheme could not be taken up for execution due to the above reasons and hence investigation to find out suitable alternate site at the upstream side of the river was started. A site in between Areacode and Edavanna was identified and feasibility studies were conducted. For the scheme with this site also the submergible area was densely populated and well developed as in the case of the Areacode site also. Because of these reasons this site also had to be discarded. Then investigation to ascertain the viability of a major scheme in the upper reach of Chaliyar river was started and a suitable site at Pothukal 22 km. away from Nilambur was identified. Investigations with this site were carried out and a feasibility report was submitted in 1985. The main objective of this

(1)	(2)	(3)	(4)
	<p>sanctioned by Government for investigation work between January 1980 and November 1980. The investigation of the project revealed that the scheme was not economically viable. It was therefore decided to ascertain the feasibility of a major Scheme in the upper reaches of the Chaliyar basin for which an investigation estimate amounting to Rs. 41.75 Lakhs was also sanctioned by Government in October 1985. After some preliminary efforts the investigation work was suspended from April 1986 due to paucity of funds.</p> <p>The Division and the three Sub Division however continued to exist with the full complements of the staff. Their establishment</p>	<p>Project was to irrigate and extensive area of land of 73,235 Ha. Though the Project was found economically feasible, it was also not acceptable due to the common problem of land submergence. Part of Government Seed Farm at Munderi a large portion of the Bhoodan Colony near Pothukal and considerable extent of forest land were coming under the submergible area of this scheme. Therefore the project with dam at Pothukal also could not be taken up. Again, investigations for finding out alternate sites were resorted to and finally a suitable site at Ambittampotty, about 3 km. upstream of Pothukal was identified for the construction of a major dam.</p> <p>Detailed investigation for the project with the dam at Ambittampotty was carried out closely following the guidelines of the Central Water Commission. Aerial Survey within the Reservoir area and command area was got carried out by the Geographical Survey of India and subsoil explorations at the dam site were carried out through the L.B.S. Center for Science and Technology. Detailed Dam site surveys, River Surveys and Canal Surveys were conducted directly by the departmental personnel. Hydrologic data for 30 years in respect of the available rain gauges within the catchment and command area was collected. Rain gauge and river gauge</p>	

(1)	(2)	(3)	(4)
		<p>expenditure amounted to Rs. 44.03 Lakhs for the period from April 1986 to May 1990. The Chief Engineer admitted in May 1990 that the entire staff were idling for the preceding few years without having any work.</p> <p>The Diversion had collected 3500 full reservoir level stone and manufactured 1,200 concrete blocks (cost Rs. 1.48 Lakhs) till may 1986 which could not be utilized due to the suspension of detailed investigations.</p> <p>The matter was reported to Government in October 1990 the final reply had not been received (October 1991).</p>	<p>near the dam site were installed and started taking daily observations. Statistical details of the reservoir area crop pattern details of the command area etc. were collected. Required Meteorological data were collected. Requirements for water supply Industrial needs etc. were also collected. Village maps of 104 Villages coming within the command area were traced and classification details of the land involved were collected.</p> <p>After interpreting the entire data collected and analyzing the results of the surveys and other investigations conducted by different agencies, a detailed Project Report was prepared in 1999. Certain modifications suggested were incorporated and the modified project report was submitted in 2001. The main objectives of the Project were to provide irrigation facilities to 225000 Ha. of land and drinking water to 11 lakhs people and to generate 6 MW Hydel Power. But this project also, like any other storage scheme was not free from the problem of land submergence. Part of Government Seed Farm at Munderi and considerable extent of Forest land were coming within the submergible area of the proposed Project. In this circumstance a direction was issued by the Hon'ble Minister for Irrigation in 200 to examine the feasibility of a series of medium irrigation schemes in the main river as well as in its tributaries as an alternative to the major Scheme.</p>

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Based on the above direction, map studies and inspections were conducted and sites for a few medium schemes comprising of RIB, Diversion weir etc. were identified and investigations were started. Out of the total number of schemes identified investigation in regard to the following schemes are already completed and connected reports submitted to Government in 2004.

1. Regulator-cum-Bridge at Kaippinikkadavu across Chaliyar.
2. Diversion Weir at Thalappally across Chaliyar.

In the meanwhile the P.W.D. authorities have come forward with proposals for construction of Road Bridges across Chaliyar at Kaippinikkadavu (noted as 1st above) and Panamkayam (included in the sites identified for a Regulator). Once road bridges at these sites are coming up a Regulator in the close proximity shall turnout to be less attractive. Taking this point into consideration another site (at Pookkottumanna in Chungathara Panchayat) in between the above two sites for Road bridges has been identified for construction of a Regulator and investigation to ascertain the feasibility has been started. As such, the medium schemes under investiga-

(1)	(2)	(3)	(4)
			tion within the Chaliyar Project Investigation Division now are as given below:
			<ol style="list-style-type: none"> <li>1. Low height dam at Malakam across Chaliyar.</li> <li>2. Regulator at Pookkottumanna across Chaliyar.</li> <li>3. Regulator at Odayikkal across Chaliyar.</li> <li>4. Low height dam at Punchakkolli across Punnapuzha a tributary of Chaliyar.</li> <li>5. Diversion Weir at Mooleppadam across Kurumanpuzha a tributary of Chaliyar</li> <li>6. Diversion Weir at Pottikkallu across Kotapuzha, a tributary of Chaliyar.</li> <li>7. Diversion Weir across Karimpuzha, a tributary of Chaliyar.</li> </ol>
			In addition to the above schemes, Investigation for the following minor schemes also are in progress under the Division.
			<ol style="list-style-type: none"> <li>1. Check dam across Kadalundy River at Oravambram in Pandikkad Panchayath.</li> <li>2. Check dam across Thootha river at Thekkumpuram in Aliparamba Panchayath.</li> <li>3. Check dam across Thootha river at Nilaparamba in Moorkanad Panchayath.</li> <li>4. Check dam across Kadalundy river at Kavummunpil Kadavu in Parappur Panchayath.</li> </ol>

(1)	(2)	(3)	(4)
			<p>Apart from carrying out investigation of Medium and Minor Schemes as explained above, the Division is also involved in the role of conducting regular inspections at spots susceptible for diversion of the State's Water Resources out of the basin by the neighbouring state and submitting periodical reports thereon.</p>
			<p>During the period under Audit Report i.e. from 1985 to 1990 the following Investigation Works data collection etc., were done.</p>
			<ol style="list-style-type: none"><li data-bbox="867 915 1255 1037">1. Establishing Bench Mark (Reduced level) stones at Pothukal dam site and within the water spread area.</li><li data-bbox="867 1058 1255 1119">2. Fixing Centre line stones for the Pothukal dam.</li><li data-bbox="867 1140 1255 1230">3. Conducting trial boring along alignment of proposed Pothukal dam.</li><li data-bbox="867 1251 1255 1312">4. River Survey for Pothukal Dam Project.</li><li data-bbox="867 1333 1255 1394">5. F.R.L. Survey of Pothukal Dam Project.</li><li data-bbox="867 1415 1255 1537">6. Procuring concrete blocks for demarcating FRL and Base points of Triangulation stations etc.</li><li data-bbox="867 1558 1255 1684">7. Fixing concrete blocks at Base points of triangulation stations for carrying out survey by the Survey of India Team.</li></ol>

(1)	(2)	(3)	(4)
			<ol style="list-style-type: none"> <li>8. Feasibility studies for the Pothukal Dam Project at Different reservoir levels ranging from + 77m. to +90.5 m. above M.S.L.</li> <li>9. Investigation for alternate dam sites for Pothukal at Ambittampotty, Velluvampuzha, Malakam, Vendakkampotty etc.</li> <li>10. Feasibility studies for Iruthullipuzha Scheme and Iringapuzha Scheme (both rivers being tributaries of Chaliyar).</li> <li>11. Investigation for a dam across Kotapuzha a tributary of Chaliyar.</li> <li>12. Feasibility studies for connecting Chaliyar River with Kadalundy River.</li> <li>13. Conducting periodical river Vigilance inspections at spots susceptible for diversion.</li> </ol>
			<p>On a persual over the incumbency details of the period under report it could be seen that even if a staff strength of 94 was sanctioned most of the time, the strength of staff in position was much less. Even in the available strength of staff, the strength of field staff comprising of Assistant Engineers and Overseers who are directly involved with field investigations were still less. Recently many hands were deployed to Local Self Government Department.</p>

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From the description in the previous paras it can be seen that the Chaliyar River Vally Project (now redesignated as Chaliyar Project Investigation) Division with its Subordinate offices was engaged during the period under report and all along from its formation till date in some investigation work or other. It is true that no Scheme investigated by the Division could be taken up for execution. In cases where the schemes formulated after laborious and time consuming investigations are found not acceptable due to reasons other than technical or economical non viability it cannot be concluded that the entire efforts behind such schemes including the expenditure incurred have turned out to be unproductive. The data collected the results of studies conducted and reports prepared for such schemes can be utilized when decided without resorting to fresh studies.

Taking these facts into consideration the objection in this regard may please be dropped.

*Regarding F.R.L. Stones and Concrete Block :*

It was found that 3500 No. of F.R.L. stones were casted in the period 1981-83 for planting along the FRL (Full Reservoir Level) of the Areacode Barrage Project. Out of the above 2560 stones were seen planted along the line of F.R.L. and 940 stones remain as balance.

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			<p>So also it was found that 1200 Nos. of concrete blocks were cast for the purpose of fixing base points of Triangulation stations for surveys for establishing bench marks at the dam site and within the reservoir area demarcating the alignment of dam main canals etc. Out of the above 860 stones are seen utilised for various purposes such as fixing Base points for triangulation stations establishing bench marks demarcating alignment of Pothukal dam, Ambittampotty Dam etc. Now 340 stones remain as balance.</p>
			<p>Totalling the above two the balance of concrete stones works out to be 1280 Nos. These are stacked near the premises of the Forest check post near Pothukal and the stock is watched properly. The remaining stones can be utilized for demarcating alignment of the head works of the Medium Schemes under investigation, alignment of head reaches of canals and establishing Bench Marks at predominant points wherever necessary. The stones casted will not be turned as waste. Hence objection in this regard may please be dropped.</p>

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REPLY TO C&AG'S REPORT FOR THE YEAR ENDED 31-3-1994—4.2  
KALLADA IRRIGATION & TREE CROP DEVELOPMENT  
PROJECT—ARBITRATION AWARDS

<i>Para</i>	<i>Reply</i>
(1)	(2)

## 4.2.1

According to a general policy decision taken by the Government in May 1978 the procedure of resolving disputes between contractors and Government by recourse to arbitration proceedings was dispensed with in public works contracts for amounts exceeding Rs. 2 lakhs. In May 1985 the provision for arbitration in respect of works estimated to cost Rs. 2 lakhs and below also was dispensed with. The reasons which weighed with Government in taking the step was the large scale misuse of the provisions for arbitration entailing substantial loss to Government. Nevertheless the provision for arbitration was not discontinued in respect of the work contracts under the World Bank aided Kallada Irrigation and Tree Crop Development Project as the conditions of contract under the Local Competitive Bidding (LCB) procedure approved by the World Bank included provision for arbitration as well.

The Chief Engineer (Kallada) requested Government in December 1986 and again in August 1987 to modify the arbitration clause under the L.C.B. specifications so as to safeguard the interest of Government and to curb the tendency on the part of arbitrators in passing awards allowing claims of contractors for fabulous sums disproportionate to the contract amounts. He

“In G.O. (Rt) No. 1192/94/Ir.D dated 2-12-1994, as amended by G.O. (Rt.) No. 86/95/Ir.D. dated 25-1-1995 Government have appointed Sri. M. Mohan Kumar the present Additional Chief Secretary as One Man Commission to enquire whether the large amount of Public money given to contractors by way of arbitration awards was due to the fact that the departmental officers had acted in a manner detrimental to the interests of Government in (i) awarding additional works and (ii) adopting negotiated rates for the works. Government feel that the concerned officials in the department have not done their official duties in a fitting manner, and that the Government Pleader have not presented the case properly before the Arbitrators. The Enquiry Commission was asked to probe into the short comings on the part on departmental officers and lapses on the part of Government Pleaders.

