The Odisha Gazette

*THE ORISSA GRAMA PANCHAYATS ACT, 1964

An Act to consolidate and amend the Law relating to Grama Panchayats in the State of Orissa

Be it enacted by the Legislature of the State of Orissa in the fifteenth Year of the Republic of India as follows :

STATEMENT OF OBJECTS AND REASONS

The Orissa Grama Panchayats Act had been enacted in the year 1948. With the implementation of the provisions of the Act, changes were considered necessary from time to time and accordingly several amendments have been made in the meantime. During the year 1957, Government appointed a Committee to look into the working of Grama Panchayats all over the State and to advise, among other matters, if it was necessary to provide any changes and safeguards in the Act and in the tightening of control for the better working of these institutions. The Committee was also required to suggest the methods by which and the directions in which the Act and the rules made thereunder should be im-proved and the administrative control strengthened to achieve better re-sults. The Committee has submitted its report which has been taken into consideration. During January, 1961, Panchayat Raj was introduced all over the State and under this system the three tiers of the system, namely, Parishads, Samitis and Grama Panchayats have to work in close collabora-tion with each other. Keeping the recommendations of the Grama Panchayats Enquiry Committee, the changes brought about by the intro-duction of Panchayats Raj and also the various administrative difficulties experienced in the working of Grama Panchayats in the State in view, it has been found necessary to consolidate and re-enact the law relating to Grama Panchayats in the State. The Bill seeks to achieve this objective.

*. Published vide Orissa Gazette Ext./22.1.1965-O.A. No. 1 of 1965.
For Statement of Objects and Reasons see Orissa Gazette Ext. No. 488/ 9.9.1962 and for Report of the Select Committee see Orissa Gazette Ext. No. 538/27.3.1964.

GRAMA PANCHAYATS MANUAL

STATEMENT OF OBJECTS AND REASONS

The Orissa Grama Panchayats Act, 1964 was amended in the year, 1994 and its provisions were brought in the tune of the Constitutions (73th Amendment) Act, 1992. Prior to the Orissa Zilla Parishad Act, 1991 was amended in the year 1993 to bring its provisions in conformity with the aforesaid constitutional amendments. Thereafter two sets of Rules namely, the Orissa Zilla Parishad (Delimitation and Reservation of Con-stituencies) Rules, 1994 and the Orissa Zilla Parishad Election Rules, 1994 were framed by the State Government which prescribed the manner of determining a Parishad Constituency, Reservation of such Constituencies for the members of Scheduled Caste, Scheduled Tribe and women and manner of holding elections to the Parishad. The aforesaid two rules were challenged before the Hon'ble Orissa High Court in a number of writ Peti-tions when the election to Zilla Parishads was announced by Government on 17.10.1994. The Hon'ble Orissa High Court in their common judgment dated 21.12.1994 have held that some provisions of both the Orissa Zilla Parishad Election Rules, 1994 and the Orissa Zilla Parishad (Delimitation and Reservation of Constituencies) Rules, 1994 suffer from the vice of excessive delegation and these rules cannot be regarded as law within the meaning of Article 243-C and Article 243-K of the Constitution in as much as they are not framed by the State Legislature. On the other hand these rules have been framed by Government in exercise of powers under Sec. 51 of the Orissa Zilla Parishad

Act. The Hon'ble High Court have observed that those rules are not based on any declared legislative policy and are inadequate to ensure a fair election. Para 27 of the judgment (OJC No.
6833/1994) is reproduced below :

"27. In the conclusion; we have no hesitation to hold that the De-limitation Rules and the Election Rules are based on no declared legislative policy and also suffer from vice of excessive delegation. These rules are also efficient to ensure a fair election as the Constitution contemplates of a free and fair election and requires the State Legislature to make law to achieve the said object. The State Legislature should take steps in that behalf to make law as required under Article 243-C and Article 243-K of the Constitution taking care all the matters specifically dealt within this judgment."

Keeping in view the aforesaid observation of the Hon'ble High Court, the identical provisions in the Orissa Grama Panchayats Act, 1964 re-quires suitable amendments.

Besides, there is no provision in the Act for reservation of seats in favour of Backward Class of Citizens in a Grama Panchayat. In order to meet the ends of social justice and upliftment of such Citizens, it is neces-sary that they should be adequately represented in the Grama Panchayats. Accordingly twenty-seven per cent of seats has been proposed to be re-served in favour of Backward Class of Citizens in a Grama Panchayat.

In the aforesaid premises it is necessary to amend the Orissa Grama Panchayat Act, 1964.

The Bill seeks to achieve the above objects.

THE ORISSA GRAMA PANCHAYATS (AMENDMENT) ACT, 2004

CHAPTER - I

PRELIMINARY

1. Short title, extent, [1][commencement and application] :– (1) This Act may be called the Orissa Grama Panchayats Act, 1964.

(2) It shall extend to the whole of the State of Orissa :

Provided that it shall not apply to any area which has been or may be constituted hereinafter as a Municipality [1][* * *] under the provisions of the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950);

Provided further that when any local area is excluded from a Munici-pality [1][* * *] under the provisions of the said Municipal Act, the provi-sions of this Act shall apply to such area.

(3) It shall come into force atonce.

[2][(4) * * *]

2. Definitions :– In this Act, unless the context otherwise requires–

(a) "Assembly Constituency" shall have the same meaning as has been assigned to it in the Representation of the People Act, 1950 (43 of 1950);

[3][(a-1)"Auditor" means an Auditor appointed under Clause (a) of Sub-Section (3) of Section 100;]

[4][(b) "Block" means a Block notified under Section 15 of the Orissa Panchayat Samiti Act, 1959 (Orissa Act 7 of 1960);]

(c) "Building" includes a hut, shed, house, shop, were-house, work-shop or other roofed structure for whatsoever purpose and of whatever material constructed but does not include a tent or other portable or temporary shelter;

(d) "Collector" and "Sub-divisional Officer" with reference to a Grama Sasan respectively mean the Chief Revenue Officer of the district and the Chief Revenue Officer of the Subdivision in which such Grama Sasan is constituted;

(e) "Committee" means any Committee of a Grama Panchayat constituted under this Act and includes a Joint Committee;

4[(f) "Director of Grama Panchayats" means an Officer appointed as such by the State Government and shall include a Deputy Director and an Assistant Director of Grama Panchayat;]

4. Substituted ibid.

5[(f-1)"Election Commission" means the State Election Commission consisting of a State Election Commissioner appointed by the Governor under Article 243-K of the Constitution;

(f-2) "Finance Commission" means the Finance Commission con-stituted by the Governor under Article 243-K of the Constitu-tion;]

(g) "Grama" means a Grama constituted under Section 3;

(h) "Grama Sasan" means a Grama Sasan established under Sec-tion 4;

(i) "Grama Fund" means a local fund constituted under Section 93;

1[(i-1) "Jawahar Rozgar Yojana" means a scheme sponsored as such by the Central Government for implementation in the State in the prescribed manner;]

(j) "Grama Panchayat" means the Executive Committee of the Grama Sasan established under Section 7;

(k) "Market" means any place set apart or ordinarily or periodi-cally used for the assembling of persons for the sale or pur-chase of grains, fruits, vegetables, meat, fish or other perish-able articles of food or for the sale or purchase of livestock or poultry or of any agricultural or industrial produce or any raw or manufactured products or any other articles or commodity necessary for the convenience of life;

(l) "Nuisance" includes any act, omission, place, animal or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing, or disturbance to rest or sleep, or which is or may be dangerous to life or to rest or sleep, or which is or may be dangerous to life or injuri-ous to health or property;

(m) "Offensive matter" includes animal carcasses, kitchen or stable refuse, night-soil, dung, dirt or putrid or putrefying substances other than sewage;

(n) "Owner" in respect of any property includes a person who, for the time being is receiving or is entitled to receive, whether on his own account or on behalf of another person as an agent, trustee, guardian, manager or receiver of the rents or profits of the property;

(o) "Palli Sabha" means a Palli Sabha constituted under Section 6;

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1[(o-1) "Parishad" in relation to any Grama means the Zilla Parishad constituted under the Orissa Zilla Parishad Act, 1991 and hav-ing jurisdiction over the area comprised within the said Grama;]

(p) "Population" means population as ascertained in the last pre-ceding Census of which the relevant figures have been pub-lished under the relevant law for the time being in force;

(q) "Prescribed" means prescribed by rules made by the State Government under this Act;

1[(q-1) "Prescribed Authority" means the authority appointed by the state Government by notification for all or any of the purpose of this Act;]

(r) "Public Place" means any place which is open to the use and enjoyment of the Public, whether it is actually used or enjoyed by the Public or not;

(s) "Public Street" means any road, street, bridge, lane, square, court, alley or passage which the Public has a right to pass along and includes on either sides the drains or gutters and the land up to the defined boundary of any abutting property, notwithstanding the projection over such land of any veran-dah or other superstructure;

2[(t) "Samiti" in relation to any Grama means the Panchayat Samiti constituted under the Orissa Panchayat Samiti Act, 1959 (Orissa Act 7 of 1960) and having Jurisdiction over the area comprised within the said Gram;]

3[(t-1)"Scheduled Areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution;]

(u) "Village" means any area recorded as a village in the revenue records of the district in which it is situated and in the ab-sence of such records any area as the Collector of the district may from time to time declare to be a village for the purposes of this Act; and

(v) "Year" means the financial year.

CHAPTER - II

GRAMA, GRAMA SASAN, GRAMA SABHA AND PALLI SABHA

3. Constitution of Grama :– (1) The State Government may for the purposes of this Act by declaration notified in the Gazette constitute any village or group of contiguous villages as a Grama and assign to such Grama, a name which shall be of one of the villages comprised within the Grama.

Explanation :– Village intervened only by forest areas, hills, streams, rivers and such other natural barriers, and lands not forming part of any village may be treated as contiguous villages :

3[Provided that in the Scheduled Areas, a Grama shall ordinarily con-sist of a habitation or group of habitations, a hamlet or a group of hamlets comprising a community or communities and managing its affairs in accor-dance with traditions and customs.]

(2) Wherever the State Government deem it fit so to do they may cancel any notification in respect of a Grama under Sub-Section (1) or may alter the area comprised in a Grama by reducing or adding to the number of villages comprised within such Grama and by declaration notified in the Gazette constitute such altered area or areas as a Grama or Gramas, as the case may be, for the purposes of the said Sub-Section.

(3) No Grama shall, so far as may be reasonably practicable, be constituted with a population of less than two thousand and more than ten thousand but in no event shall a village be divided and a part thereof included within a Grama.

NOTES

(i) Secs. 3, 4(3) – Government by notification changing headquar-ters from one village to another– The development stages and previous writ Petitions and decisions described – The power to constitute a Grama and to assign a name to it is the discretion of Government– The discretion also vests to locate the head-quarter – So long the discretion is exercised bonafidely the Court cannot interfere – But if it is exercised arbitrarily basing on extraneous considerations or has been exercised ignoring rel-evant materials, the Court can interfere as the same was without applica-tion of mind – In the instant case, after examining different materials on record, in file land reports and the reasons assigned, the Hon'ble Court has held that the notification dated 6.11.1993 remains valid and allowed : 2001 (I) OLR 168.

(ii) Sections 3, 4 (3), 149-Government's Power to decide and locate Office and headquarters of Grama Sasan in absence of mode or guideline–Scope of – Interference by writ – Court when indicated : 77 (1994) CLT 671.

(iii) Section 3, 4 (3), 149-Notification of shifting of headquarters of Grama Sasan Padmapur to Bankeswar in absence of non-application of mind by Govt. – Legality of : 77 (1994) CLT 671.

(iv) Section 3 – Constitution of Grama Panchayat was made giving it a particular name – Then there was political interference by the MLA-Under the influence of MLA, the concerned Minister passed orders for shifting the Grama Panchayat to another village and to assign the name of the latter village even though the Collector has reported that there was no

need of such change-Order passed not on relevant considerations and Public interest and it is on extraneous consideration – Hence, quashed : 1992 (I) OLR 392 : 73 (1992) CLT 692 : 34 (1992) OJD 32 (Civil).

(v) Section 3 – Power to constitute a Grama Panchayat for the purpose of assigning a name is discretion of State Government – But that discretionary power has to be exercised on relevant considerations and devoid of any extraneous considerations – If the discretion has been exer-cised on extraneous considerations or has been exercised ignoring the relevant materials or the power has been colourably exercised, the deci-sion has to be set aside : 1992 (I) OLR 392 : 73 (1992) CLT 692 : 34 (1992) OJD 32 (Civil).

(vi) Section 3 and 4 (3) – Construction of – Office and, headquar-ters to be situated within the limits of the Grama unless ordered by the Government-Grama Panchayat Ghar to be constructed as the headquar-ters of the Grama Panchayat - Held, the Grama Panchayat Ghar shall be constructed at the village which is the headquarters of the Grama Panchayat and, as such, headquarters be in the name of Grama Panchayat : 63 (1987) CLT 714.

4. Constitution and incorporation of Grama Sasan :– (1) For every Grama there shall be a Grama Sasan which shall be composed of all per-sons registered by virtue of the Representation of the People Act, 1950 (43 of 1950) in so much of the Electoral Roll for any Assembly Constitu-ency for the time being in force as relates to the Grama [1][and unless the Election Commission directs otherwise] of the roll shall be deemed to be the Electoral Roll in respect of the Grama.

(2) The Grama Sasan shall be a body corporate by the name of the Grama to which it relates, having perpetual succession and common seal, with power, subject to the provisions of this Act and the rules made there-under, to acquire, hold and dispose of property and to contract land may by the said name sue and be sued.

(3) The Office and headquarters of the Grama Sasan shall be situ-ated within the limits of the Grama and unless otherwise ordered by the State Government in the village bearing the name of the Grama.

5. Grama Sabha and its Functions :– (1) There shall be at least two meetings one in February and the other in June every year of the members of the Grama Sasan and such other meetings as may be prescribed.

(2) (a) The quorum for the meetings of the Grama Sasan (hereinafter referred to as 'the Grama Sabha') shall be one-tenth of the members of the Grama Sasan.

(b) In the event of there being no quorum at any Grama Sabha it shall stand adjourned to a future day of which notice shall be given in the

prescribed manner and no quorum shall be necessary for any such ad-journed meeting.

[2][(3) The Grama Sasan shall have the Power to–

(a) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Grama Panchayat;

(b) identify or select persons as beneficiaries under the poverty alleviation or similar other programmes :

Provided that every Grama Panchayat shall be required to obtain from the Grama Sasan a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in Clauses (a) and (b).

(c) consider and approve the annual budget of the Grama Panchayat including the Supplementary or revised budget.

(d) consider levy of all taxes, rates, rents and fees and enhance-ment of rates thereof.

(e) organise community service and drawing up and implementa-tion of agricultural production plans.

(f) consider all such matters as may be referred to it by the Grama Panchayat for its decision.

(g) call for such information and date from the Grama Panchayat as it may consider necessary; and

(h) consider such other matters as may be prescribed.]

(4) Subject to the provisions of Sub-Section (1) the meetings of the Grama Sasan shall be convened by such authority, in such manner and at such time and intervals as may be prescribed.

(5) The business of the Gram Sasan at the Grama Sabhas shall be conducted and the record of the proceedings thereof shall be maintained in the prescribed manner.

[1][(6) In the Scheduled Areas, the Grama Sasan shall be competent to safeguard and preserve the tradition and customs of the people, their cultural identity, community resources and customary mode of dispute resolution consistent with the relevant laws in force and in harmony with

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basic tenets of the Constitution and human rights.]

6. Palli Sabha and its Function :– (1) For every village within the Grama, there shall be constituted by the State Government a Palli Sabha, provided that where the area comprised within a Ward constituted for the Grama under Section 8 consist of more than one village there shall be only one Palli Sabha for such Ward.

(2) Each Palli Sabha shall consist of all persons registered by virtue of the Representation of the People Act, 1950 in so much of the Electoral Roll for any Assembly Constituency for the time being in force as relates to the area in respect of the Palli Sabha and the said portion of the Roll shall be deemed to the Electoral Roll of the Palli Sabha.

(3) The Palli Sabha shall meet annually in February every year and may also meet at other times in the manner prescribed.

(4) The person representing the Palli Sabha area in the Grama Panchayat or if there be more than one such person, one from the list of all such persons in order of preference to be determined by the Grama Panchayat, shall preside over the meeting of the Palli Sabha and in the absence of all such persons at the meeting at the appointed time, those present at the meeting may elect one from amongst themselves to preside over the meeting.

"(5)(a) The quorum for the meeting of the Palli Sabha shall be one-tenth of the members of the Palli Sabha.

(b) In the event of there being no quorum at any Palli Sabha it shall stand adjourned to a future day for which notice shall be given in the prescribed manner and no quorum shall be necessary for any such ad-journed meeting:".

(6) It shall be the duty of the Palli Sabha at its Annual Meeting in February each year to give its recommendations to the Grama Panchayat in respect of the following matters in so far as such matters relate to the Palli Sabha area, namely :

(a) the development works and programme that may be taken up during the ensuing year, and

(b) the Annual Budget estimate submitted by the Grama Panchayat under Sub-Section (1) of Section 98.

(7) Nothing in this Section shall apply in respect of a Grama compris-ing of one village only.

CHAPTER - III

CONSTITUTION OF GRAMA PANCHAYATS

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7. Grama Panchayat to be the executive authority of the Grama Sasan :– There shall be for every Grama Sasan a Grama Panchayat as hereinafter constituted which shall be the executive authority of the Grama Sasan.

8. Constitution and delimitation of Wards :– (1) As soon as may be after the Constitution of a Grama the Collector shall for the purpose of Constitution of the Grama Panchayat determine the number of Wards into which the Grama is to be divided and the extent of each such Ward and shall prepare a statement showing the number of Wards and the extent of each Ward which shall be published by him in the prescribed manner for the prescribed period inviting objections from the persons interested to be filed within the said period :

[1][Provied that –

(i) the determination of the number of such Wards shall be sub-ject to the provisions in Article 243-C of the Constitution; [2][* * *]

(ii) the total number of Wards in any Grama shall not be less than eleven and more than [1][twenty-five; and]

[2][(iii)the population of every Ward shall, as far as practicable, be equal.]

(2) The Collector shall after considering all such objections and making such further inquiry as he may deem necessary cause such alter-ation as may be necessary to be made in the statement shall finally publish the statement so as altered in the prescribed manner and thereupon the division of the Grama into Wards as shown in the statement shall become final.

(3) In cases where the population of any Grama according to the relevant figures of a Census has exceeded its Population, as recorded in the preceding Census, the Collector may re-delimit the Wards of the Grama and form new Wards wherever necessary and in doing so he shall follow the same procedure as is provided in respect of division of Wards under Sub-Sections (1) and (2).

[3][9. Powers of Election Commission and the Electoral Rolls of Wards :–(1) The superintendence, direction and control of the preparation of Elec-toral Rolls for and the conduct of, all elections to the Grama Panchayats shall be vested in the Election Commission.

(2) Unless the Election Commission, by order published in the Ga-zette directs otherwise, so much of the Electoral Roll for any Assembly

2. Substituted Ibid.

Constituency for the time being in force as relates to the area comprised within a Ward shall be entered in a register to be maintained for the Ward and such register shall, subject to such revision or updating as may be necessary, be deemed to be the Electoral Roll for the Ward for the pur-poses of this Act.]

