

Manual 6: Panchayat's Own Non-Tax Revenues

6.1 Why fiscal empowerment of Grama Panchayats necessary:

The objective of the 73rd and 74th Constitution Amendments is to make the Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs) effective institutions of self-government in rural and urban areas respectively. Among the whole lot of local bodies, the Grama Panchayats enjoy a position of pre-eminence since they stand nearest to the people in villages and serve as the cutting edge of the service delivery mechanism. It is therefore indispensable that the earning and spending power of Gram Panchayats, in a word their fiscal position be enhanced so as to match with the big and important role they are expected to play in translating the mandate of 73rd Amendment.

6.2 Grim Scenario of GP finances in Orissa:

According to Report of the Second State Finance Commission, Orissa (2004), “A valid criticism of the Gram Panchayats in Orissa is their failure to mobilize tax and non-tax revenues vested in them. While the Commission have been asked to determine the principles for devolution of funds to the Panchayati Raj Institutions, the Gram Panchayats at the grass-root level should be encouraged to make efficient use of the sources of revenues assigned to them. Generation of additional funds would give them greater autonomy to plan their developmental programmes. It may be observed that the average own income in 2002-03 for the 3730 GPs stood at Rs.46945.00. Such an estimate of average own income conceals the poor fiscal base of many of the GPs in Orissa”. (*Vide Chapter V, Survey of Local Bodies, Report of 2nd SFC Orissa, 2004*). Further the Report noted, “The SFC is of the opinion that local bodies, particularly at the village level are institutions needed for more than growth. They have to deal with problems relating to agriculture, industry, infrastructure, and environment and to an extent with sustainable development. They have to create employment opportunities, help designing programmes and implement them for different class groups, and help in evolving a new social fabric based on trust and equity. ... The Commission believe that local bodies in Orissa, particularly the PRIs starting with the GPs have to initiate appropriate measures based on surveys and feasibility studies for diversified growth of the rural economy and at the same time ensure sharing of benefits, always keeping the poor, downtrodden and vulnerable sections of population at the centre –stage of local development programmes. .. Thus the local bodies have a constitutional responsibility to do everything possible to reduce poverty, to expand education, reduce IMR, improve sanitation, improve life expectancy, provide relief and assistance to artisans, social groups like the weavers in developing their skill, activities and trade. In fact, both the PRIs and ULBs aim at improving living standards of the people” ”. (*Vide Chapter V, Survey of Local Bodies, Report of 2nd SFC Orissa, 2004*). In view of the above perception of the 2nd SFC of Orissa, it now behoves the political leadership, administrators, planners, policy makers and above all Panchayat functionaries to bring about a drastic fiscal improvement of PRIs, especially that of the bottom layer Grama Panchayats so as to enable them to play their due role in bringing about development with social justice at grassroots level.

6.3 Classification of Panchayat Revenues: Tax and Non-Tax :

The revenues of a Grama Panchayat can be broadly divided into two categories, tax revenues and non-tax revenues. The Tax revenues can again be sub-categories into Own Tax, Assigned Tax and Shared Tax, while the Non-Tax revenues can be sub-categorised into License/Registration Fees and Fines, Grants, Loans and Income-generating programmes. It is just a common sense that taxation has its limits. If any authority, be it the Government at Centre or a State Government or a local body like Grama Panchayat goes on imposing new and newer taxes or enhancing the level of taxes more and more, a time arrives sooner or later when the people refuse to pay new or enhanced tax any further and the concerned authority in obedience to the wishes of the people decides to reverse its taxation policy. In the long run thus the tax revenues can't suffice to cover the expenditures for the ever expanding volume of functions and services that the local bodies are expected to fulfill in the capacity of 'institutions of self-government' as required in the post-73rd Amendment era. It is therefore utterly significant that the local bodies especially, those which exist at the cutting edge of the delivery mechanism, namely Gram Panchayats be encouraged and promoted to explore more and more the sources of non-tax revenues for augmenting their total pool of resources. Again, the non-tax revenues consist as they do of external sources (such as in the form of grants, subsidies and shared and assigned taxes) on one hand and own revenues (such as registration/license fee, fines and income generation from own undertakings) on the other, the Panchayats can attain to a real position of resourcefulness and self-reliance in the long run if they focus on raising internal non-tax sources more and more alongside of whatever tax and external non-tax revenues are available to them.

6.4 Loan, whether an external or internal revenue?

Before we discuss the internal non-tax revenues of Gram Panchayats, it is pertinent here to clarify the position of 'loan' vis-à-vis the classification of non-tax revenues into external and internal categories. Though a loan is borrowed from an external source like a Bank, Government Department, a Donor agency or even from a person, the borrowing institution i.e. Grama Panchayat in this case takes the decision to borrow and undertakes to repay the loan along with the interest thereon and also to face the punitive consequences in the event of its failure to pay or abide by the terms and conditions of the loan. Since the act of borrowing a loan and willingness to manage it and face the associated risks flow from the decision of Grama Panchayat itself independent of any external pressure, the loan should be looked upon as a component of internal non-tax revenue of the GP rather than external revenue.

6.5 Classification of Panchayat Revenues into 4 heads:

From another angle, and to simplify the understanding of Panchayat finances, the Revenues of Grama Panchayats can be classified into 4 broad heads, namely tax revenue, non-tax revenue, grants and loans. **The first two heads can be understood as own or external revenue of a GP, while the next two as external revenues of the GP. The tax revenues** are derived from Registration Fee, Latrine Tax, Drainage Tax, Street Lighting Tax and Vehicle Tax. **The non-tax revenues** are derived from fees on markets and fairs, fees on cattle pounds, license fees on orchards, wasteland, pisciculture ponds, ferry ghats, slaughter houses, cart sheds, compost and rents from grain gollas and cooperative societies. (*Vide Chapter VI, Report of 2nd SFC Orissa, 2004*). As regards the external

sources of revenue, on top of all, **Grants from both State and Centre** constitute a big percentage of total receipts by Grama Panchayats in a year. The State Government has been providing grants to Rural Local Bodies towards meeting the salary/remuneration expenditures of these bodies.

