

FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

COMMITTEE ON PUBLIC UNDERTAKINGS (2016-2019)

SEVENTY FIFTH REPORT

(Presented on 4th December, 2018)

SECRETARIAT OF THE KERALA LEGISLATURE THIRUVANANTHAPURAM

2018

FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

COMMITTEE ON PUBLIC UNDERTAKINGS (2016-2019)

SEVENTY FIFTH REPORT

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On

MALABAR CEMENTS LIMITED

(Based on the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2015)

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COMMITTEE ON PUBLIC UNDERTAKINGS (2016-2019) COMPOSITION OF THE COMMITTEE

Chairman :

Shri C. Divakaran.

Members :

Shri T. A. Ahammed Kabeer

Shri K. B. Ganesh Kumar

Shri C. Krishnan

Shri S. Rajendran

Shri Thiruvanchoor Radhakrishnan

Shri P. T. A. Rahim

Shri Raju Abraham

Shri Sunny Joseph

Shri C. F. Thomas

Shri P. Unni.

Legislature Secretariat :

Shri V. K. Babu Prakash, Secretary

Shri K. Suresh Kumar, Joint Secretary

Shri G. Harish, Deputy Secretary

Smt. Deepa V., Under Secretary.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings (2016-2019) having been authorised by the Committee to present the Report on their behalf, present this Seventy Fifth Report on Malabar Cements Limited based on the Report of the Comptroller and Auditor General of India¹ for the year ended 31 March, 2015 relating to the Public Sector Undertakings of the Government of Kerala.

The aforesaid Report of the Comptroller and Auditor General of India for the year ended 31 March, 2015 was laid on the Table of the House on 28-6-2016. The consideration of the audit paragraphs included in this Report and the examination of the departmental witness in connection thereto was made by the Committee on Public Undertakings constituted for the years 2016-2019 at its meeting held on 17-10-2017. The recommendations of the Committee on the basis of audit para are included as Chapter I. In order to obtain more clarification, the Committee visited Malabar Cements Limited on 29-11-2017. Recommendations of the Committee on the basis of this visit are included as Chapter II.

This Report was considered and approved by the Committee(2016-2019) at its meeting held on 19-11-2018.

The Committee places on record its appreciation for the assistance rendered by the Accountant General (Audit), Kerala in the examination, of the Audit Paragraphs included in this Report.

The Committee wishes to express its thanks to the officials of the Industries Department of the Government Secretariat and Malabar Cements Limited for placing the materials and information solicited in connection with the examination of the subject. The Committee also wishes to thank in particular the Secretaries to Government, Industries and Finance Department and the officials of the Malabar Cements Limited who appeared for evidence and assisted the Committee by placing their views before it.

C. DIVAKARAN,

Chairman, Committee on Public Undertakings.

Thiruvananthapuram, 19th November, 2018.

REPORT

ON

MALABAR CEMENTS LIMITED

AUDIT PARAGRAPH 3.5

Avoidable extra expenditure

Non collection of adequate security deposit (SD) to ensure due performance of the contract coupled with non recovery of damages resulted in avoidable extra expenditure of Rs. 1.77 crore to the Company.

3.5 As per Rule 8.17 of the Stores Purchase Manual of Government of Kerala, to ensure due performance of the contract, performance security is to be obtained from the successful bidder who is awarded the contract. Performance security is to be obtained from every successful bidder irrespective of its registration status, etc., for a contract value above Rs. I lakh. Performance security may be furnished in the form of an account payee demand draft, fixed deposit receipt from a commercial bank or bank guarantee from a commercial bank. The performance security should be equivalent to five per cent of the total value of the contract, rounded off to the nearest rupee.

Malabar Cements Limited (Company) is a fully owned Government company engaged in the manufacture of cement using limestone. The Company invited (December 2011) tenders for collection and transportation of up to 10,000 Metric Ton (MT) of limestone per month from Tamil Nadu Minerals Limited, Ariyalur to the Company. According to the tender conditions, the bidders were to quote rate for one MT of limestone and the maximum quantity that can be transported in a month. The Company reserved the right to place order on one or more firms at the lowest quoted (L1) rate.

NT Lorry Service (NTLS), the L1 bidder, offered to transport 6000 MT of limestone monthly at the rate of Rs. 433 per MT and accordingly, the Company placed (March 2012) the work order on them for monthly transportation of 6000 MT. For the balance 4000 MT of limestone, work order was placed (March 2012) on Radha Lime Stone (RLS) at the L1 rate of Rs. 433 per MT. The period of contracts was one year from 27 February 2012 to 26 February 2013.