10. Constitution of Grama Panchayat :– (1) Every Grama Panchayat shall be composed of the following members, namely :

(a) a member to be elected by the persons referred to in Sub-Section (1) of Section 4 from amongst themselves who shall be the Sarpanch; and

(b) a member to be elected from each of the Wards by the per-sons on the Electoral Roll for the Ward from amongst them-selves;

[4][(c) * * *]

(2) There shall be a Naib-Sarpanch in respect of every Grama Panchayat to be elected in accordance with the provisions of Section 14.

[5][(3) (a) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Grama Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Grama Panchayat as the population of the Scheduled Castes in the concerned Grama or of the Scheduled Tribes in that Grama bears to the total population of that Grama and such seats shall be allotted by rotation to different Wards in a Grama Panchayat :

Provided that where the Population of the Scheduled Castes or, as the case may be, the Scheduled Tribes in a Grama is not sufficient for the reservation of any Seat, one seat

for the Scheduled Castes or, as the case may be, one seat for the scheduled Tribes shall be reserved in that Grama :

[1][Provided further that in the Scheduled Areas, not less than one-half of the total number of seats to be filled by direct election shall be reserved for the Scheduled Tribes; and]

(b) As nearly as may be, but not less than [4][one-half] of the total number of seats reserved under Clause (a) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes :

Provided that where only two seats are reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes, one of the two seats shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

[2][(b-1) As nearly as may be, but not less than, twenty-seven per centum of the seats of every Grama Panchayat shall be reserved in favour

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of Backward Class of Citizens as referred to in Clause (6) of Article 243-D of the Constitution in the prescribed manner; [2-A][and shall be allotted by rotation to different Wards thereof.]

[2-B][(b-2) As nearly as may be, [4][one-half] of the total number of Seats reserved under Clause (b-1) shall be reserved for women belonging to the Backward Class of Citizens.]

(c) As nearly as may be, but not less than [4][one-half] (including the number of Seats reserved for women belonging to the Scheduled Castes. [2-C][the Scheduled Tribes and the Backward Class of Citizens]) of the total number of Seats to be filled by direct election in every Grama Panchayat shall be reserved for women and such seats shall be allotted by rotation to different Wards in a Grama.]

[3][(4) The procedure regarding reservation of seats for the purposes of Sub-Section (3) shall be as follows :

(a) The Wards in which the density of Population of the Sched-uled Castes and the Scheduled Tribes is higher in the Grama shall be reserved by the Collector for the Scheduled Castes and the Scheduled Tribes, respectively and shall rotate in the descending order [3][at every two term of General Election] [1-A][and in case of Backward Class of Citizens such reservation and rotation shall be in the prescribed manner];

(b) The Wards shall be serially numbered in a list in the prescribed manner and the Collector shall reserve the required number of Wards in the Grama for women in the following manner, namely :

(i) in computing [3][one-half] of the total number of Wards, the Wards reserved for women belonging to the Scheduled Castes, [2][the Scheduled Tribes and the Backward Class of Citizens] shall be taken into account;

(ii) reservation of Wards for women belonging to the Scheduled Castes shall be made at the first instance [2][then for the Sched-uled Tribes and thereafter for the Backward Class of Citizens];

(iii) out of the Wards left in the list for Candidates other than the Scheduled Castes, [2][the Scheduled Tribes and the Backward Class of Citizens], the ward which appears first and, thereaf-ter, [3][every Second ward] shall be reserved for women, until the required quota is completed;

(iv) as nearly as may be, but not less than [3][one-half] of the Wards reserved for the members of the Scheduled Castes and Sched-uled Tribes shall be reserved for women belonging to the Sched-uled Castes and the Scheduled Tribes in the manner hereinbe-

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fore provided; and

(v) the Wards not covered in a General Election for reservation for Women shall be covered in the subsequent General Election of the Grama Panchayat in the same manner as hereinbefore pro-vided.

(c) The Collector shall, by order, after previous Publication in the prescribed manner inviting objections and suggestions from all persons interested within the prescribed period, and after considering all such ob-jections and suggestions, publish a statement, showing the division of the Grama into Wards and the Seats to be reserved therein, in his Office notice board, which shall be final.]

(5) Notwithstanding anything to the contrary in this Section–

(a) the Offices of Sarpanchas in Grama Panchayats shall be re-served for the Scheduled Castes and the Scheduled Tribes and the number of offices so reserved for the Scheduled Castes and the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of such Offices as the population of the Scheduled Castes and the Scheduled Tribes respectively in the Stae bears to the total population of the State; and

1-A[(b) as nearly as may be, but not less than 2[one-half] of the total number of Offices of Sarpanches reserved under Clause (a) shall be reserved for Women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes;

(c) as nearly as may be, but not less than, twenty-seven per centum of the Offices of Sarpanches in Grama Panchayats shall also be reserved in favour of Backward Class of Citizens as referred to in Clause (6) of Article 243-D of the Constitution and shall be allotted by rotation to different Gramas;

(d) as nearly as may be, but not less than, 2[one-half] of the total number of Offices of Sarpanches reserved under Clause (c) shall be reserved for Women belonging to the Backward Class of Citizens; and

(e) as nearly as may be, but not less than, 2[one-half] (including the number of Offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Class of Citizens) of the total number of Offices of Sarpanches in Grama Panchayats shall be reserved for Women.]

1[(6) For the purpose of reservation of Offices of Sarpanchas in Grama Panchayats and subject to the provisions of Sub-Section (5)

(a) the Grama Panchayats in relation to Gramas in which the den-sity of Population of the Scheduled Castes and the Scheduled

Tribes is higher in the Block shall be reserved by the Collector for the Scheduled Castes and the Scheduled Tribes respec-tively and shall rotate in the descending order 2[at every two term of General Election]; and

(b) after arranging the names of the Gramas within a Block in Oriya alphabetical order, as nearly as may be , but not less than 2[one-half] of the total number of Offices of Sarpanchas in each Block shall be reserved by the Collector for women and, for such reservation, the procedure provided in Clause (b) of Sub-Section (4) shall, as far as may be, apply.]

(7) The reservation of Seats under Clauses (a) and (b) of Sub-Sec-tion (3) and the reservation of Offices of Sarpanchas (other than the reser-vation for Women 1-A[and Backward Class of Citizens]) under Sub-Section (5) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

11. Qualification for membership in the Grama Panchayat :– Not-withstanding anything in Section 10 no member of a Grama Sasan shall be eligible to stand for Election-

(a) as a Sarpanch if he-

(i) is a Candidate for election [***} as a member of the Grama Panchayat in respect of any Ward; or

(ii) [***]

(iii) is a Candidate for election or holds Office as a Sarpanch of any other Grama Panchayat;

(b) as a Sarpanch or Naib-Sarpanch, if he has not attained the age of twenty-one years or is unable to read and write Oriya;

[1][(c) as a member-

(i) for more than one Ward in the Grama or for more than one Grama Panchayat; or

(ii) if he is unable to read and write Oriya; and

(iii) if he has not attained the age of twenty-one years.]

NOTES

Section 11 read with Section 25 and Rule 29 of Orissa Grama Panchayats Election Rules, 1965-If Candidate duly qualified in accordance with Section 11 and not disqualified under any of the clauses of Section 25, nomination paper not to be rejected on account of mere non-mention

Form IV prescribed

Legis./18.4.1994.

Legis./12.12.1995.

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under Rule 29 of O.G.P. Election Rules if Election Officer is satisfied that identity of Candidate is not in doubt.

Held, the rejection of nomination papers of the Petitioner was com-pletely in violation of the provisions of law and accordingly the order of rejection cannot be sustained-Order of rejection of nomination papers filed by the Petitioner is quashed. The declaration electing the opposite party No. 4 is also quashed-Fresh election is directed, accepting the nomination papers filed by the Petitioner as valid :1985 (II) OLR 408 : 59 (1985) CLT 348.

12. General Election of members of Grama Panchayat :– (1) A Gen-eral Election of the members of a Grama Panchayat shall be 2[completed] for the purpose of constituting a new Grama Panchayat under Section 7 or on the dissolution or supersession of a Grama Panchayat :

3[Provided that in the case of dissolution or supersession of a Grama Panchayat, the reconstitution within six months from the date of such dissolution or supersession, as the case may be :

Provided further that it shall not be necessary to reconstitute a Grama Panchayat where Grama Panchayat is dissolved or superseded during the last six months of its term.]

(2) A General Election shall also be held for the purpose of reconsti-tuting a Grama Panchayat 1[before the expiry of its term specified in Sub-Section (2) of Section 17].

1[(3) & (4) * * *].

13. Nomination on failure of election 2[de-reservation in certain cases] :–3(1) If for any reason whatsoever the concerned electorate fails to return a Sarpanch, or a Naib-Sarpanch, or any other member a fresh election shall be held for the purpose; and if at such fresh election no person is elected the Sub-Divisional Officer shall nominate a person eli-gible for election to such Office to be the Sarpanch, Naib-Sarpanch or such other member, as the case may be, who shall on being so nominated be deemed to have been duly elected.

2[(2) Where the Office of the Sarpanch or the Seat of any member is reserved under Section 10 for any particular category and the Sub-Collec-tor fails to nominate under Sub-Sec. (1) a person to such Office or seat, as the case may be, for non-availability of an eligible person belonging to that category, such Office or Seat shall, on recommendation being made to

2. inserted ibid.

5. Substituted ibid.

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that effect by the Sub-Collector, be de-reserved by the Collector after such enquiry as he may deem fit and shall, thereafter, be filled up by fresh election].

14. Election of Naib-Sarpanch :– (1) As soon as may be after the Publication under Section 15 of the names of the members elected at a General Election such members shall at the first meeting of the Grama Panchayat specially convened in that behalf elect in the prescribed manner from among themselves a Naib-Sarpanch :

4[* * *]

5[Provided 4[* * *] that in the case of every Grama Panchayat, the Sarpanch elected under Clause (a) of Sub-Section (1) of Section 10 or nominated under Section 13 is not a Woman, the Office of the Naib-Sarpanch in respect of that Grama Panchayat shall be deemed to have been reserved for Women.]

(2) No election of a Naib-Sarpanch shall be made unless a majority of the members of the Grama Panchayat be present at the meeting held under Sub-Section (1).

(3) No election of a Naib-Sarpanch of a Grama Panchayat required to be held under Sub-Section (1) shall be deferred merely on the ground that any member thereof has been prevented by any order of a Court of compe-tent jurisdiction from participating in such election.

(4) The members of a Grama Panchayat shall not be debarred from proceeding with the election of a Naib-Sarpanch merely by reason of there being any Causal Vacancy in the membership of the Grama Panchayat as a result of death, resignation, removal or otherwise.

15. Publication of Result of Election :– Subject to the rules, if any, made in that behalf the names of all persons elected or nominated as Sarpanch, Naib-Sarpanch or any other member of the Grama Panchayat shall, as soon as may be after such election or nomination, be published by the prescribed authority in such manner as may be prescribed :

1[Provided that if the prescribed authority is satisfied that the major-ity of members including the Sarpanch of the Grama Panchayat have been duly returned, he shall publish the names of such members, without await-ing for the result of election whether conducted or not of the remaining members.]

2-B.Inserted ibid.

2-C.Substituted ibid.

3. Substituted ibid.

16. Filling up of Casual Vacancies :– In the case of a Vacancy in the Office of a Sarpanch or Naib-Sarpanch or any other member of a Grama Panchayat occurring otherwise, than by efflux of time or dissolution or supersession of the Grama Panchayat the Sarpanch or Naib-Sarpanch, as the case may be, shall forthwith report the fact to the Sub-Divisional Of-ficer 2[who shall intimate such vacancy to the Election Commission with-out any delay and shall conduct an election on such date as the Election Commission may direct] to fill up the Vacancy in accordance with the provisions of this Act and the rules made thereunder :

3[Provided that if such a Vacancy occurs during the last six months of the term of Office of the Grama Panchayat, it shall not be necessary to hold any election to fill up such Vacancy, in which case, the Vacancy shall be left unfilled until the next General Election of the Grama Panchayat.]

CHAPTER - IV

OFFICE OF THE MEMBERS, SARPANCH AND NAIB-SARPANCH

17. Term of Office of members of Grama Panchayat– 4[(1) Any person elected as a Sarpanch or Naib-Sarpanch or any other member of a Grama Panchayat shall be deemed to have entered Office as such Sarpanch or Naib-Sarpanch or such other member, as the case may be, on the date of the first meeting of the Grama Panchayat as referred to in Sub-Section (1) of Section 14 which shall be held within a period not exceeding thirty days from the date of 4[first Publication of names of members] under Sec-tion 15 and the term of Office of all such persons shall expire with the term of the Grama Panchayat.

5[(2) Every Grama Panchayat, unless sooner dissolved or superseded, shall continue for five years from the date appointed for its first meeting referred to in Sub-Section (1) of Section 14 and no longer :

Provided that a Grama Panchayat constituted on the dissolution or supersession of a Grama Panchayat before the expiration of its term shall continue only for the remainder of the period for which the dissolved, or, as the case may be, superseded Grama Panchayat would have continued under this Sub-Section had it not been so dissolved or, as the case may be superseded.

(3) The term of Office of a Sarpanch or any other member elected to fill up a Casual Vacancy shall expire with the expiry of the term of the Grama Panchayat as specified in Sub-Section (2).]

18. Incidents of Office :– (1) The Office of the members of the Grama Panchayat shall be honorary.

[1][(2) The members of the Grama Panchayat including the Sarpanch and Naib-Sarpanch shall be paid such sitting fee for every meeting they

1-A. Added vide Orissa Gazette Ext. No. 1649 dt. 7.9.2001
2. Substituted vide Orissa Gazette Ext. No. 1649 dt. 07.09.2001.

attend and such travelling and daily allowances [2][as the State Government may, by notification, determine] and all such fees and allowances shall be paid from out of the Grama Fund.]

19. Powers, Duties and Functions of Sarpanch :– (1) Save as other-wise expressly provided by or under this Act, the executive powers of the Grama Panchayat for the purpose of carrying out provisions of this Act, shall be exercised by the Sarpanch, who shall act under the authority of the said Grama Panchayat.

(2) Without prejudice to the generality of the provisions of Sub-Sec-tion (1) the Sarpanch shall, save as otherwise provided in this Act, or the rules made thereunder and subject to such general or special orders as may be issued from time to time by the State Government in that behalf–

(a) convene and preside over the meetings of the Grama Panchayat and conduct, regulate and be responsible for the proper main-tenance of the records of the proceeding of the said meetings;

(b) execute documents relating to contracts on behalf of the Grama Sasan;

(c) be responsible for the proper custody of all records and docu-ments, all valuable securities and all properties and assets be-longing to or vested in or under the direction, management or control of the Grama Sasan;

(d) be responsible for the proper working of the Grama Panchayat as required by or under this Act;

(e) cause to be prepared all statements and reports required by or under this Act;

(f) exercise supervision and control over the acts and proceed-ings of all Officers and employees of the Grama Panchayat;

(g) be the authority to enter into correspondence on behalf of the Grama Panchayat; and

(h) exercise such other powers, discharge such other duties and perform such other functions as may be conferred or imposed on or assigned to him by or under this Act.

20. Reference by a Sarpanch to the Sub-divisional Officer in certain Cases :– If in the opinion of the Sarpanch any decision of Grama Panchayat–

(a) is subversive of peace and order in the locality; or

(b) results or is likely to result in any manifest injustice or unfair-ness to an individual or body of individuals or a particular Com-munity; or

(c) is likely to cause obstruction, annoyance or injury to the Public

or to any Class or body of persons lawfully employed; or

(d) is likely to cause danger to human life, health or safety, or a riot or affray; or

(e) is in contravention of the provisions of this Act, and the rules made thereunder,

he shall refer the matter to the Sub-Divisional Officer and act, according to such directions as the Sub-Divisional Officer may issue in accordance with the provisions of this Act, and the rules made thereunder.

21. Powers and functions of the Naib-Sarpanch :– (1) The Naib-Sarpanch shall exercise such powers, discharge such duties and perform such functions of the Sarpanch as the Sarpanch may from time to time delegate to him in writing and the Sarpanch may in like manner withdraw any or all the powers, duties and functions as so delegated.

(2) When the Office of the Sarpanch falls Vacant the Naib-Sarpanch shall for all the purposes of this Act, exercise the powers, discharge the duties and perform the functions of the Sarpanch until a new Sarpanch is elected or nominated, as the case may be, to fill up the Vacancy.

(3) In the absence of the Sarpanch, the Naib-Sarpanch shall preside over the meetings of the Grama Panchayat and in the absence of both at the meeting any other member of the Grama Panchayat present may be elected to preside over the meeting.

(4) When the Office of the Sarpanch is vacant or the Sarpanch has been continuously absent from the Grama for more than fifteen days or is incapacitated for more than fifteen days and there is either a vacancy in the Office of the Naib-Sarpanch or the Naib-Sarpanch has been continu-ously absent from the Grama for more than fifteen days or is incapacitated for more than fifteen days, the powers and functions of the Sarpanch shall devolve on a member of the Grama Panchayat from out of a panel of three such members in order of priority elected in the prescribed manner by the Grama Panchayat at in that behalf, who shall be the officiating Sarpanch and shall exercise the powers and perform the functions of the Sarpanch subject to such restrictions and conditions, if any, as may be prescribed until a Sarpanch or Naib-Sarpanch assumes Office, on being duly elected or, as the case may be, takes charge of his Office :

Provided that in the absence of any such panel or in the case of non-availability of the members on such panel the Sub-Divisional Officer may nominate one of the members of the Grama Panchayat to officiate as the Sarpanch and to exercise the powers and perform the functions of the Sarpanch in accordance with the provisions of this Sub-Section.

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NOTES

Sec. 21 (4) – When Sarpanch was in custody he should have been treated as continuously absent or incapacitated for more than 15 days and as envisaged in Section, charge would have been taken over : 2000 (I) OLR 430 : 89 (2000) CLT 720 : AIR 2000 Ori. 120.

22. Right of individual members :– Every member of the Grama Panchayat shall, subject to the rules made in that behalf, have the right to–

(a) access during Office hours to the records of the Grama Panchayat after giving due notice to the Sarpanch.

(b) move resolutions and question any Office-bearer on matters connected with the administration of the Grama Panchayat; and

(c) inspect all works undertaken by the Grama Panchayat and all institutions under the direction, management or control of the Grama Panchayat and to bring to the notice of the Sarpanch the irregularities, if any, noticed during such inspection.

23. Resignation :– (1) A member or a Naib-Sarpanch of a Grama Panchayat may resign his Office as such member or Naib-Sarpanch by giving notice in writing to the Sarpanch.

(2) The Sarpanch may resign his Office by giving notice in writing to the Sub-Divisional Officer.

(3) Except in a case where the person resigning delivers notice or resignation under the foregoing Sub-Sections personally to the Sarpanch or to the Sub-Divisional Officer, as the case may be, the Sarpanch or the Sub-Divisional Officer on receipt of such notice shall, as soon as may be, obtain confirmation from the person concerned as to its genuineness.

(4) A resignation on the basis of a notice therefore under Sub-Sec-tion (1) or Sub-Section (2) delivered personally or confirmed as aforesaid shall take effect on and from the date on which such notice was received or, as the case may be, the date on which the confirmation was obtained.

