



# **A CASE STUDY IN URBAN LOCAL BODIES**



**NON-RECOVERY OF CESS Rs.41.34 CRORE  
RESULTING IN  
LOSS OF MUNICIPAL REVENUE OF Rs.41.34 LAKH**

**REGIONAL TRAINING INSTITUTE KOLKATA  
INDIAN AUDIT AND ACCOUNTS DEPARTMENT  
JUNE 2016**

## ***Preface***

***Regional Training Institute, Kolkata was declared as Knowledge Centre for Local Bodies Audit in August 2012. In pursuit of excellence in our assigned areas of knowledge centre, we attempt to bring out series of interesting cases of frauds / deviation from rules and regulations etc. reported and reflected in the Urban Local Bodies and Panchayati Raj Institutions Reports of different State Governments, as case studies. In preparing the instant case study the model adopted by INTOSAI and some other business schools have been followed.***

***The case study on “Non-recovery of Cess amounting to Rs.41.34 crore resulting in loss of municipal revenue of Rs.41.34 lakh” has been prepared based on the Audit Para 9.2 of the Report of the Examiner of Local Accounts on Urban Local Bodies for the year ending March 2013, Government of West Bengal.***

***I hope that the readers would benefit from this. The suggestions, if any, are welcome and would help us in future.***

***RTI, Kolkata  
June 2016***

***Sd/  
Sandeep Singh  
Principal Director***

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***Kolkata Municipal Corporation did not collect cess of Rs.41.34 crore at the time of sanctioning building plans during 2008-09 to 2011-12 and suffered loss of Rs.41.34 lakh towards cost of collection.***

## **1 Background**

Sizeable numbers of workers in the India are engaged in building and other construction works. The work of construction workers has got inherent risk to the life and limb of the workers coupled with temporary relation between the employer and employees, uncertain working hours, lack of basic amenities and inadequacies of welfare facilities. Considering the vulnerable conditions of workers, the Building and other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 was framed which empowered every State Governments to constitute Building and Other Construction Workers Welfare Board. Function of the Board is to provide and monitor social security schemes and welfare measures for the benefit of building and other construction workers. To ensure sufficient funds for the Welfare Boards, for undertaking social security scheme and welfare measures of workers, the Building and Other Construction Workers' Welfare Cess Act, 1996 was framed which stipulated levy of cess on the cost of construction incurred by the employers on the building and other construction works. The provisions of the Cess Act for levy of cess are -

Section 3(1): Levy and collection of a cess at such rate not exceeding two per cent, but not less than one per cent, of the cost of construction incurred by the employer.

Section 3(2): Advance collection of cess through a local authority where an approval of such building and other construction work by such local authority is required.

Section 3(3): The proceeds of the cess collected to be paid to the Board by the local authority after deducting the cost of collection of such cess not exceeding one per cent, of the amount collected.

Thus the local authorities are responsible to collect cess at the minimum rate of one per cent while according approval for construction of building or any other

work. Authority is also empowered to collect cost of collection of such cess not exceeding one per cent of the amount collected in the shape of its own revenue.

In West Bengal the State Government stipulated (December 2007) that the construction contractor and individual, who employ workers in any building or construction work in relation to his own residence shall pay a cess at the rate of one per cent of the cost of construction incurred, if the cost exceeds Rs.10 lakh. The Urban Local Bodies shall collect the cess alongwith the applications for sanctioning building plans.

## **2 Environment**

Kolkata Municipal Corporation (KMC), during the period from 2008-09 to 2011-12, failed to collect the cess while according sanction of 10623 building plans for erection of building or addition to or repairs of buildings, involving construction cost of Rs.10 lakh and above in each building plan. KMC Sanctioned building plans covered area of 7655781.14 m<sup>2</sup> with cost of construction Rs.4134.12 crore. Thus KMC not only failed to recover an amount of Rs.41.34 crore (one per cent of Rs.4134.12 crore) towards labour cess but also lost the opportunity to earn revenue of Rs.41.34 lakh towards cost of collection. KMC had replied there was no system of collection labour cess previously while according approval for building plan.

## **3 Opportunity to Prevent Irregularity**

KMC could avoid non observance of Government regulation thereby loss of own revenue in the shape of cost of collection by adopting the following principle/procedure-

- i. By formulating a system of updating recent Government orders for observance
- ii. To become financially sustainable all the sources to enhance own revenue should have been stressed upon and availed
- iii. Emphasising the need of work related to social security and welfare measures of citizen being a local Government

- iv. By ensuring maintenance of records regarding sanction of building plan duly recording the area, value of works, amount realised towards cess
- v. By fixing responsibility for realisation of cess while according sanction for building plan proposal and issue building permit
- vi. By establishing a system of internal check utilising the services of internal auditor

#### **4 Act of Irregularity**

- a. KMC was indifferent to implement the Building and Other Construction Workers' Welfare Cess Act, 1996 and State Government order of December 2007 though had knowledge on such direction.
- b. No system was evolved to realise the Workers' Welfare Cess and thereby to enhance the source of own revenue.
- c. Welfare measures and social security aspects of workers were ignored by not implementing the Act *ibid*.