In addition to the Grants by the State, the Central Government also provides grants to PRIs on various plan heads, which are called Centrally-sponsored schemes, but the quantum of assistance and norms followed vary from scheme to scheme and from year to year. The instances of such Central schemes are Sampurna Grameen Rozgar Yojana (SGRY), Swarnajayanti Gram Swarozgar Yojana (SGSY), Indira Awaas Yojana (IAY), Prime Ministers Gramodaya Yojana (PMGY), Operation Black Board (OBB) and National Rural Employment Guarantee Act (NREGA). In each of these Schemes Centre bears the major amount while the State gives a matching contribution for its implementation. An example of Central Sector Scheme is NREGA, under which the Centre bears the total expenditure for workers' wages, 3/4th of the material cost and such percentage of administrative expenses including staff salaries as it may decide, while State shall bear unemployment allowance in full, 1/4th of material cost and expenses of State Council (*Section 22 of NREGA 2005*). The awards of Central Finance Commissions to States on account of strengthening local bodies in pursuance of the vision of devolution as envisaged under 73rd and 74th Amendments can also be called Grants from Centre since under each item of an award there is sharing by the concerned State in the shape of matching contribution. For instance, as reported by Dept. of Panchayati Raj, Orissa, a sum of Rs.20099.00 lakh was received from Tenth Finance Commission and a sum of Rs.16750.00 lakh was available as State Matching share during the Tenth Finance Commission plan period and the total amount of Rs.36849.00 lakh has been utilized for Rural Connectivity Programme (RCP) and construction / renovation of Zilla Parishad / District Rural Development Agency / Block / Gram Panchayat office buildings and Staff Quarters and other roads.

The Panchayat laws of not only Orissa but also many other States recognize '**Loan**' as a separate source of revenue for different tiers of PRIs including Grama Panchayats. But the provisions relating to the power of a GP to borrow loan as found in these laws (for instance, Section 95 of Orissa Grama Panchayat Act 1964 and Rules 104 to 116 of OGP Rules 1968) are so much coloured by cumbersome and prohibitive conditions that no GP can practically borrow even a petty sum from any source.

6.6 Ambivalent position of Non-Tax Revenues of GPs in Orissa –

Certain public properties, namely, (a) Village Roads (b) Irrigation Sources (c) Ferries (d) Waste Lands and Communal Lands, (e) Protected and Unreserved forests, and (f) Markets and fairs are to vest in the Grama Panchayat and to be under its management, direction and control as per the provisions of sub-section (4) of **Section 71 of the O.G.P. Act 1964**. Though the provision appears to be mandatory, all such properties do not appear to have been transferred or to have been vested in the Grama Panchayat. Particularly all waste lands and communal lands, protected un-reserved forests, etc. do not appear to have been alienated in favour of the Grama Panchayats. Under **clause (g) of sub-section (4) of section 71**, all incomes arising or accruing from any of the above-

mentioned properties are also to vest with the Grama Panchayats. But except a lump sum amount from the existing sairat sources, nothing else is transferred to the G.Ps. While the provisions of the GP Act are to be effectively implemented for collection of taxes, the Commission is of the view that both tax and non-tax sources made available to the G.Ps. for raising internal revenue are neither broad-based nor elastic and need to be strengthened. (*Vide Para- 6.8, Chapter VI, Report of 2nd SFC Orissa, 2004*)

6.7 Power of GP to levy fees against issue of licenses:

The Section 55 (Industries and Factories including dangerous and offensive trades) of OGP Act 1964 has listed out 24 items for which the Grama Panchayat has the power to issue licenses, subject to fulfillment of certain conditions. The **Section 56 (Control over places of public resort and entertainment)** confers the power to the GP, with previous intimation to the Collector, to issue permission or licensee to any person or party to use an enclosed space, building or tent situated within the Grama Sasan and covering an area of five hundred square feet or more for the purpose of public resort or entertainment on a commercial basis. The licenses issued under Section 55 and Section 56 are subject to terms and conditions which Grama Panchayat chooses to attach thereto and every such license is also subject to renewal. The **Section 57 (Power to levy fees for licenses under Sections 55 and 56)** provides for the power of the GP to charge a fee against issue of any such license or renewal thereof along with the conditions and restrictions, which it thinks proper. But the maximum amount of any such fee is subject to determination by the Government by way of notification.

6.8 License to Industries and Factories:

Following is the list of 24 industrial and factory units against which the GP has the power to issue license and collect a fee thereon under **Section 55 of the OGP Act-**

- (a) Keeping and Washing soiled clothes;
- (b) Boiling camphor;
- (c) Preparing chua;
- (d) Melting tallow or sulphur;
- (e) Dissolving silver and gold with nitric acid;
- (f) Storing, boiling or otherwise dealing with manure, offal, bones, hides, fish, skins, horns; or rags;
- (g) Tanning hides and skins, skinning and disemboweling of animals,
- (h) Washing or drying wool or hair;
- (i) Preparing fish oil, hydrogenerated oils, ghee, butter and such other fat preparations;
- (j) Making soap, dyeing, boiling or pressing oil;
- (k) Manufacturing or distilling sago or kedua water, manufacturing artificial manure, manufacturing or refining sugar, manufacturing sugar candy, or jaggery, tanning or manufacture of leather or leather goods, manufacturing lac, manufacturing beedis;
- (l) Manufacturing gun powder or fire-works;
- (m) Burning bricks, tiles, pottery or lime;
- (n) Keeping a public rest house, Dharmasala, Sarai, Hotel, Restaurant, eating house, coffee or tea stall, boarding or lodging house,