The Enquiry Commission submitted its report to Government in March 1995 stating the reasons that led to arbitration cases lapses committed by the departmental officials and measures required to defend the arbitration cases pending in Sub Courts and the feasibility of remaining arbitration cases which are dragging on beyond the time limit fixed in the Arbitration Act. A Special

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<p>pointed out that in most cases the arbitrators happened to be men unfamiliar with the project works and suggested (September 1987) to adopt the arbitration procedure in vogue in Andhra Pradesh for settling disputes arising in contract works for World Bank aided projects under which disputes for amounts upto Rs. 50,000 were to be referred for adjudication by Superintending Engineer/Chief Engineer and those for amounts above Rs. 50,000 to a Court of competent jurisdiction. The Chief Engineer also reported that the World Bank authorities were not adverse to any modification to the arbitration clauses in the LCB conditions. However no decision was taken by Government and consequently the disadvantageous arbitration clause remained unchanged for the remaining period for which assistance for the project was available from World Bank (i.e. up to 31 March 1989).</p>	<p>Cell constituted in the Irrigation Department is examining the suggestions/recommendations made by the One Man Commission for follow up action. The Government will take appropriate action thereon in due course.</p> <p>In addition to the above Government have decided.</p> <ol style="list-style-type: none"> <li>1. To challenge all arbitration awards by filing appeals.</li> <li>2. The closure of Contracts containing LCB conditions and</li> <li>3. To make amendment to the Arbitration Act to terminate the existing arbitration cases and to file appeals in the case of time barred and decided arbitration suits.</li> </ol>
<p>4.2.2 <i>Organisational Set up:</i></p> <p>The project is under the exclusive charge of a Chief Engineer with headquarters at Kottarakkara. There are 4 circles and 15 divisions under the Chief Engineer (March 1993).</p>	<p>No Comments</p>
<p>4.2.3. <i>Audit Coverge:</i></p> <p>Mention was made in paragraph 4.1.2 (4) (ii) of the Report of the Comptroller and Auditor General of India for 1984-85 (civil) on the pendency of the arbitration cases and the huge extra expenditure involved. The</p>	<p>No Comments</p>

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<p>Public Accounts Committee in its 85th Report recommended (December 1990) that Government should conduct a detailed investigation into the manner in which the cases of the department were presented before the arbitration and should keep a regular watch over the conduct of cases in arbitration in future. An audit review of the arbitration awards passed by the arbitrators during April 1985 to March 1993 was conducted in three circles during April-June 1993 and the following points were noticed.</p>	
<p>4.2.4 <i>Highlights:</i></p>	<p>4.2.4.</p>
<p>Even after receipt of specific proposals from the department in December 1986/September 1987 for modification of the arbitration clause suitably on the lines of similar conditions included in the work contracts of World Bank aided projects in the neighbouring states indicating inter alia that the World Bank was no adverse to modification, no decision was taken by Government till March 1989 when the period of assistance of World Bank was over with the result that the disadvantageous arbitration clause remained in force.</p>	<p>Para 4.2.4 contains the high lights of Audit review of the arbitration awards passed by the Arbitrators during April 1985 to March 1993 conduted by the Accountant General. These highlights have been included in the subsequent sub paras. Therefore seperate remarks are not necessary for this sub para.</p>
<p>4.2.5 <i>Financial Impact of Arbitration Awards and Pendency of Arbitration Cases:</i></p>	<p>4.2.5.</p>
<p>From October 1984 to March 1993 258 cases were referred to arbitration in the three project circles and awards were</p>	<p>This Para deals with the financial impact of arbitration awards and pending of arbitration cases. The facts and figures are not disputed.</p>

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<p>passed in 172 cases. Out of these 172 awards 171 awards were against the Government causing a total liability of Rs. 2053.51 lakhs (gross). In 23 of these 171 cases the arbitrators awarded a total amount of Rs. 30.76 lakhs in favour of Government also towards cost of materials etc. In one case the award was in favour of neither the contractor nor the department. The arbitrators had not passed awards in 86 cases as on March 1993. The circle-wise break-up of the cases and net liability caused are at page 105.</p>	
<p>4.2.6 <i>Trend of Awards:</i></p>	<p>4.2.6.</p>
<p>An analysis of the arbitration awards revealed that departmental lapses/failures contributed mainly to most of the adverse awards. Some of the important lapses pointed out by the arbitrators were defective investigation resulting in unrealistic estimates change of alignment change of design, leading to execution of extra items of variation in quantities delay in finalisation of design delay in handing over site, failure to provide dumping yards non-supply of electricity, delay in issue of departmental materials, etc. A cause-wise analysis of the awards passed as on March 1993 is at page 106.</p>	<p>On verification of arbitration files it is seen that the arbitrators have mainly relied on the following factors to establish breach of contract by the department for allowing claims of the contractors.</p> <ol style="list-style-type: none"> <li>1. Defective investigation.</li> <li>2. Delay in handing over site.</li> <li>3. Delay in issue of departmental materials.</li> <li>4. Failure to provide dumping yards.</li> <li>5. Non availability of power supply.</li> <li>6. Delay in finalisation of design.</li> <li>7. Miscellaneous reasons.</li> <li>8. Delay in completion of the work.</li> </ol>
	<p>On verification of the records it cannot be said that there were no lapses on the part of the department. It is practically impossible to complete a work as per the original estimate and design.</p>

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<p data-bbox="365 871 803 934"><i>4.2.7 Awards for Amounts Exceeding Probable Amount of Contract :</i></p> <p data-bbox="365 945 803 1102">The amount of awards passed by the arbitrators exceeded the Probable Amount of Contract for the whole work in 12 cases as indicated in the list given in Appendix 15.</p>	<p data-bbox="812 451 1252 892">Some changes may be necessitated on execution. The test to be applied is whether the said lapses are reasonable and can be justified. Though in the defence statements submitted before arbitrators the department tried to justify the minor lapses, the trend of the arbitrators were to ignore the defence of the department and to admit the claims of the contractors. It is also to be noted that it is practically impossible to prove misconduct on the part of arbitrators in such cases in a court of law.</p> <p data-bbox="812 924 868 955">4.2.7</p> <p data-bbox="812 976 1252 1102">This sub para deals with the awards for amounts exceeding probable amount of contract. The details of the 7 cases are furnished below:</p> <p data-bbox="812 1113 1252 1207">(i) Formation of Chavara Distributory Part II from ch. 1000m. to 2000 m.</p> <p data-bbox="812 1228 1252 1543">Sri P. K. Ramachandran is the contractor of the work. Sri. K. Krishnankutty Nair, Chief Engineer (Rtd.) is the arbitrator. The PAC of work is Rs. 9,04,432. Total value of work done by the contractor is Rs. 7,54,537. The award was decreed by the Sub Court. Appeal was filed in the High Court as MFA 412/96. The appeal is pending before the High Court.</p> <p data-bbox="812 1554 1252 1684">(ii) Formation of LB Main Canal from ch. 47005 m. to 48254 m. including cut and cover flumes and driving tunnel from ch. 47690 m to 47815 m.</p>

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	<p>Sri N. K. Aboobacker is the contractor of the work. Sri T. Janardhanan Nair and P.S. Chandran are the Arbitrators. The accepted PAC of the work is Rs. 31,24,778. Additional works and extra items were allowed. The value of work done is Rs. 2,42,86,079. There were 4 Arbitration cases for the work. The first award was passed by Sri T. Janardhanan Nair. The award amount is Rs. 64,08,291 + 12% interest. Rs. 87,51,002 was paid to the Contractor in satisfaction of the award.</p> <p>The Arbitrator for the 2nd, 3rd and 4th of the work was Sri. P. S. Chandran Superintending Engineer. These three cases were decreed as below:</p> <p>OP (A) 202/93 Rs. 285,79,550 + 18% interest</p> <p>OP (A) 203/93 Rs. 47,32,919 + 18% interest</p> <p>OP (A) 204/93 Rs. 4,87,09,326 + 18% interest</p> <p>OP (A) 202/93 204/93 were setaside by the High Court in appeal and the Court appointed Justice M. P. Menon as fresh Arbitrator. Justice M. P. Menon has awarded Rs. 28 lakhs for the two cases taken together and filed the award in the High Court. The department has filed objections to this award. The case is pending.</p> <p>OP (A) 203/93 was upheld by the High Court. The State filed appeal before the Supreme Court. The Supreme</p>

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	<p>Court has also dismissed the appeal Government in G. O. (Ms.) No. 24/97/ Ir. D. dated 1-3-1997 have accorded sanction for the payment. The amount was deposited in the Court.</p> <p>(iii) LB Main Canal from ch. 48254 m. to 49180 m including cut and cover.</p> <p>Sri A. Y. Abraham is the contractor of the work. Sri T. Janardhanan Nair is the arbitrator. The accepted PAC of the work is Rs. 47,15,477. The award amount is Rs. 99,86,572 + 12% interest. The value of work done by the contractor is Rs. 42,83,700. Government in G. O. (Rt.) No. 1362/93/IRD, dated 18-12-1993 have accorded sanction for the award amount. But payment was not made. Appeal was filed in the High Court as MFA No. 111/95. The appeal is pending.</p> <p>(iv) RBC Formation of Chavara distributory Part III from ch. 2000 m to 3500 m. and from ch. 6010 m. to 6210 m.</p> <p>Sri P. K. Ramachandran is the contractor of the work. PAC of the work is Rs. 32,22,972. Total value of work done is Rs. 25,76,045. Sri K. Krishnankutty Nair is the Arbitrator. The award amount is Rs. 61,44,815 + 15% interest. The award was decreed in OP (A) 107/92. Government in G.O. (Rt.) No. 1023/94/Ir.D dated 19-10-1994 have accorded sanction for the payment. But payment was not made. An appeal was filed in the High Court as MFA. No. 316 of 1995. The High Court stayed the execution</p>

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	<p>proceedings of the lower court. Against this order the contractor has filed SLP 2380/97 before the Supreme Court. The outcome of the case is awaited.</p> <p>(v) Formation of Canal Bank Road Part-I from Ch.1400 m. to 41500 m.</p> <p>Sri T. P. Antony is the contractor of the work. PAC of the work is Rs. 24,72,099. This was increased to Rs. 26,99,710 by allowing additional works. Sri V. M. Varkey is the Arbitrator. The award amount is Rs. 36,78,145 + 18% interest. The value of work done is Rs. 29,07,556. The award was decreed by the Court. All the document for filing appeal were handed over to the Advocate General's office for filing appeal. The appeal has not yet been filed.</p> <p>(vi) Formation of Pulamon Distributory from Ch. 549 m to 1089 m.</p> <p>Sri James Puthusseri is the contractor of the work. Sri C. K. George is the arbitrator. The agreed PAC of the work is 11,92,960. The award amount is Rs. 13,76,571 + 9% interest. Rs. 15,53,321 was paid to the contractor in satisfaction of the award.</p> <p>(vii) Formation of Kottiyam Branch Canal from Ch. 11759 m to 13100 m.</p> <p>O. P. Pathrose is the contractor. Accepted PAC of the work is Rs. 39,43,780. The amount of award is Rs. 46,14,079 + 16.5% interest. Appeal is pending in the High Court.</p>

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4.2.8 *Appointment of Arbitrators on the verge of retirement*

According to the arbitration clause in the LCB specifications the arbitrator should be an officer of the rank of Superintending Engineer or higher. It implies that no retired official should be a Government officer during the tenure of arbitration. While appointing a Superintending Engineer or higher grade official as arbitrator length of service available to the incumbent before retirement was not at all taken into account. Consequently officials on the verge of retirement appointed as arbitrators had to be retained perforce as arbitrators even after their retirement. In the case of 88 awards the verdicts were pronounced by the arbitrators long after their retirement. The amount of such awards totalled Rs. 1248 lakhs (of the total award amount of Rs. 2023 lakhs in 172 cases). In 29 cases out of the 88 awards officers having less than 4 months service for retirement were appointed as arbitrators. In 9 out of 12 cases (vide Appendix 15) where the amount of award exceed the probable amount of Contract for the whole work the awards were pronounced by the arbitrators after their retirement.