#### **5 Opportunity to detect and proving irregularity**

##### **(i) Red Flag Indicator**

During test check of the records of KMC it was seen that-

- 1) No revenue was earned towards cost of collection of cess though several building plans were sanctioned, involving construction cost of Rs.10 lakh and above since the issue of orders by State Government in December 2007.
- 2) Applications for sanction of Building Plan were not accompanied by a crossed demand draft in favour of the Board for an amount of the cess payable in advance, as stipulated in the Building and Other Construction Workers' Welfare Cess Act 1996 and Rule 1998.
- 3) No notification/instruction was found for implementing the Building and Other Construction Workers' Welfare Cess Act, 1996.

**(ii) Follow up of Red Flag**

Audit examination and evidence collection-

- 1) Audit party while conducting test check of the records and followed by discussion with the KMC officials ascertained that the corporation did not take any steps to realise cess while according sanction for the building plan applied by the taxpayers.
- 2) The information/records/registers for according approval of building plan was sought for covering the period from 2008-09 to 2011-12. Scrutiny was made for selecting the sanction of building plan, involving construction cost of Rs.10 lakhs and above.
- 3) Test check of application for sanction of building plan established that the procedure for advance collection of cess according to section 3(2) and rule 4(4) of the Building and Other Construction Workers' Welfare Cess Act, 1996 and Rule 1998 respectively was not followed.

**6 Lessons learnt**

- a) Strict observance of time to time formulation of acts/rules and orders issued by the Government needs to be stressed upon for implementation.
- b) Senior responsible authority of the organisation needs to monitor implementation of recent instructions issued by the Government or any other authority.
- c) Payment of advance cess to be made mandatory while applying for building plan sanction duly issuing notice in this regard by the authority.
- d) System of Cross checking the total value of construction of building plan sanctioned and the amount of cess/cost of collection realised needs to be followed.
- e) Regular internal check by the internal auditor is vital for proper action.

**7 Enclosure for reference**

- Audit para 9.2 appeared in the Report of the Examiner of Local Accounts on Urban Local Bodies for the year ending March 2013, Government of West Bengal.

- Copy of reply of KMC on the observation of audit.
- Copy of circular dated 23<sup>rd</sup> August, 2013 issued by KMC imposing collection of cess under the building and other constructions workers' welfare cess Act 1996 in the wake of audit observation issued.



## 9.2 Non-recovery of Cess amounting to Rs. 41.34 crore resulting in loss of municipal revenue of Rs.41.34 lakh

Kolkata Municipal Corporation did not collect cess of Rs. 41.34 crore at the time of sanctioning building plans during 2008-09 to 2011-12 and suffered loss of Rs. 41.34 lakh towards cost of collection.

In terms of Section 3 (1) of the Building and Other Construction Workers' Welfare Cess Act, 1996, a cess shall be levied and collected at such rate not exceeding two *per cent*, but not less than one *per cent*, of the cost of construction incurred by an employer.

The Section 3 (2) of the Act, *ibid*, further prescribes for advance collection of cess through a local authority where approval of building or other construction work by such local authority is required.

The State Government stipulated (December 2007) that for every Urban Local Body (ULB), construction contractor and individual, who employ workers in any building or construction work in relation to his own residence, shall be liable to pay a cess at the rate of one *per cent* of the cost of construction incurred by them, if the cost exceeds Rs. 10 lakh. The ULBs shall collect the cess through demand drafts alongwith the applications for sanctioning building plans.

Scrutiny of records revealed that Kolkata Municipal Corporation sanctioned 10623 building plans <sup>1</sup> during the period from 2008-09 to 2011-12 and the construction cost for the said buildings was Rs. 4134.12 crore as detailed below:

Table 40

Year	Area sanctioned u/s 393 <sup>2</sup> of KMC Act	Area sanctioned u/s 394 or u/s 72 <sup>3</sup> of KMC Act	Total area sanctioned	Cost of Construction <sup>4</sup>	Cess to be collected (@1% of total cost of Construction)
	(In m <sup>2</sup> )				
2008-09	1651214.144	176949.776	1828163.92	9872085168.00	98720851.68
2009-10	1602905.399	61374.753	1664280.15	8987112820.80	89871128.21
2010-11	1963205.64	230538.61	2193744.25	11846218966.20	118462189.66
2011-12	1892133.64	77459.18	1969592.82	10635801211.80	106358012.12
Total			7655781.14	41341218166.80	413412181.67

(source: Records of KMC)

<sup>1</sup> Having construction cost of Rs.10 lakh and above

<sup>2</sup> For erection of building.

<sup>3</sup> For addition to or repairs of buildings

<sup>4</sup> Computed at the minimum rate of Rs. 5400 per m<sup>2</sup> for IPS flooring.

As such KMC was to collect cess amounting to Rs. 41.34 crore at the rate of one *per cent* of the estimated cost of construction (i.e. Rs. 4134.12 crore). Thereafter, KMC was required to deposit the cess with the Board retaining one *per cent* with them as cost of collection<sup>5</sup>.