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As per terms and conditions of the contracts, NTLS and RLS remitted Rs. 5.60 lakh³¹ as SD which would be forfeited in case of their failure to carry out the work. Further, the balance work would be executed through an alternative agency at the risk and cost of NTLS and RLS. They were also liable to pay liquidated damages at the rate of Rs. 10 per MT on the undelivered quantity.

Against the contracted transportation of 10,000 MT of limestone per month for one year, NTLS and RLS transported an aggregate 17221.30³² MT of limestone only for five months up to May 2012 despite availability of limestone at site. The NTLS and RLS failed to transport the contracted quantity on the ground that the rates quoted were not favourable to them, as also due to delay on the part of the Company in unloading limestone at Company's site. On this, the Company invited (May 2012) fresh tenders and engaged alternative agencies³³ for transportation of the balance quantity at the rate of Rs. 608 per MT. In the alternative contract, the Company incurred additional expenditure of Rs. 1.77 crore. Although the additional expenditure was recoverable from NTLS and RLS as per provisions of the contracts, this amount has not, however, been recovered as yet (April 2015).

Audit noticed (October 2014) that purchase policy of the Company, approved by the Board of Directors in April 2010, diluted and limited SD to five per cent of three months' value of the contract despite Stores Purchase Manual warranting collection of five per cent of the total value of contract as SD. Consequently, against Rs. 25.98 lakh³⁴ to be kept as SD as per the Stores Purchase Manual, the Company actually held SD of Rs. 5.60 lakh only. Thus, failure on the part of Company to collect adequate SD, led to non performance of the contract by NTLS and RLS and the Company has not recovered the risk and cost amount of Rs. 1.77 crore involved in the alternative contract from NTLS and RLS.

34 120000 MT* Rs. 433* 5 per cent

³¹ Rs. 3 lakh held as EMD from NTLS and Rs. 2.60 lakh remitted as SD by RLS

³² NTLS - 1240.30 MT and RLS - 15981 MT

³³ Raja Warehouse and Logistics (8000 MT) and Vijayalakshmi Transport (2000 MT)

Thus, non collection of adequate SD to ensure due performance of the contract coupled with non recovery of damages resulted in avoidable extra expenditure of Rs. 1.77 crore to the Company.

The Company stated (April 2015) that they had filed (April 2015) a suit for recovery of damages against the defaulted firms. The reply of the Company was not acceptable since the Company had failed to ensure due performance of the contract through collection of SD as per the provisions of Stores Purchase Manual. Further Company's legal action to recover damages was late by three years due to delay by Company's Legal Department and was initiated only after this being pointed out (October 2014) by Audit. The delay may compromise the Company's position in the Court of Law.

The matter was reported (June 2015) to Government; their reply was awaited (December 2015).

Though the Administrative Department was invited (October 2015) for discussing the matter, they did not respond.

(The Audit Paragraph 3.5 contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2015.)

The notes furnished by the government on the Audit Paragraph are given in Appendix II.

Discussion and Findings of the Committee

The Committee sought explanation for the loss of $\mathbf{\xi}$ 1.77 crore incurred by the company against the non collection of adequate security deposit to ensure the fulfillment of the contract together with non-recovery of damages in this regard.

The witness replied that the contractor who was awarded the contract could not complete the work in time and hence that work was awarded to another contractor on risk and cost basis owing to which the said loss occurred. The Committee wanted to know whether the Company has recovered the damages from the contractor. The Committee enquired why the Company had limited the security deposit to 5% of value of contract for three months instead of 5% of the total value of contract as security deposit which was the percentage insisted by Kerala Stores Purchase Manual and which resulted in the company collecting only ₹5.60 lakh as security deposit against ₹ 25.98 lakh which would have been obtained.

The witness explained that, the decision to limit the security deposit to 3 months was taken by Board of Directors of the company as it was a recurring tender, and in which the contractors could demand higher rates considering also the interest accrued from the security deposit and hence it was decided to collect a lesser amount as security deposit.

The Committee opined that accepted norms regarding the procedures in public sector undertakings as per the Kerala Store Purchase Manual had been violated.

The Committee enquired further whether the decision to limit the security deposit had been approved by the government. The witness replied in the negative and stated alongwith that they aim at resolving that problem by incorporating provision for such a deviation in the recurring tender with the approval of government.

The Committee emphasized that the Board has no power to limit the period to three months as it was a matter of policy, and that the Company should have sought government approval before limiting the period pointing alongwith that it was not fair to vindicate the irregularities in procedure enforced by the Board of Directors. The Committee blamed the company for violating the terms and conditions of the Stores Purchase Manual and insisted that the Public Sector Undertakings are bound to abide by the Manual.

