

## **Report of the Public Accounts Committee On 'Smart Cards' issued by the Transport Department**

The attention of the Committee was drawn towards the alleged impropriety in the procedure adopted for the award of tenders in the matter of 'Smart Cards' issued by the Transport Department of the Government of Delhi. Public Representatives cutting across party lines, the Media and general public expressed the concern over the allegations.

In the meeting of the Committee held on 25<sup>th</sup> January 2006 members of the PAC expressed their concern over the issue and desired that the matter should be looked into. Accordingly the issue was examined in detail by the Committee in its meetings held on 6<sup>th</sup> February 2006 and 23<sup>rd</sup> February 2006.

### **Power of PAC to examine issues *suo moto*:**

Before delving into the subject the Committee would like to settle an important question on the competence of the Public Accounts Committee to enquire into such issues *suo moto*. It is a fact that the past PACs of the Delhi Assembly had not gone beyond the C&AG's Report but PACs of the Parliament and other state legislatures have taken up such issues. Keeping in view the fundamental principle of democracy of ensuring the accountability of the executive towards the legislature, this Committee would like to make a healthy beginning in Delhi also.

The Rules of Procedure and Conduct of Business in the Legislative Assembly of the National Capital Territory of Delhi provides for a 'Special Report'. Rule 177 provides that -

**"177. Special Report by the Committee** - *A Committee may, if it thinks fit, make a special report on any matter that arises or*

*comes to light in the course of its working which it may consider necessary to bring to the notice of the Speaker or the House, notwithstanding that such matter is not directly connected with, or does not fall within or is not incidental to, its terms or reference."*

Kaul & Shakdher's 'Practice and Procedure of Parliament' (P.816 Fifth Edition) states the nature and scope of examination of the PAC as follows: "*The functions of the Committee extend 'beyond the formality of expenditure to its wisdom, faithfulness and economy'. The Committee thus examines cases involving losses, nugatory expenditure and financial irregularities. When any case of proved negligence resulting in loss or extravagance is brought to the notice of the Committee, the Ministry concerned is called upon to explain as to what action, disciplinary or otherwise, has been taken to prevent a recurrence. In such cases the Committee also records its opinion either disapproving the action of the Government or passing strictures against the extravagance or lack of proper control by the Ministry or Department concerned.*

*Another important function of the Committee is the discussion of points of financial discipline and principle. "*

The matter of PAC examining cases not included in the Report of the C&AG has also been dealt therein (P.818). It states "*The Committee has of its own accord inquired into the various irregularities which have become public or which have been brought to the notice of the government, even though no formal Audit Report was presented on the subjects."*

Erskine May's 'Treatise on The Law, Privileges, Proceedings and Usage of Parliament' mentions the functions of the PAC in UK as follows: "*The Committee does not concern itself with policy; its interest is in whether policy is carried out efficiently, effectively and*

*economically. Its main functions are to see that public moneys are applied for the purposes prescribed by Parliament, that extravagance and waste are minimized and that sound financial practices are encouraged in estimating and contracting and in administration generally.”*

From the statutory provision mentioned above and the practice and procedure of the Parliaments it is obvious that the PAC is very much empowered to look into issues where there is an apprehension of irregularity. In such cases it can even examine issues which have not been included in the Report of the C&AG.

## **REPORT:**

### **Brief Background:**

The Transport Department stated that the process of adoption of smart card technology for Driving License and Vehicle Registration Applications commenced in February 1999 when a Company called M/s. Smart Chip made a presentation on the advantages of smart card technology (with microchip). On 20<sup>th</sup> December 1999 the Secretary, Ministry of Surface Transport, Government of India, wrote to the Chief Secretary Delhi and asked him to consider the proposal for adoption of the smart card technology (with microchip) and advised that in order to make the system configuration and technical specification uniform throughout the country for interconnectivity and easy retrieval the guidance of NIC (National Informatics Centre) could be made use of.

In June 2000 a Seminar for Induction of Information Technology in Road Transport Sector was held in Vigyan Bhawan Delhi in which Officers of the Ministry of Surface Transport, State Transport Departments, Transport Operators and Vendors. It was decided in the meeting to establish an Apex Unit under the Chairmanship of the

Secretary (Transport) Government of India to oversee the strategy planning and its implementation for induction of IT in Road Transport Sector. The Apex Group was constituted in July 2000 with representative of Transport Secretary of Delhi also as its Member. It was also decided in the Seminar to setup a Technical Committee to examine various Technical aspects associated with IT induction and Sub-Groups were to be created on specialized areas to detail out specific technology requirements. Delhi was a member of the Sub Group on Transport Department Automation Software and Sub Group on Smart Card Standardization.

The Technical Committee submitted its report on 31<sup>st</sup> October 2000 which was considered by the Apex Group. The Apex Group made its recommendations in December 2000.

The Committee called for these recommendations, guidelines issued by the Government of India, relevant correspondences with the Government of India, procedure adopted for the bid process etc. On the basis of the examination of these documents the Committee came to the conclusion that there were severe drawbacks and irregularities in the manner in which the whole scheme was implemented. These can be summarized as follows:

**I. NO JUSTIFICATION FOR ADOPTING AN UNTESTED TECHNOLOGY:**

In October 2000 the Technical Committee had come out with its report 'National Standard for the Driver Licence Card and Vehicle Registration Card'. The Report mentioned three technological options for storage of information on the card:

- (i) Micro Processor based
- (ii) Integrated Circuit Memory and
- (iii) Optical Memory

The Technical Committee strongly recommended the first option i.e. 'Micro Processor' based chip for the smart cards. The report said "**Microprocessor** technology provides a technology which is much **more secure** and can have in-built function which can help **provide security to the stored data**. The **memory based cards**, where the security functions are not embedded in the card and are handled through an external device, thus splitting the security elements in the chain, **makes it more vulnerable as compared to Microprocessor based Smart Card**." It stated that where volume of data to be stored alone was to be concerned then memory cards could be used but where security of information was concerned the micro processor based chip was best suited. The Report also mentioned that the entire information would require only 1Kb of storage space. The Technical Committee was also of the opinion that the card system should be made compulsory for the transport vehicles and it should be kept optional for the non-transport vehicles.

