

Rapid Notes for a critique of OREGS

Part-I

1. Though the OREGS was notified in the Orissa Gazette dated 16 Dec. 2006 (<http://orissagov.nic.in/govtpress/pdf/2006/1775.pdf>), the nodal agency of the State for NREGA i.e. Department of Panchayati Raj still continues to display on its website (<http://orissagov.nic.in/panchayat/default.asp>) the Draft copy of OREGS which is vastly different both in form and content from the notified one. By this the Department keeps on spreading the confusion as if the draft OREGS has not yet been finalized and notified. One may construe such a mismatch to be an inadvertent slip by the concerned personnel entrusted with updating of the website. But it is not so. The ground reality is such that no officer right from Orissa Secretariat down to the Block level, the cutting edge of NREGA administration knows for sure whether the OREGS has been notified at all.

2. Foul intentions behind the guarded secrecy maintained at the top about the fact of notification of OREGS can't be ruled out. The Commissioner-cum-Secretary Sri G.Dhal, under whose aegis the OREGS notification was made is no more working with the Panchayati Raj Department, and since his departure the matters relating to NREGA are being practically looked after by Sri Saswat Mishra, Additional Secretary-cum-Director Special Projects. Sri Mishra in his new capacity had issued an administrative circular in the month of November, 2006 [No. 21702/ RE 51/05 (B) PR Dated 16.11.2006] to all Collectors and PD DRDAs of NREGA districts of the State, in which he has emphasized the implementation of certain measures, which are found not only contravening the letter and spirit of the Act, but also flouting the provisions made in the OREGS, notified about a month later.

a) For instance, the Para 1 of the said circular says that the wage and material ratio should be maintained at 60:40 at only district level, which means that this norm may be ignored at GP or Block level. But the Para 9 of Schedule 1 of the Act clearly says, **“The cost of material component of projects including the wages of the skilled and semi-skilled workers taken up under the Scheme shall not exceed forty per cent of the total project costs”**, which means that the ratio of 60:40 ought to be maintained in case of each project. Further the Para 17 of OREGS also says in same vein, **“The ratio of wage costs to material costs should be no less than the minimum norm of 60:40 stipulated in the Act. This ratio should be worked out at the Gram Panchayat, Block and District levels but parity should be maintained at district level by the District Programme Coordinator”**. Under the circumstances, observance of Sri Mishra's instruction would mean violation of both NREG Act and OREGS. If Sri Mishra wants to continue with his own fad on wage-material ratio, how can he allow a vent to OREGS, which speaks of just the opposite?

b) The next instance of Sri Mishra's act of flouting the Act is the Para-2 of his said circular, which gives top priority to construction of cement-concrete roads in the villages as NREGA work, whereas both the Act (vide Para 1 of Schedule 1 of the Act) and OREGS (vide Para 14) accord the least priority to such works.

c) Sri Mishra's circular says at Para-4 that piece-rate wage will be calculated on the basis of the out-turn of the wage earner and the amount so arrived at must be reflected in the muster roll along with his out-turn quantity. But the Para-8 of Schedule 1 of the Act says, **“The schedule of rates of wages for unskilled labourers shall be so fixed that a person working for seven hours would normally earn a wage equal to the wage rate”**. Again, the Para 21(3) of OREGS says, **“Where wages are paid on a piece-rate basis, the work must be of such a nature that each labourer's work can be individually measured and the work norms must be such that any person working at a normal pace for seven hours earns no less than the minimum wage...”**.

d) Further, the said circular at Para 5(e) says, “The line Departments will have to take up their works departmentally as per existing State Government rules and relevant provisions of NREGA. The VLL system of Panchayati Raj Department shall not be applicable to line departments”. Such an instruction is utterly confusing, since existing State Govt rules and provisions of NREGA are fundamentally different from each other. For instance, State Govt. rules provide for engagement of machines and contactors, while the latter prohibit both. The intention of the circular is clear i.e. the general works to be implemented by the line departments shall remain outside the control of Panchayati Raj institutions, and as such goes against the Section 13.(1) of the Act which says, “**The Panchayats at district, intermediate and village levels shall be the principal authorities for planning and implementation of the Schemes made under this Act**”.

Thus, the secret behind withholding the dissemination of the notified OREGS among the officials and public is to show to the Centre that the State Govt has complied with the mandate of making a Scheme on one hand, and to continue to implement the NREGA works in the conventional, bureaucratic manner to benefit the vested interests of officialdom on the other.