- (o) Keeping a hair-dress saloon;
- (p) Keeping together twenty or more sheep, or goats or pigs or herds of cattle;
- (q) Preparing flour or flour based articles for human consumption or sweetmeats;
- (r) Manufacturing ice or aerated water;
- (s) Selling/storing of timber, coal, hay, straw wood, thatching grass, jute, coke, charcoal, or other dangerously inflammable material;
- (t) Selling grain, ground nut, chillies or jaggery in wholesale or storing any of the said articles for wholesale trade;
- (u) Storing any explosive or combustible material or storing kerosene, petroleum, naphtha, or any inflammable oil or spirits;
- (v) Manufacturing anything from which offensive or unwholesome smell arises or which has been declared by the State Govt by notification to be dangerous or offensive;
- (w) Using for any industrial purpose any fuel or machinery; and
- (x) Doing in general in course of any industrial process anything, which is likely to be offensive or dangerous to human life or health or property.

6.9 Maximum annual fees leviable against the licenses to be issued:

A Notification was made on the orders of Governor (**vide Notification No.1263 L.S.G. dated 8th Nov. 1950**) fixing maximum license fee leviable per annum by Grama Panchayats on trades and industries listed above and allowing the GPs to vary the amount within the maximum so fixed, if they considered it so necessary depending upon the local conditions and the nature and size of the trade and industry. As per **Section 153 (Repeals) of Orissa G.P.Act 1964**, any notification concerning licenses, permits, taxes, rates, tolls and fees etc. made under the repealed Act of 1948 shall remain in force until new provisions are made in that behalf. Thus the notification concerning the maximum amount of license fees made in the above order of 1950 remains still valid to this day. It is interesting to note that the maximum amounts for license fees so notified in 1950 are so low that the said notification has lost its practical relevance since long. For instance, the maximum license fee fixed for burning bricks is only Rs.20/- per 1 lakh of bricks, for a lodging house only Rs.5/-, or for storing petroleum upto 100 gallons Rs.3/- only.

6.10 Limitations to the Power of GPs in respect of licenses:

However, the Gram Panchayat can exercise its power to issue license in respect of any of the above 24 activities only if it has received the previous sanction by the Collector of the concerned District. Any notice issued by the GP in respect of the issue of restrictions or license on the above activities shall take effect only after the expiry of 60 days from the date of notification. The person who is interested to obtain a license for any of the above purposes shall within 30 days of the publication of the said notice apply for the license. The Grama Panchayat has the power to grant or refuse the grant the license within 60 days of the application for license so made. If Grama Panchayat decides to refuse to grant the license it shall communicate its decision to the Collector who in turn shall conduct an enquiry into the whole matter and inform the Government the decision of GP along with his views thereon. Every license so granted shall expire normally on the expiry of a year from the date of issue of the license. The application for renewal of license shall be made not less than 30 days before the date of expiry of the license. The application for license

for opening a new place shall be made not less than 30 days before the date, on which the new place is to be opened.

Moreover, the power of Grama Panchayat to issue license for manufacturing of gun-powder or fireworks or for storing of any explosive or combustible material shall remain subject to the provisions of Indian Explosives Act 1884 and rules made there-under and its power to issue license for storing any inflammable material shall remain subject to Petroleum Act, 1934 and the Rules made there-under.

6.11 A Potential Source of Income from Mahuli Liquor Trade in Scheduled Areas-

In pursuance of the mandate of PESA [Provisions for Panchayat (Extension to Scheduled Areas)] Act, 1996, the Orissa Grama Panchayat Act 1964 was amended in 1997 and a new provision in the form of **Sub-section (2) was added to its Section 44 (Obligatory Functions)**, which endowed the Grama Panchayats in Scheduled Areas inter alia with the power of supervision and control in respect of 'enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicants'. While the Sub-section on one hand categorically said that the exercise of this power would be made 'notwithstanding anything contained in any other law' it on the other provided for a limiting condition that such power would be exercised 'in such manner and to such extent as may be prescribed'. Even after a decade, no rule whatsoever has been made under OGP Act to prescribe 'the manner and extent' of exercise of the above power by a GP in the Scheduled Area. If the GP as envisaged were actually endowed with this power by the enabling Rules made in that behalf, it would not only serve the cause of health and general well being of the community in a more effective manner, but also vastly increase the scope of income for Grama Panchayats by way of receipt on account of registration and license fees on manufacture and sale of intoxicants within the limits of Grama Sasan.

As is well known, collection and sale of Mahua flower, so to say, the sole ingredient for production of Mahuli Liquor is an important source, though a seasonal one, of livelihood of the tribal and non-tribal populations in several Scheduled Areas of Orissa. It is therefore very much legitimate that Grama Panchayats in Scheduled Areas should be entitled to the income in the shape of registration and license fees from the manufacturers and traders of Mahua liquor operating within their respective jurisdictions. However, in absence of any legal provision under OGP Act 1964 in respect of regulating the preparation and sale of Mahuli liquor, the said subject is being dealt with by the Excise Department of Orissa in accordance with the Bihar and Orissa Excise Act 1915 and Rules made there-under. In a seeming effort to comply with the mandate of PESA 1996 to endow the Gram Panchayat with the power to regulate the liquor trade, the Government of Orisa **amended Bihar and Orissa Excise Act 1915 in 1999, by virtue of which a provision in the shape of Section-26 A** was inserted into the Act. As per the inserted provision, 'the authority competent to grant license' for manufacture, possession or sale, or exclusive privilege for the same shall continue to rest on the Excise Department as before, but the said authority shall have to obtain 'the concurrence of Grama Sasan' before granting the license. On a reference by the competent authority to Grama Panchayat for obtaining such concurrence, the Grama Panchayat shall accord its decision

within 30 days of the reference so made, failing which it shall be deemed that the GP has accorded its approval in favour of the proposal for license. Under the circumstances, whether the GP accords its approval or not, it is not entitled to any share in the income accruing to the Government on account of registration or license fees in respect of Mahuli liquor.