4.2.9 *Retension of a Superintending Engineer as Arbitrator even after his suspension from service on corruption charges*

A Superintending Engineer was appointed as sole arbitrator in June 1987 to settle the disputes in the work RBC formation of Chavara distributory

Clause 52 of the LCB specification which forms part of the contract states interalia that within 30 days of receipt of notice from the contractor of his intention to refer the dispute before arbitration the Chief Engineer, Project III shall send the contractor a list of three officers of the rank of Superintending Engineer or higher who have not been connected with the work under the contract. There is nothing to indicate in the arbitration clause that at the time of making the award the arbitrators should be in Government service.

4.2.9.

This para deals with the retention of Superintending Engineer as Arbitrator

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from Chainage 7440 metre to 9440 metre and 10475 metre to 14767 metre including CD works. It was noticed that after appointment as sole arbitrator the officer was suspended on an earlier occasion preferred a similar claim in respect of price exalation before the arbitrator appointed in October 1986 and the arbitrator rejected it owing to the non existence of the prime adjustment clause in the agreement. But the fact of rejection of the claim earlier by the first arbitrator was not brought to the notice of the second arbitrator by the department which resulted in a liability of Rs. 9.75 lakhs to Government.

(ii) The disputes in the work “formation of Oycor Branch Canal from chainage 7000 metre to 17607 metre excluding aqueducts Part V from chainage 15073 metre to 16804 metre” relating to the up-to-date quantity of work done measured and paid for in the part bill paid in March 1986 were referred to an arbitrator. Though the arbitrator himself had taken note of the limitation on period of work done viz. 31st March 1986 the award allowed higher rates for 2402.5 cubic metres of rock blasting done after the crucial date. The department did not point out this either to the arbitrator or to the court, but paid the amount awarded which included the blasting charge for the quantity of

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even after his suspension from service on corruption charges.

The Chief Engineer, Sri C. Somanath, Superintending Engineer, Siruvani Project Circle was appointed as the Arbitrator for the disputes and differences that arose out of the work of ‘KIP RBC Formation of Chavara Distributory from Ch. 7440 m. to 9440 m and Ch. 10475m to 14767m. including canal structures and CD works.’ The appointment was made on 4-6-1987. Shri K. N. Sathyapalan is the Contractor of the work. Shri Somanathan had published his award on 2-9-1989. Government in letter No. 12193/IRI/89/IRD. dated 30-8-1989 have clarified that since Shri C. Somanathan was under suspension when he retired on Superannuation, he may not continue as Arbitrator. By the time of receiving this letter the award had already been published. Therefore the objection that the arbitrator to conduct the arbitration case could not be raised before the arbitration hearing.

But while filing objection to the award in the Sub Court, Kottarakkara this point was strongly raised before the court as advised by the Public Works Department Law Officer. But the Court passed a decree in terms of the award on 10-4-1990. The Contractor filed execution petition in the Sub Court for realising the decretal amount. An appeal was filed in the High Court as MFA No. 980 of 1990. There was delay in filing appeal in the High Court. Delay was condoned by the Court on 18-7-1991.

(1)	(2)
2402.5 cubic metres also. The extra payment due to the lapse on the part of the department is not pointing out the factual position was Rs. 0.42 lakh.	A stay petition was moved in the court on 19-7-1991 praying to stay the operation of the EP No. 72 of 1990 in O. P. (Arb) No. 40/89 of Sub Court, Kottarakkara. The stay for one month was granted from 8-8-1991. The stay petition was again got posted on 6-9-1991 and the Court extended stay until further orders.
	Government in G. O. (Rt.) No. 369/91/IRD dated 10-5-1991 have accorded sanction to deposit the decretal amount subject to the condition that the amount will not be disbursed to the decree holder till disposal of the appeal by the state on the decree. The amount was deposited in the court on 3-6-1991. On verification of the file of the Superintending Engineer, KIP RB Circle, Kottakkara (F2-3554/87) it is seen that the amount deposited by the Superintending Engineer has been released to the Contractor by the Sub Court during 6/91. If it is so the stay orders on the execution petition issued by the High Court on 8-8-1991 and 6-9-1991 are not operative.
	The MFA filed is still pending in the Court.
4.2.10. <i>Irregular Appointment of Arbitrators after the defect Liability period</i>	4.2.10
The LCB conditions prohibit appointment of arbitrators after 30 days from the expiry of defect liability period. However contrary to the LCB conditions, the department appointed	This sub para deals with irregular appointment of arbitrators after the defect liability period.
	As clause 52 of LCB specification which forms part of the agreement

(1)	(2)
<p>arbitrators in 41 cases after the expiry of the stipulated period. The department then raised objections before the arbitrators on their belated appointments in the course of proceedings in 23 cases. However, the objections were rejected on the ground that the department failed to consider this aspect while appointing the arbitrators. The action of the department in appointing the arbitrators after the expiry of the prescribed time limit resulted in awards against Government amounting to Rs. 408.30 lakhs.</p>	<p>neither party is entitled to bring a claim to the arbitration if the arbitrator has not been appointed before the expiry of 30 days after defect liability period. Defect liability is six months from the date of certified completion of the work.</p> <p>The Chief Engineer is the appointing authority of the arbitrator in normal course. The advise of the Law Officer in this issue is as follows:</p> <p>‘According to clause 52 of LCB specifications, the arbitration can be conducted in accordance with the provision of the Indian Arbitration Act, 1940 and any statutory modifications thereof. As per the limitation Act, 1963, Article 137 para 8, the period for raising a claim is 3 years after completion of the work. As per the decisions reported in AIR 1989. Kerala 72 whether there was settlement or not itself was a dispute arising out of contract and the arbitration alone, could decide it. In AIR 1988 SC, page 1007, the limitation period for raising a claim is 3 years after completion of the work.’</p>
<p>4.2.11. <i>Defective presentation of facts before the arbitrator by the department and consequent excess payment to the contractor</i></p>	<p>4.2.11</p>
<p>(i) To settle the dispute in the work “formation of R.B. Main Canal from chainage 65300 metre” an arbitrator was appointed in September 1989 who passed an award for Rs. 20.29 lakhs in March 1992. The award included a sum of Rs. 9.75 lakhs towards compensation for price</p>	<p>This sub para deals with the defective presentation of facts before the arbitrator by the department and consequent excess payment to the contractor.</p> <p>(i) Formation of RB Canal from Ch. 6530 m to 6738 m.</p> <p>The Chief Engineer has reported that in the first arbitration case the claim</p>

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<p>excavation. The contractor had on an earlier occasion preferred a similar claim in respect of price escalation before the arbitrator appointed in October 1986 and the arbitrator rejected it owing to the non-existence of the price adjustment clause in the agreement. But the fact of rejection of the claim earlier by the first arbitrator was not brought to the notice of the second arbitrator by the department which resulted in a liability of Rs. 9.75 lakhs to Government.</p>	<p>was for the application of the price adjustment clause in the agreement for work done and to be done since the period of completion was traversed beyond twelve months.</p>
<p>(ii) The disputes in the work “Formation of Oyoor Branch Canal from chainage 7000 metre to 17607 metre excluding aqueducts Part V from chainage 15073 metre to 16804 metre” relating to the up-to-date quantity of work done, measured and paid for in the part bill paid in March 1986 were referred to in arbitrator. Though the arbitrator himself had taken note of the limitation on period of work done viz. 31 March 1986, the award allowed higher rates for 2402.5 cubic metres of rock blasting done after the crucial date. The department did not point out this either to the arbitrator or to the court, but paid the amount awarded which included the blasting charge for the quantity of 2402.5 cubic metres also. The extra payment due to the lapse on the part of the department is not pointing out the factual position was Rs. 0.42 lakh.</p>	<p>The arbitrator rejected the claim stating that it is seen from the agreement that the price adjustment clause is scored off.</p>
	<p>In the second arbitration the claim was different. The claim was for compensation for the losses and damages due to the lapses and laches of the department for works done beyond the original period of completion. In other words the claim was not for the application of price adjustment clause in the agreement. That may be reason for not having pointed out by the department the rejection of claim by the first arbitrator to the second arbitrator.</p>
	<p>(ii) Formation of Oyoor Branch Canal from ch. 7000 m. to 17607 m. including aqueducts Part V from ch. 15703 m to 16804 m.</p>
	<p>Sri Easwara Pillai Superintending Engineer (Rtd.) has passed the award on 22-1-1987. In this award the work done up to and including CC VII and part bill alone was considered. Claims 5 &amp; 6 deals with the quantities and rates of rock blasting. Three categories of rock blasting were involved. They are—</p>
	<ol style="list-style-type: none"> <li>1. Protective blasting</li> <li>2. Wet blasting and</li> <li>3. Ordinary blasting.</li> </ol>

(1)	(2)
	As per CC-VII and part bill, the three kinds of blasting recorded by the department is as follows:
	(i) Ordinary blasting .. 7056 m <sup>3</sup>
	(ii) Protective blasting .. 1216 m <sup>3</sup>
	(iii) Wet blasting .. <u>1440 m<sup>3</sup></u>
	Total .. <u>9712 m<sup>3</sup></u>
	Under claims 5 and 6, the arbitrator has assessed the quantities as follows:
	(i) Ordinary blasting .. 7056.746 m <sup>3</sup>
	(ii) Protective blasting .. 2258.508 m <sup>3</sup>
	(iii) Wet blasting .. <u>2800.000 m<sup>3</sup></u>
	Total .. <u>12115.252 m<sup>3</sup></u>
	Difference .. 2403.325 m <sup>3</sup>
	Though the arbitrator can decide on the quantities of each different item of rock blasting he cannot alter the total quantity.
	In the letter addressed to the A.G.P. (Arbitration) the Superintending Engineer had disputed the quantity of wet blasting. The correct position of increase in the total quantity of blasting had not been intimated to the Law Officers and the court. Government in GO. (Rt.) 96/89/IRD dated 23-2-1989 has accepted the award. The court has passed a decree in terms of the Government order on 7-4-1989. Payment was also made.