3) Some critical omissions and commissions of OREGS:

The architects of OREGS seem to have made an earnest endeavor to frame it in accordance with the mandate of NREG Act. Still it is afflicted with certain significant omissions and commissions, which need to be sorted out by way of an amendment notification by the Department of Panchayati Raj in order to bring OREGS into correspondence with the thrusts and underpinnings of the Act and Operational Guidelines recommended by the Central Government.

A) As is well known, the VLL (Village Level Leader) has been assigned with important powers and functions in the matter of execution of NREGA works in the State of Orissa, though the Act nowhere talks of such a functionary to play the role that it plays today. To trace the complex route through which such an extra-legal person made its entry into the NREGA framework in our State, one should refer back to the first circular issued by the then Commissioner-cum-Secretary Panchayati Raj Sri S.N.Tripathy (No. No. 1765/RE 5/05/ PR., Dated, Bhubaneswar, the 25/2/06), the subject of which was ‘**Execution of works under NREGA through Village Labour Leader (VLL)**’. In the first Para itself he says, “Now that, the National Rural Employment Guarantee Act, 2005 has become operational w.e.f. 2.2.2006 and the State Government **has not notified the final Orissa Rural Employment Guarantee Scheme (OREGS)**, the Annual Action Plan or Perspective Plan for SGRY/NFFWP being implemented during the current year shall be deemed to be the Action Plan for the Scheme as provided U/S - 4 of this Act. Since the projects are to be executed with the intention of providing guaranteed employment to registered job seekers within the legal time frame, the Government hereby reiterate that **the procedure of execution of these projects will continue through the VLL** with necessary modifications ..”. Thus it is clear that since the OREGS had not come into force then, the provision of VLL was envisaged to continue in the context of NREGA works too just as it prevailed during SGRY/NFFWP days. But once the OREGS is notified, there exists no need to continue the old system, since NREGA as such doesn’t provide for such a functionary to be appointed at all. In fact, the chapter on definition i.e. Section 2 of OREGS also has not taken any cognizance of the character called VLL. But strangely enough, all of a sudden, and without any rhyme or reason, the OREGS in its Section 17(2) brings in the word ‘VLL’ in an altogether different connection. There it is mentioned, “Wages of skilled labourers and semiskilled and **village level leaders (VLL)** should be included in the ‘material costs’.” Strictly speaking, a legal document like OREGS shouldn’t have made a casual mention of the word ‘VLL’ in the manner it does, if the said word was not defined in the Section 2. This injunction is all the more

significant in view of the fact that the character called 'VLL' is now loaded with a lot of meaning and also surrounded with a lot of controversies.

It is suggested therefore to delete the word 'VLL' from Section 17(2) of OREGS to maintain its sanctity vis-à-vis parent Act.

B) Needless to reiterate here, 'Social Audit' is an important instrument in the hands of Palli Sabha/Gram Sabha to ensure transparency and accountability in the process of execution of NREGA works (vide Section 17 of the Act). A State Scheme made under the Act should have provided for a detail mechanism of how a Social Audit is to be conducted. But strangely enough, the OREGS, as if it bears an ingrained abhorrence for the word 'social audit' mentions reluctantly twice in course of Section 4. However, the Operational Guidelines brought out by the Central Government, which should serve as a model to the State Schemes devotes a full Chapter (Chapter 11) to the subject on social audit, explaining its critical significance for the whole Act and mapping out a concrete, step-by-step mechanism of how to hold it in a most effective manner. For all its lip-service paid to the Operational Guidelines [vide Section 2(d) of OREGS], the OREGS has conspicuously failed to do justice to the imperative of social audit as warranted under the Act and Guidelines.

It is therefore suggested that OREGS should incorporate by way of amendment detail provisions on the procedure of social audit as mentioned in the Chapter 11 of Operational Guidelines.