(5) In the case of any resignation taking effect in accordance with Sub-Section (4)–

(a) the Sub-Divisional Officer shall forthwith inform the Naib-Sarpanch about the resignation of the Sarpanch; and

(b) the Sarpanch shall, in respect of the resignation of a member

5. Added vide Orissa Act No. 25 of 1992.

or the Naib-Sarpanch place the matter at the next meeting of the Grama Panchayat for its information.

24. Vote of no confidence against Sarpanch or Naib -Sarpanch :–(1) Where at a meeting of the Grama Panchayat specially convened by the Sub-divisional Officer in that behalf a resolution is passed, supported by a majority of not less than two-thirds of the total membership of the Grama Panchayat, regarding want of confidence in the Sarpanch or Naib-Sarpanch the resolution shall forthwith be forwarded by the Sub-Divisional Officer to the Collector, who shall immediately on receipt of the resolution publish the same on his notice-board and with effect from the date of such Publi-cation the member holding the Office of Sarpanch or the Naib-Sarpanch, as the case may be, shall be deemed to have vacated such Office.

(2) In convening a meeting under Sub-Section (1) and in the conduct of business at such meeting the procedure shall be in accordance with such rules, as may be prescribed, subject however to the following provi-sions, namely :

(a) no such meeting shall be convened except on a requisition signed by at least one-third of the total membership of the Grama Panchayat along with a Copy of the resolution pro-posed to be moved at the meeting;

(b) the requisititon shall be addressed to the Sub-Divisional Of-ficer;

(c) the Sub-Divisional Officer on receipt of such requisition shall fix the date, hour and place of such meeting and give notice of the same to all the members holding Office on the date of such notice along with a Copy of the requisition and of the proposed resolution, at least fifteen clear days before the date so fixed;

(d) the aforesaid notice shall be sent by post under Certificate of posting and a Copy thereof shall be published at least seven days prior to the date fixed for the meeting in the notice-board of the Samiti;

(e) the proceedings of the meeting shall not be invalidated merely on the ground that the notice has not been received by any member;

(f) the Sub-Divisional Officer or if he is unable to attend, any Gazetted Officer specially authorised by him in that behalf shall preside over, conduct and regulate the proceedings of

1. Substituted vide Orissa Act No. 4 of 1993.

3. Inserted vide Orissa Act No. 9 of 1991.

4. Substituted vide Orissa Act No. 4 of 1993.

the meeting.

(g) the voting at all such meetings shall be by secret ballot;

(h) no such meeting shall stand adjourned to a subsequent date and no item of business other than the resolution for recording want of confidence in the Sarpanch or Naib-Sarpanch, as the case may be, shall be taken up for consideration at the meet-ing;

(i) if the number of members present at the meeting is less than two-thirds of the total membership of the Grama Panchayat, the resolution shall stand annulled;

(j) if the resolution is passed at the meeting supported by the majority as specified in Sub-Section (1) the Presiding Officer shall immediately for ward the same in original along with the record of the proceedings to the Collector who shall forthwith publish the resolution in accordance with the provisions of Sub-Section (1); and

(k) where any Gazetted Officer presides at the meeting the shall, without prejudice to he provisions of Clause (j), also send a Copy of the resolution to the Sub-divisional Officer for infor-mation and such action as may be necessary.

[1][(3) When a meeting has been held in pursuance of Sub-Section (2) for recording want of confidence in the Sarpanch or Naib-Sarpanch, as the case may be, no fresh requisition for a meeting shall be maintainable–

(a) in cases falling under Clauses (i) and (j) of the said Sub-Sec-tion or where the resolution is defeated after being considered at the meeting so held, before the expiry of one year from the date of such meeting; or

(b) where the notification calling for general election to the Grama Panchayat has already been published under or in pursuance of Section 12.]

(4) Without prejuldice to the provisions of Sub-Section (3) no requi-sition under Sub-Section (2) shall be maintainable in the case of a Sarpanch or Naib-Sarpanch, as the case may be, before the expiry of [2][two years] from the date on which such Sarpanch or Naib-Sarpanch enters Office :

[3][Provided that all requisitions received under Sub-Section (2) prior to the date of commencement of the Orissa Grama Panchayats (Second Amendment) Act, 1993, in which no meeting for recording want of confi-dence has been held by the said date, shall stand abated.]

Explanation– The expression "total membership of the Grama Panchayat" shall refer to the total number of members specified in Sub-

1. Substituted vide Orissa Act Np. 23 of 1987.

Section (1) of Section 10 together with the number of members , if any, actually holding Office at the relevant date in pursuance of Sub-Section (3) of the said Section.

NOTES

(i) Sec. 24 (2)(c) and Sec. 24(3) – According to Sec. 24(2)(c) for fixing the meeting of no confidence at least clear 15 days notice should be given – For calculating 15 days the date of notice and date of meeting to be excluded – In the instant case there was no 15 days clear notice – So the no-confidence motion is quashed.

Sec. 24 (3) applies where the non-confidence motion is defeated or where it fails in view of Sec. 24(2)(i) (j) fresh requisition cannot be filed for a period of one year – That provision does not arise in the present case :2001 (II) OLR 69.

(ii) Section 24 (2) (c) – Convening a meeting for no-confidence–Meaning "at least fifteen clear days, fixed for holding the meeting"– Case 45 (1978) CLT 313 (Debarai v. Collector) referred to full Bench.

Held, requirement of giving the notice and fixing the margin of time between the date of notice and date of meeting are mandatory, violation of which will make the meeting invalid– But the mode of service or failure of by any member to receive the notice or allowing less than 15 clear days before the meeting is directory-This is also based on a sound Public policy as in that even any delinquent Sarpanch or Naib-Sarpanch can frustrate the consideration of the resolution of no-confidence against him and by tactfully delaying or avoiding the service of the notice on him thus frus-trate the holding of the meeting- The legislature has also accordingly taken care to provide in unequivocal terms a provision to obviate such contin-gencies by incorporating Clause (c) to Sub-Section (2) of Section 24- The proceeding of the meeting will not stand vitiated automatically for any infringement of the Section. The party challenging the validity of the meeting relying on the provision has to establish that he has been prejudiced :1988 (I) OLR 76 (FB) : 65 (1988) CLT 122 : AIR 1988 Ori. 116.

(iii) Section 24 (3)- A combined reading of Clause (i), of Sub-Section (2) and Clause (b) of Sub-Section (3) of Section 24 makes it clear that if number of members present at a meeting is less than two-thirds of total members of the Grama Panchayat, the resolution of no confidence against the Sarpanch or Naib-Sarpanch stands annulled So

notice fixing date of meeting for consideration of the motion for no confidence stands annulled : 1995 (II) OLR 34.

25. Disqualification for membership of Grama Panchayat :– (1) A person shall be disqualified for being elected or nominated as, a Sarpanch or any other member of the Grama Panchayat constituted under this Act, if he–

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(a) is not a Citizen of India; or

(b) is not on the Electoral Roll in respect of the Grama or of the Ward, as the case may be; or

(c) is of unsound mind; or

(d) is an applicant to be adjudicated as an insolvent or is an undischarged insolvent; or

(e) is a deaf-mute, or is suffering from tuberculosis; or in the opinion of the District Leprosy Officer is suffering from an infectious type of leprosy; or

(f) is convicted of an election offence under any law for the time being in force; or

(g) is convicted for an offence involving moral turpitude and sentenced to imprisonment of not less than six months unless a period of five years has elapsed since his release or is ordered to give security for good behaviour under Section 110 of the Code of Criminal Procedure, 1898 (5 of 1898); or

(h) holds any Office of profit under the State or Central Government or any local authority; or

(i) is a teacher in any school recognised under the provisions of the Orissa Education Code for the time being in force; or

(j) holds the Office of a Minister either in the Central or State Government; or

(k) has been dismissed from the service of the State Government or of any local authority; or

(l) being a member of a Co-operative Society, has failed to pay any arrear of any kind accrued due by him to such Society before filing of the nomination paper in accordance with the provisions of this Act and the rules made thereunder :

Provided that in respect of such arrears a bill or a notice has been duly served upon him and the time, if any, specified therein has expired; or

(m) is in the habit of encouraging litigation in the Grama and has been declared to be so on enquiry by the Collector in the prescribed manner or by any other authority under any law for the time being in force; or

(n) is interested in a subsisting contract made with or in any work being done for the Grama Panchayat or the Samiti, or any Government except as a shareholder other than a Director in an incorporated Company or as a member of a Co-operative Society; or

(o) is a paid and trained legal practitioner on behalf of the Grama

Sasan; or

(p) is a member of the Orissa Legislative Assembly or of either of the Houses of Parliament; or

[1][(q) is a member of the Samiti elected under Clause (h) of Sub-Section (1) of Section 16 of the Orissa Panchayat Samiti Act, 1959 (Orissa Act 7 of 1960); or]

[2][(r) is disqualified by or under any law for the time being in force for the purposes of an election to the Legislature of the State; or

(s) is disqualified by or under any law made by the Legislature of the [1][State; or]]

[1][(t) is in arrear of any dues payable by him to the [3][Grama Panchayat; or]]

[1][(u) has more than one spouse living; or

(v) has more than two Children :

Provided that the disqualification under Clause (v) shall not apply to any person who has more than two Children on the date of commence-ment of the Orissa Grama Panchayats (Amendment) Act, 1994 or, as the case may be, within a period of one year of such commencement, unless he begets an additional child after the said period of one year.]

(2) A Sarpanch or any other member of a Grama Panchayat shall be disqualified to continue and shall cease to be a member if he–

(a) incurs any of the disqualifications specified in Clauses (a) to (j) [1][Clauses (m) to (p) and Clauses (t) to (v)] of Sub-Section (1); or

(b) has failed to attend three consecutive ordinary meetings held during a period of four months commencing with effect from the date of the last meeting which he has failed to attend; or

(c) being a legal practitioner appears or acts as such against the Grama Sasan; or

(d) being a member of a Co-operative Society has failed to pay any arrears of any kind accrued due by him to such Society within six months after a notice in this behalf has been served upon him by the Society.

(3) Without prejudice to the provisions of the foregoing Sub-Sec-tions the Sarpanch of a Grama Panchayat shall be disqualified to continue and cease to be the Sarpanch, if he fails to attend three consecutive ordi-nary meetings of the Samiti, of which he is a member, without the previ-ous permission in writing of the said Samiti.

(4) Notwithstanding anything contained in the foregoing Sub-Sec-tions–

(a) the state Government may remove any one or more of the disqualifications specified in Clauses (f), (g), (k) and (l) of Sub-Section (1);

(b) When a person ceases to be a Sarpanch or Naib-Sarpanch or any other member in pursuance of clause (g) of Sub-Section (1) he shall be restored to Office for such portion of the term of Office as may remain unexpired on the date of such resto-ration, if the sentence is reversed or quashed on appeal or revision or the offence is pardoned or the disqualification is removed by an order of the State Government; and any person filling the vacancy in the interim period shall on such restora-tion vacate the Office.

NOTES

(i) Secs. 25 and 26 – Sarpanch of a Grama Panchayat ordered by Collector to be removed for having more than two Children after his hold-ing Office – It was alleged that he married two wives and by the second wife he had child which amounted to have more than two issues - After notice the Petitioner showed cause that he had not married the second lady – The Collector in consideration of the report of Sub-Collector re-moved/disqualified the Sarpanch from continuing in that post – No en-quiry was held in presence of Petitioner and no opportunity was given to the Petitioner to explain his assertions – The Collector acted simply on the basis of report of Sub-Collector – The

enquiry, if any, by the Sub-Collector was not in presence of Petitioner – The order of Collector cannot be sus-tained and is quashed – Directions given :2001 (II) OLR 41.

(ii) Sec.25 (3) – Orissa Panchayat Samiti (Conduct of Business) Rules, 1969 – Rule 5 – Disqualification as Sarpanch – Disqualification contem-plated in the provision of Sec. 25(3) relates to the sufficiency of reasons indicated for remaining absent by the Sarpanch and not regarding disquali-fication itself – Unless notice as required under the law is served, a Sarpanch cannot be disqualified for alleged non-attendance from three consecutive meetings – The manner of sending notice as provided in Rule 5 of the rules stated – Disqualification contemplated under Sec. 25(3) of the Act relates to non-attendance of three consecutive ordinary meetings – In the instant case notice has not been served by Certificate of posting– It is said that it was served by special messenger which has been denied – When the rule contemplates the method of service of notice in a particular way, that has to be followed – Where the manner of taking a particular action is laid down, such action must be taken according to the mode prescribed ~~– There is nothing on record to show that it was sent by special messenger~~ 1.

Substituted vide Orissa Gazette Ext. No. 1247/18.10.1994-Notfn. No. 13978-Legis./18.10.1994.

2. Substituted vide Orissa Act No. 25 of 1993.

3. Added ibid.

– Statutory rules not followed – Disqualification cannot be sustained : 2001 (I) OLR 580.

(iii) Secs. 25, 26 and 32 - Matter of disqualification of a Sarpanch on the ground that he has more than two Children - Petitioner who has raised the question of disqualification had not filed any nomination - As such he cannot challenge the election by election Petition - Difference between Secs. 25(2) and 26(2) explained - In the instant case a represen-tation was made by the Petitioner to B.D.O. who enquired into the matter and found that the third Child of Sarpanch was born in 1995 - It was duty of B.D.O. to report the matter to the Collector who has to take action under Sec. 26(2) and he is empowered to declare disqualification - Case referred to Collector for holding enquiry and to make final decision as to disqualification : 2000 (I) OLR 463 : 89 (2000) CLT 696.

(iv) Secs. 25 (1) (v) and 32(2) - In an election for Sarpanch the Petitioner was elected as Sarpanch and out of 4 Candidates Opp. Party 1 was the nearest in Votes - Opp. Party filed election Petition challenging the election on the ground that Petitioner was disqualified to be Candidate on the grounds of having more than two Children - Prior to the amendment of 1993 Petitioner has one Child and subsequently his wife gave birth to twin Children - Trial Court allowed the Petition setting aside the election -Appeal was filed - During pendency of appeal a Petition for stay of opera-tion of the judgment of Trial Court was filed - Contention of Petitioner that the twin Children should be taken as one and the appellate Court found prima facie case and refused stay - That order, at this stage cannot be characterised as illegal or without jurisdiction.

But if the present Petitioner would not have been allowed to contest the election then the Votes Polled by him would have been distributed among other Candidates - This matter has to be considered - Hon'ble Court directed the appellate Court to reconsider the stay matter : 1998 (II) OLR 690.

(v) Sec. 25 (1) (v) (as amended by Orissa Act 6 of 1994) and Sec. 39 - Grounds for declaring election void - Whether the Party has more than two Children for being disqualified involves factual adjudication - Munsif to decide whether the nomination paper has been improperly rejected -This can be raised in election dispute - Writ not maintainable : 1997 (I) OLR 310 : 83 (1997) CLT 494.

(vi) Section 25 (1) (h)-(i) Disqualification for holding any Office of profit under local authority - Local authority not defined in Orissa Grama Panchayat Act - It is to be found in Section 2 (3) of Orissa General Clauses Act : 1990 (II) OLR 453.

(vii) Section 25 (1) (h) - Disqualification - Petitioner serving in Orissa Cotton Mill - This is not local authority - Cotton Mill taken over as sick industry under Sick Textile Undertakings (Nationalisation) Act - Under pro-

visions of the Act, the entire control rests on the Central Government -Therefore, employees are to be held as holding Office of profit under Cen-tral Government - As such disqualification under Section 25 (1) (h) of Orissa G.P. Act is applicable : 1990 (II) OLR 453.

(viii) Section 25 (1) (n) - Disqualification - Petitioner held to be inter-ested in a subsisting contract where final payment was not made by the date of nomination though work had been completed, Certificate had been issued and finally had been passed quantifying the amount payable to him-Held, despite the Contractor's execution of his part of the contract and passing of the final bill, if payment is not made, the Party has to fall back on the contract for enforcement of his right, the contract does not come to an end until the other party, namely, the Government performs its part by making the payment : 64 (1987) CLT 21.

(ix) Section 25 (1) (i) and 25 (2) (d) - Disqualification - Non-payment of dues of Co-operative Society - "Accrued due" - Meaning of - There must have adjudicated arrear determined by appropriate authority as pro-vided in Section 68 of the Orissa Co-operative Societies Act, 1962 and after that, the "accrued due" must have remained unsatisfied during the stipulated period in spite of demand made for it - These are the precondi-tions for disqualification : 1985 (II) OLR 403 : 60 (1985) CLT 435 : 1986 (1) CCC 8.

26. Procedure of giving effect to disqualification :– (1) Whenever it is alleged that any Sarpanch or Naib-Sarpanch or any other member is or has become disqualified or whenever any such person is himself in doubt whether or not he is or has become so disqualified such person or any other member may, and the Sarpanch at the request of the Grama Panchayat shall, apply to the Collector for a decision on the allegation of doubt.

(2) The Collector may suo motu or on receipt of an application under Sub-Section (1), make such enquiry as he considers necessary and after giving the person whose disqualification is in question is or has become disqualified and make an order in that behalf which shall be final and conclusive.

(3) Where the Collector decides that the Sarpanch, Naib-Sarpanch or any other member is or has become disqualified such decision shall be forthwith published by him on his notice-board and with effect from the date of such Publication the Sarpanch, Naib-Sarpanch or such other mem-ber, as the case may be, shall be deemed to have vacated Office, and till the date of such Publication he shall be entitled to act, as if he was not disqualified.

1. Substituted vide Orissa Act No. 4 of 1993.

2. Inserted vide Orissa Act No. 9 of 1991.

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CHAPTER - V

CONDUCT OF ELECTIONS AND ELECTION DISPUTES

27. Manner of holding Elections :– (1) [1][Subject to the provisions in Section 9, the election of a member, Sarpanch and Naib-Sarpanch of a Grama Panchayat shall be held and conducted in the prescribed manner.

(2) Without prejudice to the provisions of Sub-Section (1) the State Government may make rules to provide for or regulate all or any of the following matters for the purpose of holding elections under this Act, namely :

(a) the manner of splitting up of Electoral Rolls of the Assembly Constituencies into parts for the purpose of constituting one or more of such parts into the Electoral Roll for a Grama, Palli Sabha and a Ward, the manner of revision of such Roll from time to time, and the Officer or authority by whom such split-ting up or revision is to be carried out;

(b) the appointment of Election Officers, Presiding Officers and such other Officers with such designations as the State Gov-ernment may deem fit for the conduct of elections;

(c) the nomination of Candidates, form of nomination papers, ob-jections to nominations and scrutiny of nominations;

(d) withdrawal of candidatures;

(e) the date, time and place of Poll including–

(i) appointment of Polling Stations for each Ward;

(ii) hours during which the Polling Station shall be kept open for casting Votes;

(iii) preparation and issue of ballot papers;

(iv) the checking of Voters by reference to the Electoral Roll;

(v) the manner in which Votes are to be given;

(vi) scrutiny of Votes, counting of Votes, the declaration of results and the procedure in case of equality of Votes;

(vii) the custody and disposal of papers relating to election and

(f) any other matter relating to elections or election disputes in respect of which the State Government deem it necessary to make rules under this Section or in respect of which this Act makes no provision or makes insufficient provision and provi-sion is in the opinion of the State Government necessary.