(1)	(2)
<p>4.2.12. <i>Non-Recovery of Amount paid on an award set aside by the High Court</i></p> <p>The disputes in the work “Formation of Left Bank Main Canal from chainage 19500 metre to 20000 metre” were referred to an arbitrator who passed an award for Rs. 5.09 lakhs in favour of the contractor in April 1985. On passing of the decree of the award by the Sub Court the department deposited a sum of Rs. 5.32 lakhs (including interest) in the Sub Court in March 1987 and the court released the amount to the contractor. Simultaneously the department challenged the award and the decree in the High Court. The High Court set aside the award in March 1991 with direction to the arbitrator to consider all pieces of evidence in respect of certain claims and give separate reasons for his conclusions and to pass the award within four months from the date on which the parties appeared before him. The parties were directed to appear before the arbitrator on 25 March 1991. Accordingly a sitting was held on 25 March 1991. But a fresh award was not passed by the arbitrators as of August 1994. The Department did not refer back the matter to the High Court so far (August 1994). The department initiated action for the recovery of the amount of Rs. 5.32 lakhs paid to the contractor as far back as in September 1991. The amount was however, not recovered as of August 1994.</p>	<p>4.2.12.</p> <p>The disputes and differences that arose out of the contract work of KIP LBC-Formation of LB Main Canal from ch. 19500 m to 20000 m. pursuant to agreement No. 14/SE/KIP/LB/81-82, dated 26-5-1981 was referred to Sri R. Narayan Iyer, Deputy Chief Engineer, (B&amp;R) Designs, Thiruvananthapuram. He has made and published the award on 25-4-1985. The award was filed in the Sub Court, Thiruvananthapuram as O.P. (Arb) 43 of 1985. The department filed petition to set aside the award. The award was accepted by the Court on 31-3-1986. Against judgement of the Sub Court on MFA was filed by the state before the High Court on MFA 601 of 86. The appeal was allowed by the court on 5-3-1991 and remitted back the award to the Arbitrator for fresh consideration. It was also directed to make the award within 4 months from the date on which the parties appear before the arbitrator. It was also directed the parties to appear before the arbitrator on 25-3-1991.</p> <p>As directed by the High Court in CMP No. 30873/86 in MFA No. 601 of 86 the decretal amount of Rs. 5,32,009/60 was deposited in the Lower Court during 3/87. The amount was released to the contractor by the Court.</p>

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On receipt of the Judgement of the High Court, the Superintending Engineer KIP LB Circle, Kottarakara addressed the District Government Pleader, Thiruvananthapuram for taking action to realise the Government money from the contractor. The advise received from the District Government Pleader was to file an EP in the Sub Court, Thiruvananthapuram to realise the amount. For filling EP, the originals of the Judgement and decree are necessary. The Judgement and decree were in the High Court. The Advocate General was addressed by the Superintending Engineer to obtain the Judgement and decree (24-5-1993). His Financial Assistant was also deputed to the office of the Advocate General.

On contacting further the District Government Pleader the then District Government Pleader was of the view that there is no need in filing an EP. She had opined that before taking any further step the Advocate General's views are also to be considered (9-3-1994).

The Superintending Engineer, KIP LB Circle, Kottarakara had addressed the Advocate General for obtaining his directions in the matter (16-3-1994). No direction is seen received from the Advocate General. The Advocate General in his letter dated 20-7-1996 has forwarded the original decree and judgement.

(1)	(2)
	<p>The Superintending Engineer has forwarded the original decree and judgement to the District Government Pleader to take necessary steps on 14-8-1996.</p> <p>The Additional Government Pleader in her letter dated 30-1-1997 has returned the documents to the Superintending Engineer and has requested clarification as to the action taken as ordered by the High Court to make the fresh award within 4 months from the date on which the parties appear before the arbitrator. If no action has been taken. She wants the opinion of the Advocate General to proceed further in the matter. The Superintending Engineer has sought for the advice of the Advocate General vide his letter dated 4-4-1997.</p> <p>From the File No. F4-6897/84 of the Superintending Engineer it is seen that no action was taken by him to obtain a fresh award as ordered by the High Court. The Superintending Engineer did not appear before the arbitrator on 25-3-1991 as ordered by the High Court.</p> <p>Though the appeal was allowed by the High Court during 3/91, the department could not even approach the court, get back the Government money from the contractor for one reason or other.</p>
<p>4.2.13. <i>High Level Committee:</i></p> <p>Finding that the arbitration awards generally went against the interest of Government, a High Level Committee (HLC) consisting of the Secretaries of Irrigation, Finance and Law</p>	<p>4.2.13.</p> <p>This sub para deals with for not having served completely the interest of Government in constituting the High Level Committee. This case is being examined in file 7211.IRI/96/IRD.</p>

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Departments and the Chief Engineers was constituted by the Government in February 1988 to go into unsettled claims of contractors and exploring the prospect of out of court settlement of arbitration awards. The Department did not utilise this facility for settlement of disputes with contractors. The HLC was confined mainly to out of court settlement of arbitration awards. So the intention of Government in constituting the committee to safeguard the interest of Government was not served completely.

4.2.14. *Extra expenditure due to inaction of the High Level Committee:*

One of the functions of HLC was to explore possibilities for negotiation with the contractors with a view to reducing the amount of awards. But in cases though the contractors specifically mentioned the extent to which they were agreeable to reduce the amount of award provided payment was made within two to four months, the committee did not consider the case and no decision was taken during this period.

4.2.14.

This sub para deals with the extra expenditure due to the inaction of the High Level Committee two arbitration awards have been mentioned in this para.

(i) Formation of Pandalam Branch Canal from Ch. 2220 m. to 4000 m.

In a note submitted to Government by Chief Engineer on 4-11-1988 it was proposed to place the award on the above work to the High Level Committee. Further in Chief Engineer's office letter No. LS-11772/85 dated 17-1-1989 it was informed to Government that the contractor is willing to forego the interest and 25% of the award amount on condition that the balanced amount shall be paid to him on or before

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(1)	(2)
	<p>31-3-1989. As per G.O. (Rt.) 316/92/IRD dated 31-3-1992 &amp; G.O. (Rt.) 362/93/IRD dated 28-3-1993 sanction were accorded for the payment of decretal amount.</p> <p>In G.O. (Rt.) No. 316/92/IRD dated 31-3-1992 Government accorded sanction for the decree passed by the Sub Court, Thiruvananthapuram for the decretal amount of Rs. 14,83,298/85 plus interest @ 12% from 1-7-1985 to 10-10-1986 plus @ 9% from 11-10-1986 to 13-8-1991 plus @ 6% from 14-8-1991 till 31-3-1992.</p> <p>(ii) KI &amp; TCDP Formation of Paravoor distributory from Ch.0 m. to 5150 m. including CD works.</p> <p>As requested by Government in letter No.11461/IRI/92/IRD dated 11-5-1992 a note was submitted to Government vide Chief Engineer's Letter No. LS/1491/89 dated 21-5-1992 for placing the award of the work before the High Level Committee. But the High Level Committee have not taken a decision. Government in G.O. (Rt.) No. 362/92/IRD dated 28-3-1993 have accepted the decree and Judgement of the Sub Court and accorded sanction for the payment of the decretal amount of Rs. 39,67,010 + interest @ 12% from 28-11-1990 till 16-2-1992 and thereafter @ 6% till the date of payment.</p> <p>The contractor was prepared to forego the interest on the award subject to the condition that the award amount is paid on or before 30-6-1992.</p>

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(1)	(2)
<p>4.2.15. <i>Excess payment due to delay in acceptance of recommendations of the High Level Committee by Government :</i></p> <p>The arbitrator appointed to settle the disputes in the work "Formation of LBMC constructing cut and cover between chainage 18283 metre and 18813 metre" passed an award on 11 July 1988 for an amount of Rs. 28.57 lakhs with interest at 12% from the date of award till the date of decree/ payment. The HLC in its meeting held on 29 November 1988 decided to settle the matter out of court if the contractor agreed to reduce 40% of the award amount and to forego the entire interest. The contractor on 16th January 1989 expressed his willingness to accept the decision of HLC and the Chief Engineer, Project III on the same day requested Government to take a decision in the matter. But the Government did not take a decision till a decree from the court was received on 12 February 1990 and Rs. 35.39 lakhs (including interest) was paid to the contractor on 30 November 1990 as ordered by Government on 23 November 1990.</p> <p>Avoidable payment on account of the delay in taking a decision by Government in this case was Rs. 18.25 lakhs. (Principal Rs. 11.43 lakhs and interest Rs. 6.82 lakhs).</p> <p>The matter was referred to Government in April 1994 reply has not been received (October 1994).</p>	<p>4.2.15.</p> <p>This sub para deals with the excess payment due to delay in acceptance of recommendations of High Level Committee by Government.</p> <p>As requested by the contractor Sri P. P. Paulose, the dispute and differences that arose out of the contract work of KIP-Formation of LB Main Canal constructing cut and cover between Ch. 18283 and 18813 was referred to arbitrator Shri K. Karunakaran Unnithan, Chief Engineer (Rtd.), passed and published the award on 11-7-1988. The award amount came to Rs. 28,56,672/43 + interest @ 12% from 11-7-1988 till date of decree or payment whichever is earlier.</p> <p>As per the request of the contractor, the award and connected documents were placed before the High Level Committee. The High Level Committee which held on 29-11-1988 decided to settle the matter outside court, provided the contractor agrees to reduce 40% of the award amount and the interest awarded by the arbitrator. The contractor agree to accept the decision of the award amount and the interest awarded by the arbitrator. The contractor agreed to accept the decision of the committee and place an undertaking with a request to make payment on or before 28-2-1989. The High Level Committee which held on 9-3-1989 have recommended to the payment of the reduced amount.</p>

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The Sub Court, Kottarakkara passed a decree in terms of the award. The matter was again referred to Government and Government in G. O. (Rt.) 802/90/Ir.D dated 23-11-1990 have accorded sanction for the payment of the award amount of Rs. 28,56,672/43 + 12 % interest from the date of award to the date of decree and thereafter @ 6% interest.

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ACTION TAKEN STATEMENT ON THE C & AG REPORT  
FOR THE YEAR ENDED 31-3-1994

<i>Report Year &amp; No.</i>	<i>Para No.</i>	<i>Subject</i>	<i>Action Taken</i>
(1)	(2)	(3)	(4)
1994	4.5	<i>Loss on account of failure in defending a court case:</i>	
		<p>The work “constructing bund between Veluthur and Manakody” was awarded (October 1978) to a Multipurpose Service Co-operative Society in Thrissur District (Society) for Rs. 5.25 lakhs to be completed within 18 months from the date of handing over of the site. The site was handed over to the society in February 1979. But the society commenced the work only in the first week of March 1980 and after executing a small portion of the work for Rs. 1,036 stopped the work in the last week of the same month. As the society did not resume the work despite several notices issued by the department the contract was terminated (July 1982) at its risk and cost. The liability was initially fixed at Rs. 4.58 lakhs and revenue recovery proceed-</p>	<p>The work in this case was accorded for execution to the Arimpur multi purpose Co-operative Society Ltd., Thrissur. As per the Agreement the work should have been completed within 18 months from the date of handing over the sight. The society started the work in the first week of March 1980 and stopped by the last week of the month because of a notice received from an advocate on behalf of his client. So the contract was terminated at the risk and the cost of the society. After terminating the work the schedule of rates was revised and based on the rates in force a revised estimate was sanctioned. Accordingly the liability of the Society was initially fixed as Rs. 4,57,921 which is to be recovered from the Society. Against this the society had filed petitions requesting that the society may be absolved from the contractual liability on account of risk and cost arrangement. Government examined the</p>

(1)	(2)	(3)	(4)
		<p>ings initiated (January 1987). Aggrieved by the revenue recovery proceedings the society filed (March 1987) a suit in the Munsiff Court, Thrissur seeking permanent injunction against the recovery proceedings. The main prayer of the society was for a permanent injunction restraining the Government from taking or continuing steps under the Revenue Recovery Act for the amount without quantifying the amount by due process of Law. As none of the respondents including the Government Pleader was present and counter affidavit not filed when the petition was heard on 24 October 1987, the court delivered judgement ex parte restraining the department temporarily from revenue recovery proceedings. The suit was finally heard on 19 December, 1989 and the court passed ex parte decree in favour of the society as neither the counter affidavit was filed nor the representative was present at the time of hearing. The petition</p>	<p>petition in detail and ordered as per G.O. (Rt.) No. 844/90/IRD dated 17-12-1990 that there is no ground to exempt the society from the risk and cost. After terminating the work the schedule of rate was revised and based on the rates in force a revised estimate was sanctioned. Accordingly the liability of the society was re-fixed at Rs. 15,79,321 which was to be recovered from the society. Fresh requisition was made for the recovery of the amount. Meanwhile the Society filed O.S. No. 792/87 in the Munsiff Court, Thrissur. The court passed ex parte decree on 19-12-1989 ordering injunction restraining the department from taking action against the society under R.R. Act. The R.R. steps already initiated were withdrawn and hence there was no carelessness on the part of the Department.</p> <p>The Munsiff Court, Thrissur passed ex parte order on 19-12-1989 without serving summons or notice to the department. On hearing the court verdict the department initiated necessary action</p>