6.12 Operation of Public Markets within the area of a GP-

Section 58(1) of the Orissa Grama Panchayat Act, 1964 empowers a Grama Panchayat to demarcate and provide places for use as public markets or reversely close or suspend any such market or part thereof. **The Section 58(2)** empowers the GP to levy any one or more of the fees as mentioned below, in any public market at such rates, subject to maximum rates if any prescribed in that behalf, and may place the collection of such fees under the management of such person as may appear to it proper or may lease out such fees on such terms and conditions as the GP may deem fit.

- (a) fees for use of, or for the right to expose goods for sale in such market,
- (b) fees for the use of shops, stalls, pens or stands in such market,
- (c) fees on vehicles (including motor vehicles as defined in Motor Vehicles Act, 1939 or pack animals bringing , or on persons carrying any goods for sale in such markets, and
- (d) fees on animals brought for sale in or sold in such market, license fees on brokers, commission agents and weighmen etc. practicing their calling in the market.

The Section 58(3) says that a schedule of rates or fees in respect of every market specified above shall be prepared by the GP with approval of the Panchayat Samiti in accordance with the rule made for the purpose and the GP shall notify the schedule so prepared at a conspicuous place within the market. As per **Section 58(4)** if and where the lessee or his agents, as the case may be, contravenes any provisions of the schedule, his lease shall be forfeited and he shall, on conviction, be liable to a fine not exceeding rupees fifty.

Following an amendment of the OGP Act in 1994, the **Section 58(5)** says that the Orissa Agricultural Produce Markets Act 1956 shall not apply to markets set up within the area of GP before or after the OGP Amendment Act of 1994 came into force, and where the land or building or both belonging to any GP have been transferred to a Market Committee under Section 4 of the Orissa Agricultural Produce Markets Act, 1956 prior to the date of notification of the Amendment Act of 1994, it shall stand transferred to the GP having its jurisdiction over it on that date. Again, if a market set up under Orissa Agricultural Produce Markets Act, 1956 is situated and operating within the area of a Grama on the date of notification of the above amendment, it shall be deemed to be a market allowed under the OGP Act. However, the said market if not transferred to the Grama within 3 months of the notification of the Amendment Act shall cease to function under the control of Grama Panchayat.

6.13 2nd SFC, Orissa on GP's Power over Public Markets-

“After the 73rd Amendment of the Constitution, ‘markets and fairs’ have become a constitutional responsibility of the Panchayati Raj Institutions as they find place under

Schedule- XI. For discharging such responsibility it is necessary that the markets presently managed by the Regulated Market Committees are transferred to the management of the G.Ps concerned. Presently, under the provisions of the Orissa Agricultural Produce Markets Act, 1956, net income of such markets are shared equally among the local bodies and the market committees; however, with a stipulation that the transferable share to the local bodies shall not be less than 80% of the average net income of land and building for 3 preceding years before transfer of the market to the committee. Thus, the Market Committees having no social or constitutional responsibility appropriate about 50 p.c. of the net income of such markets, while the local bodies starve for want of funds. The Market Committees do not take up any local improvement work except for providing some facilities in the markets in a haphazard manner and there is also no provision in the Act to enable the Market Committees to take up any development work or health & sanitation measures, in the locality. The objectives of the Orissa Agricultural Produce Markets Act, 1956 are also very narrow and confined to the activities of regulating the purchase and sale of agricultural produce only. The Commission, therefore, are of the opinion that it is high time that the said Act is repealed and the markets now under the management of different market committees constituted under the Act are re-transferred/transferred to the management of the concerned G.Ps” *(Vide Para- 6.43, Chapter VI, Report of 2nd SFC Orissa, 2004)*

6.14 Operation of Private Markets within the area of a GP-

As per **Section 59 of the OGP Act**, no person shall open a new private market or continue to keep open a private market without obtaining a license from the concerned GP, and the said license shall remain valid for a year and may be renewed every year thereafter. In the Scheduled Areas the Grama Panchayat, subject to the control and supervision of Grama Sasan shall have power to manage village markets by whatever name called. The Section 60 of the Act says, the GP while granting license in respect of a private market may attach such conditions as it may deem necessary in regard to sanitation and water supply, weights and measures to be used etc. The GP may modify these conditions as and when it so considers necessary. It may at any time suspend or cancel the license already issued on the ground of breach of the conditions stipulated. The GP may charge a fee against issuance of a license, and the said fee shall not be exceed 15% of the gross income from the shop in the preceding year. The GP has the power to close any private shop, if it is unlicensed, or if the license has been suspended or cancelled or which is kept open in contravention to the provisions of OGP Act.

6.15 GP’s power to restrict and prohibit unauthorized market-

As per **Section 62**, no person shall sell or expose for sale any animal or article in any public or licensed private market without the permission of the GP or licensee, as the case may be, or of any person authorized by him. As per **Section 63**, the Grama Panchayat may prohibit by public notice or license or regulate the sale or exposure for sale of any animals or articles in or upon any public street or place or part thereof.

6.16 Dispute, if any around the definition of ‘market’-

As per **Section 2(k) of OGP Act**, ‘market’ means any place set apart or ordinarily or periodically used for assembling of persons for the sale or purchase of grains, fruits,

vegetables, meat, fish or other perishable articles of food or for the sale or purchase of live-stock or poultry or of any agricultural or industrial produce or any raw material of manufactured products or any other articles or commodity necessary for the convenience of life. As per **Section 61**, if any disputes as to whether a place is a market or not, the Grama Panchayat shall make a reference thereon to the State Government and the decision of the latter shall be final.

