



Abstract

Karur Municipality – Bridge constructed across Amaravathy River at Karur on Build, Operate and Transfer basis – Damage due to floods – Cancellation of BOT Agreement – Constitution of Committee under Hon'ble Justice Thiru. P.Bhaskaran, (Retired) – Recommendations of the Committee – Accepted – Orders issued.

Municipal Administration and Water Supply (MA3) Department

G.O.(Ms) No. 250

Dated: 11.12.2008

Read again:

1. G.O.(Ms) No.29, Municipal Administration and Water Supply Department, dated 30.01.1996.
2. G.O.(Ms) No.87, Municipal Administration and Water Supply Department, dated 04.04.1997.
3. G.O.(Ms) No.179, Municipal Administration and Water Supply Department, dated 15.07.1997.
4. G.O.(Ms) No.5, Municipal Administration and Water Supply Department, dated 12.01.1998.
5. G.O.(2D) No.28, Municipal Administration and Water Supply Department, dated 06.05.1998.
6. G.O.(D) No.472, Municipal Administration and Water Supply Department, dated 02.12.2005.
7. G.O.(Ms) No.165, Municipal Administration and Water Supply Department, dated 19.12.2005.
8. G.O.(Ms) No.166, Municipal Administration and Water Supply Department, dated 19.12.2005.
9. Govt letter No.41135/MA3/2005-1 dated 22.12.2005
10. From M/S East Coast Consultants & Infrastructure Ltd Lr. ECCI Ltd/3J/1083/05 representation dated 26.07.2006. 19.08.2006.
11. G.O. (Ms) No.33, Municipal Administration and Water Supply Department, dated 1.3.2007.

Read also:

12. Report of Hon'ble Justice Thiru. P.Bhaskaran Committee from the Member Secretary and S.E, O/o. CMA, Chennai-5 in letter Roc. No.10272/2007/E3 dated 28.07.2008.

In the G.O 1st read above, administrative sanction was accorded for constructing a new bridge across Amaravathy River at Karur at a cost of Rs.1155 lakhs by accepting the request of Karur Municipality. Subsequently, in

the G.O. second read above, the following procedural guidelines were prescribed for undertaking the work under Build , Operate and Transfer basis :-

- i. A consultant shall be engaged by the Karur Municipality to prepare tender documents for construction of the bridge by obtaining grant from TNUIFSL;
- ii. On receipt of the report from the consultant, tender should be called for, for construction of the bridge on Build, Operate and Transfer basis. After scrutiny of the tender, selection should be made considering the concession period, toll to be collected from the vehicle etc, quoted by the tenderer and the work order given after obtaining the approval of the Government.
- iii. After the work is entrusted on this basis, the bridge will be under the maintenance of the BOT contractor from 15 to 20 years, Afterwards, the contractor should hand it over to the Karur Municipality.
- iv. The Karur Municipality should acquire both the private lands and Government lands adjacent to the approach road. As far as Government lands are concerned they will be alienated without any cost. However, the Municipality should take action to acquire private lands”

2. In the G.O. third read above, the tender documents prepared by the M/s.Kirloskar Consultants (appointed by TNUIFSL on behalf of the Karur Municipality) were approved and a Technical Scrutiny Committee comprising of Chief Engineer (H) (Designs & Investigation), Director, Highways Research Station and Chief Engineer (H) was formed for technical assessment / and additionally four more members were included to process the tenders.

3. As it was a project under the Build , Operate and Transfer scheme and first of its kind in the road sector of urban local bodies, the technical details of the tenders were scrutinized by the Chief Engineer (H) Designs & Investigation , as a member of the Technical Scrutiny Committee. After observing the formalities, the Technical Scrutiny Committee recommended to Government, the bid of M/S East Coast Consultants & Infrastructure Ltd., being the successful bidder to take up this work on B.O.T. basis on 18.12.1997. Subsequently, the structural designs of the bridge components, submitted by M/S East Coast Consultants & Infrastructure Ltd., Chennai, were cleared by the Chief Engineer (H) Designs & Investigation during 1998 in stages on the request of the Chief Executive Officer, Tamil Nadu Urban Development Fund.