1[(3) In the absence of any provision in this Act or the rules made thereunder, the provisions of the Representation of the People Act, 1950 and the Representation of the People Act, 1951 shall mutatis mutandis

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apply for the purposes of election to Grama Panchayats in the following matters, namely :

(i) preparation, revision and updating of Electoral Rolls;

(ii) appointment of Electoral Registration Officers, Presiding Of-ficers and Polling Officers;

(iii) qualifications and disqualifications for registration as Voter;

(iv) such other matters which have to be, or may be required to be, dealt with for the purposes of conducting free and fair elec-tion.]

1-A[(4) The Election Officers, Presiding Officers and other Officers appointed or designated for the time being for the conduct of elections under this Act shall be deemed to be on deputation to the Election Com-mission for the period commencing on the date of the notification calling for such election and ending with the date of declaration of the results of such election and, accordingly, such Officers shall, during that period, be subject to the control, superintendence and discipline of the Election Com-mission.]

28. Bar against Servants of State Government and Local Authorities canvassing at Elections :– No person who is in the service of the State Government or of any local authority shall, by canvassing on behalf of any Candidate or otherwise, interfere or in any way use his influence in an Election and a breach of provisions of this Section shall render the person liable to have his services terminated.

29. Penalty for misconduct at Elections :– (1) A person shall be guilty of an election offence if he–

(a) fraudulently defaces or otherwise alters or tampers or destroys any nomination paper or ballot papers;

(b) fraudulently defaces, injures, disturbs, destroys or removes any list, notice or other documents affixed or otherwise published in accordance with the provisions of this Act and the rules made thereunder; or

(c) without due authority supplies any ballot paper to any person or receives any ballot paper from any person or is in posses-sion of any ballot paper; or

(d) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

(e) without due authority destroys, takes, opens or otherwise in-terferes with any ballot box or ballot papers then in use for the purposes of the election; or

(f) obstructs or in any way interferes in the performance of the duties of any Officer or servant appointed or employed for the

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purpose of holding and conducting elections; or

(g) being required by the provisions of this Act and the rules made thereunder to do any act to take any proceedings, neglects, or refuses to do any such act or to take any such proceedings.

(2) Any person guilty of an election offence under this Section shall be punishable on conviction with fine which may extend to rupees one hundred and when the offence is a continuing one with a further fine which may extend to five rupees for everyday after the date of the first conviction, during which the offender is proved to be a persistent committe of the offence.

30. Election Petitions :– No election of a person as a member of a Grama Panchayat or as a Sarpanch or Naib-Sarpanch held under this Act shall be called in question except by an election Petition presented in ac-cordance with the provisions of this Chapter.

NOTES

(i) Sec. 30 - Elections of Sarpanch - Challenge as to - Prayer for verification and recounting of ballot papers - Rejection of on ground of absence of specific instances and evasive stand taken by Petitioner there should not be reving enquiry - Was proper - No interference by High Court : AIR 2000 Ori. 156.

(ii) Sec. 30 - Petition under, when maintainable, indicated.

Held, Sec. 30 lays down that no election of a person as a member of a Grama Panchayat or as a Sarpanch or Naib-Sarpanch held under the Act shall be called in question except by an election Petition presented in accordance with the provisions of Chapter V of the Act : 90 (2000) CLT 508.

(iii) Sections 30, 32 and 39 - Election of member or Sarpanch or Naib-Sarpanch - To be called in question in an election Petition only - Writ Petition is not maintainable except in extraordinary circumstances - Im-proper acceptance or rejection of nomination papers - Not an exceptional or extraordinary circumstance : 1992 (II) OLR 91.

31. Presentation of Petitions :– (1) The Petition shall be presented on one or more of the grounds specified in Section 39 before the [1][Civil Judge (Junior Division)] having jurisdiction over the place at which the Office of the Grama Sasan is situated together with a deposit of such amount, if any, as may be prescribed in that behalf as security for costs within fifteen days after the date on which the name of the person elected is published under Section 15 :

Provided that if the Office of the [1][Civil Judge (Junior Division)] is closed on the last day of the period of limitation as aforesaid the Petition may be presented on the next day on which such Office is open :

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Provided further that if the Petitioner satisfies the [1][Civil Judge (Jun-ior Division)] that sufficient cause existed for the failure to present the Petition within the period aforesaid [1][Civil Judge (Junior Division)] may in his discretion condone such failure.

(2) No Candidate who has been elected to be a member, Sarpanch or Naib-Sarpanch of a Grama Panchayat shall be debarred from holding Office as such member, Sarpanch or Naib-Sarpanch merely by reason of any election Petition having been filed against him unless his election has been declared void by the [1][Civil Judge (Junior Division)].

32. Parties to the Petition :– (1) The Petition may be presented by any person who has filed his nomination.

(2) A person whose election is questioned and where the Petition is to the effect that any other Candidate is to be declared elected in place of such person, every

unsuccessful Candidate who has Polled more Votes than such Candidate shall be made Opposite Party to the Petition.

33. Contents of Petition :– (1) An election Petition –

(a) shall contain a concise statement of the material facts on which the Petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the Petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such cor-rupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the Petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings.

(2) Any schedule or annexure to the Petition shall also be signed by the Petitioner and verified in the same manner as the Petition.

34. Relief that may be claimed by the Petitioner :– A Petitioner, may, in addition to claiming a declaration that the election of all or any of the returned Candidates is void claim a further declaration that he himself or any other Candidate has been duly elected.

35. Procedure before the [1][Civil Judge (Junior Division)] :– (1) Sub-ject to the provisions of this Act and the rules made thereunder every election Petition shall be tried by the [1][Civil Judge (Junior Division)] as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits.

(2) The [1][Civil Judge (Junior Division)] shall not be required to record or to have the evidence recorded in full but shall make a memorandum of the evidence sufficient in his opinion for the purpose of deciding the case.

(3) The [1][Civil Judge (Junior Division)] shall, for the purpose of de-

ciding any issue receive so much evidence, oral or documentary, as he considers necessary and may require the production of any evidence.

(4) The [1][Civil Judge (Junior Division)] may, at any stage of the pro-ceedings require the Petitioner to give further security for the payment of all costs incurred or which is likely to be incurred by any Opposite Party and if within the time fixed by him or within such further time as he may allow such security is not furnished, he may dismiss the Petition.

(5) No witness or other person shall be required to disclose the name of the person for whom he has Voted at an election.

(6) The provisions of the Indian Evidence Act, 1872 (1 of 1872) shall, subject to the provisions of this Act, apply in the trail of an election Petition.

(7) Notwithstanding anything in any enactment to the contrary no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

(8) Reasonable expenses incurred by any person in attending to give evidence may be allowed to such person which shall, unless the [1][Civil Judge (Junior Division)] otherwise directs, be deemed to be part of the costs.

(9) Any order as to costs passed by the [1][Civil Judge (Junior Divi-sion)] shall be executed by him on application made in that behalf in the same manner and by the same procedure as if it where a decree for the payment of money passed by himself as suit.

NOTES

Secs. 35 and 37 - Election challenged in a case - Amendment sought about improper counting - Amendment can be allowed - Provisions of Representation of People's Act, 1951 in this respect stated - Consider-ation for allowing amendment stated - The Court has power to allow amend-ment of plaint - The word “Munsif” in the Act should be changed by proper amendment of the Act : 1998 (II) OLR 43.

35-A. Refund of Security Deposit :– Where no costs have been awarded, the whole of the security deposit, and in cases where any costs have been awarded, the balance, if any, of the security deposit after pay-ment to any person towards costs may, on an application made in that behalf in writing to the [1][Civil Judge (Junior Division)] by the person by whom the deposits have been made or, if such person dies after making such deposit by the legal representative of such person, be returned to the applicant.

36. Appearance before the [1][Civil Judge (Junior Division)] :– Any

1. Substituted vide Orissa Gazette Ext. No. 1391/12.12.1995. 1-A.Inserted vide Orissa Gazette Ext. No. 1649 dt. 07.09.2001.

appearance, application or act before the [1][Civil Judge (Junior Division)] may be made or done by the party in person or by a legal practitioner duly appointed to act on his behalf :

Provided that it shall be open to the [1][Civil Judge (Junior Division)] to direct any party to appear in person, whenever he considers it neces-sary.

37. Powers of [1][Civil Judge (Junior Division)] :– The [1][Civil Judge (Junior Division)] shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect to the following matters, namely :

(a) discovery and inspection;

(b) enforcing the attendance of witness, and requiring the deposit of their expenses;

(c) compelling the production of documents;

(d) examining witnesses on oath;

(e) granting adjournments;

(f) reception of evidence taken on affidavit;

(g) issuing commissions for the examination of witness and may summon and examine suo motu any person whose evidence appears to him to be material; and shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

38. Decision of [1][Civil Judge (Junior Division)] :– (1) If the [1][Civil Judge (Junior Division)] after making such enquiry, as he deems neces-sary, finds in respect of any person, whose election is called in question by a Petition that his election was valid, he shall dismiss the Petition as against such person and may award costs at his discretion.

(2) If the [1][Civil judge (Junior Division)] finds that the election of any person was invalid, he shall either–

(a) declare a casual vacancy to have been created; or

(b) declare another Candidate to have been duly elected;

whichever course appears, in the circumstances of the case to be more appropriate and in either case, may award costs at his discretion.

(3) All orders of the [1][Civil Judge (Junior Division)] shall, subject to the provisions of Sub-Section (4), be final and conclusive :

Provided that [1][Civil Judge (Junior Division)] may, on application pre-sented within one month from the date of any of the orders made under this Section by any person aggrieved, review such order on any ground and may, pending the decision in review direct stay of operation of such order :

Provided further that no application for review under the preceding

proviso shall lie, if an appeal is preferred in accordance with the provisions of Sub-Section (4).

(4) Any person aggrieved by an order of the [1][Civil Judge (Junior Division)] may within thirty days from the date of the order, prefer an appeal in such manner as may be prescribed before the Disdtrict Judge having jurisdiction who shall after giving the parties

an opportunity of being heard, confirm, reverse, alter or modify the order of the [1][Civil Judge (Junior Division)] and pending disposal of such appeal may direct stay of operation of the said order.

NOTES

Section 38 (4) – Application filed under Section 31 of the Act, chal-lenging the rejection of nomination paper – Misc. case dismissed exparte– Appeal filed contending that no notice was served – Appeal notice also not sent – Writ application filed contending that proper service of notice is compulsory.

Held, notice must be served – Mere tendering is not sufficient–order contrary to evidence is against law : 1986 (II) OLR 96.

39. Grounds for declaring election void :– (1) The [1][Civil Judge (Jun-ior Division)] shall declare the election of a returned Candidate void, if he is of the opinion-

(a) that on the date of his election the Candidate was not quali-fied or was disqualified to be elected under the provisions of this Act or the rules made thereunder; or

(b) that any corrupt practice has been committed by the Candi-date; or

(c) that any nomination paper has been improperly rejected or accepted; or

(d) that such person was declared to be elected by reason of the improper rejection or admission of one or more Votes for any other reason was not duly elected by a majority of lawful Votes; or

(e) that there has been any non-compliance with or breach of any of the provisions of this Act or of the rules made thereunder :

Provided that in relation to matters covered by Clause (a) the [1][Civil Judge (Junior Division)] shall have due regard to the decision, if any, made under Section 26 before making a declaration under this Section.

(2) The election shall not be declared void merely on the ground of any mistake in the forms required thereby or of any error, irregularity or informality on the part of the Officer or Officers charged with carrying out the provisions of this Act or of any rules made thereunder unless such

1. Substituted vide O.G.E. No. 993 Notfn. No. 7703 - Legis. Dt. 28.05.2001.

mistake, error, irregularity or informality has materially affected the result of the election.

NOTES

(i) Sec. 39 (1) (d) and (e) and Sec. 39 (2) – Grounds for declaring election void – Votes cast in the names of dead persons There is no definite pleading nor proof as to in whose favour the Votes of the dead persons had been cast– In absence of any such pleading or proof, it is difficult to conclude that the result of the election had been materially affected – The Section makes it clear that, even if there has been any irregularity on the part of the Election Officer charged with carrying out the provisions of the Act, or any rules made thereunder, unless such mis-take, error, irregularity or informality had materially affected the result of the election, such election should not be declared void merely on the ground of any such mistake or irregularity : 2001 (II) OLR 129.

(ii) Sec. 39 – Orissa Grama Panchayat Election Rules – Rule 46–Election to Panchayat – Post of Ward Member – Petitioner and Opp. Party found to have secured equal number of Votes – Presiding Officer declaring Petitioner elected by resorting to lot – Dispute relating to number of Votes secured by Candidates and whether any valid Vote of Opposite Party was rejected while accepting invalid Votes in favour of Petitioner – Cannot be adjudicated effectively without recounting of Votes – Consent of parties for draw of lots cannot operate as estoppel – Order of trial Court directing Opp. Party elected on scrutiny of evidence and recounting of Votes – Is proper : AIR 1999 Ori. 187.

(iii) Sec. 39(2) – Orissa Grama Panchayat Election Rules – Rule 17 –If the Election Rules provide clearly rejection of ballot paper in absence of compliance with statutory formalities there cannot be any other ground to hold otherwise – If there is rejection according to Rules, the rejection stands valid : 1999 (II) OLR 25 : 88 (1999) CLT 165.

40. Grounds for which a Candidate other than the returned Candi-date may be declared to have been elected :– If any person who has lodged a Petition, has in addition to calling in question the election of the returned Candidate, claimed a declaration that he himself or any other Candidate has been duly elected and the [1][Civil Judge (Junior Division)] is of opinion–

(a) that in fact the Petitioner or such other Candidate received a majority of the valid Votes; or

(b) that but for the Votes obtained by the returned Candidate by a corrupt practice the Petitioner or such other Candidate would have obtained a majority of the valid Votes;

1. Substituted vide O.G.E. No. 993 Notfn. No. 7703 - Legis. Dt. 28.05.2001.

he shall after declaring the election of the returned Candidate to be void declare the Petitioner or such other Candidate, as the case may be, to have been duly elected.

41. Corrupt Practices :– The following shall be deemed to be corrupt practices for the purposes of this Chapter, namely :

(1) Bribery, that is to say, any gift, offer or promise by a Candidate or by any other person on his behalf or any gratification to any person whom-soever–

(i) with the object, directly or indirectly of inducing–

(a) a person to stand or not to stand as or to withdraw from being a Candidate, or to retire from contest at such elec- tion; or

(b) an elector to Vote or refrain from voting at such elec- tion; or

(ii) as a reward to–

(a) a person for standing or refraining from standing as a Candidate, or for having withdrawn his candidature or for having retired from contest; or

(b) an elector for having Voted or for refraining from voting.

Explanation– For the purposes of this clause, the term gratification includes all forms of entertainment and all forms of employment for re-wards; but does not include the payment of any expenses incurred bonafide for the purposes of such election.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a Candidate or any other person on his behalf, with the free exercise of the electoral right of any person :

Provided that -

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein, who–

(i) Threatens any Candidate or any elector or a person in whom a Candidate or an elector is interested, with in- jury of any kind including social ostracism and ex-com- munication or

(ii) induces or attempts to induce a Candidate or an elector to believe that he, or any person in whom he is inter- ested will become or will be rendered an object of divine displeasure or spiritual censure.

shall be deemed to interfere with the free exercise of the electoral right of such Candidate or elector within the meaning of this clause; and

1. Substituted vide O.G.E. No. 993 Notfn. No. 7703 - Legis. Dt. 28.05.2001.

(b) a declaration of Public Policy or, a promise of Public Action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.

(3) The systematic appeal by a Candidate or by any other person on his behalf to Vote or refrain from voting on grounds of caste, race, commu-nity or religion or of the use of national symbols such as the National Flag or the National Emblem, for the furtherance of the prospects or the Candidate's election.

(4) The Publication by the Candidate or by any other person on his behalf of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the Personal Charac-ter or Conduct of any Candidate, or in relation to the Candidature or with-drawal or retirement from Contest of any Candidate, being a statement reasonably calculated to prejudice the prospect of that Candidate's Selec-tion.

(5) The hiring or procuring whether on payment or otherwise, of any vehicle or vessel by a Candidate or by any other person on his behalf for the conveyance of any elector, other than the Candidate or any member of his family to or from any Polling Station or place fixed for the Poll.

Explanation– In this clause, the expression "vehicle" means any ve-hicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The obtaining or procuring or abetting or attempting to obtain or procure by a Candidate or by any other person on his behalf of any assis-tance, other than the casting of a Vote, for the furtherance of the pros-pects of the Candidate's election from any person in the service of the State Government or in the employ of any local authority.

42. Withdrawal of Petition :– The Petitioner may, at any time, with-draw the election Petition filed by him.

43. Abatement of Petition :– A election Petition shall abate only on the death of the Petitioner.

CHAPTER - VI

POWERS, DUTIES AND FUNCTIONS OF GRAMA PANCHAYATS

44. Obligatory functions :–[1][(1) Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of a Grama Panchayat, within the limits of its funds to undertake, control and administer and be responsible for the following matters in respect of the Grama, namely :

1. Substituted vide O.G.E. No. 993 Notfn. No. 7703 - Legis. Dt. 28.05.2001.

(a) construction, repair maintenance, alteration and improvements of Public Streets;

(b) lighting, watering and cleaning of Public Streets and other Public Places;

(c) the removal of unauthorised obstructions, projections and en-croachments in or upon Public Streets and other Public Places;

(d) construction, maintenance and cleaning of drains and drain-age works and all Public latrines, urinals and similar conve-niences and the disposal of drain water and sullage;

(e) construction and maintenance of works and means for supply of water for Public and Private Purposes; and regulation of sources of water-supply for drinking purposes and storage of water supplied for drinking purposes;

(f) scavenging, removal and disposal of filth, rubbish and other obnoxious Polluted matters;

(g) reclamation of unhealthy locality, the removal of noxious vegetation and generally the abatement of all nuisances;

(h) measures for preventing and checking the spread of epidemic or infectious and other dangerous diseases;

(i) regulation and abatement of offensive or dangerous trades or practices;

(j) the registration of births, deaths and marriages and maintenance of registers prescribed by or under this Act;

(k) the protection, maintenance and development of all properties vested in or entrusted to the management of the Grama Panchayat;

(l) establishment, management and maintenance of common grazing grounds and lands for common benefit of the people of the Grama.

(m) Maintenance of records relating to Cattle Census, Population Census and other statistics as may be prescribed;

(n) registration of animals sold;

(o) regulation and control of movement of Cattle for Protection of crops;

(p) destruction of stray and ownerless dogs;

(q) rendering all reasonable assistance to the Samiti in matter of establishment and maintenance of schools for primary education;

(r) supervision and maintenance of village and field boundary marks and maintenance of village records when so required by the State Government;

1. Substituted vide O.G.E. No. 993 Notfn. No. 7703 - Legis. Dt. 28.05.2001.

(s) supervision and maintenance of soil conservation works;

(t) regulation of meals, fairs and festivals and establishment, maintenance and regulation of markets, hats and cart-stands including stands for carriage or motor vehicles within the meaning of the Motor Vehicles Act, 1939 (4 of 1939) and registration of sales of animals in such markets, hats and fairs within the Grama;

[1][(u) the implementation of schemes for economic devlopment and social justice in relation to agriculture, including agricultural extension;]

(v) fulfillment of any other obligation imposed by or under this Act or any other law for the time being in force;

[2][(w)minor forest produce;

(x) small scale industries including food processing industries;

(y) rural housing;

(z) poverty alleviation programme;

(z-1)women and child welfare;

(z-2)social welfare including welfare of the handicapped and mentally retarded;

(z-3)Public distribution system;

(z-4)maintenance of community assets.]