6.17 Power of GP in respect of regulating collection and trading of minor forest produce-

The **Eleventh Schedule of the Constitution** added as a part of 73rd Amendment provides for 'minor forest produce' (item no.7) to be brought under the control of Panchayats. Besides the **OGP Act 1964 in the Sub-section (1) under its Section 44 (Obligatory Functions)** mentions inter alia minor forest produce as item (w), which ought to remain under the administrative control of Grama Panchayat. The **Sub-section (2) of the Section 44** also says that 'ownership of minor forest produce' should remain under the control and supervision of Grama Sasan in the 5th Scheduled Areas of the State. In deference to these provisions the Government of Orissa in the Department of Forest and Environment announced a **Resolution (No.5503/F&E, dated 31st March 2000) on Procurement and Trading Policy for Non-Timber Minor Forest Produce**, which for the first time formally acknowledged the ownership rights of Grama Panchayat over the minor forest produce, which was so far under the control of Forest Department. This Policy Resolution was followed by an **Order (No.LS.III.41/2000 dated 26.5.2000) of the Department of Panchayati Raj, Orissa** which required any trader intending to procure and trade the minor forest produce in the areas falling under a Grama Panchayat ought to register themselves with the concerned GP by way of application in a prescribed format along with payment of the registration fees. If the registered traders are found to be procuring the minor forest produce from the primary collectors at a price lower than the fixed one, the Grama Panchayat shall have power to cancel his registration. Such public undertakings of the Government as OFDC (Orissa Forest Development Corporation), TDCC (Tribal Development Cooperative Corporation) and TRIFED (Tribal Cooperative Marketing Development Federation of India) were however exempt from the obligation to register themselves with the GP unlike the private dealers. Then came the **Orissa Grama Panchayat (Minor Forest Produce Administration) Rules, 2002 notified by Dept. of Panchayati Raj in Extraordinary Gazette of Orissa (No. 2091 dated Nov. 15, 2002)**, which presently governs the matters relating to 68 nos. of minor forest produce within the jurisdiction of a GP in both scheduled and non-scheduled areas.

6.18 Orissa GP (Minor Forest Produce Administration) Rules, 2002-

As per the Rules of 2002 the GP shall have the power to regulate procurement and trading of MFP, whether produced in government lands and forest areas within the limits of Grama or collected from the Reserved Forests and brought into the Grama. Any person intending to collect the above mentioned minor forest produce from the primary gatherers or to trade in such produce within the Grama Panchayat during any trading year is required under Rule 4 of the said Rules to register himself as such on payment of a registration fee, to the concerned Grama Panchayat as may be notified by the

Government from time to time. The following are the salient features of the current policy-

- Priority would be given to the VSS (Vana Surakshya Samiti) and its members for collection and trading of MFP.
- Price fixation would be done by the Panchayat Samiti (PS) in September and would be circulated to different offices of district administration and to all the GPs.
- The Gram Sabha would ratify prices fixed and necessary changes can be made based on the local needs.
- If Panchayat Samiti fails to fix the price then the District Collector would call a meeting of PS preferably in October to fix up the minimum procurement prices.
- The trader registered to procure MFP from the GP shall furnish monthly return and also annual return in a prescribed format.
- The GP shall furnish an annual return on the procurement and sale to the Forest Range Officer.
- In case of violation of payment of minimum procurement prices by the registered traders to the primary collectors, the Sarapanch shall conduct an inquiry and then it shall be discussed in the GP meeting and then GP may resolve to cancel the registration of the trader. If the trader after cancellation of the registration continues to procure MFP from the GP area then the Sarapanch or Secretary shall lodge complaint before the DFO. The MFP seized by the DFO from the trader shall be publicly auctioned and the sale proceeds thereof be deposited under the appropriate head of account under the Orissa Forest Act.
- If a trader is engaged in procurement of MFP without registering with the GP then the Sarapanch or Secretary shall lodge complaint before the DFO for taking appropriate action.

However, under **Rule 9 (I) of the above Rules of 2002** such registration fee is not payable by the Public Sector Undertakings like the OFDC and TRIFED. In this connection Second State Finance Commission, Orissa in their Report (2004) observed, "Since most of the minor forest produce are procured from primary gatherers and traded by these corporations/co-operatives, the Grama Panchayats are virtually deprived of getting registration fee from all the procurers and traders. The Commission are of the view that as it is obligatory for a Grama Panchayat under Section 44(I) of the Orissa Grama Panchayat Act, 1964 to control and administer 'Minor Forest Produce', which finds place in clause (w), it is unfair to deprive them of the registration fee due from the public sector undertakings. Secondly, it is apprehended that non-imposition of the registration fee on the PSUs may be interpreted as discriminatory. In the circumstances, the Commission suggest that **Rule 9(I) of the Orissa Grama Panchayats (Minor Forest Produce Administration) Rules, 2002**, may be suitably amended empowering the Grama Panchayats to levy and collect the registration fee from the P.S.U. traders also".

(Vide para- 6.53 Report of the Second State Finance Commission, Orissa, 2004)

Another important concern that has surfaced in course of implementation of the Rules of 2002 is worth mentioning here. As per the 2002 Policy, it is mandatory for the trader

(except Govt Corporations) to register itself with the GPs from which it is procuring. The objective behind such arrangement is to bring the NTFP trade under supervision of the GPs, and bring some income though not in terms of making any lucrative profit. GPs do have the authority to reprimand unscrupulous traders, in accordance with the OGP Act. In other words, it is now the responsibility of the GPs to ensure fair price to primary collectors through periodic monitoring and surprise checks. On the contrary, it is being largely observed that registration has no relationship with procurement and that trade operations and registration are going parallel to each other. It is further observed that from the standpoint of primary collectors, such registration with the GPs is not making any difference either with regard to overall procurement or payment. In most of the GPs, traders are procuring from primary collectors without knowledge of the GPs, which implies that PRI members are not keeping track of NTFP trade in local hats, let alone maintaining records of transactions. Most importantly, most of them are not even aware of their constitutionally sanctioned supervisory and regulatory roles. Therefore, the monitoring trade at least in the local hats is not taking place.

