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No.10(25)/2001-I(Q&C)
Government of India
Ministry of Defence.

New Delhi, the November 22, 2002.

To

The Chief of Army Staff,
The Chief of Naval Staff,
The Chief of Air Staff.

Subject: Management of Commercial Shopping Complexes
Created on Defence land by Services from non-
Public fund or by Re-appropriation of Govt.
Buildings.

I am directed to invite attention to Ministry of Defence letter No. 110216/5/2000/D(Lands) dated 4.1.2001, vide which the question of continuation of Shopping Complexes created on Defence Land by the Services from Non-public funds were allowed to continue on certain terms and conditions. Further, it has become necessary to frame the "Rules" in view of Court's directives on the subject matter also. Therefore, after careful consideration of the issue, and with the approval of the Competent Authority, it has been decided to promulgate the "Rules on Management of Commercial Shopping Complexes created on Defence Land by the Services from Non-public Funds or by Re-appropriation of Government Buildings" as per Annexure enclosed.

3. This issues with the concurrence of Director (Finance/Works) vide Dy. No. 2534/Dir(Fin/W/o2) dated 20.11.2002.

Yours faithfully,

(A.K. FATIYAK)
DIRECTOR(WORKS)

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05/11/02
DCDE Sectt.
Letter No. 743
Dated 20.11.2002
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Copy to:

- ✓ 1. Director General Defence Estates, R.K.Puram, New Delhi.
2. Principal Director/Directors DE, Northern/Southern/Western/Eastern and Central Commands
3. Controller General Defence Accounts, New Delhi.
4. CDA, Northern/Southern/Western/Eastern and Central Commands
5. DADS, New Delhi. 6. Sr.DADS, Northern/Southern/Western/Eastern and Central Commands
6. M of Defence (Finance/Works-I)
7. Army Headquarters QMG's Branch, (ADG, LWE).
8. D(Air-II)
9. D(Navy-III)

RULES ON MANAGEMENT OF COMMERCIAL SHOPPING COMPLEXES CREATED ON DEFENCE LAND BY THE SERVICES FROM NON - PUBLIC FUNDS OR BY REAPPROPRIATION OF GOVERNMENT BUILDINGS.

PRELIMINARY :--

1. These rules shall be called "The Ministry of Defence Commercial Shopping Complexes Management Rules, 2002".
2. These will apply to the commercial shopping complexes placed under the management of the Defence Estate (DE) organization in pursuance of Government of India, Ministry of Defence letter No.11026/2/2000/D(Lands), dated 04-01-2001.
3. These will come into force from the date of their approval by the Government or from the date of placing of the commercial shopping complexes under the management of the DE organization, whichever is later.

DEFINITIONS :--

- 4.(i) In these rules, unless, otherwise warranted by the context (1) "commercial shopping complex" means a complex placed under the management of the DE organization under rule 9(1) of the Cantonment Land Administration Rules (CLA), 1937 or, as the case may be, under rule 3 © of the Acquisition Custody & Relinquishment (ACR) Rules, 1944.
- (ii) "Net revenue" means the difference between total receipts from commercial shopping complex and the amount spent towards payments of contract charges, electricity and water charges, departmental charges (2.5%) , sundry expenses.etc.
- (iii) "Screening Committee" means a committee constituted under rule 10(I) of these rules.

TRANSFER OF MANAGEMENT: --

5. The aforesaid shopping complexes will be transferred by the concerned service to the concerned Defence Estate Officer(DEO) within a period of thirty days from the date of issue of the government order in this regard. On the date of issue of a Government order placing a commercial complex under the management of the DEO, the ownership of the said commercial complex will vest without encumbrances in the Government who will exercise complete administrative and financial control over the commercial complex through the D.E. organization.
6. After the receipt of the Government order under rule (5), the previous management shall liquidate all liabilities and transfer all

records/books of accounts to the DEO including moneys to be credited to the Government treasury in terms of Min. of Def. letter dated 4.1.2001, for the intervening period i.e. from 4.1.2001 till the date of handing/taking over these shopping complexes.

7. The allottees in authorized occupation of the shops, as on the date on which management of the shopping complex is placed with the DEO, shall be allowed to continue till the expiry of the allotment period/licence which they had executed with the previous management. After expiry thereof, the allottees will be required to hand over peaceful vacant possession to the DEO within six more months failing which the DEO shall resort to action under public Premises (Eviction of Unauthorised Occupants) Act, 1971.

8. The allottees who are in unauthorized occupation of the shops, i.e. whose allotment period/licence has already expired on or before the date the management of the shopping complex is placed with the DEO under rule 5, shall be afforded six months time to vacate the premises. The DEO shall serve a notice in this regard to the existing allottees through registered A/D post on the last known address of the allottee and also by pasting the notice on a conspicuous part of the premises duly witnessed by two persons. If the allottees fail to vacate the premises within six months the DEO shall resort to action under Public Premises (Eviction of Unauthorised Occupation) Act, 1971.