On the basis of the Report of the Technical Committee the Apex Group held a meeting on 19<sup>th</sup> December 2000. In the meeting the representative of the Delhi Government suggested an increase in the memory capacity so that the whole life history of the vehicles in terms of tax payments/challans/fitness including pollution could be incorporated in the card itself. The Secretary (Road Transport and Highways), Government stated that the state governments could introduce additional data/columns over and above the suggested format **so long as the basic minimum set of information is available across the country**. The NIC representative clarified that storage **capacity of 1 Kb was more than sufficient** for the suggested format. It was also further stated that these **additional information was best captured and maintained in the backend**

**of the system i.e. the computer in the Transport Department. Thus there was no obvious need to carry all these additional information on the card to be issued to the vehicle owner.**

In its reply dated 22<sup>nd</sup> February 2006 the Department has stated that on 13<sup>th</sup> December 2000 (after the meeting of the Apex Group) a meeting was held under the chairmanship of the Chief Minister to discuss introduction of Smart Card Technology in Transport Department. The Department states that in the meeting, the Chief Minister directed that the Department should go in for Smart Optical Card both for commercial and non-commercial vehicles. It is not clear whether the Department brought to the notice of the Chief Minister that the Apex Committee of the Union Government and States was already seized of the matter and it had recommended a standardized card with microprocessor chip and also that non-commercial vehicles were not to be burdened with the additional expense.

The Apex Committee held another meeting on 11<sup>th</sup> January 2001. The relevant recommendations of the Apex Committee were:

1. Any changes over and above the basic minimum standardized format to suit the specific additional requirements of a state shall be carried out by NIC only.
2. Microprocessor based smart card shall be used with 4Kb storage capacity. The cost of the card would be between 80-130 rupees and life of the card would be assured for ten years.
3. Keeping in mind the inter-operability and non-proprietary use of technology, it is proposed that the operating system to be used for smart cards should be from the open domain and not proprietary ones offered by the vendors. This is to ensure that the future developments could be done by different independent agencies for induction of this technology.

The Committee had sent a questionnaire to the Department and sought to know:

1. Comparative Statement of the features available in the smart card of various states and their respective costs
2. The basis on which the decision was taken for incorporating new technology
3. Whether any experts were consulted or whether any background study was undertaken prior to recommendation of adopting the new technology. Details along with the recommendations if any.

In reply to the query of the Committee regarding comparative study of the technology being adopted by the other states the Department replied: *".. a number of states started consideration on adoption of smart card technology at almost the same time. Any comparison done among features available in smart card of various States and the respective costs must therefore be seen in the context of each state's specific needs, their prevailing IT capability and their own strategies to deal with the issues. To that extent any comparison made between features/costs of smart card in different states is not valid for determination of features/cost by another state."*

**In short, no comparative study was undertaken by the Delhi Transport Department before adopting the new technology of optical memory strip for the Registration of Vehicles.** The argument of the Department is not acceptable. It was only after keeping in view the specific needs of the various states that the Apex Committee had prescribed a standardized format and technology for the smart card to be applicable throughout the country.

In reply to the question regarding the basis for adopting the new technology and whether any experts were consulted or whether any

background study was undertaken the Department has stated that the decision to adopt the smart card technology was taken in the wake of the suggestions, recommendations and guidelines provided by MORTH, (Ministry of Road Transport and Highways) Government of India.

The Committee would like to clarify its stand on the Smart Card here. The Committee is not against the adoption of the smart card system as a substitute to the manual system of Registration Certificates. The Smart Card in Delhi has adopted two technologies for data storage. First the microprocessor based chip of 4kb capacity and secondly the optical memory strip of 1.5 Mb capacity. The objection of the Committee is to the fact that the Department has burdened the vehicle owner with the optical technology which was not at all needed in the first place. Had the Department stuck to the standardized format (on a microprocessor chip) of the MORTH the consumer would have had to pay only Rs. 80-130 whereas due to the incorporation of the so called 'latest technology' of optical memory strip he has to pay Rs. 370/- to the vendor over and above the Registration Fees of Rupees 100/- which is taken by the Department.

**Nowhere in the recommendations, guidelines and suggestions of the MORTH has the 'optical memory' technology been advocated. On the contrary as mentioned earlier the Technical Committee had discouraged its use on the grounds that it was not secure for storage of sensitive information.** Time and again the experts had reiterated the benefit of the microprocessor based chip technology and accordingly the Apex Committee had finalized a standardized format which was to be carried on the smart card. Although MORTH allowed the states to incorporate additional information the recommendation of the Apex Group was *"if necessary any changes over and above the basic minimum standardized format*



*to suit the specific additional requirements of a state shall be carried out by NIC only.*" Moreover the Apex Committee was also of the view that the Department could store the additional information on its computers instead of the smart card.