6.19 Recovery of expenses against disposal of corpses-

As per **Section 64**, after the expiration of 24 hours from the death of any person the GP may undertake the burning or burial of the dead body of that person, in a manner consistent with the religious customs of the deceased. The expenses incurred for the said purpose may be recovered from the estate of that person. In case of pauper, his corpse shall be disposed of free of cost by the GP.

6.20 Fine against unauthorized use of premises-

As per **Section 68**, if any person without obtaining the license uses a place or a building for some purpose for which the license of the GP is required or if a person on obtaining a license uses a place or a building in contravention of the conditions attached to the license, he shall be liable on conviction to a fine which may extend to one hundred rupees for the first offence and if the offence be a continuing one with a further fine which may extend to five rupees for every day after the first conviction.

6.21 Recovery of expenses against violation of GP's direction on pest control and improved agriculture and animal husbandry-

As per **Section 70(1)** the GP may, if occasion so arises, declare any area within Grama to be an agricultural pest infested area and take steps for eradication of the pests and may for the said purpose issue necessary direction to the owners or growers of crops. The GP may in accordance with a scheme made for the purpose issue directions, to the inhabitants of the area to adopt improved methods of agriculture or animal husbandry, as the case may be, with a view to increase agricultural production within Grama. **Section 70(2)** says, such power of GP to issue directions shall be exercised with prior approval of, and subject to the control and direction of the State Government or the prescribed authority. The GP is required to invite objections from the inhabitants on the draft scheme before notifying it. As per **Section 70(3)** if any person fails to comply with such directions, the GP may recover from him the expenses that might have been incurred on account of his default.

6.22 Provisions on Borrowing by Grama Panchayats-

The Section 95 of OGP Act 1964 and Rules 104 to 116 of OGP Rules 1968 deal with the provisions relating to borrowing by Grama Sasan

The Section 95 of the O.G.P. Act 1964 says that Grama Sasan may borrow money (loan) from the State govt., any local authority, or any individual or organization registered or not to carry out the functions assigned to it. But this power to borrow is subject to certain conditions such as previous sanction of the State Government and compliance to the related Rules made under the Act.

6.22.1 Rule 104 of Orissa GP Rules 1968 (Loan rules) contains detail provisions on Grama Sasan's power to borrow from any source. If the G.P. decides to make a loan, first of all it has to pass a resolution to that effect in the meeting of Grama Panchayat and then submit an application to the Collector of the District for the said purpose attaching therewith the resolution so adopted. The application is to be made in Form No.22 appended to OGP Rules, 1968.

The Collector shall examine the application so submitted in regard to the following matters: -

- (a) Whether the application is made in prescribed format and accompanied by GP resolution;
- (b) Contents of the application are true and correct;
- (c) Financial position of Grama Sasan is sound enough to repay the loan;
- (d) The term of the loan doesn't exceed 15 years;
- (e) In case of the loan sought from the State Government, the Gram Sasan undertakes to pay the interest at the rate fixed by the state Government;
- (f) In case of a loan applied for to develop an orchard, or digging or renovating a tank for pisciculture purposes, the land on which such projects are to be carried out belongs to the Grama Sasan;
- (g) In case of a loan applied for to construct a building or a shed, the land on which such constructions shall be carried out belongs to Grama Sasan; and
- (h) At the time of the application for a loan from the Government, the total loan outstanding (both from Govt and non-Govt. sources) against Grama Sasan doesn't exceed 10 times the average of its annual income during preceding 3 years. This condition can be relaxed only if the establishment of Grama Sasan has not completed 3 years;
- (i) At the time of the application for a loan from some non-Government source, the total loan outstanding (both from Govt and non-Govt. sources) against Grama Sasan doesn't exceed 3 times its income during the preceding year, and the total loan (both from Government and non-Government sources) outstanding at the moment including the one being applied for doesn't exceed 10 times the average of the income of the 3 preceding years;
- (j) If the loan is meant for an irrigation project, the condition may be relaxed. But it can't exceed 5 times the income of Grama Sasan in the preceding the year; and
- (k) That the work for which loan is applied is feasible and income generating for Grama Sasan.

The Collector after satisfying himself in regard to above conditions shall forward the application for loan made by a GP to the State Government.

6.22.2 As per **Rule 105 of Orissa GP Rules 1968** the State Government has the discretionary powers to refuse or grant the full or part of the loan applied for either from Government or from non-Government source or impose any other condition on the basis of the Act and Rules in respect of the application for loan. As per **Rule 106** the decision of the State Government shall be communicated to Grama Sasan. **Rule 107** binds Grama Sasan to the terms and conditions of loan if any imposed by the Government in respect of loan either from Government or non-Government source, and Grama Sasan shall furnish information on its Fund or loan the State Government as and when desired by the latter.

6.22.3 **Rule 108** provides for timely payment by Grama Sasan of principal and interest of the loan obtained from the Government failing which a set of stringent consequences that shall follow. In case of Grama Sasan's failure to pay the loan and its interest in full or in installment it shall be liable to pay an additional interest at 2% besides the rate of interest fixed in respect of the loan. Further, if the loan is not utilized for the purposes for which it was incurred, then Grama Sasan shall be liable to pay interest at the rate of 12.5 % per annum on the amount of loan from the date of receipt of the loan.

6.22.4 As per **Rule 109** if any portion of loan amount remains unspent on the date by which the whole amount should have been utilized, Grama Sasan shall forthwith refund the said amount along with the interest due thereon. However, Director of Grama Panchayats has the discretion to allow extension of time by which such unspent amount should be refunded or utilized.

6.22.5 Further **Rule 110** stipulates that if Grama Sasan fails to pay the principal of the loan and the interest thereon timely in full or in part as per the terms and conditions of the loan the Director of Grama Panchayats has the discretionary power to attach the funds of Grama Panchayat and appoint a special officer for the purpose of dealing with the funds so attached. Moreover, the said Director may deduct the unpaid dues of Grama Sasan pending on account of the loan from the Government from the grant or subsidy due to Grama Sasan.