(1)	(2)	(3)	(4)
	<p>filed (March 1987) by the society to Government in this regard was also rejected (December 1990) as there was not ground to exempt the society from risk and cost.</p> <p>Meanwhile the department refixed the liability at Rs. 15.79 lakhs consequent on awarding the balance work to another contractor in December 1990 for Rs. 21.05 lakhs who completed the work in May 1992 at a cost of Rs. 25.84 lakhs.</p> <p>According to the standing instructions issued by the Law Department of Government, the Government Pleader was to apply for certified copy of judgement and decree on the same day it was pronounced to enable appeal being preferred in time. In this case this was not done till September 1994. On 1 October 1994, Government Pleader reported that he had applied for the copy of the judgment and decree on the same day and arrangements were being made to file appeal suit.</p>		<p>through the District Government Pleader, to file appeal before the Court for setting aside the exparte order. Accordingly defence statement and statement of facts were handed to District Government Pleader, Thrissur on 21-1-1992 itself and the department was in constant touch with the Government Pleader. In spite of repeated request from the department and from the Additional District Magistrate Thrissur, Government Pleader did not take any steps to file appeal.</p> <p>Shri M. Chandrasekhara Menon, the then Government Pleader, Thrissur alone was responsible for the lapse in conducting the case and consequent loss to Government. Shri Menon had filed IA. 3558/96 for getting aside the exparte decree with petition for condonation of delay and the petition was dismissed on 12-12-1996.</p> <p>Shri Chandrasekhara Menon is now no more. The only provision which deals with the</p>

(1)	(2)	(3)	(4)
		<p>The Chief Engineer stated in June 1993 that the department was quite unaware of the case and due to non-receipt of notice or summons the department was not in a position to attend the case or to file counter petition. The fact, however remains that for want of proper co-ordination between the Government Pleader and departmental authorities in the conduct of the case, Government had to suffer a loss apart from delay in the completion of the work for more than a decade.</p> <p>The matter was reported to Government in December 1992 reply has not been received (October 1994).</p>	<p>loss sustained to Government due to the negligence of a Government Law Officer is Rule 18 of the Kerala Government Law Officer (Appointment and conditions of service and Conduct of Cases Rules 1978). The said rule keeps silence against the realization of loss from the legal heirs of a deceased Law Officer. So there is no scope for the realization of loss caused to Government due to the negligence of the Law Officer.</p>

STATEMENT OF ACTION TAKEN ON THE RECOMENDATION OF THE  
C & AG REPORT FOR THE YEAR ENDED 31-3-1994

<i>Para No.</i>	<i>Name of Department</i>	<i>Recommendation/ Observation</i>	<i>Action Taken/ Remarks</i>
(1)	(2)	(3)	(4)
4.6	Water Resources (M.I.) Department	Infructuous expenditure on a minor Irrigation work, Malakayal Ela (Ela) spread over an area of about 110 acres paddy fields in Kollam District had dry lands on its three sides and Ikkara river on the fourth. As incursion of flood water during rainy season and sline water during summer into the ela through the river affected the paddy cultivation improvement to the existing flood bund between the ela and river as also some allied items of works were undertaken by the Minor Irrigation Division, Kollam in February 1983 at an estimated cost of Rs. 5.51 lakhs. The work was completed in October 1984 at a cost of Rs. 7.19 lakhs. However the full utility of the work could be derived only on the installation of a pumpset for bailing out water from the ela for which a platform was necessary. The construction of a platform proposed as far back as in 1985 was however, held	The bund was damaged in high flood during 1990-91. Damage was severe due to the misreant activities and digging of mud by the mud cutters. It is reported that several attempts were made by the department for the construction of engine thara on completion of the original work during 1984-85. Inspite of earnest effort the work could not be arranged till 1990 due to the non response to tender calls in many times. Also the "Karshaka Samithi" has failed to provide "Petty and Para" and hence cultivation has been affect.  Under these circumstances, the delay in arranging the work was due to the delay in departmental procedures and non-co-operation of beneficiaries.

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(1)	(2)	(3)	(4)
		<p data-bbox="591 464 878 663">up on account of procedural delays and finally it was taken up in February 1990 and got completed in December 1991 at a cost of Rs. 0.27 lakh.</p> <p data-bbox="591 684 878 1409">The Executive Engineer stated in May 1993 that the bund was removed more or less completely by miscreants and that the entire Ela having been dug deep by mud collectors had become unfit for cultivation. According to him the rectification of the damages to both the bund and the field was very difficult. Thus delay on the part of the department in arranging construction of a plarform to erect the pumpset and the inability in preventing misutilisation of agricultural land resulted in denying the utility of improvements undertaken at a cost of Rs. 7.46 lakhs which ultimately remained unproductive.</p> <p data-bbox="591 1430 878 1535">The matter was referred to Government in July, 1993 reply has not been received (October, 1994).</p>	

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STATEMENT OF ACTION TAKEN ON THE REPORT OF THE COMPTROLLER  
& AUDITOR GENERAL FOR THE YEAR ENDED 31ST MARCH 1994

<i>Para No.</i>	<i>Name of Department</i>	<i>Audit Para</i>	<i>Action Taken</i>
(1)	(2)	(3)	(4)
4.8	Irrigation Department	<p><i>Idle investment on construction of boat basin at Ponnani:</i></p> <p>With a view to providing better facilities for loading and unloading cargo and also for embarking and disembarking passengers, the Executive Engineer, Irrigation Division, Thrissur proposed (November 1968) for the construction of a boat basin at Ponnani and providing office and quarters for canal staff at an estimated cost of Rs. 5.5 lakhs. After a lapse of 15 years the Chief Engineer accorded administrative approval for the work in January 1984 at an estimated cost of Rs. 9.46 lakhs. Technical sanction for the work was issued (March 1984) by the Superintending Engineer for Rs. 10 lakhs and the work was put to tender in March 1984. As the lowest quoted rate was very high Government accorded sanction in</p>	<p>The scheme was taken up in 1984. Administrative sanction for the work was accorded by the Chief Engineer in 1/84 at an estimate cost of Rs. 9.46 lakhs and Technical sanction was issued by the Superintending Engineer for Rs. 10 lakhs in 3/84. The work was put to tender in 3/84. As the lowest quoted rate was very high Government accorded sanction in January 1985 to execute the work departmentally with an overall excess of 47% above estimate rate. The work was taken up in May 1985.</p> <p>While the work was in progress the construction of RR masonry was not found feasible and hence the Executive Engineer, proposed change of design to RCC piles and slabs. The Superintending Engineer Irrigation Circle, Kozhikode after inspection work issued directions as per Order No. D2-1165/82 dated 18-6-1986 to change the design to piles and slab and to transfer 75 numbers of piles. The RC piles transferred for the work have since been</p>

(1)	(2)	(3)	(4)
		<p>January 1985 to execute the work departmentally as piece work with an overall excess of 47 per cent above the estimated cost of Rs. 9.46 lakhs. The work was accordingly taken up in May 1985 but was stopped in June 1987 after incurring an expenditure of Rs. 4.70 lakhs as the design of the jetty was ordered to be revised with piles and slabs since there was difficulty in constructing random rubble masonry at the proposed bed level. It was, however, noticed that as per the original proposal of 1968 the boat basin was to be constructed with precast RCC piles, beams and slabs. The revised design and estimate for Rs. 13.75 lakhs forwarded by the Executive Engineer in April 1992 has not been approved as of September 1993. However 75 number of RCC piles, found surplus in another work, costing Rs. 101 lakhs were transferred to this work as far back as in March 1987 even before proposing the change in design.</p>	<p>partly sunk into the river bed. Out of the 10 MT cement issued for the work 3.90 MT was utilized. The Balance Quantity of 6.10 MT cement has since been transferred to other work.</p> <p>Meanwhile proposal for the construction of a fishing harbour in the above area was finalised by the Harbour Engineering Department.</p> <p>The follow up action in respect of the construction of boat basin was stopped for the time being in view of the above development. As the proposal for the Fishing Harbour by the Harbour Engineering Department was introduced later and that the work done will be fully utilized the expenditure incurred for the construction of Boat Basin amounting to Rs. 4,07,054 cannot be considered infructuous.</p> <p>The first phase of the work of fishing harbour has already been started and there is a proposal for the second phase to an extent upto the mouth of the P.C. Canal area. It is found that any development of this locality could be carried out and made feasible only after protecting the portion of the river bank. The Harbour Engineering Department does not require any protective</p>

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(1)	(2)	(3)	(4)
		<p>Thus due to defective planning and departmental delays an amount of Rs. 4.07 lakhs remained locked up for 7 years without serving any purpose and no benefit of the proposed work could be obtained.</p>	<p>work at this portion at present. Had this protection work not been done earlier there would have arisen the necessity for protecting this particular side while constructing the fishing harbour by the Harbour Engineering Department.</p>
		<p>The matter was reported to Government in February 1994 reply has not been received (October 1994)</p>	<p>The work executed so far is fruitful and is of benefit for the construction of the fishing harbour and hence the expenditure incurred cannot be considered infructuous.</p>

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STATEMENT ON REMEDIAL MEASURES TAKEN ON THE REPORT OF THE  
 COMPTROLLER AND AUDITOR GENERAL FOR THE YEAR ENDED 31ST  
 MARCH, 1997 NO. 3 (CIVIL) PARA 4.3 UNINTENDED BENEFIT TO A  
 CONTRACTOR (IDAMALAYAR IRRIGATION PROJECT)

<i>Para No.</i>	<i>Name of Department</i>	<i>Audit Para details</i>	<i>Remedial Measures Taken</i>
(1)	(2)	(3)	(4)
4.3	Water Resources Department	<p><i>Unintended benefit to Contractor:</i></p> <p>Mention had been made in paragraph 4.1.13 of the Report of the Comptroller and Auditor General of India for the year ended 31st March 1995 (Civil) of the excess payment made for the works 'construction of main canal from chainage 600 metre to 1000 metre' and from 'chainage 1000 metre to 1350 metre' of Idamalayar Irrigation Project. The rates of 17.1 per cent and 16.2 per cent above estimate on 1990 Schedule of Rates (SOR), at which the works were awarded to a contractor in December 1990, were enhanced to 35 per cent above estimate on 1992 SOR by Government in August 1994 as recommended by the High Level Committee (HLC) in July 1994 and time of completion was extended up to July 1995.</p>	<p>The works 'construction of main canal' in two reaches under Idamalayar Irrigation Project, viz., (i) from ch. 600 m. to 1000 m. and (ii) from ch. 1000 to 1350 m. were awarded to M/s. Paily Pillai and Sons on 10-12-1990.</p> <p>The first work was arranged at 17.1% above Estimate Rate of 1990 SOR and agency started the work on 1-2-1991. The second work was arranged at 16.02% above Estimate Rate of 1990 SOR and the agency started the work on 9-1-1991. The period of completion (36 months) was to expire 31-1-1994 and 8-1-1994 respectively.</p> <p>The contractor used heavy machinery such as bulldozer etc. for the work and this had been resisted by the labourers and finally this led to labour strikes. The works were stopped from 15-4-1991 to 30-11-1991. Meanwhile the contractor moved the Hon'ble High Court for police</p>