4. In the G.O. fourth read above, permission was accorded to the Karur Municipality to enter into an agreement with the successful bidder i.e., M/S East Coast Consultants & Infrastructure Ltd subject to the following changes in the bid documents :-

- i) the period of validity was reduced to 90 days from the date of submission of bids ;

ii) the Municipality / other Agencies would not construct any other bridges within a radius of 10 km from the bridge during the concession period ;

iii) Hoardings and advertising rights on the bridge and approaches during the concession period are acceptable, subject to aesthetics and safety as determined by Karur Municipality;

iv) collection of toll from the vehicular traffic by M/s ECCI Pvt Ltd., on the bridge for 14 years after constructing the bridge was fixed as follows :

- a. Lorry (per trip / per day) – Rs.30/- (Rupees Thirty only)
- b. Cars / Vans / Jeeps (per trip / per day) - Rs.10 /- (Rupees Ten only)
- c. Tractors (per trip / per day) – Rs.25 /- (Rupees Twenty five only)
- d. Bus (per trip / per day) - Rs.30/- (Rupees Thirty only)
- e. Cranes and other heavy vehicles (per trip / per day) - Rs.50/- (Rupees Fifty only)

(The above toll was applicable for the year 1998. This would be increased @ 8% p.a)

5. Subsequently, in the G.O. fifth read above, the period of collection of toll from the vehicular traffic was amended as fourteen years, including the period of construction.

6. The Firm commenced the construction work on 25.03.1998 and completed the project on 11.02.2000. The bridge was thrown open to traffic on the same day. The company maintained the bridge and collected the toll as per the terms of agreement.

7. The position being such, when Tamil Nadu experienced heavy rains during the Northeast Monsoon of the year 2005, there were unprecedented floods in almost all the rivers of the State. The river Amaravathy was in spate due to the unprecedented floods on 23.11.2005 and 24.11.2005 which caused extensive damage to the approach road to the Karur Amaravathy bridge.

8. To enquire into the reasons for the damages caused to the New Amaravathy bridge, a Technical Experts Enquiry Committee was constituted in the G.O. sixth read above, with the following members:-

1. Thiru.S.Perumal, Engineer-in-Chief, Public Works Department, Chepauk, Chennai-5.
2. Thiru.P.M.Palanivelu, Director, Highways Research Station, Guindy, Chennai-32.
3. Thiru N.Sekar, Chief Engineer, (Investigation and Design), Highways and Rural Works Department, Guindy, Chennai-32.

9. The above said committee submitted its Report on 14.12.2005 , based on which following directions were issued in the G.O. seventh read above :-

“ a) The Highways and Rural Works Dept should take over the new Amaravathy Bridge and the approach roads connecting the National Highways on the one side and the State Highways on the other side.

b) The rectification works recommended by the Technical Experts Committee should be undertaken by Highways Department and bridge restored for public use.

c) After restoration of the bridge, collection of toll will be stopped in the public interest.”

10. Consequently the Municipal Commissioner of Karur Municipality was directed in the G.O eighth read above, to cancel the contract under the relevant provisions of the “Concession Agreement” entered into with the BOT operator, namely M/S East Coast Consultants & Infrastructure Ltd, Chennai on account of breach of obligations under agreement.

11. In Govt letter nineth read above, a complaint was made to the D.G.P with a request to entrust the complaint to the proper investigation wing and to investigate further into the circumstances leading to the conception of the project and its sanction, execution and current performance of the contract and also to take further action in accordance with the law. The CBCID filed an FIR and investigated the matter. On the submission by the CBCID, Karur, the case was later closed by Chief Judicial Magistrate, Karur after recording it as ‘mistake of fact’.