6.22.6 **Rule 111** allows the Grama Sasan to repay the whole or any part of the loan along with the interest thereon before the scheduled date subject to the previous permission by the Director of Grama Panchayats.

6.22.7 **Rule 112** describes the procedure to be followed in consequence of the attachment of any Fund of Grama sasan by Director Grama Panchayats. He shall issue a notice to Grama Sasan along with its notification in official Gazette prohibiting collection and management of the fund attached and vesting the administration of the said fund to an officer specially appointed by him. This special officer shall deposit all money collected or received in behalf of the attached fund to the Treasury in case the loan was made from the Government or to the lender if the loan was made from a non-Government source. This Officer shall submit the accounts of all these transactions in a form to be

prescribed by the Director, and the latter shall cause a statement of such accounts to be published in the official Gazette.

6.22.8 As per **Rule 113** the concerned District Panchayat Officer shall serve as the Drawing and Disbursing Officer in respect of a loan obtained from the Government. **Rule 113** enjoins upon the Drawing & Disbursing Officer to intimate the Director Grama Panchayats and the concerned Block Development Officer the date and drawal of the loan amount and the date of disbursement of the same to Grama Sasan, and to furnish the said Director a quarterly report mentioning all particulars relating to sanction, disbursement and recoveries of all loans in respect of Grama Sasans falling within his area. The form and manner in which such particulars need be furnished shall be as directed by the Director from time to time.

6.22.9 The **Rule 114** enjoins upon the District Panchayats Officer to maintain the accounts in respect of all loans obtained by Grama Sasans in his area in such form and manner as directed by the Director of Grama Panchayats.

6.22.10 The **Rule 115** provides for a half-yearly return to be submitted by Gram Panchayat Officer by 15th of November and 15th of May of each financial year showing an abstract of full particulars of loans, interest and recoveries in his area to the Director along with its copy forwarded to Accountant-General of Orissa. The GPO shall also intimate the Grama Sasan by 15th of May each year on the amount of loan from Government outstanding against a Grama Sasan.

6.22.11 The **Rule 116** provides that the refund or repayment of Government loans including the interest thereon shall be made in O.T.C. Form No.6 in the Treasury or Sub-Treasury of the concerned district. This Rule also provides for Challans to be presented by the Treasury in quadruplicate, out of which two shall be given to the depositor, one to be retained by the Treasury and the fourth one to be sent to the District Panchayat Officer.

6.23 Low and uncertain non-tax revenues of GPs in Orissa-

As already mentioned, source-wise the revenues of a GP can be divided into own income and income from external sources. The own income of a GP is derived from taxes on various heads and non-tax receipts from lease and license etc. The external sources of income consist of grant-in-aid from State Government, grants from different Schemes of Central and State Government, and of course borrowing from Governmental and non-Governmental sources. It has been noticed that the tax revenues of the GPs are too low to meet any of its components of establishment expenditure. The state of non-tax revenues of the GP is also equally miserable. The Second State Finance Commission of Orissa (2004) compiled and presented in a tabular form the district-wise data on non-tax revenues of the GPs in Orissa collected on such heads as orchard, pisciculture, ferry ghat, compost, grain gollas/cooperative societies, slaughter houses and cart shed, rent, waste land cattle pound and market and fair during the 4-year period 1999-2000 to 2002-2003. Based upon the said data, the Commission observed, "The information gathered from Table No.2 in respect of non-tax revenue of G.Ps during the years 1999-00 to 2002-03 is

also not satisfactory. The average non-tax revenue per G.P. varies between Rs.18, 722.00 to Rs.13, 897.00 during the years 1999-2000 to 2001-2002, while that for 2002-2003 is at the lowest of Rs.8, 478.00 only. There is also no consistent or rising trend of non-tax revenue during the afore-mentioned period. In case of individual items, while the amount collected towards orchards during the year 2000-01 was to the tune of Rs.1852962.00, it came down to Rs.1571665.00 during the year 2001-02. Again, it sharply declined to Rs.1097377.00 in 2002-03. Similarly, in case of pisciculture the amount collected was to the tune of Rs.43894047.00 in 2000-01 but it came down to Rs.38196640.00 in 2001-02 and again sharply came down to Rs.1364550.00 in 2002-03”. (*Vide Para- 6.18, Chapter-VI, Report of 2nd SFC Orissa, 2004*).

8.24 Grant-in-aid to GPs from State Government-

Among all the sources of income, regular grant-in-aid from State Government is a significant factor for the very survival of the local bodies including the Grama Panchayats. Since the ‘local government’ comes under the item no.5 of the List-II (State List) in the Seventh Schedule of the Constitution, the State of Orissa like other States of the country is duty bound to provide regular grant-in-aid to the local bodies for meeting their basic expenses. Unlike in the past when the size of annual State grants to local bodies didn’t follow any pattern or standards, it has to a considerable extent come under regulatory directions and norms given by such statutory bodies as Central Finance Commission and State Finance Commission from time to time. The trends of transfer of funds from Government of Orissa to Grama Panchayats in recent 7 years from 1988-99 to 2004-05 is mentioned below-

Table- Grans released to GPs under Schemes like Honorarium/Subsidy etc.