(1)	(2)	(3)	(4)
		<p>The contractor again in October 1995 represented that due to frequent side slips, untimely monsoon and heavy surface flow and other adverse situation prevailing in the site, he was not in a position to continue the work without further raising the rates at least by 85 per cent over the sanctioned rate of August 1994. The HLC having examined the case in December 1995 constituted a sub-committee to report whether it would be beneficial to retender the work after terminating the present contract or it would be advantageous to execute the work through the present contractor. The sub-committee consisting 4 out of the 7 members of the HLC inspected the works on 5th January 1996, but did not make any specific recommendation on the subject. The HLC reconsidered the matter and recommended (January 1996) to Government to carry out the balance work as per the revised design through the same agency at 80 per cent above 1992 SOR</p>	<p>protection and the court granted the same. But strike again commenced on 11-1-1993. An agreement could be arrived at only on 16-7-1993 in a reconciliation meeting held by the then Minister for Irrigation and Cultural Affairs. Another five months were lost due to the monsoon. The works were restarted after the strike on 9-12-1993.</p> <p>The labour unions had to paid rates higher than in the schedule of rates and considerable working season was also lost on account of the strike. The agency then demanded escalated rates of 110% over the agreed rates and 4.5% on petrol items and spare parts and informed that he was not willing to complete the balance work if he was not compensated.</p> <p>The Chief Engineer while recommending the case to government also reported that if the balance works were rearranged the estimate had to be revised as per 1992. SOR and there was every possibility to quote very high per centage of rate over the estimate rate. On getting the report of the Chief Engineer the HLC met on 20-7-1994 and considered the issue. The Committee was</p>

(1)	(2)	(3)	(4)
		<p>after the expiry of the extended time of completion. Government accepted the recommendation of HLC in March 1996. Since the delay in completion of work was not due to any departmental lapse the contract should have been terminated invoking the provisions in the agreement and the work rearranged at the risk and cost of the contractor. The decision to carry out the balance work through the same agency and payment of enhanced rate to the contractor was against the contractual provisions:</p> <p>The enhancement as ordered in March 1996 alone would involve an excess expenditure of Rs. 30.67 lakh and Rs. 25.49 lakh over and above that agreed to in August 1994 in respect of the two works. The works were in progress and up to May 1996, excess payment of Rs. 3.65 lakh and Rs. 5.94 lakh were made to the contractor.</p> <p>The matter was referred to Government in May 1996 reply had not been received (October 1997).</p>	<p>convinced of the fact that labour problem affected the progress of the work and the contractor had to pay wages more than that in the 1992 Schedule of Rates as already settled in the High Level Conference convened by the then Minister (Irrigation and Cultural Affairs). After detailed discussions the Committee recommended to allow 1992 schedule of rate plus 35% tender excess for the balance items and time of completion was extended by 18 months.</p> <p>It is true that the contractor had again approached Government for revision of rates for compensating loss due to frequent side-slips untimely monsoon and heavy surface flow and other adverse situation prevailing in the site. He demanded 85% excess over the 1992 Schedule of Rates. The HLC which met on 21-12-1995, examined the request of the agency for rate revision and constituted a sub-committee with 4 members to visit the site and to report to HLC whether it would be beneficial to retender the work after terminating the present contract or it would be advantageous if the work was arranged through the present contractor.</p>

(1)	(2)	(3)	(4)
			<p>In the HLC meeting held on 12-1-1996 the recommendation of the sub-committee which inspected the site to carry out the balance work as per the revised design and for removing the extra earth on the canal alignment through the same agency as recommended by the department was considered.</p> <p>After detailed examination the committee recommended to entrust the remaining work to the same agency at 80% above 1992 SOR for the following reasons:</p> <ul style="list-style-type: none"> <li>(a) As the original contractor had not completed his work it was not possible to terminate the work without paying compensation.</li> <li>(b) The arrangement of the work through another agency would take time.</li> <li>(c) The agency was well equipped with all the infrastructural facilities in the site to complete the work.</li> <li>(d) Due to the high risk of men and money in carrying out work in the earth slipping terrain, the rate might go very high if the work was tendered.</li> </ul> <p>This recommendation of the High Level Committee to allow enhance</p>

(1)	(2)	(3)	(4)
			<p>rates was with a view to ensure the smooth completion of the works after considering various aspects of the work in detail and Government accepted the recommendation.</p>
			<p>Later on the basis of the audit objections by the Accountant General and subsequent developments, government had set up a committee comprising the Principal Secretary (Finance), Secretary (Irrigation), Secretary (Law) and Chief Engineer, Projects II to go into all aspects of the matter and to suggest a course of action to complete the work which still remained incomplete. The High Power Committee recommended (i) to cancel the contracts of the works at the risk and cost of the contractor (ii) to terminate the contracts except between ch. 600 m. to 675 m. and 1200 m. to 1350 m. and to arrange the work for the remaining areas at the risk and cost of the contractor. (iii) to prepare design for the above reaches with detailed estimate at the then SOR and to arrange through open tenders.</p>
			<p>But the contractor has filed O.P. 11564/99 in the Hon'ble High Court against the termination of the works at his risk and cost and also claiming additional payments. The Hon'ble Court has</p>

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(1)	(2)	(3)	(4)
			granted interim stay on the termination order. The stay is still continuing. Therefore risk and cost liability could not be ascertained. Further action will be taken after the disposal of the O.P. Considering the above aspects, further action on para No. 4.3. may be dropped.

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STATEMENT OF ACTION TAKEN ON THE RECOMMENDATIONS OF  
COMPTRROLLER AND AUDITOR GENERAL FOR THE YEAR ENDED  
31ST MARCH, 1996

<i>Para No.</i>	<i>Department</i>	<i>Recommendation/ Observation</i>	<i>Action Taken</i>
(1)	(2)	(3)	(4)
4.3	Irrigation Department	<p>According to Kerala Public Works Department Manual work should in no case be arranged without ensuring the availability of land required for construction and without a proper design in terms of provisions in the Madras Detailed Standard Specifications which formed part of the agreement for execution of works the site was to be handed over to the contractor within two months of the agreement. Failure to adhere to the above provisions resulted in extra payment of Rs. 38.78 lakhs in the following work.</p> <p>The work "Construction of a bridge-cum-acqueduct at Prayattukadavu across Manimala river" forming part of Kaviyoor branch canal of Pampa Irrigation Project was awarded to a contractor in June 1987 for Rs. 39.33 lakhs at 7.25 per cent below estimate. As per the terms of the agreement executed on 30 June 1987 the work was to be completed within 18 months i.e., before 29th December 1988. The site to be handed before 30 August 1987 was handed over to the contractor in December 1987 (left bank) and September 1988 (right bank) only. The delay of 15 month of the handing over of the site in the right bank was stated to be due</p>	<p>The work "Construction of a bridge-cum-acqueduct at Prayattukadavu across Manimala river" was awarded to Shri V. P. Abraham, contractor on 8-6-1987. The agreement for the work was executed on 30-6-1987 vide agreement No.1/SEP/87-88 with time of completion of 18 months from the date of handing over the site. The left bank site was handed over on 15-12-1987 after 5 months after executing the agreement. It is due to the fact that the contractor was reluctant to come forward to take over the site to start the work due to rainy season and the work site was on the river bank. So it was not possible to execute considerable work during July, August and September. Hence he</p>

(1)	(2)	(3)	(4)
		<p>to non-settlement of a litigation. The soil test to assess the bearing capacity of the soil was conducted after awarding the contract as a result of which the earlier design had to be revised in March 1990. The work was completed in February 1993 at the cost of Rs. 96.28 lakhs and final payment made in November 1993.</p> <p>Alleging delay in handing over of site and change of design etc., the contractor demanded (December 1988 and January 1989) enhancement by 50 per cent of the schedule rate for the items of work executed after 29th December 1988 and Rs. 8.60 lakhs towards form works and paid wages for idle staff till 23rd December 1988. On 15th March 1990 the contractor further demanded Rs. 8.75 lakhs on account of idling charges of machinery and wages for the period from 24th December 1988. A High Level Committee constituted by Government for examination of the claims of the contractor recommended (February 1991) payment of 50 per cent over the schedule rate in respect of work done after 29th December 1988 and rejected the other two claims. Government accepted the recommendation (March 1991) and Rs. 17.23 lakhs were paid to the contractor in November 1993. Meanwhile the Contractor in August 1991 claimed total amount of Rs. 45.14 lakhs</p>	<p>took over the site after rainy season and in the best working season.</p> <p>Regarding the Right Bank i.e., from ch. 3695 m. to 3727 m the site was taken over by the contractor on 17-9-1988 i.e., 14<sup>1</sup>/<sub>2</sub> months after executing the agreements. This portion was taken over under emergency clause due to delegation pending with the Munsiff Court, Thiruvalla. This portion was handed over on the very same day when the authorities handed over to this department.</p> <p>In the original estimate, foundation of down-stream (North) abutment and extension barrals were proposed as open foundation taking into account the bearing capacity of the soil as 20 tonnes m<sup>2</sup> designs were finalised in the ID &amp; RD, Thiruvananthapuram. In the approved Drawing</p>

(1)	(2)	(3)	(4)
		<p>comprising Rs. 17.35 lakhs of the rejected claim and Rs. 18 lakhs for additional work with interest at the rate of 18 per cent per annum (Rs. 9.79 lakhs). When the High Level Committee decided not to pay any amount other than the that already paid to the contractor, the contractor filed a petition in the High Court which directed the Government (31st March 1993) to consider and dispose of the contractor's petition within two months. The High Level Committee in May 1993 recommended payment of Rs. 21.55 lakhs comprising Rs. 17.35 lakhs towards compensation due to idling of men, materials and machinery upto 15th March 1990 and Rs. 4.20 lakhs against value of work done over estimated quantity due to change in design.</p>	<p>No. 3/86, sheet No. 2/2 Note 4, it was specified that the bearing capacity of the soil should be verified at site and if the actual value is less the structure has to be re-designed. Subsequently, the bearing capacity of the soil was tested by M/s. G.S. Jain &amp; Association, Cochin and according the their reports the safe bearing capacity could be taken as 8.75 tonnes/m<sup>2</sup> only (50% of 17.50 tonnes/m<sup>2</sup>) since the water table during rainy season will be at or just below the foundation level since the value was less than 20 tonnes/m<sup>2</sup> it was necessary to re-design the proposed foundation of the down stream side abutment and extension barrel. These procedures and re-exercise of designing led to the delay and it was inevitable.</p>
		<p>Thus delayed handing over of the site and revision of design after award of the contract resulted in extra payment of Rs. 38.78 lakhs to the contractor.</p>	

STATEMENT OF ACTION TAKEN ON THE RECOMMENDATIONS OF  
COMPTROLLER AND AUDITOR GENERAL FOR THE YEAR ENDED  
31ST MARCH, 1997 (CIVIL)

<i>Report Year &amp; No.</i>	<i>Para No.</i>	<i>Subject</i>	<i>Action Taken</i>
(1)	(2)	(3)	(4)
1996-97	4.5	<i>Avoidable payment of interest on Electricity Charges:</i>	
		Scrutiny of the records of Minor Irrigation (MI) Divisions revealed that Rs. 37.32 lakh was paid between June 1995 and January 1997 towards interest for the delay in payment of Electricity charges in respect of 45 Lift Irrigation (LI) Schemes in MI Divisions. Thrissur (19 LI Schemes-Rs. 1.36 lakh), Malappuram (15 LI Schemes-Rs. 34.47 lakhs) and Sultan Bathery (11 LI Schemes Rs. 1.49 lakh). Besides, non remittance of electricity charges from November 1993 to March 1996 in respect of 27 LI Schemes in MI Divisions, Thrissur (21 LI Schemes-Rs. 19.39 lakh) and Malappuram (6 LI Schemes Rs. 6.68 lakh) would result in payment of interest amounting to Rs. 26.07 lakh till December 1996.	Delay in payment of electricity charges arose mainly due to the non-provision of earmarked funds for electricity charges up to 1994-95. During the period up to 1994-95, there was no distinct allotment for payment of electricity charges. The provision under "Project maintenance" was meant for payment of Contractor's claims, wages and electricity charges and naturally the Executive Engineers gave priority for payment of dues to contractors. The non receipt of invoices in time from the Kerala State Electricity Board was also one of the reasons for the delay in making payment. From 94-95 onwards, seperate provision was earmarked in the Budget for payment of Electricity charges and this step to a large extent has ensured the payment of Electricity charges in time.  The budget provision under Minor Irrigation Project maintenance for the year 1994-95 was Rs. 375 lakhs. The Chief Engineer pointed out the necessity of clearness of

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(1)	(2)	(3)	(4)
		The matter was referred to Government in July 1997, reply had not been received (October 1997).	Electricity charges and as a result from 1995-96 onwards, separate earmarked allotment for Electricity charges was set apart in the Budget. The total provision under project maintenance was Rs. 619 lakhs for 1995-96 out of which Rs. 300 lakhs were earmarked for electricity charges alone. During 1996-97 the total provision for project maintenance was Rs. 592.31 lakhs out of which the provision for Electricity charges alone was Rs. 310 lakhs.
			Government have in G.O. (Ms.) No. 35/97/IRD dated 23-9-1997 ordered that the outstanding dues under electricity charges can be adjusted against the arrears of electricity duty due to Government from the Board.
			The Executive Engineer concerned have reported that at present the Electricity Charges are being paid without delay.