To a pertinent question of the Committee the witness explained that a suit had been filed against the first two contractors for breach of contract.

The Committee wished to be informed of the present position of the case filed in 2015 against defaulters. The witness made it clear that the hearing was expected to be held on 9th November 2017.

The Committee criticized the witness for the visibly intentional delay of three years seen in filing case against the contractors, after it was pointed out by the Audit. The witness submitted that the Board did take action against the contractors within three years.

The Committee enquired about the measures taken by the authorities to save the Company from economic losses. It also enquired whether the defaulters had been black listed. The witness replied in affirmative at the same time revealed that the defaulters were not however officially blacklisted and hence a list of companies blacklisted was not included in the reply. The Committee felt that the witness was trying to mislead the Committee with false statements and voiced that it suspected a clandestine affair in the whole process. The Committee pointed out that unless the defaulters were blacklisted they will have no hindrance to participate in tenders in future. It observed with displeasure that no measures had been taken yet to restore the loss incurred by the company.

The Committee stated that The Malabar Cements Limited inspite of remaining a frontline institution, has a deplorable image among the public and emphasized the necessity of conducting a case study for the overall betterment of the company.

CHAPTER I

Recommendations of the Committee on the basis of the Audit paragraph

1. The Committee strongly recommends to take necessary action to recover the risk and cost amount of ₹ 1.77 crore incurred due to non-collection of adequate security deposit and non recovery of loss sustained due to the alternate contract from NT Lorry Service (NTLS) and Radha Lime Stone (RLS) as per the provisions of the contract.

2. The Committee criticizes the company for not blacklisting the defaulted firms and enabling them to participate in tenders in future. Hence the Committee recommends to take immediate action to black list officially, the two defaulted firms NTLS and RLS. 3. The Committee vehemently criticizes the visibly intentional delay of three years seen in initiating legal action against the defaulted firms NTLS and RLS, and wants to be furnished with a detailed report on the present position of the case filed against the defaulted firms.

4. The Committee blames the Board of Directors of the Company for diluting the purchase policy of the Company by limiting the security deposit to five per cent of three months value of the contract and for violating the provisions of the Kerala Stores Purchase Manual with out government approval. The Committee recommends that the decisions of the Board of Directors should be implemented subject to the approval of the government alone and that the Kerala Stores Purchase Manual should not be violated.

5. The Committee recommends to conduct a detailed study and submit proposal before the government to improve the overall performance of the Company.

CHAPTER II

The Committee visited Malabar Cements Limited on 29-11-2017 and after a detailed discussion with the Company officials made the following recommendations.

Observations/Recommendations of the Committee on the basis of Visit to Malabar Cements Ltd.

6. The Committee observes that even though Malabar Cement is accepted widely as the best quality cement, the government has not given any purchase preference or prize preference to Malabar Cements and hence the Company has to face tight competition from other private cement companies. The Committee recommends to provide purchase preference or prize preference at government level to Malabar Cement and also to negotiate with all government departments especially PWD and Water Resources Departments and other PSUs to give prime preference to Malabar Cement in their Construction Works.

7. The Committee expressed its strong displeasure on the stoppage of production in Walayar and Cherthala plants due to delay in the tendering process. The Committee views this as dereliction of duty on the part of the company management for not procuring raw materials in advance and recommends that situations like this should not be repeated in future.

8. The Committee understands that the marketing of cement through dealers alone and the denial of Malabar Cement to small scale sellers were the main reasons that hinder the Company from capturing the market. The Committee recommends to take urgent measures to recapture the market by strengthening and developing distribution network and also resorting to suitable promotional activities to promote the Malabar Cement brands in the market.

9. The Committee recommends to open retail outlets for Malabar Cement brands in all regions.

10. The Committee observes that increasing cost of production is the major challenge faced by the Company and urged to take necessary steps to reduce the cost of production.

11. The Committee observes that even though the land and raw materials for the Hindustan Newsprint are provided by the State Government, they are giving fly ash to private companies. The Committee opines that the lion's share of the fly ash produced in Hindustan Newsprint should go to Malabar Cements Limited and it should not be set apart to private companies. The Committee recommends to take effective measures to procure sufficient amount of fly ash from Velloor Hindustan Newsprint Ltd.

12. The Committee finds that Malabar Cements is paying income tax for the unavailed interest on the loan amount awarded to some Public Sector Undertakings without government guarantee for the implementation of the Greenfield projects. It was revealed that the Company has been paying tax for 7 years for the unavailed interest on the amount funded for the greenfield projects. The Committee recommends that Government may intervene in this matter and take appropriate action to avoid the payment of tax on the unavailed interest on the loan amount financed by the company to other PSUs.