The Department had also stated in its written reply that "*with the amendment of the Central Motor Vehicle Rules, it became mandatory for all the states to comply with the amended rules and to incorporate this technology in their driving licence and vehicle registration certificate applications.*" **The Department has again attempted to hide behind the decisions of the Government of India to stave of the criticism of hasty and unwise decisions.** The said Central Motor Vehicle Rules was amended on 31<sup>st</sup> May 2002 to facilitate the use of smart cards and the formats of application and registration certificates were prescribed. Later on 10<sup>th</sup> August 2004 another amendment of the Rules was notified where carrying additional optional medium on the smart card was allowed. Whereas Delhi had floated the tenders for the smart optic cards in Delhi in February 2001 itself. **Thus at the time of issue of the tenders for smart optic cards there was no compulsion on the Delhi Government for an additional medium of storage of data. Even the subsequent amendment in the following year was only optional and not mandatory.**

In the meeting held on 23<sup>rd</sup> February 2006 the Commissioner (Transport) stated that the optical medium contained the scanned copies of the entire file of the vehicle. He also admitted that the information on the optical strip could not be accessed by the traffic and enforcement staff on the roads with the hand-held readers. It could be accessed only in the computers installed in the office! A scanned image definitely needs huge storage capacity but where is the

justification for burdening the vehicle owner if it is to be used only in the office. As suggested in the meeting of the Apex Committee in December 2000 the information should have been stored in the back-end of the system (computers in the Transport Department).

Vide its reply dated 27<sup>th</sup> February 2006 the Department has stated that the following information is available on the optical medium:

1. Prescribed Form 23A
2. The previous details of tax record of cardholder
3. past history of accident(s) by the cardholder
4. Biometrics (thumb impression, photographs, etc)
5. Complete Database of pending prosecution cases received from other zonal offices and other states
6. Particulars of wanted notes received from other Government Departments, i.e. Police, Excise, etc.
7. Any other relevant information ordered to be included from time to time.

The Committee was surprised to note that most of the information was repetitive of the information already contained in the microprocessor chip and there was nothing which could not have been stored in the back-end of the system. The prescribed Form 23A is already contained in the microprocessor chip! What is more shocking is the fact that the details of the information to be carried on the optical strip were worked out in a meeting held under the chairmanship of the commissioner (Transport) on 7<sup>th</sup> April 2004. **Which implies that on the date of issuing the tender (February 2001) and even on the date when the contract/agreement was signed (June 2003) the Department had no idea of what information was to be stored on the optical strip medium. It appears that the technology to be adopted and the company which would supply it were predetermined and the Department had felt no need to**

**undertake a feasibility study of the technology or the final requirements.**

**Thus the Department has failed to throw light on the need and justification for an additional expensive technology, the research undertaken on it and expert views, if any, on the basis of which the technology was adopted. The Department was not at all justified in imposing an additional burden on the pretext of 'value addition' on the vehicle owner with an untested technology which was vulnerable to breach of security.**

## **II. OBJECTIVE OF INTER-OPERABILITY NOT ACHIEVED:**

An important objective of the induction of IT in the transport sector was that the smart card issued to the vehicle owners should be inter-operable i.e. it should be accessible to the public authorities throughout the country. The documents of the transport Departments throughout the country were to be standardized in a digital format to assure greater security and it was also to be operable inter-state. The police, transport, enforcement or even the tax authorities in any corner of India was supposed to have access to the details on these smart cards.

In the meeting held on 23<sup>rd</sup> February 2006 the Commissioner (Transport) stated that the information on the optical strip could not be accessed by the hand held terminals. He also stated that the optical strip medium was not inter-operable and added that information on the optical medium was not meant for other states! **The Committee fails to understand the need for such information on the card if it can neither be accessed by the authorities in Delhi nor by their counterparts in other states.**

In its written reply the Department stated that it had fifty hand held terminals at present and training programme of the enforcement staff had commenced and training of the traffic police personnel was also proposed. In the earlier meeting held on 6<sup>th</sup> February 2006 the Commissioner had stated that around five lakhs cards had been issued and these constituted about 12-15% of the total vehicles. It may be noted that the tender was finally awarded in June 2003. **Thus even after the lapse of nearly two and a half years the operability of the card within Delhi itself is questionable in the absence of adequate hand held readers and trained staff.** The commissioner's reply to this argument was that the cards had been issued to the new vehicles and they were less likely to be subjected to checking!

Thus the prime objective of inter-operability is defeated as the cards are not operable within Delhi itself in the absence of sufficient number of hand held readers and trained personnel. Although the hand held readers in Delhi can access the stored information on the microprocessor chip but they are not compatible to access the information on the optical strip. **In the absence of these vital inputs the efficacy of introducing the smart cards itself is questionable.**

### **III OBJECTIVE OF USING 'NON-PROPRIETARY' TECHNOLOGY NOT ACHIEVED:**

The Department failed to adhere to another crucial recommendation laid down by the Apex Committee and reiterated by the MORTH which was of adopting a technology which was 'non-proprietary'. Anticipating future problems the Apex Committee had recommended - "*Keeping in mind the inter-operability and non-*

*proprietary use of technology, it is proposed that **the operating system to be used for smart cards should be from the open domain and not proprietary ones offered by the vendors.** This is to ensure that the future developments could be done by different independent agencies for induction of this technology.”*

However from the documents submitted by the Department it appears that the Department has accepted the claim of the vendor at its face value without bothering to verify the genuineness and competence of the vendor to offer a ‘non-proprietary’ technology.