C) A State Scheme worth the name ought to provide for a fool-proof grievance redressal machinery at different levels to ensure an effective, time-bound and transparent manner of implementation of NREG Act. Accordingly, the **Section 19 of the Act** enjoins upon the State Government to put in place appropriate mechanism at Block and District levels for the purpose. But going through the OREGS one feels utterly disappointed in this respect. **At Section 5(a)(vi) of OREGS**, it is casually mentioned that one of the obligations of the Programme Officer at Block level is to 'respond to complaints'. The important questions such as 'whose complaint', 'how to register a complaint', 'time limit within which to dispose of a complaint' and moreover 'what a complainant shall do if his complaint is not timely or properly disposed of' etc. are simply left untreated. Again at **Section 29(3) of OREGS**, it is mentioned, "The District Programme Coordinators will maintain a complaint register according to the proforma given in Form B-11. They should also install a complaint box at a conspicuous place in their office and personally open it at once a week. The complaints received in such boxes should be entered into the complaint register & disposed of within 15 days of receipt". From a careful reading this provision it is clear that there is no provision of an acknowledgement receipt to be given to the complainant, since he is supposed to put his complaint in the box kept for the purpose. Secondly, what is the meaning of the DPC opening the complaint box personally, when the very nature of the complaint might be nuanced against his office? Thirdly, what is the remedy available to a complainant, if the DPC fails to address to his complaint timely or properly?

It is therefore imperative that the OREGS should by way of amendment incorporate detail procedure for registration and disposal of complaints and grievances of the members of public at different levels, such as Block, District and State along with the provision for an ombudsman system at district level in line with the suggestions put forth under Section 10.8 of Operational Guidelines.

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Part-II: POSTSCRIPT

4) State Council should have been in place by now-

As per Section 12 of NREG Act, a State Council consisting of officials and PRI leaders including representatives of SC, ST and OBCs, one-third of them being women, is supposed to play a pivotal role in monitoring and evaluation of implementation of the Act in a State. It shall also serve as a forum for ensuring proper functioning of the grievance redressal machinery at each level. Besides, the Council has a far more important legal obligation too, that is, to prepare an annual report on the implementation of the Act for presentation to the State legislature- an obligation that can't be substituted by any other agency.

But as is well known, Govt of Orissa has not formed the State Council yet. Going by the letter and spirit of the Act, the formation of Council should precede the notification of OREGS. Even OREGS assigns an important, statutory function exclusively to the State Council- "The reports collected by the District Programme Coordinator shall be recorded in Form B-12 and shall be sent to the Council and the Ministry of Rural Development through (a) an electronic copy, emailed or reported online; and (b) a hard copy, duly signed by the authorized officer of the State Council" [vide Section 26(2) of OREGS]. Again, OREGS at Section 8(7) says, "The Council shall determine the proforma of the job card which shall contain the essential features as indicated in Form B-2". The question arises, in absence of a Council, who does its work?

Not only that. If one carefully goes through the nuances of OREGS, it betrays a dubious intention of short-circuiting the mandate of Act for constituting the State Council. For instance, while dealing with specific functions of cardinal importance, OREGS at several places mentions that those may be discharged either by State Government or State Council, as if two entities have identical status in the eyes of the Act, which is not the fact. Let us take for instance the provision made under Section 6 (1c) of OREGS, which says, "In some circumstances, locations or seasons, it may be difficult to guarantee employment within this initial list of permissible works and in such circumstances, **the State Government or Council** may add to the list of works in consultation with Central Government." This runs counter to the provision made under Section 12(3b) of the Act, where determination of 'preferred works' is the exclusive domain of the State Council.

On a practical plane, we have already seen how the State Government in course of last one and half years has already played havoc with the priority of works enlisted under Para-1 of Schedule-1 of NREG Act by way of reversely prioritising 'concrete roads' the item number-8 over and above water harvesting and drought proofing measures the item numbers 1 and 2. The State Government shouldn't be allowed any further to arbitrarily tinker with the provisions of the Act in absence a State Council.

5. Photographs on the Job Card, a must:

The Para-2 of the Schedule-1 of the Act makes it obligatory on the part of the State Government to ensure affixing of photographs of the concerned adult members of a household on the Job Card. Needless to say, the photographs if so affixed would prevent the impersonation in the use of such cards, which is otherwise known as the problem of ghost workers. May be, in the initial period a State Government might allow some laxity in this condition due to the technical problem of arranging a photographer in a remotely located rural area. Keeping it in view the Para -4.3.3 of Central Operational Guidelines had mentioned, "The State Government in a particular area may order the photograph to be affixed later (within three months) if the immediate provision of a photograph is not practicable". But it is not understandable why OREGS, which was formulated almost a year after the NREG Act came into operation should allow the same relaxation in regard to photographs [Vide Section 8(3) of OREGS].