On the other hand, violation of the Government orders and non-collection of the cess amounting to Rs. 41.34 crore, denied the social welfare for workers intended under the Act. KMC also lost the opportunity to earn revenue of Rs. 41.34 lakh<sup>6</sup> towards cost of collection.

KMC replied that decision (August 2013) to impose labour cess with effect from 1 September 2013 had since been taken.

KMC further stated (September 2013) that there was previously no procedure for collection of Labour Cess and the owner / developer / contractor perhaps deposited Labour Cess directly to the Labour Welfare Board.

The reply is not tenable as onus of collecting the cess was bestowed on the ULB and not on the individual owner / developer / contractor.

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<sup>5</sup> Vide memo No. 6895 - F dated 11.09.06 of Finance Department, Government of West Bengal.

<sup>6</sup> @ of one *per cent* of total cess collected



THE KOLKATA MUNICIPAL CORPORATION  
CENTRAL MUNICIPAL OFFICE BUILDING  
5, S.N. BANERJEE ROAD,  
KOLKATA-700 013

Dated: 23rd August, 2013

**MUNICIPAL COMMISSIONER'S CIRCULAR NO. 47 OF 2013-14**

Sub: Imposition of Cess under the building and other constructions, workers' welfare cess Act, 1996

1. K.M.C. is declared as Advance Cess Collector.
2. The Building Department will collect the advance cess @ Rs. 1.0 % of the estimated cost of construction during -disposal of the application for new proposals, addition/alteration and regularisation where cost of Construction is more than Rs. 10.0 lakhs under BI\*Code No. 9310/970 along with usual demand of fees
2. Advance Cess would be levied as per guideline of the cost of construction within Kolkata Metropolitan Development Area as prescribed by the Jt. Secretary, Govt. of West Bengal which is as follows :-
  - a) With IPS Flooring Rs. 5,400/- per square meter.
  - b) With Mosaic flooring Rs. 6,300/- per square meter
  - c) With Marble flooring Rs. 7,300/- per square meterOther floor finish has to be included in 'c' i.e. marble flooring
4. C.M.F & A. will monitor the collection of cess @ 1.0 % cost of construction under B.1. Code No. 9310/970.
5. The applicant will submit a declaration in regard to the nature of floor finish.
6. K.M.C. will collect advance cess in case of all pending proposals from the date of effect mentioned below.
7. Director General (IT) will take initiative for updating all the existing software to enable Bldg. Department for collection of cess and give notification through website for its wide publication.

The above decisions will take effect from 1<sup>st</sup> September, 2013 prospectively.

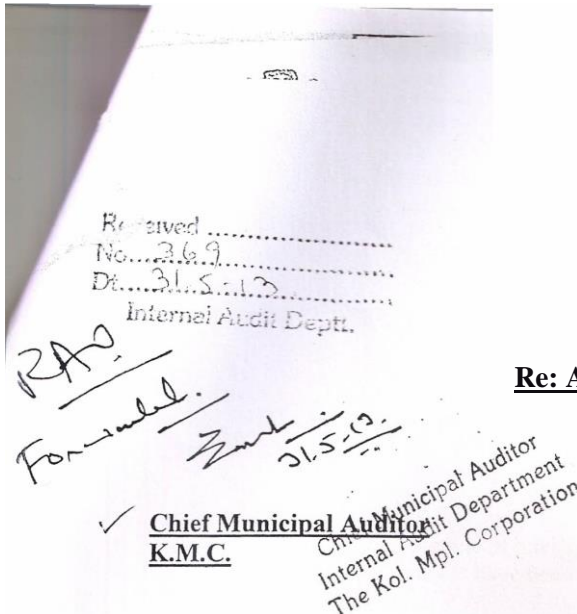
This is issued as per approval of Mayor-in-Council dt. 02.08.2013 vide Item No. M.69.9.

Municipal Commissioner

Distributions:-

1. Hon'ble Mayor/Dy. Mayor/Members, Mayor-In-Council.
2. It. MpJ. Commissioner(Dev.)/ Jt. MpJ. Commissioner (Rev.)
3. All Controlling Officers
4. C.M.F. & A., C.M.A.
5. Dy. C.E.(Bldg.)/North/South
6. Dy. C.E. (C)/Ex. Engineer (C), Building Department

Municipal Commissioner



**Re: Audit of Building Department**

In reference to Memo No. *GAI/RAO/KMC/Building/13-14/136* Dated 23.05.2013 of Resident Audit Officer, Kolkata Municipal Corporation, this is to inform you that Kolkata Municipal Corporation has not levied any Cess under Building And Other Construction Worker's' Welfare Cess Act, 1996 for the Financial Year 2011-12. The information may kindly be forwarded to Resident Audit Officer, Kolkata Municipal Corporation.

**Director General (Building)**

**Copy to:**

1. Municipal Commissioner
2. Controller of Municipal Finance & Accounts, K.M.C

**Director General (Building)**