Para 21.3 of the Concession Agreement dated 20<sup>th</sup> June 2003 signed between the Government and the vendor (Ms. Shonkh Technologies International Limited) reads as follows:

*“Shonkh shall have the proprietary right in the technology in the Project of Vehicle Registration Certificate of Smart Optical Card developed by Shonkh. Notwithstanding the above GNCTD shall at all times have the right to use the technology as well as the software involved in the issue of Vehicle Registration at all times after the termination of this agreement for any reason whatsoever other than for reasons of breach or failure on the part of GNCTD.”*

The clause is flawed on two accounts. **Firstly did Shonkh Technologies have the ‘proprietary rights’?** As per the Report of the Negotiation Committee constituted by the Transport Department *“The optical media is the proprietary item of M/s.Drexler Technology Inc., USA. M/s STIL (i.e Shonkh Technologies International Limited) will be buying the Smart Optical Card from M/s. Laser Card Corporation, USA, which is using the technology of M/s. Drexler Technology Inc. of USA. The said Company has appointed M/s. STIL as its sole distributor in India.”*

Thus Shonkh Technologies was merely a sole distributor of a USA based company (Laser Card Corpn) which in turn was a subsidiary of M/s. Drexler Technology Inc. In such a scenario how could Shonkh Technologies offer the use of technology to the Government?

Secondly, even otherwise, the power of the Government to utilize the technology was valid only after the termination of the agreement. Thus if the Government decided to terminate the agreement prior to the agreed period of five years then they would not be able to use the technology and in that case they would have to start from scratch because the vendor was under no obligation to share the technology in cases of termination of agreement '*for reasons of breach or failure on the part of GNCTD*'

**Thus the Department failed to ensure that the technology adopted by it was non-proprietary. They are left at the mercy of the vendor for further developing the technology or expanding its usage in future.**

#### **IV IRREGULARITIES IN THE TENDER PROCESS –**

Notice Inviting Tenders for the smart optical cards were issued on 9<sup>th</sup> February 2001. The tenders were invited in the 'three cover system' i.e. (i) Pre qualification Bid, (ii) Technical Bid and (iii) Commercial Bid.

The prequalification bids were opened by the Technical Evaluation Committee on 28<sup>th</sup> February 2001. The pre-qualification bids were received from seven bidders but only one viz. M/s. Shonkh Technologies International Limited was stated to have qualified and hence it's technical bid was also opened on the same day. The Technical Evaluation Committee again met on 29<sup>th</sup> March 2001 and decided to open the commercial bid of the Company at a '**convenient**

**date'**. The commercial bids were finally opened on 6<sup>th</sup> July 2001. M/s. Shonkh Technologies had quoted a price of Rs.390/- per card.

The delay of four months between the opening of the pre qualification bid (28.2.01) and the date of opening of the commercial bid (6<sup>th</sup> July 2001) is a matter of concern. **When it was evident that only one bidder had qualified there was always a chance of the bidder and unscrupulous officials tampering with the commercial bid (price bid) and jacking up the quoted price. It is for this reason that the three bids should have been opened as closely in time as possible or the Department ought not to have opened the bid at all.**

On 13<sup>th</sup> November 2001 the Commissioner (Transport) sent the proposal to award the contract to M/s. Shonk Technologies to the Finance Department Government of Delhi. The following relevant comments of the Deputy Secretary (Finance) dated 2.1.2002 is worth reproducing here:

1. While Government of India had advocated the smart card at a cost of Rs. 80-130/- the Delhi Government's proposal was for smart optical card at a cost of Rs. 390/-. Except for one reason that the department wants to use the 'futuristic technology' no other reason is recorded on the file.
2. There was no proof of the Company having experience of supplying, installation, erection commissioning, implementation and maintenance of similar goods/services in India or abroad and also that the Company had maintenance support infrastructure facilities in Delhi as was required under the conditions of the bid.
3. The inter operability of the cards was not confirmed.

4. The data storage for commercial vehicles was much more than the non-commercial vehicles and it was not justifiable to burden the non-commercial vehicle owner with the additional expense.
5. Smart optical card technology had already been discarded worldwide due to non reliability and short life of optical surface. It needs to be clarified how this untested technology has been preferred over the tested technology of smart card (with microprocessor chip).
6. The proposal is silent whether the hand held reader/writer would be available in the open market or again it would also be a proprietary item. Further the cost factor of these equipments had been ignored.
7. The SEBI has confirmed vide their letter dated 20.9.01 that the alleged market manipulations in the scrip of Shonkh Technologies was under investigation. This clearly establishes that the firm is not having a clear track record. How the department is ignoring this vital fact in recommending this case?

On the basis of the objections raised by the Finance Department, on 9<sup>th</sup> February 2002, the Principal Secretary (Finance) constituted a Committee under the Chairmanship of the Commissioner (Industries), Additional Secretary (Finance) and Additional Secretary (IT) to look into the tender procedure and submit its report by 25<sup>th</sup> February 2002.

The Committee submitted its report on 25<sup>th</sup> February 2002 and confirmed that the standard procedure of two stage bidding process (first Request for Proposal and later Request for Qualification) had not been adhered to by the Department. It also found that **"certain procedural deficiencies are apparent in the way tenders have been evaluated. However, the outcome of the tender does not appear to have been materially affected by these deficiencies."**



**It is surprising that on the one hand the Committee found that the due procedure was not followed and still it claimed that the outcome of the tender had not been materially affected.** More surprisingly the Principal Secretary (Finance) instead of clearly spelling out his opinion returned the proposal to the Department with the remarks that the Head of the Department was competent to take a final decision! If that was the case where was the need for the Finance Department to examine the issue or appointing a Committee? Instead of causing a delay of three months, in the first instance itself the proposal could have been sent back to the Transport Department with the remarks that it was for the Head of the Department to take a final decision.

Thus in spite of not adhering to the laid down principle of tender process and in spite of the fact that there was only a single bidder left in the fray the Transport Department chose to go ahead with the process. It may be borne in mind that even at that period of time there was no compulsion on the part of the Government of Delhi to switch over to smart card technology because the relevant notification of the Government of India (that too only for the smart card and not smart optical card) was issued only in August 2004.