[3][(2) Notwithstanding anything cotained in any other law, in the

Scheduled Areas, subject to the control and supervision of the Grama Sasan, the Grama Panchayat shall exercise within its local limits, such power and perform such functions in such manner and to such extent as may be prescribed in respect of the following matters, namely :

(a) enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant;

(b) the ownership of minor forest produce;

(c) prevention of alienation of land and restoration of any unlawful alienated land of a Scheduled Tribe; and

(d) control over money-lending to the Scheduled Tribes.]

[4]["(3) Subject to the provisions of the Act and the rules made thereunder, it shall be the duty of a Grama Panchayat, within the limits of its funds to–

(a) prepare plans for economic development and social justice; and

(b) implement schemes for economic development and social justice and undertake execution of any other scheme, performance of any act or management of any institution, or organisation

as the Government may, by order, entrust to it including those in relation to the matters listed in the Eleventh Schedule to the Constitution of India, subject to such terms and conditions as may be specified in the order."

NOTES

(i) Section 44 (1) (t) - Orissa Grama Panchayats Rules - Rule 87 (b)– Lease of Grama Panchayat Properties which are not to be managed by Grama Panchayat – Rule 87 (b) providing for Public auctioning thereof –Mandatory : AIR 1993 Ori. 206.

(ii) Section 44 (1) (t) – Orissa Grama Panchayats Rules – Rule 87 (b) – Grama Panchayat properties which are normally not to be managed by Grama Panchayat – Leasing of-Procedure-Public auctioning should be restored to – Departure from procedure – Reasons must be recorded : AIR 1993 Ori. 206.

(iii) Section 44 (1) (t) and Section 58 read with Rule 68 of Orissa Grama Panchayat Rules, 1968 – Control, administration, maintenance and regulating vests with the Grama Panchayat – Not on any other Officer of Government : 1987 (II) OLR 538.

45. Discretionary functions :– The Grama Panchayat may, if a major-ity of its members so decide by a resolution, with the previous approval of the State Government and shall, if the state Government so direct, under-take within the Grama the control and administration of and be responsible for the following matters, namely :

(a) Planting and care of trees on the sides of Public Streets or in other Public Places vested in it;

(b) maintenance of village forest declared as such by notification by the State Government for the purpose of this Act;

(c) improved breeding and medical treatment of cattle and pre-vention of cattle diseases;

(d) construction, maintenance and regulation of slaughter houses;

(e) assisting and advising agriculturists in reclaiming waste lands and cultivating fallow lands;

(f) development of Co-operation, promotion of Co-operative stores for improved seeds and implements, arranging for Co-opera-tive management of land and other resources of the village and establishment of Goshalas and dairy farms on Co-opera-tive lines :

(g) relief from famine or other calamity;
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(h) establishment and maintenance of libraries and reading rooms and providing for music and other entertainments in Public Places;

(i) organisation of fire services and protection of life and property in case of fire;

(j) maternity and child welfare and establishment of centres for the purpose;

(k) establishment and maintenance of Akharas and clubs and Places for sports, games and other recreations;

(l) establishment and maintenance of ferries, fair-weather roads, cattle pounds and imposition of fees therefor;

(m) establishment and maintenance of works for providing em-ployment in time of scarcity and establishment of granaries;

(n) organisation, management and promotion of cottage indus-tries and the establishment and maintenance of trading and other remunerative schemes;

(o) construction and maintenance of Dharmasalas and rest houses;

(p) organisation and maintenance of agricultural and industrial ex-hibitions as are not managed by any other authority;

(q) statistics of unemployment;

(r) Public vaccination and inoculation;

(s) Control over the disposal of adulterated foodstuffs and un-wholesome food and making of report to the appropriate au-thority under any law for the time being in force;

(t) adult education; establishment of Primary Schools either jointly with any other Grama Panchayat or otherwise with the prior approval of the Panchayat Samitis concerned;

(u) organising a body of Grama Swechha Sevaks for assisting the Grama Panchayat in the discharge of its functions in the mat-ter of Social Services such as extinguishing village fire pro-tecting life and property when fire or flood occurs, disposing of dead bodies and rendering such other social and philan-thropic services as may be specified by the State Government from time to time :

(v) prevention of gambling and implementation of the programme for prohibition;

(w) maintenance of village agricultural bunds situated on lands belonging to or vested in the State Government and construc-tion of such bunds on any such land;

(x) the doing of anything the expenditure on which is declared by the State Government to be an appropriate charge on the Grama
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Fund; and

(y) any measure not hereinbefore specifically mentioned which is likely to promote Public safety, health, convenience or general welfare.

46. Delegation of duties to Grama Panchayat by a local authority, by a Central or State Government :– Nothing in this Chapter shall be deemed to impose any duty or confer any power on the Grama Panchayat with respect to any matter which is under the direct administrative control of any other local authority or of any department of the Central or State Government unless such duty or power has been transferred or delegated to the Grama Panchayat by order of the local authority of the Central or State Government, as the case may be.

47. Power to execute works and take over institutions from State Government, Samiti and others :– (1) The State Government or the Samiti may, subject to such terms and conditions, if any, as they may deem fit to impose, entrust to the Grama Panchayat the execution of any development work within the Grama with an estimated cost not

exceeding the pre-scribed amount and it shall thereupon be the duty of such Grama Panchayat to undertake the execution of such work.

(2) Subject to the rules made in that behalf and the prior approval of the Collector, a Grama Panchayat may receive from any person and take over any property vested in him or the management of any institution or the execution of maintenance of any work or the performance of any duty within the Grama on such terms as may be determined by the Collector.

48. Duty to advise on matters referred to Grama Panchayat :– It shall be the duty of the Grama Panchayat to advise the State Government on such matters as may be referred to the Grama Panchayat from time to time.

49. Public Streets and Waterways :– Subject to the provisions of any other law for the time being in force a Grama Panchayat shall have control of all Public Streets and Waterways situated in the Grama not being private property and not being under the control of any other local authority, or the Central or State Government and may do all things neces-sary for the maintenance and repair thereof and may,–

(a) construct new bridges and culverts;

(b) divert or close any such Public Street, bridge or culvert;

(c) widen, open, enlarge or otherwise improve any such Public Street, Culvert or Bridge and with minimum damage to the

1. Substituted vide Orissa Gazette Ext. No. 426/18.4.1994-Notfn. No. 6139-Legis./18.4.1994
2. Inserted vide Orissa Act No. 9 of 1991.

neighboring fields, plant and preserve trees on the sides of such street;

(d) deepen or otherwise improve such waterways;

(e) with the sanction of the prescribed authority undertake small irrigation projects;

(f) trim branches of trees projecting on Public Streets;

(g) set apart by Public notice any Public source of water-supply for drinking or culinary purposes and likewise prohibit bathing, washing of clothes and animals or other acts likely to Pollute the source so set apart :

Provided that nothing in this clause shall be deemed to authorise a Grama Panchayat to interfere with a canal governed by any other law for the time being in force without the prior permission of the prescribed au-thority.

50. Powers in respect of Private water-supply :– (1) A Grama Panchayat may by written notice require the owner of or the person hav-ing control over a private water-course, spring, tank, well or other Places the water of which is used by the Public as a matter of right for drinking or culinary purpose, to take all or any of the following steps within a reason-able period to be specified in such notice, namely :

(a) to keep, and maintain the same in good repair;

(b) to clean the same from time to time of silt, refuge, or decaying vegetation;

(c) to protect it from Pollution; and

(d) to prevent its use if it has become so Polluted as to be prejudi- cial to Public health.

(2) A person upon whom a notice has been served under Sub-Sec-tion (1) may within thirty days from the date of the notice appeal to the prescribed authority against the order contained in the notice whereupon the prescribed authority may stay the operation of the order contained in the notice till the disposal of the appeal and it may after giving such notice of the appeal to the Grama Panchayat concerned, modify, set aside or confirm the order :

Provided that the prescribed authority shall, when it confirms or modifies the order contained in the notice after expiry of the period men-tioned therein, fix a fresh period

within which the order contained in the notice, as confirmed or modified by it shall be carried out.

(3) If any person, upon whom a notice has been served as aforesaid and which has not been set aside by the prescribed authority, fails without sufficient reasons to comply with the order contained in the notice or the order as modified by the prescribed authority under Sub-Section (2) within

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the time specified in the notice or within the time fixed by the prescribed authority, as the case may be, the Grama Panchayat shall at its own ex-pense take the necessary steps.

51. Duties of Grama Panchayat in respect of water-supply :– The Grama Panchayat shall provide the Grama or any part thereof with a supply of water proper and sufficient for domestic purposes and for such pur-poses may–

(a) construct, repair and maintain tanks, wells or tube-wells or lay service pipes and other water fittings for supplying water and clear out streams or water-courses;

(b) with the consent of the owner thereof and with the approval of a majority of the total memberships of the Grama Panchayat utilise, cleanse or repair any tank, well, stream or water course within the Grama or provide facilities for obtaining water there-from; and

(c) do any other act necessary for carrying out the purposes of this Section.

52. Improvement of sanitation :– (1) For improvement of sanitation a Grama Panchayat may require by order, the owner or occupier of any land or building –

(a) to close, remove, alter, repair, cleanse, disinfect or put in good order any latrine, urinal, water-closet, drain, cess-pool or other receptacles for filth, sullage water, rubbish or refuge pertain-ing to such land or building or to remove or alter any door or trap or construct any drain for any such latrine, urinal or wa-ter-closet which opens on to a street or drain or to shut off such latrine, urinal or water-closet by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighborhood;

(b) to cleanse, repair, cover, fill up, drain off, deepen or remove water from a private well, tank, reservoir, pool, depression or excavation which may appear to the Grama Panchayat to be injurious to health or offensive to the neighbourhood;

(c) to clear off any vegetation, undergrowth, prickly pear or scrubjungle therefrom;

(d) to remove any dirt, dung, night-soil, manures or any obnox-ious or offensive matter therefrom and to cleanse the land or building :

Provided that a person on whom an order under Clause (b) is served may within thirty days of the receipt of the order appeal to the Sub-Divi-sional Officer against the said order and that Officer may vary, set aside or confirm such order.

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(2) Without prejudice to the powers under Sub-Section (1), the Grama Panchayat, if it considers necessary in order to improve the drainage of the Grama or any part thereof, may–

(a) cause private drains to be constructed, altered or removed; or

(b) require by notice the owner or occupier of any land or building to construct private drains therefor or to alter or remove pri-vate drains thereof.

53. Scavenging :– (1) Every Grama Panchayat may make adequate arrangements for–

(a) regular sweeping and cleansing of the streets and removal of sweepings therefrom;

(b) daily removal of filth and carcasses of animals from private premises;

(c) the daily removal of rubbish from dust-bins in private premises; and with this object, it shall provide–

(i) depots for deposit of filth and rubbish and carcasses of animals;

(ii) covered vehicles or vessels for the removal of filth;

(iii) vehicles or other suitable means for the removal of the carcasses of large animals and rubbish;

(iv) dust-bins for the temporary deposit of rubbish;

(v) trenching ground for the deposit of night-soil; and

(vi) an establishment for carrying out the above purposes.

(2) No person shall, after due provision has been made under Sub-Section (1)–

(a) deposit the carcasses of animals, rubbish or filth in any street or on the verandah of any building or on any unoccupied ground along side any street or on the bank of any watercourse or tank; or

(b) deposit filth, carcasses of animals in any dust-bin or in any vehicle not intended for the removal of the same.

(3) Where no establishment is employed by a Grama Panchayat, the Grama Panchayat may by written notice require the owner or Occupier of the land in the local area to cleanse such land to the satisfaction of the Grama Panchayat within a reasonable period.

54. Water hyacinth :– The Grama Panchayat may, and when re-quired by the residents of the local area, shall undertake discovery, removal and destruction of water hyacinth, prickly pear or any other agricultural pests on any land, premises or water as well as construction of fences and barriers to check its movement and may recover its cost from the residents

of the locality concerned unless the local residents arrange for free labour for the purpose.

55. Industries and factories including dangerous and offensive trades :– (1) With the previous sanction of the Collector and notwithstanding anything contained in any other law for the time being in force, a Grama Panchayat may notify that no place within the local area of the Grama Sasan shall be used in the course of any trade, business or calling without a licence granted by it and except in accordance with the condition specified in such licence, for any one or more of the following purposes, namely :

(a) washing soiled clothes and keeping soiled clothes for the pur-pose of washing them and washed 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) traning hides and skins, skinning or disembowelling of ani-mals;

(h) washing or drying wool or hair;

(i) preparing fish-oil, hydrogenated oils, ghee, butter and such other fat preparations;

(j) making soap, dyeing, boiling or pressing oil;

(k) manufacturing or distilling sago or keuda water, manufactur-ing artificial manure, manufacturing or refining sugar, manu-facturing sugarcandy or jaggery, tanning or manufacture of leather or leather goods, manufacturing lac, manufacturing beedis;

(l) manufacturing gunpowder or fire-works;

(m) burning bricks, tiles, pottery or lime;

(n) keeping a Public halting place, Dharmasala, Sarai, choultry or other rest house, keeping hotel, restaurant, eating-house, cof-fee house, tea stall, boarding house, or lodging house (other than a student's hostel under Public or recognised control);

(o) keeping a shaving or hair dressing saloon;

(p) keeping together twenty or more sheep or goats or pigs or herds of cattle;

(q) preparing flour or articles made of flour for human consump-tion or sweetmeats;
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(r) manufacturing ice or aerated water;

(s) selling timber or storing it for sale, storing or selling coal, stor-ing hay, straw wood, thatching grass, jute, coke, coal or char-coal or other dangerously inflammable materials;

(t) selling grain, groundnut, chillies or jaggery in wholesale or storing any of the said articles for wholesale trade;

(u) storing any explosive or combustible material or storing kero-sene, petroleum, naptha or any inflammable oil or spirits;

(v) manufacturing anything from which offensive or unwholesome smell arises or which has been declared by the State Govern-ment by notification, to be dangerous or offensive;

(w) using for any industrial purpose any fuel or machinery; and

(x) in general, doing in the course of any industrial process any-thing which is likely to be offensive or dangerous to human life or health or property:

Provided that no notification under this Sub-Section shall take effect till sixty days from the date of Publication thereof.

(2) The owner or occupier of every such place shall within thirty days of the Publication of such notification apply to the Grama Panchayat for a licence for the use of such place for such purposes.

"(3)(a) The Grama Panchayat may, by order, and under such restric-tions and regulations as it thinks fit grant or refuse to grant such licence within sixty days from the date of receipt of the application.

(b) In case the Grama Panchayat decides to refuse to grant the li-cence, it shall communicate it's decision to the Collector of the district who on receipt of the information from the Grama Panchayat and after conducting such inquiry as he deems fit shall forward the same along with his considered views to Government for a decision."

(4) Every such licence shall expire at the end of the year unless for special reasons the Grama Panchayat specifies therein an earlier date, for its expiry.

(5) Application for renewal of such licences shall be made not less than thirty days before the end of every year and applications for licence for Places to be newly opened shall be made not less than thirty days before they are proposed to be opened.

(6) (a) The power of the Grama Panchayat to grant a licence for the purpose of manufacturing gun-power or fireworks or storing any explosive or combustible materials specified in Clauses (1) and (u) of Sub-Section (1) shall be subject to the provisions of the Indian Explosives Act, 1884 (4 of 1884) and the rules framed thereunder and no such licence shall be

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granted unless the said provisions have been complied with by the appli-cant for the licence.

(b) The power of the Grama Panchayat to grant a licence for the purpose of storing kerosene, petroleum, naptha or any other inflammable oil or spirit specified in Clause (u) Sub-Section (1) shall be subject to the provisions of the Petroleum Act, 1934 (30 of 1934) and the rules framed thereunder and no such licence shall be granted unless the said provisions have been complied with by the applicant for the licence.

56. Control over Places of Public resort and Entertainment :– With the previous intimation to the Collector a Grama Panchayat may notify that no enclosed place, building or tent situated within the Grama and covering an area of five hundred square feet or more shall be used by any person or party for the purpose of Public resort or entertainment, the admission whereto is regulated by payment of money, without obtaining a licence from it in the prescribed manner.

57. Power to levy fees for licences under Sections 55 and 56 :– The Grama Panchayat may, subject to such maximum as may be determined by the State Government by notification in that behalf, levy a fee in respect of any licence or permission under Sections 55 and 56 and the renewal thereof and may impose such conditions and restrictions on such licence as it may think necessary.

58. Markets :– (1) The Grama Panchayat may demarcate and pro-vide Places for use as Public markets and close or suspend any such mar-ket or part thereof.

(2) Subject to such rules as may be prescribed, the Grama Panchayat may levy any one or more of the following fees in any Public market at such rates, not exceeding the 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 Grama Panchayat may deem fit :

(a) fees for the 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 mar-ket;

(c) fees on vehicles (including motor vehicles as defined in the Motor Vehicles Act, 1939 (4 of 1939) or pack animals bring-ing, or on persons carrying any goods for sale in such market;

(d) fees on animals brought for sale into or sold in such market;

(e) licence fees on brokers, commission agents, weighmen and measurers practising their calling in such market.

(3) A schedule of rates or fees in respect of every market specified in Clauses (a), (c) and (d) of Sub-Section (2) shall be prepared by the Grama

Panchayat with the approval of the Panchayat Samiti in accordance with the rules made in that behalf, and the Grama Panchayat shall cause such schedule to be exhibited at a conspicuous place within the market.

(4) Where the market has been leased out, any contravention on the part of the lessee or of his agents of the provisions of the schedule speci-fied in Sub-Section (3) shall render the lease liable to forfeiture and the lessee or his agent, as the case may be, immediately responsible for such contravention shall be liable on conviction to be punished with a fine not exceeding rupees fifty.

[1][(5) (a) On and after the date of commencement of the Orissa Grama Panchayats (Amendment) Act, 1994 (hereinafter referred to in this Sub-Section as the 'appointed date'), nothing in the Orissa Agricultural Pro-duce Markets Act, 1956 shall apply–

(i) to or in relation to any market set up or established within the area of a Grama prior to the appointed date; or

(ii) for setting up or establishment of any market within the said area after the appointed date.

(b) where any land or building or both belonging to any Grama Panchayat has or have been transferred to a Market Committee under Section 4 of the Orissa Agricultural Produce Markets Act, 1956 prior to the appointed date, such land or building or both, as the case may be, shall, if the same continues to be within the area of a Grama, stand transferred to the Grama Panchayat having jurisdiction over the Grama on the appointed date.

(c) Any market set up or established under the Orissa Agricultural Produce Market Act, 1956 which is situated within the area of a Grama and continues as such on the appointed date shall be deemed to be a market allowed to be set up or established under

this Act, but shall cease to continue as such after the expiration of a period of three months from the appointed date unless its continuance is allowed further in accordance with the provisions of this Act and the rules made thereunder.]

59. Private Markets :– No person shall open a new Private Market after the commencement of this act, or continue to keep open a Private Market unless he obtains from the Grama Panchayat a licence to do so for a period not exceeding one year in the prescribed manner and such licence may be renewed every year.

[2][Provided that in the Schedule Areas, the Grama Panchayat, subject to the control and supervision of the Grama Sasan shall have power to manage village markets by whatever name called.]

60. Licensing Private Markets :– (1) (a) The Grama Panchayat shall grant the licence applied for in respect of a private market subject to such conditions as it may think fit as to sanitation and water supply, and weights and measures to be used and such other matters as may be prescribed.