12. In their representation tenth read above, M/S East Coast Consultants & Infrastructure Ltd have stated that as per the terms of contract, they were responsible for the upkeep and maintenance of the bridge till the end of the concession period of 14 years after which the bridge was to be handed over to the Karur Municipality and that they were entitled to collect toll from the bridge as per the terms of the contract till the end of the concession period. They have further reported that they owe a substantial amount to the financial institutions in respect of this project and the premature termination of the BOT contract has put them into severe financial constraints, besides creating a lack of confidence in the financial institutions, of their ability to participate in future BOT ventures. They have further expressed their willingness to fulfill all their obligations under clause 10.3 of the agreement for repairing the damaged portion of the approach road, pathway and footpath to the satisfaction of the Karur Municipality, but the opportunity was not given to them for repairing the flood- damage by the Karur Municipality, despite the fact that the maintenance/upkeep of the bridge fall under their scope of work until the bridge was handed over to the local body. The company also represented that they were ready to reimburse the cost incurred towards carrying out temporary repair work, and further requested to revoke the order of cancellation of the BOT contract and restore the rights available under the provisions of the BOT agreement.

13. The Government in the G.O. eleventh read above, therefore constituted a Committee consisting of the following members to find out “if there

was any breach of obligation under the BOT agreement for the Karur Amaravathy Bridge Project by BOT operator M/S East Coast Consultants & Infrastructure Ltd and if not whether any compensation has to be paid and if so what is the quantum of the compensation to be given to BOT operator”.

1	Hon'ble Justice Thiru.P.Bhaskaran (Retd)	Chairman
2	Thiru.T.K.Shanmugasundaram, Chief Engineer (General), Highways Department, Chennai-600 005.	Member
3	Thiru.A.Devaraj, Additional Director, Finance (BPE) Department, Chennai-9.	Member
4.	Thiru.R.Raghunathan, Superintending Engineer, Commissionerate of Municipal Administration, Chepauk, Chennai-600 005.	Member Secretary

14. The Report of the above said Committee has been received by the Government, from its Member – Convener & Superintending Engineer in his letter twelfth read above for taking follow up action.

15. The Committee in its Report has concluded that due to the unprecedented floods on the night of 23.11.2005/24.11.2005 and the site conditions prevailing, the damage to the retaining wall on the Dindigul side was caused; and that there was no damage to the main bridge structure. The committee also concluded that the BOT operator, M/s E.C.C.I Pvt. Ltd., Chennai, had not violated any of the agreement conditions and, that the entire damage to the retaining wall had occurred only due to the unprecedented flow in the river . The agreement conditions also stipulate that the BOT Operator has to undertake any rehabilitation works required in case of any damage to the structure, and since the Company expressed their willingness to take up the rehabilitation work in tune with agreement conditions, the Committee felt that necessary directions should have been given to both the Department and the Company to commence execution of the rehabilitation work. The Committee has therefore come to the conclusion that there is no violation of agreement on the part of the BOT operator, M/s E.C.C.I Pvt. Ltd and therefore they should be paid eligible compensation as per the agreement provisions and going by natural justice.

16. The Committee considered the following three options in regard to payment of compensation to the BOT operator:-

(a) Depreciated value of assets (bridge) taken over by the Municipality as on 25th Nov.2005 as per the audited accounts of the Company as on the date of taken over and adding reasonable margin on the above value till the date of payment.

(b) Return on capital employed by the BOT operator based on the dividend projected in the DPR and the interest payable for the balance loan.

(c) Present value of estimated net future collections from the bridge (gross collection minus estimated administrative and other expenditure).

17. Among the above three options referred to in para 16 above, the committee has recommended the option (c), namely, calculation based on present value of estimated net future collections from the bridge.