**As mentioned earlier the whole process appears to have been premeditated and preplanned to accord monetary benefit to the single vendor viz., M/s. Shonkh Technologies. The moment it became that only one bidder was left in the fray the tender process ought to have been scrapped.**

#### **V DUBIOUS ANTECEDENTS OF THE VENDOR:**

As mentioned earlier the Deputy Secretary (Finance) had pointed out that the activities of the Company (Shonkh Technologies) was

under the SEBI (Securities and Exchange Board of India scanner. Vide letter dated September 20<sup>th</sup> 2001 the Chief General Manager of SEBI confirmed that "*SEBI is investigating alleged market manipulations inter-alia in the scrip of Shonkh Technologies Limited.*"

The apprehension stood vindicated by later developments as is evident from the media reports. The Jul 30 - Aug 12, 2005 issue of Frontline magazine reported that "*on June 30, the Central Bureau of Investigation (CBI) raided the office and residential premises of Vivek Nagpal, one of the directors of Shonkh Technologies International Limited (STIL), The CBI raid was based on a criminal complaint filed against STIL in January by Oriental Bank of Commerce (OBC) accusing it of causing a loss of Rs.38.49 crores to Global Trust Bank, which later merged with OBC. The CBI probe also covered allegations about STIL's role in the securities scam. The Securities and Exchange Board of India (SEBI) had, through its own inquiries, confirmed STIL's associations with Ketan Parekh, the kingpin of the scam, and it issued critical directives and orders against the company in September 2004 and June 2005.*"

**Thus in spite of having received a communication from SEBI in September 2001 that all was not above board the Department chose to allow the Company to earn crores of rupees from the general public.** {As per the concession agreement with the Company at least 40 lakh cards are to be issued which means that even by conservative estimates the company would earn at least Rs. 148 crores (370 x 40 Lakh)}

## **VI UNDUE FAVOUR TO THE VENDOR:**

### **1. Preconditions of the Tender Document not adhered to:**

Two important pre conditions mentioned in the tender documents were as follows:

- (i) Experience of Supplying, Installation, Erection, Commissioning, Implementation and Maintenance of similar Goods/Services anywhere in India or abroad.
- (ii) The tenderer must have maintenance/support infrastructure facilities in National Capital Territory of Delhi so as to serve the Department's installation site.

**The Committee found that the Department had not made any efforts to verify the claim of the tenderer that they had the above facilities.** The Committee asked the department to state whether the claims of the vendor as mentioned in the tender documents were verified. Vide its reply dated 27<sup>th</sup> February 2006 the Department replied that the evaluation of the bid was done by a Technical Evaluation Committee. However from the perusal of the minutes of the Technical Evaluation Committee it is evident that no effort had been made to cross-verify the claims of the vendor. A matter involving crores of rupees, especially when the credentials of the vendor was suspect, ought to have been handled more carefully. **The Committee could have very much made a physical verification and satisfied itself with the claims of the vendor.**

**Rather the Company had mentioned in the bid that it's Regional Software Development Office, Business Development Office and Project Development Office were located in Gurgaon. Thus technically the so called 'qualified' bidder had not fulfilled the pre conditions because as per the tender document tenderer must have maintenance/support infrastructure**

**facilities in National Capital Territory of Delhi so as to serve the Department's installation site.**

The claim of the vendor that they possessed 'Experience of Supplying, Installation, Erection, Commissioning, Implementation and Maintenance of similar Goods/Services anywhere in India or abroad' was also not verified. In fact at the time of signing the concession agreement M/s. Shonkh Technologies International Ltd conveyed that they had entered into an agreement with M/s. Virgo Softech Limited, who would be the consortium partner of Shonkh to execute the project. Thus actually the project was to be executed by Virgo Softech and the capability of Shonkh Technologies is therefore suspect. If at all such consortiums were to be allowed then there was no need to specify in the tender documents that the tenderer was to possess in house facilities, infrastructure etc.

In para 3.11 of the tender document it was mentioned that, "*The tenderer shall not assign in whole or in part, its obligations to perform under the Contract except with the Department's prior written consent.*" As per the reply of the department it is stated that the vendor had informed them that he had entered into an agreement with a third party **i.e. he had not received the prior written consent of the Department.**

**2. Report of the Negotiation Committee ignored:**

On 20<sup>th</sup> March 2002 the Transport Commissioner constituted a Negotiation Committee with officers of the Transport Department, IT Department and Finance Department as its members to '*negotiate with the Company for rationalization of rates and also prepare the Agreement to be signed with the Company*'.

The Negotiation Committee did a thorough job of the task entrusted to them and submitted its report on 2<sup>nd</sup> July 2002. Its important observations were as follows:

- (i) As per the break-up of costs of different components of a Smart Optical Cards submitted by Shonkh Technologies it was evident that delhi's card were the costliest. Shonkh Technologies stated that the smart optical card supplied in Gujarat cost Rs. 155.99, in Maharashtra it was Rs.161.43 and in Delhi it was Rs.282.51 i.e about **Rs. 130/- more than the other states.**
- (ii) Optical Card Media: As Shonkh Technologies was the only supplier of Smart Optical Cards in India the Negotiation Committee stated that **'there is greater preponderance of probability of charging monopolist price for its product by the Company'.**
- (iii) **Chip Cost:** Shonkh Technologies had indicated the Chip cost as Rs. 140.86 (with SCOSTA operating system). The Committee enquired from three other reputed firms and it was found that the cost was within Rs. 64.80 to Rs.110/-. The Committee stated that **'it is apparent from above that rates quoted by M/s. Shonkh Technologies are obviously higher by at least Rs. 50/- per card.'** The Committee confirmed that the three other firms conformed to the technical specification as well as all guidelines issued by the Government of India.
- (iv) **Custom duty and Custom clearance, freight and insurance** – *'The Committee also observed that on the raw card cost M/s. STIL has indicated custom duty of 21% plus Custom Clearance, freight and insurance @2.5%, but while*

computing the total impact of both, the Company has included the cost of the latter on the former also and thus ...calculated and charged 24.5% cost under both these heads/counts. **The net impact of this is increasing the total raw Card cost by Rs. 2.75 per card and for 40 lakh cards the aggregate amount comes to Rs. 1.10 Crore. This has been done either inadvertently by M/s. STIL or knowingly a case of misrepresentation of facts.'**