13. The Committee blames the Company for not having a proper financial management and for not approaching the Government for Government guarantee. It

opines that this crisis could have been avoided if the company had financed the loan amount to PSUs with Government guarantee. Considering the financial crisis faced by the Company, the Committee strongly recommends to take stringent measures for the realization of arrears of the loan amount financed by the Company to various Public Sector Undertakings in connection with Greenfield projects.

14. The Committee observes that eventhough there were strict norms for allotting agencies of Malabar Cements, the dealers who are reluctant to follow the norms of Malabar Cements Ltd. were not blacklisted by the Company and their dealership was not also cancelled. The Committee opines that the Company should examine whether collaboration with such agencies are necessary and should take appropriate action on defaulted agencies.

15. The Committee suspects that there exists a mutual understanding between the company officials and dealers so that other brands of cements get more market when there is sufficient stock of Malabar Cement brands. Hence the Committee doubts the presence of a lobby working to vandalize the Company by spreading false propaganda against it. The Committee strongly recommends to take urgent steps so that such influences are exposed and to bring an end to these intentional misdeeds.

16. The Committee condemns strongly the action of the Company in acquiring 7 acres of land on lease from Cochin Port Trust for 30 years at an expenditure of ₹58 crore for starting cement bagging unit when the Company is unable to sell its own cement. The Committee finds that there was no title deed executed in the name of the company as a result of which the company had lost the money. The Committee strongly recommends to conduct a vigilance enquiry on the contracts and dealings behind procuring land on lease spending ₹58 crore at Cochin Port Trust Premises.

17. The Committee evaluates that the defects in financial and marketing management of the Company are the main reasons behind the stifle faced by the Company at present. The Committee recommends to conduct market study on expanding the marketing zone and the methods to capture the market by giving offers to dealers and to submit revised proposal in this regard before the Government.

18. The Committee recommends that the Company should maintain its own business line and strategic business policy.

19. The Committee recommends to expand the transporting sector of the Company and to make business dealings only with reputed and successful societies which are known to require huge amounts of Cement per day.

20. The Committee urges to ensure the availability of lime stone and to take efficacious measures to avert situations like avoiding tender proceedings in future.

21. The Committee observes that there is abundant sand deposit in the second mine unit of Pandarathumala and recommends to seek the consent of the Forest Department for collecting sand from the area.

22. The Committee urges the workers and officials of the company to work more efficiently and to submit necessary proposals to Government to make the company more profitable.

Thíruvananthapuram, 19th November, 2018.

C. DIVAKARAN, Chairman, Committee on Public Undertakings.

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APPENDIX-I

SUMMARY OF MAIN CONCLUSIONS /RECOMMENDATIONS

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No	Para No.	Department Concerned	Conclusions/Recommendations
(1)	(2)	(3)	(4)
1	1	Industries	The Committee strongly recommends to take necessary action to recover the risk and cost amount of \gtrless 1.77 crore incurred due to non-collection of adequate security deposit and non recovery of loss sustained due to the alternate contract from NT Lorry Service (NTLS) and Radha Lime Stone (RLS) as per the provisions of the contract.
2	2	Industries	The Committee criticizes the company for not blacklisting the defaulted firms and enabling them to participate in tenders in future. Hence the Committee recommends to take immediate action to black list officially, the two defaulted firms NTLS and RLS.
3	3		The Committee vehemently criticizes the visibly intentional delay of three years seen in initiating legal action against the defaulted firms NTLS and RLS, and wants to be furnished with a detailed report on the present position of the case filed against the defaulted firms.
4	4	i i i i i i i i i i i i i i i i i i i	The Committee blames the Board of Directors of the Company for diluting the purchase policy of the Company by limiting the security deposit to five per cent of three months value of the contract and for violating the provisions of the Kerala Stores Purchase Manual with out government approval. The Committee recommends that the decisions of the Board of Directors should be implemented subject to he approval of the government alone and that the Kerala Stores Purchase Manual should not be violated.