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ACTION TAKEN STATEMENT IN RESPECT OF PARA 4-7 OF THE COMP-  
TROLLER AND AUDITOR GENERAL REPORT FOR THE YEAR ENDED  
31ST MARCH, 1997 (CIVIL)

<i>No. of Report</i>	<i>Department</i>	<i>Recommendation</i>	<i>Action Taken Statement</i>
(1)	(2)	(3)	(4)
4.7	Irrigation	<p><i>Loss due to arrangement of Anti-sea erosion work during off season period:</i></p> <p>According to the existing instructions Anti-sea erosion works should be started well ahead of the onset of monsoon and phased in such a manner that the construction of each segment of the work was completed or reached a safe stage during the working season (October to March).</p> <p>Government accorded administrative sanction in July 1986 for construction of a 400 metre seawall (from ch.104.085 to 104.485 km) at Mattool in Kannur District. The work was split into two reaches of 200 mtr. each and the first reach (from ch. 104.085 km to 104.285 km) was awarded to a contractor in February 1987 for Rs. 12.42 lakhs (35 per cent above estimate) with November 1987 as the scheduled date of completion. The period of completion was subsequently extended up to May 1988. While the work was in progress there was a severe sea attack during September 1987 causing heavy</p>	<p>The work was awarded to Shri I. K. C. Abdul Rahiman at 35% above estimate rate and the site was handed over to the contractor on 25-2-1987 with a time of completion of nine months from the date of handing over the site. This short duration is given with good intention to complete the work before the outset of monsoon otherwise heavy loss would be sustained to the people due to severe erosion. This particular sea wall had to be formed in a gap of 400 mts. between the completed sea walls.</p> <p>The sea attack in the area is very severe. Since there was sea wall on either side there was concerted action of wave in this gap. The prime duty of the department is to give maximum protection to life and property. During the</p>

(1)	(2)	(3)	(4)
		<p>damage to the sea wall under construction.</p>	<p>working season above 50% construction was over and the damage was caused in the complete profile. Usually construction of sea wall has to be done during working season but this cannot be strictly followed because departmental procedures do not coincide with the accurate season. It is conventional to start the work during the working period itself in order to save the coastal dwellers. During construction there was heavy sea attack which caused considerable damages which is not due to department's lapse. After the visit of Chief Technical Examiner to the site a revised estimate was prepared. At that time another sea attack had taken place on 6/88 which led to fresh revised estimate.</p>
		<p>The contractor expressed his willingness in May 1989 to execute the rectification work at his agreed rate. Due to abnormal delay in the preparation of the estimate for the rectification work the contractor backed out in December 1989. He was relieved of the work in January 1990 and was paid Rs. 12.48 lakh in February 1990. The revised estimate for the work based on schedule of rates 1990 was finally approved by Chief Engineer in June 1992 and was sanctioned by Government in November 1992. The work was awarded to another contractor in April, 1993 at 75% above estimate and completed in October 1993 at a cost of Rs. 12.70 lakh.</p>	
		<p>Failure to comply with the departmental instruction to programme the anti-sea erosion work during working season resulted in avoidable expenditure of Rs. 12.70 lakhs in rectification work. Even if the offer of the original contractor to execute the work at the agreed rate had been accepted by the Department an extra expenditure of Rs. 5.49 lakhs could have been avoided.</p>	<p>Revised administrative sanction for Rs. 33,60,025 had been accorded and Technical sanction had also been given. The work had been completed in all respects on 25-10-1993 for a total amount of Rs. 12.70 lakhs and no deliberate delay has been occurred.</p>

STATEMENT OF ACTION TAKEN REPORT IN RESPECT WATER RESOURCES  
(IR) DEPARTMENT OF THE REPORT OF THE COMPTROLLER AND  
AUDITOR GENERAL FOR THE YEAR ENDED 31ST MARCH, 1997

<i>Para</i>	<i>Recommendation/Conclusion</i>	<i>Action Taken Statement</i>
(1)	(2)	(3)
4.7	<p><i>Loss due to arrangement of Anti-sea erosion work during off season period:</i></p> <p>Failure to comply with the departmental instruction in regard to the arrangement of anti-sea erosion work at Mattool in Kannur District cost Government Rs. 12.70 lakhs.</p> <p>According to the existing instructions anti-sea erosion work should be started well ahead of the onset of monsoon and phased in such a manner that the construction of each segment of the work was completed or reached a safe stage during the working season (October to March).</p> <p>Government accorded administrative sanction in July 1986 for construction of a 400 metre sea wall (from chainage 104.085 km to 104.485 km.) at Mattool in Kannur District. The work was solit into two reaches of 200 metres each and the first reach (from chainage 104.085 km to 104.285 km.)</p>	<p>The Chief Engineer issued instructions for taking up original ASE works for execution in October so as to complete the work well ahead of the onset of the monsoon. However the estimate for the work was ready to be tendered only by 10-12-1986. The rate quoted by the tenderer Sri I. K. C. Abdu Rahiman Haji was not within the power of acceptance of the tendering authority (SE) and was submitted to Chief Engineer's Office. The tender was accepted at 35% above estimate rate on 17-12-1986 and selection notice was issued by superintending Engineer on 30-12-1986.</p> <p>The agreement for the above work was executed on 25-2-1987 and the site was handed over to the contractor on the same day allowing a completion period of nine months. The Department could not afford to wait for the next working season for tendering the above work as the damages would have doubled by then necessitating the preparation of a revised estimate.</p> <p>The damages to the afore mentioned sea wall had occurred in two different stages. The first damage was sustained in 9/87 and the second damage in 6/88. Although</p>

(1)	(2)	(3)
<p>was awarded to a contractor in February 1987 for Rs. 12.42 lakh (35 per cent above estimate) with November 1987 as the scheduled date of completion. The period of completion was subsequently extended up to May 1988. While the work was in progress there was a severe sea attack during September 1987 causing heavy damage to the sea wall under construction.</p>	<p>The contractor expressed his willingness in May 1989 to execute the rectification work at his agreed rate. Due to abnormal delay in the preparation of the estimate for the rectification work, the contractor backed out in December 1989. He was relieved of the work in January 1990 and was paid Rs. 12.48 lakh in February 1990. The revised estimate for the work based on schedule of rates 1990 was finally approved by Chief Engineer in June 1992 and was sanctioned by Government in November 1992. The work was awarded to another contractor in April 1993 at 75 per cent above estimate and completed in October 1993 at a cost of Rs. 12.70 lakhs.</p>	<p>the first damage was sustained in 9/87 the exact assessment of the damages could not be done by taking level or tape measurements due to the heavy drift and continued concentrated wave action upto 12/87 and hence the quantity of damage was assessed by calculating the balance quantity of materials required for the foundation of sea wall to the required length of 200 m. It was ascertained that with the remaining stones available the sea wall could be formed for a length of 150 m. only. For the remaining 50m length extra quantity of stones were required. Accordingly a proposal based on the above mentioned method for forming the remaining 50 m. sea wall was submitted to Superintending Engineer by Executive Engineer in 4/88 only with comparative statement. As the excess incurred was not within the power of approval of S.E. The S.E. directed to prepare a revised estimate for obtaining approval on 24-5-1988. While the revised estimate was being prepared the second damage occurred which necessitated a fresh revised estimate.</p>
		<p>Again the exact quantity of damages sustained was not possible to be assessed due to heavy drift and confined wave action. The quantum of damage was assessed and revised estimate was prepared by A.E.E. to the division office on 30-12-1988. The revised estimate for an amount of Rs. 18.60 lakhs was finalised and submitted to Chief Engineer's Office on 1-6-1989. The Chief Engineer instructed the S.E. to prepare a revised estimate for the work as a whole (viz. Reach. I and</p>

(1)	(2)	(3)
<p>Failure to comply with the departmental instruction to programme the anti-sea erosion work during working season resulted in avoidable expenditure of Rs. 12.70 lakh on rectification work. Even if the offer of the original contractor to execute the work at the agreed rate had been accepted by the department an extra expenditure of Rs. 5.49 lakh could have been avoided.</p>	<p>The matter was referred to Government in March 1996 reply had not been received (October 1997).</p>	<p>Reach. II) on 1-6-1989 in addition to the comparative statement. The A.E.E. prepared and submitted the revised estimate for the whole work amounting to Rs. 27.00 lakhs incorporating the deviations of the two works which was submitted to S.E. on 10-11-1989. The contractor withdrew his willingness to carry out the extra work on 17-12-1989 which by that time had exceeded 125% of the original work on 1-1-1990 the A.E.E. forwarded the letter of contractor and recommended that the work be closed in the light of the refusal of the contractor to carryout the extra quantity of work for which revised estimate was submitted and was pending sanction on the ground the contractor had satisfactorily completed all items of work as per original agreement except item Nos. 2, 3 and 4 which could not be carried out in the absence of sanction of excess quantities. The same was submitted to S.E. on 3-1-1990 by the Executive Engineer. The Superintending Engineer in the light of the afore mentioned circumstances vide D3-1194/84/(A) dt. 12-1-1990 ordered that the contract with Sri I. K. C. Abdurahiman Haji as agreement No. SE (1) 10/86-87 dt. 25-2-1987 to be closed. Since the original contract for the above work was closed the Superintending Engineer on 12-7-1990 directed the Executive Engineer to prepare a seperate estimate for the balance work based on the 1990 schedule of rates.</p> <p>Government vide G.O. (Rt.) No. 836/92/IRD dated 19-9-1992 accorded revised administrative sanction for the above work for Rs. 33,60,625 and on the basis of this the S.E. issued Technical sanction for the estimate</p>

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(1)	(2)	(3)	(4)
			<p>of balance work amounting to Rs. 7,24,732 vide order No. D3-1195/84 (a) dt. 17-11-1992. The work was tendered on 27-11-1992 and awarded to Sri R. Mohandas at 75% above estimate rate. The work was completed in 10/93 for a total amount of Rs. 12.70 lakhs.</p>
			<p>Hence it may be seen that delay involved is only due to Administrative and procedural reasons at the level of submission and scrutinising of revised estimate and the delay involved in preparing the revised estimate immediately after damage was sustained was due to the heavy drift and continual concentrated wave action that persisted for two or three months. The work arranged in 1987 could not be completed before the agreement date of 11/87 due to severe sea attack that occurred in 9/87. The site was not fit for carrying out any activity like taking levels or tape measurements till 12/87 due to heavy drift and continued and concentrated wave action. When the preparation of R.E. were in progress the same kind of sea attack occurred in this area in 6/1988 and it hindered the resumption of work. But heavy drift or concentrated wave action did not take place during the period in 1993 when balance work was under execution. The condition was favourable for carrying out the work. Hence the reason for arranging the work in 1993 during the same season as was arranged in 1987 is justifiable.</p>
			<p>The original work was arranged in 1987 based on nature and necessity at this</p>

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(1)	(2)	(3)	(4)
		coastal belt. Coastal area like this which is exposed to heavy sea attack cannot be left unprotected indefinitely. This was the reason for arranging the work again in 1993.	