- (v) The Negotiation Committee observed that '*as per the independent enquiry made by the Committee the total price of 4Kb Microprocessor Card(complete manufactured smart card with SCOSTA OS) is Rs. 95/- thus there is no rhyme and reason for heavy cost of Rs. 283/- for a Smart Optical Card.*
- (vi) The Negotiation Committee finally recommended a price of Rs. 303/- per card which would ensure 10-15% profit to the vendor. The Committee also recommended for review of rate of smart optical card every year. It was also brought to the notice of the Department that Gujarat Government had brought down the rate of smart optical card from Rs. 435 to Rs. 289.95 per card.

**Surprisingly the Department chose to reject the recommendations of the Negotiation Committee.** In her note dated 23<sup>rd</sup> July 2002 the Transport Commissioner stated that the price suggested by the Negotiation Committee was based upon the information obtained from competitor firms. She also states that the proceedings were 'vitiating' as most of the discussions centered on dollar price fluctuation and the imputed profit margin to be allowed to

the tenderer. The Department finally settled for a cost price of Rs. 370/- per card.

The Committee is of the opinion that there were no grounds for rejecting the recommendations of the Negotiation Committee. Unless the comparative rates were studied how was the Committee to know the prevailing market rates? In the matter of optical strip the Committee itself admitted that there was no basis for comparison due to the absence of any other supplier. **The Negotiation Committee had rightly pointed out the apprehension of the vendor quoting monopolistic rates.** Terming the proceedings of the Negotiation Committee to be 'vitiating' also appears to be unwarranted. The Commissioner (Transport) should have borne the considerations of the Department more than that of the vendor. **The Negotiation Committee's recommendation that there was no rhyme or reason for burdening the consumer with an additional cost of Rs. 283/- for the optical card was very much pertinent and ought to have been implemented.**

When the matter was sent to the Finance Department for approval of the rate of Rs. 370/- per card for forty lakh cards, **the Finance Department again, for reasons best known to them, failed to perform their duty and returned the proposal with the comments that the Head of the Department was competent to decide the matter.**

### **3. Provisions of the Concession Agreement made favourable for the Vendor-**

On 20<sup>th</sup> June 2003 the concession agreement was finally signed by the Department and the vendor i.e. Shonkh Technologies. On 17<sup>th</sup> June 2003 a draft notification was issued to provide for the following:

"(i) With respect to **new vehicles** the registration with Smart Optical Card to be **made compulsory for all categories of vehicles**.

(ii) With respect to **old vehicles** the registration of all categories of vehicles with the Smart Optical Cards to **become compulsory within two years** from the effective date of the final notification;

(iii) The cost of the Smart Optical Cards to be recovered from the vehicle owners is fixed at an amount of Rs. 370/- per card, **in addition to all other fees and charges leviable under applicable laws, rules and regulations for registration of vehicles and for other matters concerning the vehicles;**"

The Government had thus tried to make the smart optical card compulsory for all categories of vehicle owners in spite of the fact that Government of India had categorically stated that it was to be compulsory for the commercial vehicle owners only and that to only the smart card with microprocessor chip which was to cost about Rs.80-100.

Clause 4 (f) of the Concession Agreement reads as follows:

"(f) In the event, the final Notification is issued by GNCTD providing for the amendments in the applicable laws, rules and regulations as mentioned in Clause (d) above, the following shall apply:

(i) The GNCTD agrees that in the event that the total number of Smart Optical Cards Registration including any replacement of the card on account of changes in the Visual Zone or transfer of vehicles or duplicate issue, does not reach 40 lacs in number during the duration of the Agreement (including the smart optical cards issued prior to the final notification); Shonkh reserves the right to extend this agreement till it issues 40lacs.

(ii) In the event Shonkh does not extend the Agreement as mentioned above GNCTD will pay to Shonkh a sum of Rs.50/- for each card being



*the difference between 40 lacs and the number of Smart Optical Cards actually issued, replaced etc. during the duration of the Agreement (including the smart optical issued to the final notification) on which Shonkh is entitled to receive Rs.370/- per card.”*

The agreement implies that the Government has granted an assurance of at least forty lakh cards to the vendor at the cost of Rs.370/- per card although no such guarantee was mentioned in the tender documents. **Moreover in a blatant move which would profit only the vendor it has been decided that in the event of the agreement not being extended beyond the period of five years the Government would be bound to pay the vendor @ Rs. 50/- per card for each unissued card.** Even the power to extend the agreement has been bestowed upon the vendor. Thus in case after the period of five years i.e in June 2008 the vendor has not issued 40 lakh cards he will get Rs.50 per card just because his quota of 40 lakh was not achieved. In the meeting held on 6<sup>th</sup> February 2006 the Commissioner stated that around five lakh cards had been issued i.e five lakh cards in three years. Even assuming that the vendor manages to issue five lakh cards in the remaining two years there would be a balance of thirty lakh cards. So the department will have to pay him Rs. Fifteen crores. The vendor is under no obligation to extend his agreement. **Instead of inserting a time bound schedule and penalty clause, the department has offered the vendors a reward.**