9. ALLOTMENT OF SHOPS:

The following procedure shall be adopted for allotment of the shops:-

(I) The DEO shall invite applications in the prescribed form in Schedule I through advertisement in print media/public notice pasted on office notice boards in the offices of DEO, GE, Stn. HQrs etc./hand bills provided that publicity through print media shall be mandatory. There shall be a gap of at least 15 days between publication of the notice in the newspapers and last date of receipt of applications. Application received after the last date so notified shall not be entertained. No application without earnest money deposit, the amount of which shall be equal to one month's licence fee, shall be entertained. The notice shall specify the number of shops to be allotted tradewise, the licence fee fixed for each shop, the period of licence and the basis of allotment. The applicant shall be required to mention the kind of shops/trade he/she is applying for in his/her application.

(II) (a) 60% of the shops in each commercial shopping complex shall be reserved for war-widows/widows of Defence personnel killed in other action, ex-servicemen, their spouses, widows of ex-servicemen. Provided that preferential allotment may be made in favour of existing licencees/occupants in this category.

(b) Remaining 40% of the shops may be allotted to civilians, provided that preferential allotment may be made in favour of existing

civilian licencees/occupants subject to the condition that priority be given to the remaining existing licencees/occupants of the ex-servicemen etc. as mentioned in Para 9 (II)(a) above.

(c) In case of unfilled vacancy in the category of 60% limit, another attempt shall be made within a period of one year and even if no response is received, unfilled/balance shops shall be considered to be given to the civilian category beyond the limit of 40%.

(d) The preferential allotment made under para 9(II) (a) & (b) above shall be only for the initial term of the licence for a period of three years. Further allotment shall be made strictly under the rules framed herein.

(III) After the receipt of the applications, the same shall be segregated into three categories, namely

(i) for shops reserved for war-widows/widows of Defence personnel killed in other action, ex-servicemen, their spouses, widows of ex-servicemen

(ii) for existing licencees/occupants; and

(iii) others.

Further, in each of these categories the applications will be segregated trade-wise. If applicants for a particular trade is less than or equal to the number of shops of that trade they shall be allotted the shops. If, however, the applicants for a particular trade are more than the number of shops in that trade, selection of allottees shall be done by draw of lots. Furthermore, if the number of shops of a particular trade is more than one in a commercial shopping complex, allotment of shops shall also be made by draw of lots.

10. CONSTITUTION OF THE SCREENING COMMITTEE:

A Screening Committee shall be constituted consisting of the following :-

(i) Military officer commanding the station in which the said commercial shopping complex is located as Chairman;

(ii) DEO concerned under whose jurisdiction the complex falls;

(iii) Garrison Engineer/Central Public Works Department (GE/CPWD) reps concerned under whose jurisdiction the complex falls.

11. FUNCTIONS OF THE SCREENING COMMITTEE:

The Committee shall be responsible for :

(i) Determination of the licence fee payable per month for each of the shops. The licence fee shall be determined as per the procedure set out in Rule 12.

(ii) Deciding the nature of trade to be permitted in each of the shops.

(iii) Scrutiny of each application.

(iv) Allotment by draw of lots if the number of applicants is more than the number of shops in each of the categories.

(v) Deciding the trade and shop number to be allotted to the successful applicant.

12. LICENCE FEE/MAINTENANCE-CUM-SECURITY CHARGES AND PERIOD OF LICENCE:

I. The Committee shall determine the licence fee in respect of each of the shops in a commercial shopping complex provided that the licence fee so determined shall not be less than 10% of the total of the current market cost of land provided by the DEO plus current depreciated cost of construction provided by the Garrison Engineer/Regiment concerned and improvements, if any. The committee shall also determine the cost of maintenance-cum-security services to be made available for the commercial shopping complex. The component of maintenance-cum-security services shall be worked out by the committee on the basis of fair assessment of the likely cost to be incurred in this regard.

II. The shops shall be given on licence for a period of three years on payment of licence fee and maintenance-cum-security charges as fixed by the committee under Rule 12(I) subject to the provisions that licence fee shall be enhanced by 10% every year and maintenance-cum-security charges shall be subject to enhancement by 5% every year provided further that the committee shall be competent to determine lesser enhancement with the prior approval of Principal Director, Defence Estate, the command if the facts and circumstances of the case so warrant.

III. No change of trade will normally be permissible during the currency of the licence. However, in exceptional circumstances the committee constituted under Rule 9(I) will be competent to permit change of trade on an application received from the allottee on payment of fees of Rs.5000/- or more as may be decided by the Committee.

IV. No transfer of allotment is permitted except in case of demise of the allottee. The same shall be considered by the Screening Committee to the dependent/legal heirs as the case may be for the residual period of the term.

V. The allottee will be required to maintain proper standards of hygiene and quality products for sale as may be prescribed by the Station Health Organisation/Cantonment Board.

VI. Trade licences whenever necessary shall be obtained by the allottees from the concerned municipal authority and prominently displayed in the premises.

VII. The Station HQrs in whose jurisdiction the commercial shopping complex exists shall issue security passes to the allottees and their employees after due verification.