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STATEMENT OF ACTION TAKEN ON PARA 4.8 OF THE REPORT OF THE  
COMPTROLLER AND AUDITOR GENERAL FOR THE YEAR ENDED  
31ST MARCH, 1997

<i>Para No.</i>	<i>Recommendation/Observation</i>	<i>Action Taken</i>
(1)	(2)	(3)
4.8	<p><i>Idling of Motor and Pump sets:</i></p> <p>Under Lift Irrigation Schemes (LIS) implemented through out the State by the Minor Irrigation (MI) Wing of the Irrigation Department, electric motor and pump sets were used for lifting water from rivers and ponds and feeding the ayacuts through well laid pipes and cut channels, The purchase of motor and pump sets was made by the MI Divisions concerned on the basis of supply orders placed by the Chief Engineer (Mechanical) who determined the design of the motor and pump set required for the scheme taking into account the actual necessity and site condition. It was noticed that due to the failure of the Department in executing agreement/remitting cost of providing High Tension Power connection as advance to the Kerala State Electricity Board, the capacity of pump house had to be reduced in</p>	<p>1. <i>Palankara L.I. Scheme in Karulai Panchayath:</i> 4 Nos. of 50 HP motors were purchased for this scheme in anticipation that H. T. Power connection will be obtained for the scheme. As there were no chances for getting H.T. connection, 2 Nos. of 50 H.P. Motor and pump sets which can be run with L.T. Power supply were erected for the scheme. Out of the remaining 2 Nos. of 50 H. P. Motors, one was erected at Moochiparatha L. I. Scheme and other one at Kaduvakuzhi L. I. Scheme.</p> <p>Thus all the motors and pump sets purchased for the above scheme have been utilised. The scheme has been commissioned on 12-3-1999. Hence there is no locking up of government money in this case. The main reason for the non-receipt of H. T. Connection is not the delay in execution of the minimum guarantee agreement, but the worst power problem faced in the district especially in Nilambur area.</p> <p>2. <i>Moochiparatha L.I. Scheme in Edakkara Panchayat:</i> 5 Nos. of 120 H.P. motor and pump sets were purchased for this scheme in anticipation of H.T. Power connection. But only L.T. connection was received for the scheme. Hence the scheme was commis-</p>

(1)	(2)	(3)
<p>Palankara LIS and Moochiparatha LIS in MI division Malappuram resulting in idling of two 50 HP motors costing Rs. 1.32 lakh and five 120 HP motors costing Rs. 4.69 lakh from June 1987 and July 1984 respectively. In respect of Thanampara LIS under Palakkad MI Division five 110 HP motors costing Rs. 3.95 lakh purchased in 1994 were also idling for which no reasons were on record.</p> <p>Thus 12 motor and pump sets worth Rs. 9.96 lakh purchased for the above 3 LIS were idling for three to ten years.</p>	<p>sioned with one number of 50 HP Motor and pump set with the available power supply. Another 50 H.P. motor and pump set has also been installed under this scheme and electrification work completed. Action is being taken to get power connection.</p> <p>Out of 5 Nos. of 120 H. P. motor and pump set, one has been transferred to Kannampally LI Scheme in Keezhuparamba Panchayat under MI Division Malappuram and another 3 Nos. have been transferred to the Assistant Engineer, MI section No. 1 Mananthavadi under MI Division Sulthan Bathery. The remaining one is kept as spare unit for substituting temporarily in the place of damaged sets in L.I. Schemes under M.I. Division, Malappuram where the similar capacity of motor and pump sets are installed.</p>	<p>3. <i>Thenampara L.I. Scheme in Thrithala Panchayath:</i></p> <p>This scheme comes under MI subdivision, Shornur. It was partially commissioned on 19-2-1999. Out of the 9 pump sets purchased for the above scheme. 5 numbers of 110 HP Motor Pump and accessories were transferred to the Assistant Executive Engineer, Electrical Sub-Division (Irrigation, Aluva) on 7-11-2003 and the balance of 4 Nos. stands installed in LI. Scheme Thenampara and is working safely. As such there are no pumps and motors kept idling under this scheme now.</p>

STATEMENT OF ACTION TAKEN ON PARA 4.9 OF THE REPORT OF THE  
COMPTROLLER AND AUDITOR GENERAL FOR THE YEAR ENDED  
31ST MARCH, 1993

<i>Para No.</i>	<i>Recommendation/Observation</i>	<i>Action Taken</i>
(1)	(2)	(3)
4.9	<p><i>Payment of tender excess on market rate for materials purchased for Kurumassery Lift Irrigation Scheme in Minor Irrigation Division, Ernakulam resulted in extra liability of Rs. 6.58 lakh:</i></p> <p>Mention was made in paragraph 3.4 of the Report of the Comptroller and Auditor General of India for the year ended 31st March 1988 (No. 6 of 1989- Civil) about the delay in completion of the canal work under Karumassery Lift Irrigation Scheme in Parakkadavu block in Ernakulam District arranged in February 1982 and termination of the contract due to non supply of pipes by the department. The balance work was rearranged for Rs. 5.07 lakh in February 1990 without procuring/ensuring the availability of required pipes. In September 1990 supply order was placed with Premo Pipe Factory, Chavara (A State Government Undertaking) for procuring the available size of pipes and the design of the distributary system was changed accordingly. During execution 450 mm diameter Premo pipe was changed to 315 mm diameter Poly</p>	<p>As per G. O. (Rt.) No. 315/93/IRD. dated, 15-3-1993 Government have sanctioned revised estimate amounting to Rs. 44.30 lakhs for the work Kurumassery Lift Irrigation Scheme in Parakkadavu Panchayath and as per G. O. (Rt.) No. 261/94/IRD dated 4-3-1999 53% above estimate rate for all items was also sanctioned.</p> <p>While the revised estimate was sanctioned as per the Govt. Order dated 15-3-1998 the agency of the work represented that he could execute the work if he has been given 53% above estimate rate of the revised estimate including extra item. The same was brought to the notice of the High Level Committee and they recommended for issuing orders to execute the work. This is the ground of issuing the Government Order allowing 53% above estimate rate for all items including extra items. As the order issued was considering all</p>

(1)	(2)	(3)
<p>Vinyl Chloride (PVC) pipe in certain reaches due to non availability of Premo Pipe. In arriving at the rates for this extra item of work the then market rate of PVC pipe (Rs. 830.06 per metre) was taken into account. Though tender excess was not admissible over market rate the contractor was paid 53 per cent tender excess over and above the market rate. The extra liability in purchasing 1496 metres of PVC pipe was 6.58 lakh. The work which commenced in February 1982 remained incomplete (March 1997) due to failure on the part of the department to supply the balance quantity of 265 metres of pipe and the expenditure of Rs. 38.81 lakh incurred on the scheme remained idle.</p>	<p>the aspects and peculiarity of the work there is no need of remedial measures since there are existing orders restricting giving tender premia to the items to which market rate is provided in the estimate.</p> <p>Normally schemes do not idle due to failure of supply of departmental materials. In this case the problem was arisen due to stoppage of production of premo pipes by the factory a Government firm. Any how the bottleneck has been overcome and finally the scheme commissioned.</p> <p>In the circumstances stated above it is requested that the remarks offered may be accepted and the objection in the matter may be dropped.</p>	

APPENDIX III

ARBITRATION AWARDS IN EXCESS OF AGREED PROBABLE AMOUNT OF CONTRACT/TOTAL VALUE OF WORK DONE

(Reference: Paragraph 4.2.7.)

Sl. No.	Name of work and agreement Number	Agreed PAC/value of work done (Rs. in lakhs)	Period	Damages awarded due to							
				Defective investigation	Failure to provide dumping yard for earth	Delay in issuing departmental materials	Delay in finalisation of design (Rs. in lakh)	Delay in handing over of site	Non-availability of power supply	Other reasons including interest	Total amount of award
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1.	Formation of Chavara distributory Part II from Ch.1000 to 2000 m. Agreement No. 17/OE/KCQ/85-86 dated 11-12-1985.	9.04	October 1992	17.68	2.56	..	..	..	..	..	20.24
2.	Formation of LB main canal branch 47005 to 48254 m including cut and cover and cover flumes and driving tunnel from Ch. 47690 m. to 47815 m. Agreement No. 1/SE/KCQ 84-85 dated 9-5-1984.	31.25	March 1989	41.32	6.00	10.14	5.85	..	0.77	..	64.08
3.	LB Main Canal from Ch. 48254 to 49180 m. including cutting and cover. Agreement No. 10/SEDCQ/85-86 dated 10-9-1985.	47.15	December 1992	99.87	..	..	..	..	..	..	99.87
4.	RBC formation of Chavara distributory Part III 2000 m. to 3500 m. and 6010 m. to 6210 m. Agreement No. 14/SE/KCQ/85-86 dated 30-10-1985.	32.23	October 1992	61.45	..	..	..	..	..	..	61.45

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
5.	Formation of Canal Bank Road Part I from Ch.14000 to 41500 m. Agreement No. 20/SE/85-86/KIP/ dated 7-1-1986.	24.72	January 1993	1.95	24.65	..	9.16	..	1.02	36.78	..
6.	Formation of Pulaman distributory from Ch. 549 m. to 1089 m. Agreement No. 22/SE/KIP/CB/ 81-82 dated 4-1-1981.	11.93	NA	13.77	13.77	..	..	..	..	..	27.54
7.	Formation of Kottiyam Branch canal from Ch. 11759 m to 13100 m. Agreement No.10/SE/LB/88-89 dated 14-9-1988.	39.49	February 1993	40.28	2.49	3.37	..	..	..	..	46.14
8.	RBC Improvement to canal bank road and link road Part III from Ch. 47000 m. to 52800 m. Agreement No. 24/SE/85-86/KIP/ dated 17-1-1986.	6.70	November 1992	64.45	..	..	..	2.40	..	0.01	6.86
9.	Formation of Punalur distributory Ch. 0 to 3800 m. Agreement No. 23/SE/KIP/LB/83-84 dated 20-3-1984.	9.21	June 1990	13.84	1.50	0.36	..	0.42	..	0.30	16.42
10.	LBMC bank road from Ch.0 to 13900 m. Agreement No. 8/SE/KIP/LB/ 88-89 dated 29-8-1988.	18.08	January 1993	9.64	..	3.22	..	5.26	..	..	18.12
11.	Formation of Oyoor distributory from Ch. 0.10 m to 6.95 m. Part I to VI. Agreement No.7/SE/KSP/LB/85-86 dated 29-10-1985.	36.46	March 1993	6.81	22.18	..	..	12.14	..	0.13	41.26
12.	LB formation of Pulamon distributory from Ch. 15 m to 47.62 m. Part III from Ch. 1089 to 1760. Agreement No. 39/SE/KIP/LB/ 82-83 dated 19-2-1983.	8.41	October 1990	2.95	4.86	1.73	..	..	..	..	9.54