Description	<i>(Rupees in Crores)</i>						
	1998-99 Actual	1999-00 Actual	2000-01 Actual	2001-02 Actual	2002-03 Actual	2003-04 R.E.	2004-05 B.E.
Hionorarium to Sarpanches and Naib-Sarpanches.	5.64	3.77	3.76	3.78	4.49	4.49	4.48
Grants to Gram Panchayats for Staff Subsidy	6.90	12.89	6.31	19	16.34	15	14.82
D.A. & Sitting fee to Sarpanches Ward Members for attending G.P. Meeting	4.37	3.26	3.13	3.88	3.60	3.38	3.38

Source: Panchayati Raj Department, Government of Orissa

(Quoted in Ch-VI of Report of 2nd State Finance Commission, Orissa, 2004)

As revealed from the above Table, the State Government has been providing annual grants to the GPs for such establishment expenses as honorarium to Sarpanchs and Naib Sarpanchs, staff subsidy and DA and Sitting fee to Sarpanchs and Ward Members for attending GP meeting. Needless to say, a local body worth the name ought to bear such bare expenditures as the honorarium or sitting fees for its own staff. Explaining this phenomenon, the Second State Finance Commission observes, “The PRIs are performing a number of functions right from Zilla Parishad at the District Level to Grama Panchayats

at the grassroot level in their three-tier system. The Government as pointed out earlier, have been providing a substantial amount to RLBs (Rural Local Bodies) towards their salary/remuneration and other requirements from the state resources, as the income derived from G.Ps, which are only authorised to levy taxes on certain items as per the provisions of the law, is not sufficient to meet even their day to day expenses, not to speak of providing necessary civic amenities. *(Quoted in Ch-VI of Report of 2nd State Finance Commission, Orissa, 2004).*

6.25 Award by the State Finance Commission to PRIs during 1988-89 to 2002-03 -

Besides the regular grant-in-aid by the State Government to the PRIs including the GPs for covering their staff expenditures, the State Government has also started providing grants to them as required for devolution of funds necessitated by the 73rd Constitution Amendment and on the basis of the recommendation of the State Finance Commission. Such devolution of funds is always linked to the specific functions/subjects earmarked by the Commission. The following Table presents the devolution of funds to PRIs by the State Government in respect of Kendu Leaf Grant, Land Cess, Minor Forest Product, Sairat and Entertainment Tax, based upon the recommendation of the First State Finance Commission, Orissa whose period coincided with the Eleventh Finance Commission covering 2000-2001 to 2004-05.

Table: Devolution of Funds to PRIs on the recommendation of 1st State Finance Commission

Proposed Grant	1998-99 (Actual)		1999-00 (Actual)		2000-01 (Actual)		2001-02 (Actual)		2002-03 (Actual)	
	Recomm ended	Actual	Recomm ended	Actual	Recomm ended	Actual	Recomm ended	Actual	Recomm ended	Actual
Kendu Leaf Grant	22.91	10.5	22.91	10.02	22.91	22.91	22.91	22.91	22.91	22.91
Land Cess	9.14	3.15	9.14	3.59	9.14	9.14	9.14	7.64	9.14	9.14
Minor Forest Product	2	0	2	0	2	2	2	0	2	0
Sairat	1	0	1	0	1	1	1	1	1	1
Entertainment Tax	0.13	0	0.13	0	0.13	0	0.13	0	0.13	0
Total P.R. Department	35.18	13.65	35.18	13.61	35.18	35.05	35.18	31.55	35.18	33.05

Source: Budget Documents, Finance Department, Govt. of Orissa, Bhubaneswar (Quoted in Ch-VI of Report of 2nd State Finance Commission, Orissa, 2004).

6.26 KL Grants to PRIs

The Kendu Leaf Trade in Orissa is regulated by the Orissa Kendu Leaves (Control of Trade Act) 1961 and the Orissa Kendu Leaves (Control of Trade) Rules, 1962. According to Section II (I) of the Kendu Leaves (Control of Trade) Act, 1961 out of the net profits derived by the Govt. from the trade in Kendu leaf, an amount not being less than 50% thereof shall be paid to the P. S.s and G. Ps. The Govt. resolution No. 11341 dt. 21.6.86 of the erstwhile Community Development and Rural Reconstruction Deptt. on principle of distribution of K. L. Grant has been revised vide resolution No. 24820 dt. 16.12.02. The following principles are followed for distribution of K. L. Grant.

- 90% the amount available under K. L. Grant may be distributed among Grampanchayats, Panchayat Samities and Zilla Parishads of K. L. growing areas at the ratio of 72:10:8 respectively.

- 10% the amount available under K. L. Grant may be retained at the level of Govt. for distribution for socially relevant purposes and activities.

(Source: Annual Report of Panchayati Raj, Orissa, 2002-03)

6.27 Award by Central Finance Commission for PRIs in the State -

The Article 280 of the Constitution, which provided for the constitution, powers and functions of the Finance Commission at national level stood amended as a result of the 73rd Constitution Amendment, and thereafter Clause 3(bb) under the said Article required the Commission to recommend “the measures needed to augment the Consolidated Fund a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State”. Accordingly the Tenth and Eleventh Finance Commissions announced their Awards to the State of Orissa on account of local bodies. But in each such award by the Central Finance Commission, it is necessary that firstly, grants are provided for specific objectives and secondly, the State has to provide a matching share in respect of each central grant so awarded. The following two Tables present the awards by Tenth and Eleventh Finance Commissions to the State of Orissa on account of Orissa-

Table: Grants to P.R.Is of Orissa as Recommended by Tenth Finance Commission
(Rs. in Crore)

1998-1999 Actual	1999-00 Actual	2000-01 Actual	2001-02 Actual	2002-03 Actual
50.00	117.50	-	-	-

Source: Finance Accounts for Respective Year

(Quoted in Ch-VI of Report of 2nd State Finance Commission, Orissa, 2004)

Table: Grants to P.R.Is of Orissa as Recommended by 11th Finance Commission

(Rs. in Lakh)

Local Bodies	Grant Recommended by EFC	State Share	Total	Grant Released up to 30.06.04
Rural Local Bodies	34559.00	8640.00	43199.00	20735.28

Source: Finance Department, Government of Orissa

(Quoted in Ch-VI of Report of 2nd State Finance Commission, Orissa, 2004)