As mentioned above this clause was operative in the event the Government issued the final notification. The Department was so concerned about the welfare of the vendor that it made provision for

his compensation even if the notification was not issued! Clause (g) of the concession agreement reads as follows:

*"(g)In the event the final Notification is not issued for any reason whatsoever, GNCTD shall have no obligation arising out of non-issue of such final Notification and there shall be no liability to GNCTD to pay any sum as per Clause (f) above, provided that in such an event Shonkh shall be entitled to issue Smart Optical Cards registration on the terms contained in this agreement for a duration of the agreement or till Shonkh had issued or replaced 40 lakh vehicle registration certificates in number, whichever is later."*

**Thus irrespective of the fact whether the Government decided to issue the notification or not Shonkh was assured that they will continue to issue 40 lakh smart optical cards even if they could not complete the task in five years.** It is a clear case of appeasing the vendor at the cost of the common man. The Department has taken upon itself to fully insure the vendor from any monetary loss.

The motive behind these clauses is mischievous and needs to be probed. Moreover the assurance of the Department to compensate the dealer @ of Rs. 50/- per card ought to have been ratified by the Finance Department as the funds of the public exchequer was involved. From the records available with the Committee it appears that **the Concession Agreement and the draft and final notifications mentioned above were not approved by the competent authority i.e. the Hon'ble Lieutenant Governor in this case.**

The fact that the tender was issued even before the Government of India had made it mandatory, the vendor had not fulfilled the pre-conditions, recommendations of the Negotiation Committee were

ignored, favourable terms in the Concession Agreement and by passing the authority of the Hon'ble Lieutenant Governor shows that the Department was in a hurry to award the contract to M/s. Shonkh Technologies. Concern for the general public, Departmental procedures and authority of the Lieutenant Governor were of no importance to them.

## **VII ILLEGALITY OF THE TENDER PROCESS:**

Article 246 of the Constitution read with the Seventh Schedule distributes the legislative powers of the Union and the States. The subject of 'transport' appears both under the State List (List II) as well as the Concurrent List (List III). Entry 57 of the State List delegates the legislation power to the States on - *'taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars, subject to the provision of Entry 35 of List-III'*. As per Entry 35 of List III the Union Government has the power to legislate on *'Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied'*. Thus Entry 57 of List II is expressly made subject to Entry 35 of List III.

Article 251 clearly states that if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament, the law made by Parliament, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, be inoperative.

Therefore, the Government of India was the sole repository of power in respect of all particulars and information to be contained in the Vehicle Registration Certificate. {Section 41 (1), (2),(3), (5),(8),(9) and Section 64 (b),(e),(o) of the Central Motor Vehicle Act, 1988). Any law of the states which contradicted the provisions of the

Central Act or Rules would therefore not be operative on account of being repugnant to the Central law.

The Notice Inviting Tender (NIT) for the smart optical card for Vehicle Registration was issued on 9<sup>th</sup> February 2001. As on that date the Central Motor Vehicle Rules, 1989 had not provided for issuing smart cards. **The notification amending the CMV Rules, providing for the smart cards was issued on 31.5.2002.** The final notification which was published on 31.5.2002 provided in para 1.2 that the Rules are to take effect from date of final publication in the official gazette, i.e. **the amendment had not bestowed any retrospective status for its implementation. Thus, as on the date of issue of the tender, the Delhi Government had no power to issue vehicle registration on smart cards and the entire process of the tender was illegal.**

**Even after 31.5.2002 when the Government of India had provided for smart cards the tender continued to remain illegal because the amendment providing for an 'additional optional medium' was issued by the Government of India only on 10<sup>th</sup> August 2004.** Vide notification dated 31.5.2002 the Government of India had allowed only the 'single chip microprocessor' smart card. It was only much later in August 2004 that an amendment was made that the smart card could carry additional storage medium (optical strip in the case of Delhi).

Thus the Department had jumped the guns and gone ahead with a dubious tender process much before amendments in the Central Rules were carried out and as such **the concession agreement was an *ultra vires* contract.**

Even the amendment of the Delhi Motor Vehicle Rules 1993, issued on 26<sup>th</sup> February 2004 was without statutory backing because it

was issued prior to the Central Government notification allowing the additional medium. On the date of the issue of the Delhi notification the Central Rules had allowed only a smart card with microprocessor chip and not a smart card with optical strip and thus **the notification of the Delhi Government was repugnant to the Central Rules.**

As shown above the entire process of the tender and the contract entered in to with the vendor was contrary to the statutory provisions and therefore void *ab initio*.

### **VIII BURDEN ON THE CONSUMER –**

As has been reported earlier the smart card was to be made compulsory for the commercial vehicles and optional for the non-commercial vehicles. In contrary to the guidelines of the Centre the smart optical card was made compulsory for all vehicle owners.

Moreover a smart card, which as per the Apex Committee was to cost about Rs. 80-130 (with 4Kb microprocessor chip), was not acceptable to the Department. It was hell bent on issuing smart optical cards @ Rs.370/-

Even in the matter of the charges for the smart optical cards the Transport Department is acting contrary to the directions of the Central Government. Vide notification dated 31<sup>st</sup> May 2002 it has been provided that if the registration was to be issued on a smart card then the Department could charge an additional amount of fee of Rupees two hundred for each such card. The use of 'if' indicates that smart card was optional. Not only did the Department make it mandatory, but also it has allowed the vendor to collect the charge of Rs. 370/- over and above the fees charged by the Department. As per the notification of the Government of India if the certificate was issued on the smart card the vehicle owner was to pay only Rs. 200/- whereas

actually he is being asked to cough up Rs. 370/- besides the fees of the department.