(b) The Grama Panchayat may modify the conditions of the licence to take effect from a specified date.

(c) The Grama Panchayat may at any time suspend or cancel any licence granted under Clause (a) for breach of the conditions thereof.

(2) When a licence is granted under Sub-Section (1) a fee not ex-ceeding fifteen per cent of the gross income of the owner from the market in the preceding year shall be charged by the Grama Panchayat for such licence.

(3) The Grama Panchayat may close a Private Market which is unli-censed or the licence for which has been suspended or cancelled or which is held or kept open contrary to the provisions of this Act.

61. Decision of disputes as to whether Places are markets :– If any question arises as to whether any place is a market or not, the Grama Panchayat shall make a reference thereon to the State Government and their decision thereon shall be final.

NOTES

Section 61 and 146 - Section 61 empowers the Government to decide as to whether or not a place located within the Grama Panchayat is a market or not - This is to be decided only on reference by Grama Panchayat- But a dispute as to whether two Grama Panchayats operating market in their respective areas could operate the market on the same days or on different days comes within the ambit of Section 146, but not Section 61 : 1991 (II) OLR 26 : 72 (1991) CLT 38 : 33 (1991) OJD 415 (Civil).

62. Restriction of sale in Markets :– No person shall sell or expose for sale any animal or article in any Public or licensed Private market without the permission of the Grama Panchayat or licensee, as the case may be, or of any person authorised by him.

63. Prohibition against sale on Public Road :– The Grama Panchayat may prohibit by Public notice or licence or regulate the sale or exposure for sale of any animals or articles in or upon any Public street or place or part thereof.

64. Power to dispose of corpses :– After the expiration of not less than twenty-four hours from the death of any person, the Grama Panchayat may, subject to the provisions of any other law, cause the corpse of such person to be burnt or buried and the expenses thereby incurred shall be recoverable as a debt due from the estate of such person :

Provided that in every such case a corpse shall be disposed of, so far as may be possible, in a manner consistent with the religious tenents of the deceased :

Provided further that the Grama Panchayat may provide for the burial and burning of paupers free of charge within the limits of the Grama.

65. [1][xxx]

66. [1][xxx]

67. [1][xxx]

68. Penalty for contravention of licence in respect of use of pre-mises :– Save as otherwise expressly provided in this Act, every person, who, having the immediate control of any place or building within the Grama permits it to be used for any of the purposes in respect of which a licence is required under this Chapter without having obtained a licence therefor, or having obtained a licence permits such use in contravention of any of the conditions of such licence 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 during which an offender is provied to have persisted in the commission of the offence.

69. [* * *]

70. Pest control and improved methods of husbandary :– (1) Not-withstanding anything contained in any other law the Grama Panchayat may, from time to time–

(a) whenever any occasion arises, declare the whole or any part of the Grama to be an agricultural pest infected area and take steps for the eradication of the infection and for the said pur-pose issue necessary directions to the owners or growers of corps within the Grama; or

(b) call upon the inhabitants of the Grama in accordance with a scheme made in that behalf to adopt improved methods of agriculture and animal husbandry with a view to increase agri-cultural production within the Grama and issue such direction as the Grama Panchayat may consider necessary in that be-half.

(2) The powers of the Grama Panchayat under Sub-Section (1) shall be exercised with the prior approval and subject to the control and direc-tion of the State Government or the prescribed authority :

Provided that no action shall be taken under Clause (b) of Sub-Sec-tion (1) unless objections from the inhabitants of the Grama have been called for in respect of the scheme referred to therein and considered; and the scheme notified in accordance with the rules made in that behalf.

(3) On default of the persons to comply with any of the directions issued under the provisions of Sub-Section (1) the Grama Panchayat may take all such steps as it may consider necessary for the purpose and realise the expenditure incurred from the persons concerned.

(4) The recovery of expenses, if any, that may be made by the Grama Panchayat under Sub-Section (3) shall be in accordance with such prin-ciples and in such manner as having regard to the financial resources of the person concerned, the State Government may, by general or special order, direct.

CHAPTER - VII

PROPERTY AND CONTRACTS

71. Vesting of Public Properties in Grama Sasan :– (1) All property within the Grama of the nature hereinafter in this Section specified, other than property maintained by any other local authority or the Central or State Government, shall for the purposes of this Act, vest in the Grama Sasan and shall, with all other properties of whatever nature or kind which may become vested in the Grama Sasan, be under its directions, manage-ment and control, that is to say–

(a) all Public sewers and drains and all works, materials and things appertaining thereto and other conservancy works;

(b) all sewage, rubbish and offensive matters deposited on the streets or collected by the Grama Panchayat from streets, la-trines, urinals, sewers, cesspools and other Places;

(c) all Public lamps, lamp posts and apparatus connected there-with or appertaining thereto; and

(d) all buildings or other works constructed by the Grama Sasan and all lands and buildings or other property transferred to the Grama Sasan by the Central or the

State Government or ac-quired by gift, purchase or otherwise for local Public purposes.

(2) The State Government may from time to time by general or spe-cial order made in that behalf exclude from the operation of this Act or any specified Section of this Act any of the properties of the nature specified in Sub-Section (1).

(3) Properties within the Grama belonging to, maintained managed or controlled by the State Government shall, on the issue of general or special orders made from time to time by the State Government in that behalf and subject to the provisions of this Act and the rules made there-under, and to such terms and conditions as may be specified in such order, vest in the Grama Sasan and be under its management, direction and control.

(4) Without prejudice to the generality of Sub-Section (3) but sub-ject to the provisions thereof, properties of the nature herein specified shall vest in the Grama Sasan and be under its management, direction and control, that is to say–

(a) Village roads,

(b) Irrigation sources,

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(c) Ferries,

(d) Waste lands and communal lands;

(e) Protected forests within the meaning of the Indian Forest Act, 1927 (16 of 1927) and unreserved forests within the meaning of the Madras Forest Act, 1882 (Madras Act 5 of 1882) in respect of the management, protection and maintenance thereof for timber, fuel, fodder and other purposes;

(f) Markets and fairs or such portions thereof as are held upon Public land or upon land belonging to or under the control of Government together with such lands, and

(g) All income arising or accruing from any of the items of proper-ties covered by the foregoing clauses.

72. Apportionment of income of ferries and markets :– (1) When-ever the State Government are of the opinion that–

(a) any ferry vested in the Grama Panchayat connects Public Streets under the management of more than one local authority; or

(b) the residents within the jurisdiction of more than one local authority use any market or fair the rights of management, regulation and control whereof is vested in the Grama Panchayat.

The Sate Government or the prescribed authority may from time to time apportion the income of such ferry or, as the case may be, of the market or fair among the aforesaid local authorities in such manner and proportion as the State Government or the prescribed authority may de-cide.

(2) Notwithstanding anything contained in this Act whenever the State Government deem it expedient so to do they may by general or special order made in that behalf and subject to such conditions as may be specified therein direct that the management of any ferry or of any market or fair referred to in Sub-Section (1) shall vest in such person or authority as the State Government may deem fit.

NOTES

Sections 72 and 73 - Transfer of fishery right in a water area to the Grama Panchayat - Grama Panchayat acquires a right - Such a right can-not be affected without affording it an opportunity to show cause : 68 (1989) CLT 606 : AIR 1989 Ori. 262.

73. Allocation of properties to and withdrawal of properties from the Grama Sasan :– (1) The State Government may allocate to a Grama Sasan any Public property situated within the Grama and thereupon such property shall for the purposes of this Act and subject to such terms, conditions, limitations and restrictions as the State Government may from

time to time impose in that behalf, vest in and come under the manage-ment and control of the Grama Panchayat.

(2) Whenever in respect of any property vested in or under the man-agement and control of the Grama Sasan the State Government consider in expedient in the general Public interest so to do or whenever in their opinion the Grama Panchayat has failed to make proper use of such prop-erty, they may by general or special order direct the withdrawal of such property from the Grama Sasan and thereupon such property shall vest in and be under the direction, management and control of the State Govern-ment :

Provied that the Grama Sasan upon such withdrawal shall not be entitled to any compensation except in respect of such improvements of a permanent nature made by the Grama Sasan as the State Government may deem proper.

NOTES

Section 73 - Transfer of fishery right in water area to the Grama Panchayat in 1959 - Revocation of transfer on certain allegations made against the Grama Panchayat - No opportunity of showing cause or of hearing has been afforded to the Grama Panchayat - Impugned order of revocation of transfer dated 16.05.1988 - Not sustainable - Order of revo-cation quashed : 68 (1989) CLT 606 : AIR 1989 Ori. 262.

74. Acquisition of land for Grama Sasan :– (1) Where for Grama Sasan any land or any right in land is required to carry out any of the purposes of this Act such Grama Sasan shall first negotiate with the per-son or persons having interest in the said land and if the parties fail to reach an agreement, such Grama Sasan may make an application to ac-quire the land or the right, as the case may be, in the prescribed form and manner to the Collector who may, if satisfied that same is required for a Public purpose take steps to acquire the same.

(2) Such land or such right shall on acquisition and on payment of compensation awarded in accordance with the law under which the acqui-sition was made vest in the Grama Sasan.

(3) Where in pursuance of the negotiation referred to in Sub-Section (1) the parties arrive at an agreement the Grama Sasan concerned may in accordance with the agreement, but subject to the prior approval of the Collector, acquire the land or the right which shall thereupon vest in and belong to such Grama Sasan.

Explanation– "Land" includes immovable property of any kind and benefits which arise out of land and things attached to the earth or perma-nently fastened to anything attached to the earth.

75. Powers to transfer management of Property to Samiti or Parishad :– The Grama Panchayat may with the previous approval of the

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Collector place under the control and management of the Samiti or Parishad any property belonging to or under the control of such Grama Panchayat.

76. Disposal of Property :– (1) With respect to the disposal of the property belonging to or vested in or under the direction, management and control of the Grama Sasan the following provisions shall, subject to the rules made in that behalf, have effect, namely :

(a) no movable property, other than the usufruct of tanks and lands, shall be disposed of by the Grama Panchayat in any manner whatsoever unless there exists a corresponding provi-sions in the budget of the Grama Panchayat for the year;

(b) no immovable property shall be disposed of–

(i) by sale, exchange, gift, mortgage or otherwise or by way of lease with permission for construction of perma- nent structures thereon without the prior sanction of the State Government; or

(ii) by way of lease, not being a lease covered by Sub-clause (i) for a period exceeding three years without the prior sanction of the Collector.

(2) The disposal of any property by the Grama Panchayat in contra-vention of Sub-Section (1) shall be invalid and of no effect.

NOTES

Section 76 - Cancellation of long term lease – Power of the Collec-tor under – Scope detailed : 61 (1986) CLT 86.

77. Procedure for entering into Contract :– With respect to the mak-ing of contracts the following provisions subject to the rules, if any, made in that behalf have effect, namely :

(a) every such contract shall be made on behalf of the Grama Sasan by the Sarpanch;

(b) on such contract for any periods which in accordance with any provision of this Act, the Sarpanch may not carry out without the approval or sanction of any authority specified in the Act or the rules made thereunder shall be made by him until and unless such approval or sanction be obtained;

(c) no contract for the acquisition of immovable property shall be valid unless the contract has been approved by the prescribed authority where the price stipulated to be paid for such prop-erty exceeds the prescribed amount.

NOTES

Section 77 - No provision in the statute for preferential treatment to local person.
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Held, the statutes makes no provisions entitling local persons to, any preferential treatment over others – All that it provides is that an individual who is a fisherman by caste or by profession, any group of individuals or a registered Co-operative Society consisting only of fisher-men by caste or profession, landless labourers, marginal farmers, sched-uled caste and scheduled tribe persons are entitled to take the water area on long term lease in the manner prescribed-Regarding the ground that the Panchayat realised though belatedly that the Petitioner did not develop the tank properly during the period of previous lease, minimum of fairness required– The Collector to enquire into the allegation giving an opportunity to the Petitioner to have her say regarding the matter :1986 (I) OLR 34 : 61 (1986) CLT 80.

CHAPTER - VIII

TAXATION

78. [* * *]

79. [* * *]

80. [* * *]

81. [* * *]

82. [* * *]

83. Taxes which may be levied by the Grama Panchayats :– Subject to the provisions of this Act and the rules made thereunder it shall be competent for a Grama Panchayat for purposes of this Act to levy all or any of the following taxes, rates or fees, namely :

(a) [* * *]

(b) a tax payable by owners of vehicles (hereinafter referred to as vehicle tax) suitable for use on road and specified in the Sched-ule where such vehicles are kept or used within the Grama;

(c) a latrine or conservancy tax payable by the occupiers, owners of lands and buildings situated within the limits of the Grama in respect of private latrines, privies or cess pools or in respect of premises or compounds cleaned by the Panchayat agent at such rates as may be prescribed subject to a maximum of six rupees per year;

(d) a water-rate where water is supplied by the Grama Panchayat, based on the costs of supply of water and of maintenance of water-supply schemes;

(e) a lighting rate where the lighting of Public Street, Places or buildings is undertaken by the Grama Panchayat based on the cost of lighting and of maintenance of works required for the purpose;

(f) a drainage tax payable by the owners of lands and buildings situated within the limits of the Grama, where a system of

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drainage has been introduced by the Grama Panchayat, at such rates as may be prescribed subject to a maximum of three rupees per year;

(g) a fee on private markets, cart-stands and slaughter within the Grama;

(h) a fee on animals brought for sale into or sold in a Public mar-ket within the Grama;

(i) fees for regulating the movement of cattle as may be consid-ered necessary by the Grama Panchayat for the protection of crops raised within the Grama;

(j) fees for use of any buildings or structures, shops, stalls, pens or stands in the market referred to in Clause (b) of Sub-Sec-tion (2) of Section 58;

(k) fees for use of slaughter houses and cart-stands maintained by the Grama Panchayat;

(l) rent from dealers temporarily occupying open grounds or any structure or building belonging to or maintained by the Grama Panchayat;

(m) licence fees on brokers, commission agents, weighmen and measurers practising their calling within the Grama;

(n) any other tax, rate or fee which the Grama Panchayat is em-powered to impose by any law for the time being in force; and

(o) any other tax, toll, fee or rate, as may be decided by the Grama Panchayat subject to the approval of the State Government.

84. [* * *]

85. [* * *]

86. Vehicle Tax :– (1) When it has been determined by the Grama Panchayat that a tax on vehicles specified in the Schedule shall be im-posed the Grama Panchayat shall make an order that the owner of every such vehicle which is kept or used within the Grama shall pay the tax in respect of such vehicle and shall cause such order to be published in the prescribed manner.

(2) Such order shall be published at least one month before the beginning of the half-year in which such tax will first take effect and shall specify at what rates, not exceeding the rates specified in the Schedule, such tax shall be levied.

(3) Such tax shall not be imposed on vehicles kept for sale by and bonafide dealer in such vehicles.

(4) The time and manner of payment of tax, refund, proportionate payment or composition thereof or exemption therefrom and liability to payment of tax on transfer of ownership of vehicle shall be as may be prescribed.

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87. Grant of licence on payment of vehicle tax :– (1) On receiving the amount of tax due to it the Grama Panchayat shall give the person paying the same a licence for the vehicle for the period in respect of which the amount is received.

(2) Such licence shall be for the current year or half-year as the Grama Panchayat thinks fit.

(3) A Grama Panchayat licence showing the prescribed particulars shall be affixed to every vehicle at a conspicuous place so as to be dis-tinctly visible.

88. Liability in absence of owner and prohibition to keep vehicle without licence :– (1) Whenever the owner of the vehicle liable to pay the vehicle tax is not resident within the Grama to which tax is due, the person in whose immediate possession the vehicle is for the time being kept shall pay the tax and take out the licence for the same.

(2) No person shall keep within the Grama or be in possession of any vehicle kept within the Grama specified in the Schedule without the li-cence required under this Act.

89. Limits on double taxation in respect of vehicle tax :– (1) Not-withstanding anything to the contrary in any other law for the time being in force where a person is liable to pay the vehicle tax in respect of a vehicle for any particular period under this Act and also under the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950) and if he proves that the tax has been paid –

(a) to any Grama Panchayat, he shall not be liable to pay such tax to any other Grama Panchayat nor shall he be liable to pay the same to any Municipal or Notified Area Council except to the extent of the excess of the dues to the Council over the amount paid to the Grama Panchayat; or

(b) to any Municipal or Notified Area Council he shall not be liable to pay such tax to any Grama Panchayat, but such Council shall pay to the Grama Panchayat concerned, the amount due under this Act, if the said amount is less than the amount paid to the Council.

(2) Any dispute arising under this Section between two or more Grama Panchayats or between Grama Panchayats and Municipal or Noti-fied Area Councils shall be referred to the State Government or the pre-scribed authority whose decision shall be final.

(3) For the removal of doubts it is hereby declared that nothing in this Section shall apply in respect of a vehicle referred to in the Schedule when such vehicle is neither kept nor used within the limits of a Grama.

90. Assessment, review and revisions :– Save as otherwise pro-vided in this Act–
GRAMA PANCHAYATS MANUAL

(a) the assessment of taxes and prevention of evasion of taxes under the provisions of this Chapter, the modification or revi-sion of such assessments, the preparation of assessment lists and alteration thereof shall be as may be prescribed;

(b) the Collector may on the application of any party on whom any tax, toll, rate or fee has been imposed or on his own motion review or revise the tax, toll, fee or rate.

91. Power of Collector to require the Grama Panchayat to impose tax :– Whenever it appears to the Collector that the balance of the Grama Fund to a Grama Panchayat or its income is insufficient for the discharge of its duties or obligatory functions imposed upon it by this Act or for the performance of any duties in respect of which it shall have been declared in accordance with the provisions of this Act to have committed default, the Collector may require the Grama Panchayat to impose any tax which it is empowered to impose or to enhance any existing tax in such manner or to such extent as the Collector may deem fit and the Grama Panchayat shall forthwith proceed to impose or enhance in accordance with the req-uisition such tax under the provisions of this Chapter, as if the Grama Panchayat had itself taken a decision in that behalf.

(a) the Collector shall take into consideration any objection which the Grama Panchayat or any inhabitant of the Grama may make against the imposition or enhancement of such tax;

(b) it shall not be lawful for the Grama Panchayat without the sanction of the Collector to abandon or modify or to abolish such tax when imposed;

(c) The Collector may at any time by notification, abolish or re-duce the amount or rate of any tax levied or enhanced under this Section and the levy of the tax or enhancement, except as to arrears therefor accrued due, shall thereupon cease or be modified accordingly.

92. Formal defects not to invalidate tax and Government properties not be exempted from tax :– (1) A tax imposed under this Act shall not be invalid for defect of form and where any property is described for the purpose of assessing any such tax, it

shall be sufficient to describe it so that it shall be generally known and it shall not be necessary to name the owner or occupier.

(2) Nothing in this Act shall be costrued so as to exempt the proper-ties belonging to or vested in the State Government from any liability in respect of any tax or rate referred to in Clauses (c) to (f) of Section 83.