VIII. Allottees defaulting on any of the condition of the licensee's agreement will be liable to termination of their licence and eviction under PP Act.

IX. The allottees shall be required to deposit security equivalent to four months' licence fee which shall be refundable without interest on vacation of the shop.

X. On initial allotment the allottees will be required to pay two months' licence fee in advance on receipt of which, the licence agreement will be executed with them and physical possession of shop handed over. After the expiry of the first two months, the monthly licence fee shall be payable in advance before the last working day of the previous month.

XI. The allottee will be required to execute an agreement with the DEO at his/her own cost.

13. COMMERCIAL SHOPPING COMPLEX ACCOUNT:

(i) In respect of commercial shopping complexes created on Defence land by utilizing non-public funds only, 50% of the net revenue calculated (annually) will be remitted to the concerned Regimental Fund authorized by Government/Service HQrs. In the event there is no such regimental fund, 50% of the net revenue shall be remitted to AWWA/AFWWA/NWWA and balance 50% into the Government treasury in the manner as stated above.

(ii) The DEO based on the past data available with him shall project a budget for maintenance as well as the approximate amount which would have to be remitted to the regimental fund.

(iii) The management of accounting of such Commercial Shopping Complexes, will be done from the Defence Service Estimates (Respective Services Code Heads as enclosed in Annexure-A) itself. For meeting the expenditure, Service HQrs. will release funds to DEO as per para 13(i) above under these heads. All receipts will be credited as revenue to the Defence Services heads.

(iv) The DEO shall be responsible for the expenditure subject to the allotment made by the respective Service HQrs. for maintenance of the shopping

complexes from the Cash Assignment already available with the DEO and compiled under the relevant Service Head by the Unit accountant (U.A.) attached to the DEO. Quantum of cash assignment will be suitably enhanced as on requirement basis.

(v) All receipts on account of licence fee, maintenance etc. shall be deposited by the concerned DEO within 48 hours in the Govt. Treasury by way of MRO and shall be compiled by the Unit Accountant to the concerned receipt Head.

(vi) After February accounts are closed, the DEO shall work out the Net Revenue and intimate 50% of this amount to unit/Formation for claiming the amount from DEO. This will be remitted to the Regimental fund by the DEO(s) through the cash assignment. This will be treated as provisional payment, which will be further fine-tuned after audit of accounts of expenditure and receipts.

(vii) Immediately after the promulgation of this letter, the DEO(s) will be authorised to use the cash assignment for incurring expenditure on these head of accounts only for the management of such shopping complexes.

(viii) The accounts, cash and stores of the DEO will be subject to post audit by the CDA concerned through the LAO every quarter.

14. ELECTRICITY / WATER CHARGES:-

The allottee will also be required to pay separately electricity/water charges as may be fixed by the authorities concerned in addition to the monthly licence fee and maintenance-cum-security charges, provided that the allottees shall pay electricity/water charges directly to the authorities concerned wherefrom direct electricity/water connections are given in the shops wherever feasible by the authorities concerned on a 'NOC' to be furnished by the DEO. The municipal service charges (in lieu of property tax) will be paid by the DEO to the concerned local body/municipality, if otherwise payable.

15. LAPSE OF DEPOSITS :

In the event of allottees forfeiting their claim to any of the security deposit made as per these rules, the deposits shall lapse to the Govt. and will be credited into the "Commercial Shopping Complex Account".

16. MAINTENANCE OF COMMERCIAL SHOPPING COMPLEX:

(I) DEO shall enter into contracts for services like conservancy, horticulture, landscaping, security etc. after following prescribed tendering procedures.

(II) The DEO may authorise any of his/her subordinate officers as Administrative Officer in charge of the commercial shopping complex. He/she may also designate any technical staff in his/her office to act as supervisor over the contract staff engaged and to arrange for essential day to day requirements of the commercial complex. The DEO may also take the assistance of clerical staff in his office for maintaining the record, books, registers, ledgers pertaining to accounts.

(III) The DEO shall maintain the following books of accounts: Cash-book, imprest cash-book, stock-book, immovable property register, works register, measurement book, vehicle log book, commercial complex register and any other document which he/she may consider necessary.

(IV) The LAO shall carry out quarterly audit of all the documents maintained under rule 12(III). The audit fees as determined by the CDA concerned shall be payable by DEO.

(V) The DEO shall get original or maintenance works done through any agency after obtaining the sanction of the Competent Authority as specified if necessary, provided that if the commercial shopping complex is situated in a cantonment the DEO shall first request the Cantonment Board for execution of the work on payment of departmental charges to the extent of 10% of the actual cost of the works.

(VI) The DEO shall be competent to make local purchases of stores after sanction of the Competent Authority as per rule 12(II). The provision of General Financial Regulations and other Govt. instructions in regard to purchase or disposal of stores or equipments shall be followed. The sanction of the Competent Authority shall be taken in case any deviation from the financial rules is considered necessary.

17. MISCELLANEOUS

I. Any matter not covered in the above rules shall be decided by the Director General, Defence Estates.