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5	5	Industries	The Committee recommends to conduct a detailed study and submit proposal before the government to improve the overall performance of the Company.
6	6	Industries	The Committee observes that even though Malabar Cement is accepted widely as the best quality cement, the government has not given any purchase preference or prize preference to Malabar Cements and hence the Company has to face tight competition from other private cement companies. The Committee recommends to provide purchase preference or prize preference at government level to Malabar Cement and also to negotiate with all government departments especially PWD and Water Resources Departments and other PSUs to give prime preference to Malabar Cement in their Construction Works.
7	7	Industries	The Committee expressed its strong displeasure on the stoppage of production in Walayar and Cherthala plants due to delay in the tendering process. The Committee views this as dereliction of duty on the part of the company management for not procuring raw materials in advance and recommends that situations like this should not be repeated in future.
8	8	Industries	The Committee understands that the marketing of cement through dealers alone and the denial of Malabar Cement to small scale sellers were the main reasons that hinder the Company from capturing the market. The Committee recommends to take urgent measures to recapture the market by strengthening and developing distribution network and also resorting to suitable promotional activities to promote the Malabar Cement brands in the market.
9	9	Industries	The Committee recommends to open retail outlets for Malabar Cement brands in all regions.

10	10	Industries	The Committee observes that increasing cost of production is the major challenge faced by the Company and urged to take necessary steps to reduce the cost of production.
11	11	Industries	The Committee observes that even though the land and raw materials for the Hindustan Newsprint are provided by the State Government, they are giving fly ash to private companies. The Committee opines that the lion's share of the fly ash produced in Hindustan Newsprint should go to Malabar Cements Limited and it should not be set apart to private companies. The Committee recommends to take effective measures to procure sufficient amount of fly ash from Velloor Hindustan Newsprint Ltd.
12	12	Industries	The Committee finds that Malabar Cements is paying income tax for the unavailed interest on the loan amount awarded to some Public Sector Undertakings without government guarantee for the implementation of the Greenfield projects. It was revealed that the Company has been paying tax for 7 years for the unavailed interest on the amount funded for the greenfield projects. The Committee recommends that Government may intervene in this matter and take appropriate action to avoid the payment of tax on the unavailed interest on the loan amount financed by the company to other PSUs.
13	13		The Committee blames the Company for not having a proper financial management and for not approaching the Government for Government guarantee. It opines that this crisis could have been avoided if the company had financed the loan amount to PSUs with Government guarantee. Considering the financial crisis faced by the Company, the Committee strongly recommends to take stringent measures for the realization of arrears of the loan amount financed by the Company to various Public Sector Undertakings in connection with Greenfield projects.

14	14	Industries	The Committee observes that eventhough there were strict norms for allotting agencies of Malabar Cements,
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18	18	Industries	The Committee recommends that the Company should maintain its own business line and strategic business policy.
19	19	Industries	The Committee recommends to expand the transporting sector of the Company and to make business dealings only with reputed and successful societies which are known to require huge amounts of Cement per day.
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21	21	Industries	The Committee observes that there is abundant sand deposit in the second mine unit of Pandarathumala and recommends to seek the consent of the Forest Department for collecting sand from the area.
22	22	Industries	The Committee urges the workers and officials of the company to work more efficiently and to submit necessary proposals to Government to make the company more profitable.
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APPENDIX-II

NOTES FURNISHED BY GOVERNMENT ON THE AUDIT PARAGRAPH

(Audit Report 2014-2015)

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	3.5	h	•	3		···· · · ·
					SD) to ensure due performance of alabar Cements Ltd, Palakkad	

Malabar Cements Limited is a fully owned Government Company engaged in the manufacture of grey cement. The company caters to approximately 10% of the total grey cement market of the state. It may also be mentioned that this is one of the few PSUs of the state that has been consistently making profits.

The raw materials for the manufacture of cement are sourced from various parts of the state and also adjoining states also. The Company has been following the Store Purchase Manual of the state government for all its procurements. Analysis of the number of bids that were being received in the e-tenders showed that generally the same parties were quoting for the tenders and very few new bidders came. The analysis also showed that the clause for performance guarantee as stipulated in the Store purchase Manual of the State Government was becoming a limiting factor for participants in the tender. Considering this fact, the 178th Meeting of the Board of Directors of the Company held on 29.04.2010 decided to insist on a Security Deposit equivalent to 5% of the order value for 3 months. This was done with an intent to get better rates with wider participation in the tenders of the Company.

The changes were made with the approval of the Board of Directors with a view to elicit better participation in the Company's tenders. However, there were some cases wherein, isuccessful bidders did not complete deliveries as stipulated in the tender conditions and this led to the litigations that have been pointed out by the Audit team.

It may be mentioned that Suit No.74/2015 for recovery has been filed against M/s N.T.Lorry Service for an amount of Rs.1,15,28,408.00 and Suit No.99/2015 against M/s Radha Limestone for an amount of Rs.50,95,216.00.

In the meantime, 208th meeting of the Board of Directors held on 4.10.2016 has decided that henceforth as stipulated in the Stores Purchase Manual Performance Security equivalent to 5% of the total value of the contract will be insisted upon from the successful bidders.

AMES RAJ

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