CHAPTER - IX

FINANCE

THE ORISSA GRAMA PANCHAYATS ACT, 1964

93. Grama Fund :– (1) There shall be constituted a Grama Fund for every Grama Sasan and to the credit of the said fund shall be placed–

(a) all proceeds of any tax, toll, fee or rate imposed under the provisions of this Act;

(b) all fines imposed and realised under this Act in respect of offences committed within the jurisdiction of the Grama Sasan in proceedings instituted under this Act, or under any other Act or rules in which provision is made for the credit of such fines to Grama Fund;

(c) all sums ordered by a Court to be placed at the credit of the Grama Fund;

(d) all proceeds of the disposal of property by or on behalf of the Grama Sasan;

(e) all income accruing from any property or institution or under-taking or work belonging to or vested in or under the direction, management and control of the Grama Sasan;

(f) all moneys received by way of penalty, compensation or for compounding offences under the provisions of the Act, or the rules made thereunder;

(g) all income from any scheme undertaken by the Grama Panchayat on its own account or on behalf of Government or any local authority;

(h) all moneys assigned to the Grama Sasan by Government or Samitis for the establishment or maintenance of institutions;

(i) such portion of the rent or other proceeds of Government prop-erty as the State Government may direct to be placed to the credit of the Grama Fund;

(j) all other sums assigned to the Grama Fund by special or gen-eral order of State Government from out of Government rev-enues, or otherwise;

(k) all sums received by way of loan, gift or contributions or other grants from any source whatsoever by or on behalf of the Grama Sasan;

(l) all sums received on account of cesses under the Orissa Cess Act, 1962 (Orissa Act 11 of 1962);

(m) all interest and profits arising from any investment of or from any transaction in connection with, any money belonging to the Grama Sasan;

(n) the balance, if any, standing at the commencement of this Act at the credit of the Grama Fund.

(2) Nothing in this Section or in this Act shall affect any obligation of

a Grama Sasan arising from a trust legally imposed upon or accepted by it.

94. Vesting, custody and investment of Grama Fund :– (1) The Grama Fund shall vest in the Grama Sasan and held by it in trust for the purposes of this Act subject to the provisions therein contained.

(2) The Grama Fund shall be deposited in the name of the Grama Panchayat in the Savings Bank of the nearest Post Office and if there is a treasury or Sub-treasury nearer than a Post Office, the Grama Panchayat shall open a personal ledger account with the treasury and the Grama Fund shall be deposited in it and at no time the cash balance in the cus-tody of the Sarpanch shall exceed the sum fixed by the Collector:

Provided that the Grama Panchayat may deposit any part of the Grama Fund as it may decide in such Central Co-operative Bank as may be approved by the Registrar of Co-operative Societies:

[Provided further that the Grama Panchayat may deposit the funds received under the Jawahar Rozgar Yojana being part of the Grama Fund, in a separate Savings Bank Account in the nearest Post Office, Co-opera-tive Bank, Nationalised Bank or Scheduled Bank.

Explanation :– The expressions "Co-operative Bank" and "Sched-uled Bank" shall have the same meaning as respectively assigned to them in the Deposit Insurance Corporation Act, 47 of 1961 and the Reserve Bank of India Act, 2 of 1934 and the expression "Nationalised Bank" shall mean a corresponding new Bank constituted under Sub-Section (1) of Section 3 of the Banking Companies (Acquisition and Transfer of Under-takings) Act 40 of 1980.]

[1][(3) A Grama Panchayat may invest any surplus amounts from out of its Grama Fund in Government Securities issued either by the State Government or Government of India or in such other securities including Savings Certificates or in fixed current or savings deposits in Co-operative Societies approved by the Registrar of Co-opeative Societies, Orissa in buying debenturers of Orissa Provincial Co-operative Land Mortgage Bank Limited, or with the approval of the State Government in purchasing shares in the Grain Golla Societies or approved Societies other than grain gollas or in Government Companies within the meaning of the Companies Act, 1956 (I of 1956).

95. Power to Borrow :– The Grama Sasan may with the previous sanction of the State Government and subject to the provisions of this Act and rules made thereunder borrow money from the State Government, any local authority, or any individual or body of individuals corporate or not to carry out its purposes :

Provided that nothing contained in the Local Authorities Loans Act, 1914 (9 of 1914) and the rules made thereunder shall apply in respect of money borrowed from the State Government after the commencement of this Act.

96. Priority of payments out of Grama Fund :– (1) Except as other-wise provided in this Act the Grama Panchayat shall set apart and apply annually out of the Grama Fund–

(a) firstly, such sum as may be required for repayment of and the payment of interest on any loan;

(b) secondly, liabilities and obligations arising from a trust legally imposed upon or accepted by the Grama Sasan;

(c) thirdly, such sum as may be required to provide for payment towards salaries, allowances and meeting of other expendi- ture relating to the establishment of the Grama Sasan;

(d) fourthly, such sum as may be required for the maintenance of services as may have been undertaken by the Grama Sasan; and

(e) fifthly, subject to such exemptions as the State Government may from time to time direct, all expenses, if any, incurred by the State Government in the preparation of electoral rolls the Publication of nominations and result of elections, holding of elections and in matters ancillary or incidental thereto, exclud- ing travelling allowance of Officers of the State Government.

(2) Notwithstanding anything to the contrary contained in this Act moneys received by way of loan, gift, contribution of grants from source whatsoever for any specific object shall not be expended on any other object.

97. Application of Property and Grama Fund :– (1) All property vested in the Grama Sasan under this Act, all funds received by it in accordance with the provisions thereof and all sums accruing to it under the provisions of any law for the time being in force shall, subject to the provisions of this Act and the rules made thereunder, be applied for the purposes of this Act within the limits of the Grama.

(2) Notwithstanding anything in Sub-Section (1) it shall be lawful for the Grama Panchayat with the prior approval of the Collector and subject to the rules made in that behalf–

(a) to make contribution towards expenditure incurred by any other local authority or out of any Public fund for measures affect-ing education, health, safety or convenience of the Public cal-culated to benefit the residents of the Grama; or

(b) to create scholarship tenable outside the limits of the Grama; or

(c) to make any other kind of contributions for any other purpose within or outside the limits of the Grama calculated to be in furtherance of the cultural and economic development of the residents of the Grama.

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98. Budget estimate of the Grama Panchayat :– (1) The Sarpanch shall in each year prepare and place before the Grama Panchayat for its consideration a budget estimate showing the probable receipts and expen-ditures for the following year and the Grama Panchayat shall, with such modifications as it thinks fit, submit the budget to each of the Palli Sabhas within the Grama for their recommendation under Sub-Section (6) of Sec-tion 6 and shall thereafter submit the same, along with the recommenda-tions, if any, of the Palli Sabhas, to the Grama Sasans for its [1][approval].

(2) If during the course of any year the Grama Panchayat finds it necessary to alter the figures shown in the budget with regard to its re-ceipts or to the distribution of the amount to be expended on different services undertaken by it a supplementary or revised budget may be framed by the Sarpanch and considered by the Grama Panchayat and with such modifications, if any, as it may think fit to make the budget shall, in the prescribed manner be submitted to the Grama Sasan for its [1][approval].

[1][(3) On approval of the Grama Sasan to the annual budget or, as the case may be, the supplementary budget or revised budget, the Grama Panchayat shall forward the same to the Sub-Divisional Panchayat Officer appointed by the Director, who shall be competent to examine the budget and shall furnish his comments to the Grama Panchayat which shall be placed before the Grama Sasan for consideration and finalisation with or without any modification as may be necessary.]

(4) Save as otherwise expressly provided in this Act or the rules made thereunder no expenditure in excess of the annual budget estimate shall be incurred by the Grama Panchayat unless such excess has been adequately provided for in the Supplementary or revised budget estimates prepared in accordance with the provisions of this Section.

(5) Subject to the provisions of this Act the Annual Budget estimate or the supplementary or revised budget estimate shall contain such par-ticulars as may be prescribed:

Provided that in every annual budget estimate made for the mini-mum working balance as may be determined by the Collector from time to time excluding, however, the income from endowments, and grants.

[1-A][(6) A Copy of the budget so finalised under Sub-Section (3) shall be forwarded by the Grama Panchayat to the Panchayat Samiti as well as the Zilla Parishad recompilation at their level.]

99. [1-B][* * *]

100. Audit and Accounts :– (1) The Grama Panchayat shall keep regular accounts of receipts and disbursement from the Grama Fund and such accounts shall be published in the prescribed manner.

"(2) The Provisions of the Orissa Local Fund Audit Act, 1948 shall

1. Inserted vide Orissa Act No. 9 of 1991.

apply in regard to the audit of the Grama Funds.

(3) Notwithstanding anything contained in the aforesaid Act, for the purpose of this Act the Government may, by notification, appoint an Of-ficer of Government as the

Examiner of Local Accounts and such number of Deputy or Assistant Examiners of Local Accounts as they may consider necessary to exercise such powers and discharge such functions of the Examiner as may be assigned to them by Government. The Examiner so appointed may, with the approval of the Government, appoint such num-ber of auditors as he may deem necessary."

[1][100-A. (1) It shall be the duty of the Finance Commission to re-view the financial position of Grama Panchayats and to make recommen-dations to the Governor as required under Article 243-I of the Constitution.

(2) The Finance Commission may, for the purpose of maintaining sound financial position of Grama Panchayats, make such recommenda-tions including measures needed for improvement of the financial position thereof, as it may deem fit.

(3) The Governor shall cause every such recommendations made by the Finance Commission together with an explanatory memorandum as to the action taken thereon to be laid before the Legislative Assembly.]

CHAPTER - X

RECOVERY OF CLAIMS

101. Date and manner of payment of taxes, etc. :– The latrine or conservancy tax, the drainage fee and the water rate shall be payable on such dates and in such manner as may be prescribed.

102. Recovery of taxes and other dues :– (1) When any amount on account of any tax, toll, rate, rent or fee or any sum on any account whatsoever has become due to the Grama Panchayat shall with the least practicable delay, cause to be presented to the person liable for the pay-ment thereof a bill in the prescribed form for the amount due from him.

(2) If the person to whom a bill has been presented as aforesaid does not, within fifteen days from the presentation thereof, either–

(a) pay the sum claimed as due on the bill; or

(b) show cause to the satisfaction of the Grama Panchayat why he should not pay the same; or

(c) prefer an appeal in accordance with Sub-Section (3) against the claim;

the Grama Panchayat may cause to be served upon such person a writ of demand in the prescribed form.

(3) An appeal against any claim included in a bill presented under Sub-Section (2) may be filed in the prescribed manner before the Sub-divisional Officer within the period of fifteen days specified on the said

Sub-Section and the decision of the Sub-divisional Officer shall subject to the decision in revision filed in the prescribed manner and within the pre-scribed time before the Collector, be final :

Provided that no revision shall be entertained by the Collector against the orders of the Sub-divisional Officer confirming the liability of the claim-ant to the whole or any part of the amount claimed in the bill unless along with the application for the revision the claim amount as decided by the Sub-divisional Officer is deposited with the Grama Panchayat.

(4) The presentation of every bill under Sub-Section (1) and the service of every writ of demand under Sub-Section (2) shall be effected by an Officer or Servant of the Grama Panchayat authorised in this behalf–

(a) by giving or tendering the bill or writ to the person to whom it is addressed; or

(b) if such person is not found by leaving the bill or writ at his last known place of abode if within the limits of the Grama or by giving or tendering the bill or writ to some adult male member or servant of his family; or

(c) if such person does not reside within the limits of the Grama and his address elsewhere is known to the Sarpanch or other person directing the issue of the bill or writ, then by forward-ing the bill or writ to such person by registered post, under cover bearing the said address or

(d) if none of the means aforesaid be available, then by causing the bill or writ to be affixed on some conspicuous part of the building or land, if any, to which the bill or writ relates in the presence of at least two respectable inhabitants of the local-ity.

(5) If the sum for which a writ of demand has been served is not paid within fifteen days from the date of such service, the Panchayat may levy such sum by distraint and sale of the movable property of the de-faulter in the prescribed manner.

(6) Fees for–

(a) every writ of demand issued under Sub-Section (2);

(b) every distress made under Sub-Section (5);

(c) the cost of maintaining any livestock seized under Sub-Sec-tion (5),

shall be chargeable at such rates as may be prescribed.

1-A.Inserted vide O. A. 15 of 1997, O. G. E. No. 1567, Notfn. No. 22433 dt.22.12.1997.

1-B.Sec. 99 Omitted ibid.

(7) If a Grama Panchayat is unable to realise the tax, toll, rate, rent or fee or any sum on any account whatsoever as aforesaid, it may apply to the Collector to recover the same as arrear of land revenue and on receipt of such application, the Collector shall, after holding such enquiry as he thinks fit, proceed to recover the sum as an arrear of land revenue unless such sum is directed to be written off by the Grama Panchayat under Section 104.

103. Recovery by Seizure in respect of Vehicle Tax :– (1) Without prejudice to the other provisions of this Chapter, the Grama Panchayat may at any time seize and detain the vehicle in respect of which vehicle tax is due but has not been paid:

Provided that no vehicle, other than a bicycle, shall be seized or detained when actually employed in conveyance of any passenger or goods.

(2) If the vehicle seized be not claimed and tax due thereon is not paid within fifteen days from the date of seizure, the Grama Panchayat may direct that the vehicle be sold in Public auction and the proceeds of sale applied to the payment of–

(a) tax, if any, due on the vehicle sold;

(b) such penalty not exceeding the amount of tax as the Grama Panchayat may direct; and

(c) the expenses incurred in connection with the seizure, deten-tion and sale, and the excess amount, it any, remaining after payment of the aforesaid dues shall be paid to the owner of the vehicle or other person entitled thereto.

(3) If the owner of the vehicle or other person entitled thereto claims the same within fifteen days from the date of seizure or at any time before the sale it shall be returned to him on payment of–

(a) tax due thereon;

(b) such penalty not exceeding the tax due as the Grama Panchayat may direct; and

(c) the expenses incurred in connection with the seizure and de-tention.

104. Power to write off dues :– Notwithstanding anything contained in the foregoing provisions of this Chapter, the Grama Panchayat may, by a special resolution made in that behalf and with the prior approval of the Samiti direct any sum due to the Grama Panchayat on account of tax, rates, tolls or fees or any dues on any account whatsoever payable by any person to the Grama Panchayat to be written off on ground of undue hardship or as having become irrecoverable.

105. Overriding effect of this Chapter and imitation for recovery of dues :– (1) The provisions of this Chapter shall have force and effect notwithstanding anything to the

contrary contained in any contract, agree-ment, custom or usage or in any other law for the time being in force, or

any rule or order having the force of such law.

(2) No arrears of tax, toll, rate or fee or of any sum due on any account whatsoever to the Grama Panchayat shall be recovered by distress after the expiry of three years, or as if it was an arrear of land revenue after the expiry of six years from the date when the amount in question be-comes recoverable under this Act.

106. Failure of Grama Panchayat to take steps for recovery of dues :– In case of default on the part of the Grama Panchayat in taking steps for recovery of the dues as aforesaid, the Sub-divisional Officer may take steps for the recovery of such dues on behalf of the Grama Panchayat in accordance with the provisions of this Act and the rules made thereunder, and, subject to the deductions on account of the costs of realisation, shall credit the proceeds to the Grama Fund :

Provided that no action shall be taken under this Section by the aforesaid authority unless the Grama Panchayat, having been given an opportunity of expressing its views in the matter and allowed reasonable time to make good its default, has failed to do so.

107. Alternative procedure by suit :– In lieu of any process of recov-ery allowed by or under this Act or in case of failure to realise by such process, the whole or any part of any amount recoverable or of any com-pensation, expenses, charges or damages payable in pursuance of the provisions of this Act and the rules or order made thereunder it shall be lawful for the Grama Sasan to sue in any Court of competent jurisdiction the person liable to pay the same.

108. Amount of tax, etc., to be final :– (1) The amount of every sum claimed from any person under this Act on account of any tax, rate, rent, fee or otherwise shall, subject to decision in appeal, review or revision, if any, in accordance with the provisions of the rules made thereunder, be final.

(2) Effect shall be given by Grama Panchayat to every decision in appeal, review or revisions against any such claim.

CHAPTER - XI

CONTROL

109. Control over the Grama Panchayat :– Subject to the provisions of this Act, the rules made thereunder and any special or general orders issued by the State Government from time to time, [1][the Director, Collec-tor, the District Panchayat Officer appointed by the State Government] or such other Officer or person specially authorised in that behalf by the State Government shall exercise general powers of inspection, supervision

1. Previously inserted vide Orissa Act No. 9 of 1991 and subsequently substi-tuted vide Orissa Gazette Ext. No. 426/18.4.1994-Notfn. No. 6139-Legis./ 18.4.1994.

and control over the exercise of powers, discharge of duties and perfor-mance of functions by the Grama Panchayat under the provisions of this Act.

NOTES

Section 109-A general power of inspection, supervision and control over Grama Panchayat - Such power does not extend to superimposing a Committee to discharge the functions entrusted by Legislature to the Grama Panchayat- Which such actions would be unauthorised, contrary to the scheme of the Act and would amount to be illegal imposition : 1987 (II) OLR 538.

110. Powers of inspection, supervision and control in respect of particular matters :– (1) Without prejudice to the generality of the powers conferred under Section 109, the [1][Director, Collector, District Panchayat Officer appointed by the State Government or such other Officer or person authorised under the said Section or authorised by the Director, Collector or District Panchayat Officer] in pursuance of any special order made by the State Government in that behalf may–

(a) by order in writing call for and inspect any book, register, record or document in the possession or under the control of a Grama Panchayat or a Committee;

(b) call for the production of the cash balance in the custody of the Grama Panchayat;

(c) inspect any institution, or immovable property belonging to or vested or under the management, direction or control of a Grama Panchayat or a Committee or any work done or under-taken by or under the direction of the Grama Panchayat or such Committee;

(d) by order in writing direct a Grama Panchayat or Committee to furnish such statements, reports, copies of documents, records or registeres relating to the Grama Panchayat or such commit-tee as he thinks fit;

(e) record in writing for the consideration of a Grama Panchayat or Committee any observation which he thinks proper in re-gard to the proceedings, or powers, duties and functions of the Grama Panchayat or such Committee.

(2) Subject to such rules as may be prescribed all registers, records and documents in the possession or control of a Grama Panchayat shall be open to inspection by the Chairman of the Samiti or of the Parishad and upon submission of the inspection report, if any, by such Chairman, the State Government may take such action as they deem proper.

(3) A member of the State Legislature may visit the Office of any Grama Panchayat situated within his constituency and may record his opinion

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in a register to be maintained for the purpose in every such Office and the Copy of such opinion recorded shall be sent within two weeks from the date of entry to the Government for such action as they may deem fit.

111. Grama Panchayat to afford facilities for inspection :– (1) Sub-ject to such rules, as may be made in that behalf the Grama Panchayat, its Sarpanch, Naib-Sarpanch, Officers and employees shall at all reasonable times be bound to afford to the [1][Director, Collector, the District Panchayat Officer] or other Officer or person or member of the State Legislature authorised under Section 109 or 110 such access to the property, institu-tions or premises of the Grama Panchayat and to all registers and records thereof and to the cash balance in custody of such Grama Panchayat as may, in the opinion of the [1][Director, Collector, the District Panchayat Of-ficer] or such Officer or person, be necessary to enable him to discharge his duties under this Chapter.

(2) Subject to such rules as may be made in that behalf the Grama Panchayat, its Sarpanch, Naib-Sarpanch, Officers and employees shall at all reasonable times be bound to afford to the Chairman referred to in Sub-Section (2) of Section 110 such access to the registers, records and docu-ments as may in the opinion of such Chairman be necessary for the pur-pose of the inspection under the said Sub-Section.