Not only this, the payment of Rs. 370/- is not going to be a one-time affair. Every time the vehicle's ownership is transferred or renewed, or duplicate is to be issued on account of loss or mutilation or there is a change of address or cancellation of hypothecation etc. the vehicle owner will have to again and again pay Rs.370/- When the matter was brought to the notice of the Commissioner (Transport) in the meeting held on 23<sup>rd</sup> February the Commissioner's response was that a person who has a vehicle worth of lakhs, should not whine over a few hundred rupees. **The question is not of one person dishing out a few hundred rupees alone. The question is why a private vendor is being allowed to fleece the common man under the protection of the Transport Department.**

#### **CONCLUSION AND RECOMMENDATIONS:**

The irregularities observed by the Public Accounts Committee in the process of issuing Smart Optical Cards have been spelt out in detail above. These were:

**I No justification for adopting an untested technology** – As against the recommendation of the Apex Committee for introducing smart cards with microprocessor chip the Transport Department in Delhi chose to go for an additional 'optical medium' in the smart card. The Government of India prescribed SCOSTA (Smart Card Operating System for Transport Application) Although the microprocessor chip of Delhi confirmed to these standards and were duly certified by NIC but in the absence of standards for the optical strip the optical segment

remained untested. Its reliability and durability in the absence of standardization is suspect.

**II Objective of inter-operability not achieved** – The information contained in the optical segment is not accessible to the hand held readers which would be available with the enforcement authorities and the traffic police. It can be accessed only in the computers of the Department. In such a case there was no need to carry this information at all on the smart card and ought to have been maintained at the back-end as recommended by the Apex Committee. Beyond Delhi it is not operable at all.

**III Objective of using 'non-proprietary' technology not achieved** – As reported by the Negotiation Committee of the Government the optical media technology used by the vendor is the proprietary item of M/s.Drexler Technology Inc., USA. In the concession agreement M/s.Shonkh Technologies claimed that they shall have the proprietary rights but they magnanimously offered the Government the right to use the technology. The company was offering a right which was not theirs at all. The 'optical media' technology was a patented and proprietary technology of Drexler Technology and Shonkh Technologies had no right to further assign it.

**IV Irregularities in the tender process** – The Department proceeded with the tender process fully aware that only one vendor was going to be qualified. It ignored the objections raised by the Deputy Secretary (Finance) and the Committee constituted under the Chairmanship of the Commissioner (Industries) which stated that the due process of tender had not been followed.

**V Dubious antecedents of the vendor** – The antecedents of the vendor were suspect. In spite of the fact that SEBI had indicated that the activities of the Company was under scrutiny the contract was awarded to the Company. Subsequent media reports confirmed the dubious activities of the company.

**VI Undue favour to the vendor** – The claim of the vendor regarding its experience of Supplying, Installation, Erection, Commissioning, Implementation and Maintenance of similar Goods/Services anywhere in India or abroad and its maintenance/support infrastructure facilities in National Capital Territory of Delhi were not verified. Moreover contrary to the condition the Company declared that its facilities were in Gurgaon and not in Delhi. Still the Department found it fit to award the contract to the vendor.

Recommendations of the Negotiation Committee were ignored. The Negotiation Committee had drawn attention towards the monopolistic control of the vendor in the optical media segment. It had also stated that the 4Kb microprocessor chip card was adequate and there was no justification for the optical segment. Even the recommendation to bring down the cost of the card was not accepted.

Provisions of the Concession Agreement were framed in such a manner that the vendor was guaranteed 40 Lakh cards in spite of the fact that no such guarantee was mentioned in the tender document. Moreover if the vendor was not able to get 40 lakh cards he was to be compensated @ of Rs.50/- per card.

**VII Illegality of the tender process** – The entire tender process was illegal as it was commenced and contracted at a time when it had



no statutory backing of the Central Government. Moreover even the notification, which itself was repugnant to the central notification, did not have the approval of the Lieutenant Governor.

**VIII Burden on the consumer** - The vehicle owner in Delhi was forced to pay for the smart optical card even when it was not mandatory. Moreover he has to pay Rs. 370/- per card whereas the maximum permitted by the Central Government was only Rs. 200/- Even this 200 rupees was to be levied only if the vehicle owner needed his certificate on the smart optical card.

**Thus with the sole objective of favouring a dubious entity the Department has burdened the common man monetarily. On the pretext of introducing latest technology, unscrupulous elements in the Department colluded with the monopolistic vendor to commit a huge fraud on the people of Delhi. Stringent and deterrent action needs to be taken against the officers responsible for this fraud. The Committee recommends that the entire matter should be handed over to the Central Bureau of Investigation for a thorough probe into the acts and omissions on the officers of the Transport Department. Persons who have benefited from contract whether from the Department or from the vendor Company as well as any middle men need to be identified and punished.**

**Moreover as the entire process was contrary to the statutory provisions the concession agreement needs to be scrapped. In keeping with the central government notification only a smart card with 4kb microprocessor chip should be issued. The smart card should be kept optional for the non-commercial vehicle owners. If at all the department is**

**interested in making it compulsory then it should bear the expense on this account. Steps should be taken to refund the amount taken in excess of the fees laid down by the Central Government rules and if it is not possible then the vehicle owner should be compensated against his future tax/fee obligations.**

**The action taken by the Department on the recommendations of the Committee should be submitted within three months of the adoption of the Report by the Assembly.**

**Delhi**

**(Dr. SC Vats)  
Chairman  
Public Accounts Committee  
Delhi Legislative Assembly**