6. Amendment of Job Card necessary:

The Section 13(1) of OREGS says, “Every agency making payment of wages must record on the job card without fail the amount paid and the number of days for which payment has been made”. But the Form-B2, the proforma for the Job Card as prescribed under OREGS contains no column for mentioning the amount paid. Thus the Form-B2 stands the need for its immediate amendment to incorporate a column for the amount paid for each day’s work.

7. Transparency required in selection of other implementing agencies:

It is a fact that the NREG Act at Section 16(5) says, “The Programme Officer shall allot at least fifty percent of the works in terms of its cost under a Scheme to be implemented through the Gram Panchayats”, which means that he may allot the remaining percentage of the works to the other implementing agencies, such as Panchayats at Block and Zilla level, Line Departments, NGOs, Central and State Government Undertakings and Self-Help Groups (vide Para 5.2.2 Central Operational Guidelines). Then as per Section 15 of OREGS, such alternative agencies shall be selected on the basis of ‘technical expertise and resources, capacity to handle work within the given time frame, reputation for work, and the overall interests of beneficiaries and such selection shall have to be indicated in the Annual Plan’. Further it is mentioned under the said Section, “A panel of agencies approved by the Central or State Government, shall be arranged by the Programme Officer in order of priority to ensure that alternative options are available in the event where an agency fails to execute the work”. But the moot question arises, what is the modus operandi of the selection to be followed by the Central or State Government in respect of such alternative agencies? OREGS is conspicuously silent about it. Since the Panchayats are the principal authorities as declared under the Act and since all the works including the ‘general works’ under the Act have to be undertaken within the area of this or that Panchayat, the latter should have a say in the process of selection of alternative agencies. Secondly, to maintain transparency in such selection process, a team of resource persons from among both officials and non-officials should be specially constituted for the purpose at the State level to enlist the panel of alternative agencies based upon their applications invited through open advertisement in public media.

8. Adequate control by Gram Panchayat over the ‘general works’ to be ensured:

As is well known, both the NREG Act and OREGS have divided all the works under a Scheme into two categories, Panchayat Works to be executed by Gram Panchayat and ‘General works’ to be executed by other implementing agencies [vide Section 16(1) of OREGS]. Again, OREGS at Section 4(c) says, “Gram Panchayat shall be responsible for planning of works, registering households, issuing job cards, allocating works, executing fifty per cent of the works like ‘Panchayat works’ and monitoring the implementation of the Scheme at the village level.”, which means that Gram Panchayat should exercise its supervisory authority over the ‘general works’ too, since the latter are very much covered under the Scheme itself. But the OREGS lacks in providing for the exact mechanism by which the Gram Panchayat, or for that matter Gram Sabha can hold the other implementing agencies like a line Department or a Public Undertaking accountable for the commissions and omissions done by that external agency. To be more specific, the questions that loom large are, how the villagers can exercise their regular right to inspection and information on the day-to-day progress of general works and/or how Gram Sabha can conduct their periodical social audit of the finance and performance of such general works.

It is therefore suggested that without putting in place a foolproof mechanism of control and supervision by Gram Panchayat over the ‘general works’, the State Government shouldn’t go ahead in planning and implementing any general work.

9. Why blame Sarpanch alone?

The Section 24 of OREGS (Bank Account) contains a peculiar provision that says that though the bank account under the Scheme will be operated jointly by the Sarpanch and Executive

Officer/Secretary of GP, the Sarpanch will be personally liable for any expenditure made without the sanctions from competent authorities. Firstly, when it is a joint account, why should Sarpanch alone be held accountable for any lapse, if any committed by both persons or by the other person? Secondly, nowhere in the OREGS, the so-called competent authorities are bound by any norm or deadline within which they should release their administrative and technical sanction. On the other hand, Gram Panchayat has been entrusted with the supreme obligation of providing jobs to all the applicants in a time bound manner (vide Section 16 of NREG Act). If the so-called competent authorities don't release their approval of work proposals timely, how can the GP would be able to provide the job to the applicants in time?

Moreover, the OREGS should have specified the persons/officials, who shall operate the bank account of general works, and what should be their liability in the event of any lapse by the account holders.