The projected Toll collection after deducting anticipated staff cost and administrative expenditure (with 5% increase in then expenditure per annum) at the discount rate of 8%,10% and 12% during the left over period from 2007-2014 will be as follows :-

(Rupees in lakhs)

Year	Projected Gross collection	Anticipated staff cost and administrative expenditure with 5% increase p.a.	Estimated Net collection	Discounted value		
				8%	10%	12%
2007	252.34	18.00	234.34	216.99	213.02	209.27
2008	272.30	18.90	253.40	217.16	200.31	201.96
2009	294.02	19.85	274.17	217.69	205.90	195.21
2010	318.92	20.84	298.08	219.09	201.54	189.58
2011	344.26	21.88	322.38	219.54	200.20	182.79
2012	371.21	22.97	348.24	219.39	196.41	176.56
2013	371.21	22.97	348.24	203.02	178.65	157.40
2014	371.21	22.97	348.24	188.05	162.63	140.69
Total	2595.47			1700.93	1567.66	1453.46

18. The committee has made the following recommendations:

i. that out of three options placed before it , the compensation based on the future estimated collections discounted at 10% is a reasonable one and accordingly the compensation of Rs.15.68 crores, as on the cut off date of 31.03.2008, may be paid as reasonable compensation to the BOT operator ;

ii. that the expenditure met by the Highways department on temporary restoration shall be deducted from the above recommended amount ;

iii. that the release of the compensation in full or part till the promised restoration now being carried out is completed as per schedule agreed upon, may be decided by the Government ; and

iv. that the additional protective works taken up by the Agency, if any, shall be quantified and the compensation decided as this matter is outside the scope of the Committee.”

19. The Government have carefully examined the recommendations of the “ Committee on Bridge across Amaravathy river at Karur” under the Chairmanship of Hon’ble Justice Thiru.P.Bhaskaran (Retd) taking into account the factors like, loss that will be incurred by the BOT operator due to premature termination of contract / deprivation / non-collection of toll during the remaining eight years from 2007-2014, current cost of construction of the bridge and the fact that , no damage has been caused to the main structure of the bridge, that a commitment has been made by the BOT operator for carrying out the rehabilitation work and the current market rate of interest and have decided to accept the recommendations of the Committee and hereby orders that the Construction Company namely M/s ECCI Pvt Ltd be paid a compensation amount of Rs.15.41 Crores (i.e.) after deducting the expenditure of Rs.27 lakhs incurred by the Highways Department towards temporary restoration .

20. The expenditure sanctioned in para 19 shall be debited to the following sub head of account :-

“2217 URBAN Development 80 General 001 Direction and administration I non-plan AC. Commissioner of Municipal Administration 51. compensation 02 other compensations (DPC 2217 80 001 AC 5124)”

The expenditure shall be included in the Final Supplementary Estimate for 2008-09 for which proposal shall be sent by the Director of Municipal Administration at the appropriate time to Finance Department. The Director of Municipal Administration is authorized to draw and disburse the amount sanctioned in para 19 above after inclusion of the expenditure in the Final Supplementary Estimate.

21. This order issues with the concurrence of the Finance dept in their U.O.No. 566/SS (PK)/08/dated 10.12.2008 with ASL No.1389 (one thousand three hundred and eighty nine).

(BY ORDER OF THE GOVERNOR)

**NIRANJAN MARDI
SECRETARY TO GOVERNMENT.**

To

The Director of Municipal Administration, Chepauk, Chennai – 600 005

Copy to

The Finance Department, Chennai -600 009.

The Highways and Minor Ports Department, Chennai -600 009

Secretary to Hon’ble Chief Minister, CM Office, Chennai – 600 009

Special PA to Hon’ble Minister (Finance) Department, Chennai - 600 009

Special PA to Hon’ble Minister(RD&LA) Department, Chennai - 600 009.

Private Secretary to Chief Secretary, Chennai -600 009.

Private Secretary to Secretary,

Municipal Administration Water Supply Department,

Chennai -600 009.

The Finance(MAWS) (BG.I)(BG.II)(B.Coord) Department, Chennai-600 009.

//Forwarded by Order//

SECTION OFFICER.