10. Deficient on Right to Information:

The Section 23 (Transparency and Accountability) of the Act says inter alia, "The State Government may, by rules, determine the arrangements to be made for the proper execution of Scheme and programmes under the Schemes and to ensure transparency and accountability at all levels in the implementation of the Schemes". Again to be more specific, the Para-16 of Schedule-1 of the Act has mandated, "All accounts and records relating to the Scheme shall be made available for public scrutiny and any person desirous of obtaining a copy or relevant extracts therefrom may be provided such copies or extracts on demand and after paying such fee as may be specified in the Scheme". But it is disturbing to know that the OREGS has avoided making necessary provisions for the same. Only at Section 30(3), it merely says, "photocopy of the muster roll will be kept for public inspection in every Gram Panchayat and in the office of the Programme Officer", which means that there is no provision for taking a copy of or an extract from the muster roll by any person.

To ensure proper compliance of OREGS to the RTI-based provisions under the Act, it stands immediate need of amendment in the light of the suggestions mooted in Chapter –10 of NREGA Operational Guidelines.

11. No provision for Vigilance or Beneficiary Committees:

The NREGA Operational Guidelines at Para-10.7 speaks emphatically of the need for forming Vigilance Committee and Beneficiary Committee for each work sanctioned with a view to prevent corruption and mal-practices and also to ensure broadest possible participation of the workers themselves in the process of implementation of the works under the Act. But pathetically enough, there is not a single reference to either of two Committees in the main text of the OREGS, though in the Proforma for Assets Register attached to the OREGS the last (15th) column asks, "Whether local vigilance committee formed?". In all probability it seems, the Government of Orissa copied down verbatim all the Forms and Proforma from the NREGA Operational Guidelines and in the process the sole column relating to vigilance committee inadvertently crept into OREGS. Otherwise, it is not understandable why there is no mention at all of Vigilance Committee in the whole of the main text of the OREGS.

In order to incorporate adequate provision for formation and functioning of both Vigilance Committee and Beneficiary Committee for each work executed under the Act, the OREGS should undergo necessary amendment.

12. OREGS-2006 dares to override NREG Act-2005

As is well known, Section- 28 of the Act clearly says, "The provisions of this Act or the Schemes made thereunder shall have effect notwithstanding anything inconsistent therewith

contained in any other law for the time being in force or in any instrument having effect by virtue of such law..”. The rationale for this overriding provision is that many prevailing laws that were made in the past have some or other retrograde provisions, which might mar the operation or impact of the new law. Accordingly, OREGS should have accorded a place of priority to NREGA and the Scheme made there under over the rest of provincial laws. But unfortunately, at Section 2(2), OREGS speaks in a contrary spirit, “Words and expressions not defined in this Scheme shall have the same meaning as in the Act (*meaning NREG Act, 2005*) or the Orissa Gram Panchayat Act, 1964, the Orissa Panchayat Samiti Act, 1959 or the Orissa Zilla Parishad Act, 1991, as the case may be.” The moot question is, what is the purpose of bringing in Orissa GP Act, PS Act or ZP Act into the arena of NREGA? This is only and simply meant to obviate the need for complying with the transparency and accountability requirements of NREG Act. For instance, at Para 11.5.1 the Operational Guidelines says, “The quorum of the Forum (*Social Audit Forum*) must be the same as for all Gram Sabhas, with the quorum being applied separately to all relevant categories (e.g. women, SC, ST and OBCs)”, which means that there must be some or other quorum, as applicable now for Gram Sabha, made mandatory for holding the Social Audit Forum under NREGA. But as is well known, OREGS says at Section 4(a), “**Gram Sabha or Palli Sabha**, as the case may be, is authorized to conduct social audits for the implementation of the Scheme”, which means that in Orissa’s context Palli Sabha too can conduct social audit. But as is well known again, as per Orissa GP Act 1964 the quorum for Gram Sabha meeting is ten percent only, while no quorum is needed for holding a Palli Sabha meeting. Under the circumstances, if we go by the Orissa GP Act as prescribed under the OREGS, we shall witness the same kind of farcical rehearsal of Social Audit Forums as has been occurring in the case of so-called Palli Sabha meetings over the decades.

So it is suggested that OREGS should provide for a quorum for the Palli Sabha to hold a Social Audit Forum irrespective of the provisions whatsoever contained in any other law, and moreover should unequivocally declare the NREG Act and a Scheme lawfully made under it to be having overriding effect over every other law.

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