(3) Whoever contravenes the provisions of Sub-Section (1) or (2) shall, on conviction, be punishable with fine not exceeding an amount of rupees fifty and when the contravention is a continuing one with a further fine which may extend to rupees five for everyday during which the of-fender is proved to have persisted in committing the offence.

112. Deputation of Officers to advise Grama Panchayats :– The Collector may by general or special order direct any Officer of any of the departments of Government engaged in development work within the dis-trict to attend any meeting of the Grama Panchayat and to advise and assist such Panchayat on any matter relating to the work of the Depart-ment to which such Officer belongs.

113. Samiti to act during disability of Grama Panchayat :– When-ever in the opinion of the Collector a Grama Panchayat is unable to exercise its powers or discharge its duties or perform its functions in accordance with the provisions of this Act, or the rules made thereunder by reason of any judgment, decree or order of any Court the Collector may direct the Samiti to act on behalf of the Grama Panchayat for all or any of the pur-poses of this Act, so long as such disability continues and the Samiti shall, subject

to such rules as may be made in that behalf, forthwith comply with the directions of the Collector.

114. Power of Sub-divisional Officer in respect of certain resolu-tions and orders of Grama Panchayat :– (1) The Sub-Divisional Officer may, suo motu or on a reference by the Sarpanch under Section 20, after

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calling for an explanation from the Grama Panchayat and considering the explanation, if any, offered by the Grama Panchayat, rescind, modify or confirm any resolution or orders passed or made by the Grama Panchayat if in his opinion such resolution or order is of a nature as specified in any of the Clauses (a) to (e) of the said Section.

(2) The Sub-divisional Officer may if he deems it expendient so to do, at any time pending the disposal of the proceedings under Sub-Section (1) make all or any of the following orders and may at any time rescind or modify the same, namely :

(a) suspend the operation of the resolution or order;

(b) prohibit the doing or continuance by any person of any act, in pursuance of or under the cover of such resolution or order;

(c) direct the Grama Panchayat, to take any action which it would have been entitled to take if the resolution or order had never been made or passed and which in the opinion of the Sub-divisional Officer is necessary for preventing any person from doing or continuing to do anything under cover of the said resolution or order.

(3) The Grama Panchayat may, in accordance with a resolution passed in that behalf appeal to the Collector against the order made under Sub-Section (1) within thirty days from the date of the said order and the Collector after giving the Grama Panchayat an opportunity of being heard may cancel, modify or confirm the orders passed by the Sub-divisional Officer.

115. Suspension and removal of Sarpanch, Naib-Sarpanch and Mem-ber :– (1) If [1](1) If the State Government, on the basis of a report of the Collector or the Project Director, District Rural Development Agency, or suo motu are of the opinion that circumstances exist to show that the Sarpanch or Naib Sarpanch of a Grama Panchayat wilfully omits or refuses to carry out or violates the provisions of this Act or the rules or orders made there-under or abuses the powers, rights and privileges vested in him or acts in a manner prejudicial to the interest of the inhabitants of the Grama and that the further continuance of such person in Office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama, they may after giving the person concerned a reasonable opportunity of showing cause, remove him from the Office of Sarpanch or Naib-Sarpanch, as the case may be.

(2) The State Government may, pending initiation of the proceeding on the basis of their opinion under Sub-Section (1), by order, for reasons to be recorded in writing, suspend the Sarpanch or Naib-Sarpanch, as the case may be, from the Office.

1. Substituted vide O.G.E. No. 993 Notfn. No. 7703-Legis. Dt. 28.05.2001.

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(3) The State Government, at any time during the pendency of pro-ceeding under "Sub-Section (1), revoke the order of suspension of a Sarpanch or Naib-Sarpanch passed under Sub-Section (2)"

(4) A Sarpanch or Naib-Sarpanch on removal from Office under Sub-[2][Section (1)] shall also cease to be a member of the Grama Panchayat, and such person shall not be eligible for election as member for a period not exceeding four years as the State Government may specify.

(5) The provisions of this Section shall, so far as may be, apply in respect of any member of the Grama Panchayat not being a Sarpanch or Naib-Sarpanch; provided that no such member shall be liable to be placed under suspension under the said provisions.

(6) (a) Whenever the Collector is of the opinion that the Sarpanch of a Grama Panchayat has failed in convening any meeting of the Grama Panchayat within a period of three continuous months he may, after mak-ing such enquiry as he deems fit, by order,

remove the Sarpanch from Office and may also declare him not to be eligible for election as member for a period not exceeding one year as he may specify in his order, and on such order being made the Sarpanch shall cease to be a member of the Grama Panchayat.

(b) Nothing contained in the preceding Sub-Sections shall apply in respect of a default as specified above.

NOTES

(i) Sec. 115(1) - Order of suspension - An elected representative like Sarpanch can be suspended only if the pre-requisite condition under Sec. 115(1) is satisfied - In this case the Collector does not indicate anywhere that the Sarpanch had wilfully violated the provisions of the Act or had wilfully omitted to do certain Act - Order of suspension cannot be sus-tained : 2001 (II) OLR 132.

(ii) Sec. 115(6) - The Collector is required to form on opinion that the Sarpanch was in a position to convene the meeting of the Grama Panchayat but did not deliberately convene the meeting - Discretion of Collector - Section intention not that mere failure to convene meeting will attract removal even if there are circumstances justifying such failure -The word 'may' means the Collector has to consider the facts and circum-stances before deriving opinion on removal : 2000 (I) OLR 430 : 89 (2000) CLT 720 : AIR 2000 Ori. 120.

(iii) Secs. 115 (6) - Petitioner a Sarpanch while in custody handed-over charged to Naib-Sarpanch - On complaint by Members of the Grama Panchayat for not convening meeting for a continuous period of three months and on enquiry report submitted by District Panchayat Officer the Collector removed the Sarpanch from Office - Held, District Panchayat

1. Substituted vide O.G.E. No. 993 Notfn. No. 7703-Legis. Dt. 28.05.2001.

Officer submitted report without applying mind and without appreciating relevant facts and circumstances - Charge can be handedover by a person in custody - When Petitioner submitted charge to Naib- Sarpanch he could not be held responsible for not convening meeting : 2000 (I) OLR 430 : 89 (2000) CLT 720 : AIR 2000 Ori. 120.

(iv) Sec. 115(1) - Sarpanch suspended by final order of Collector on charges of financial irregularities - Of course, the irregularities were found- But the Collector did not mention, that he was satisfied that the infration of the provisions was "wilful" - Order of suspension cannot be sustained -Moreover, a reasonable opportunity should have been given to be heard : 1999 (II) OLR 264.

(v) Sec. 115(1) - Suspension of Sarpanch - Natural justice - Oppor-tunity of hearing - Not necessary : 1999 (II) OLR 264 : AIR 2000 Ori. 28.

(vi) Sec. 115(1) - Suspension of Sarpanch - Validity - Charges against Sarpanch considered by Collector - However no finding recorded as to delinquency being "wilful" - Order of suspension thus liable to be quashed : 1999 (II) OLR 264 : AIR 2000 Ori. 28.

(vii) Section 115 - The language of the Section contemplates com-mission or omission of any prejudicial act by Sarpanch or Naib-Sarpanch after he has been elected and while continuing to hold Office - There should be satisfaction about the reasons mentioned therein - It does not contemplate of acts or omissions done in the past : 1995 (I) OLR 173.

(viii) Section 115 (as amended in 1991) - Suspension and removal of Sarpanch or Naib-Sarpanch - On report from Collector State Govern-ment has to scrutinise and to be satisfied regarding the reasons of activi-ties as embodied in the Section - The notice of reasonable opportunity is to be given to show cause - After that, final action is to be taken - State Government may also disagree with the view of the Collector - State Government can suspend during pendency of proceeding or can revoke suspension : 1994 (II) OLR 212.

(ix) Section 115 (6) - Removal of the Sarpanch for not convening meeting of Grama Panchayat within the stipulated period and declaring him not eligible for election of member for one year - On facts and circum-stance of the case, the records were not

handedover to him and B.D.O. acted arbitrarily by handingover records to another person - No justifica-tion in removing him even though he made representation - Power illegally exercised : 1994 (II) OLR 571.

(x) Section 115 - Collector suspends Sarpanch - Matter pending before Government - Principle of natural justice in case of removal - Gov-ernment directed to make a final decision within two months : 78 (1994) CLT 616.

(xi) Section 115 - Elected to the post of Sarpanch in 1992 - Initiation 1. Substituted vide O.G.E. No. 993 Notfn. No. 7703-Legis. Dt. 28.05.2001.

of surcharge proceeding prior to election - Suspension of Sarpanch on the ground of wilful omission or refusal to carryout or violation of provisions of the Act - Illegal : 78 (1994) CLT 662.

(xii) Section 115 - Suspension and removal of Sarpanch - One ground was delay in convening the meeting - Secretary resigned - No other mem-ber willing to act as Secretary - B.D.O. moved and he sent one Officer who had to convene the meeting - It is not a deliberate action of the Sarpanch - The other ground was that on some dates some amounts of money were withdrawn by Secretary for quick execution of work, but amounts had been credited within a very short time - Such action cannot be said to be deliberate violation of law even though it can be an irregular-ity - There was no adequate reason for removal - Impugned order of re-moval held bad : 1990 (I) OLR 44.

(xiii) Section 115 (1) - Power of Collector to suspend a Sarpanch -Collector must be satisfied on the basis of the report of the S.D.O. that the preconditions for exercise of power under the Section satisfied - Re-quirements to be fulfilled - Collector suspending the Sarpanch mechani-cally without applying his mind to the materials on record - Held, the order of suspension cannot be sustained : 32 (1990) OJD 106 (Civil).

(xiv) Section 115 read with Article 226 of the Constitution of India- Reinstating Sarpanch by the State Government - Assertion of favoritism to the Sarpanch being a member of Political Party in power - No circum-stance indicated in the writ Petition - It is unsafe to draw inference of favoritism : 65 (1988) CLT 597.

(xv) Section 115 (1) - Meaning of word "shall" - It cannot be used as mandate - Opportunity of being heard if interpreted to be a mere formality, the Sarpanch shall lose a right to Office in violation of principle of natural justice : 65 (1988) CLT 597.

(xvi) Section 115 (2) - Authority conferred upon Government has to be exercised with due care and caution - It must be satisfied and must form its opinion : 65 (1988) CLT 597.

(xvii) Section 115 (2) - Material not satisfying the requirement of Section 115 (1), cannot and do not satisfy the requirements of Section 115 (2) - Show cause notice on some irrelevant grounds (as for suspen-sion) for removal not possible and is quashed : 1987 (II) OLR 538.

(xviii) Section 115 (2) - Minister's view for reinstating Sarpanch -Strong reasons should be available for quashing the order : 65 (1988) CLT 597.

(xix) Section 115 (2) read with Articles 226 and 227 of the Consti-tution of India - View of the Government - interference by the High Court

1. Substituted vide Orissa Act No. 9 of 2004, OGE No. 1368, Dt - 12.10.2004. 2. Substituted vide Orissa Act No. 9 of 2004, OGE No. 1368, Dt - 12.10.2004.

- Unless the High Court finds that the view to be perverse and absolutely erroneous it should not as an appellate Court re-appraise the materials and come to its own conclusion : 65 (1988) CLT 597.

(xx) Section 11 5 (1) - (A) Allegation that lease of a tank was can-celled - This was done on the basis of a resolution of the Panchayat in which the Sarpanch had one Vote only - Held, he is not at fault.

(B) Sarpanch advance Rs. 100/- and there is no provision for it -Held, there is no prohibition - It is only improper and he should be advised not to repeat - This is not delinquency.

(C) Sarpanch did not call upon the Secretary to furnish Security -Held, infraction of such duty may be involuntary or omission but not wilful omission.

(D) Sarpanch retained cash with him more than the amount allow-able - Held, it cannot be said wilful - He should be pulled up-One such ground can be valid ground for suspension : 1987 (II) OLR 391.

(xxi) Section 115 (1) - Order of suspension by the Collector - It infringes the right of elected representative to continue in Office - There must be circumstances existing for satisfaction of the Collector - Other-wise the order is to be stuck down as non-application of mind - Extrane-ous considerations should not creep in - High Court can strike down such order under Article 226 of the Constitution of India.

Held, since existence of "circumstances" is a condition fundamental on the making of an opinion, the existence of circumstance, if questioned has to be proved at least prima facie - It is not sufficient to assert the circumstances exist and give no clue to what they are because the cir-cumstance must be such as to lead to conclusions of certain "definite-ness" : 1987 (II) OLR 407.

(xxii) Section 115 (1) - Power to suspend only when conditions stipulated in the provisions fully satisfied - Actions done in accordance with resolutions of the Grama Panchayat on matters within the domain of the Grama Panchayat are not relevant and germane material for exercise of such power - Sarpanch cannot be singled out and held responsible even if there be minor infirmities (though in the present case there was no infirmity to the decisions of the Grama Panchayat) - Undue interference with the affairs of the Grama Panchayat deprecated - Instances of this nature sound the death - knell of democracy at the lowest level : 1987 (II) OLR 538.

(xxiii) Section 115 (1) - Suspension of Sarpanch or Naib- Sarpanch -Requirements under Section 115 are all cumulative and should have been complied - Absence of any one of them makes the order invalid : 1987 (II) OLR 391.

(xxiv) Section 115 (1) - Suspension of Sarpanch - Collector must be

satisfied that delinquency was "wilful" - (Panchayat - Suspension of Sarpanch - Satisfaction of Collector) : 1987 (II) OLR 391 : AIR 1988 Ori. 150.

(xxv) Section 115 (1) - The action of the Sarpanch or Naib-Sarpanch must have been "wilful" - Omission, refusal, violation or abuse must have been wilful.

Held, a mere violation, omission, refusal or abuse is not enough –Omission, refusal, violation or abuse must also be wilful – The adverb "wilfully" governs and qualities the conduct of Sarpanch, namely, that wilfully omitted, refused, violated the provisions of the Act or the rules or wilfully abused the rights and privileges vested in him or wilfully acted in a manner prejudicial to the interest of the inhabitants of the Grama Panchayat or the Grama – Unless it is found that he did so wilfully, the provision would not be attracted : 1987 (II) OLR 391.

(xxvi) Section 115 (1) - Suspension and removal of Sarpanch, Naib-Sarpanch and member - All the three requirements, namely (a), (b) and (c) are cumulative - If any one of the requirements is absent, the order is invalid.

Held, suspension of an elected representative is indeed a drastic action and should not be taken recourse to cursorily and in a mechanical manner – Having vested the powers with the Executive to suspend an elected representative, the Legislature provided safeguards against arbi-trary exercise. All the three requirements under Section 115 (1) are cumu-lative Absence of any one of them, the suspension is invalid – The Collec-tor must form an opinion on both the counts enumerated in (b) and (c) Existence of one is not sufficient - Every delinquency or lapse might not satisfy the requirements of (c) – Therefore, while bringing the tenure of an elected representative to an end either temporarily or prematurely, utmost care and circumspection ought to be exercised – Right

of an elected rep-resentative to continue in Office for the full tenure should not be lightly tinkered with by the Executive : 1986 (II) OLR 427 : 62 (1986) CLT 548.

116. Dissolution and reconstitution of Grama Panchayat :– (1) If in the opinion of the State Government a Grama Panchayat is not competent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers they may, by notification published in the prescribed manner, direct that the Grama Panchayat be dissolved [1][* * *]

[1][* * *]

(2) Before publishing a notification under Sub-Section (1) the State Government shall communicate to the Grama Panchayat the grounds on which they propose to take action, fix a reasonable period for the Grama Panchayat to show cause against the proposal and consider the explana-tions and objections, if any, of such Grama Panchayat.

(3) Upon the Publication of such notification all the members of the Grama Panchayat including its Sarpanch and Naib-Sarpanch shall forth-with be deemed to have vacated their Offices as such and fresh elections shall be held in the prescribed manner.

(4) During any interval between the dissolution and the reconstitu-tion of the Grama Panchayat [2][under this Section,] all or any of the powers and duties of the Grama Panchayat and its Sarpanch may be exercised and discharged in such manner and to such extent as the State Government may determine by the Chairman of the Samiti.

117. Supersession of Grama Panchayat :– (1) If after the fresh elec-tion held under the last preceding Section the Grama Panchayat continues to be incompetent to perform or abuse its powers, the State Government for all or any of the reasons specified in Sub-Section (1) of Section 116 may, by notification published in the prescribed manner, supersede it for a specified period [3][and may, in like manner by stating reasons therefor, extend such period from time to time so, however, that the total period of supersession does not exceed six months.]

(2) Before publishing a notification under Sub-Section (1) the State Government shall follow the procedure laid down in Sub-Section (2) of Section 116.

(3) The supersession of a Grama Panchayat shall, if no other date or time is fixed in the said notification, take effect from the date of Publica-tion thereof and thereupon all the members of the Grama Panchayat in-cluding its Sarpanch and Naib-Sarpanch shall forthwith be deemed to have vacated their Offices.

(4) [1][***]

(5) The provisions of Sub-Section (4) of Section 116 shall during the period of supersession of a Grama Panchayat and till its reconstitution apply so far as may be in regard to the exercise and discharge of all or any of the powers and duties of the Grama Panchayat and its Sarpanch.

(6) The State Government may reconstitute the Grama Panchayat before the expiry of the period notified under Sub-Section (1) [1][* * *]

(7) The term of Office of a Grama Panchayat at reconstituted in pursuance of the provisions of Section 116 or this Section, as the case may be, shall expire with the date on which the term of Office of the Grama Panchayat would have expired had it not been dissolved or super-seded.

118. Devolution of assets on dissolution or supersession :– When a Grama Panchayat is dissolved under Section 116 or superseded under Sec-tion 117 the Collector, until the date of reconstitution thereof, and the reconstituted Grama Panchayat thereafter, shall be entitled to all the as-sets and shall be subject to all the liabilities of the Grama Panchayat as on

the date of dissolution or supersession, and on the date of reconstitution, respectively.

119. Collector's power to take action on the default of Grama Panchayat or its Sarpanch :– (1) If at any time it appears to the Collector that a Grama Panchayat or its

Sarpanch has made default in performing any duty imposed by or under this Act, or any other law for the time being in force, he may, in consultation with the Samiti, by order in writing, fix a period for the performance of such duty.

(2) If such duty is not performed within the period so fixed the Collector may direct to Samiti to perform it and may also direct that the expenses of performing it shall be paid from out of the Grama Fund within such time as the Collector may fix to the Samiti.

(3) If the expenses directed under Sub-Section (2) are not paid within the time so fixed the Collector may make an order directing the person having the custody of the Fund to pay it in priority to any other charge, against such Fund.

(4) Such person shall, so far as the balance to the credit of the Grama Fund admits, be bound to comply with such order.

120. The State Government may, suo motu, at any time or on appli-cation received from any party interested within ninety days from the passing of the order review any order passed under Section 115, 116 or 117 it was passed [1][***] under any mistake, whether of fact or of law, or in igno-rance of any material fact:

Provided that the State Government shall not pass any orders preju-dicial to any party unless such party has had an opportunity of making a representation.

121. Power of Sub-divisional Officer to recover records and money :–(1) Where on the application of a Grama Panchayat the Sub-divisional Officer is of the opinion that nay person, who in the capacity of a member, Sarpanch, Naib-Sarpanch or Officer or other employee of the Said Grama Panchayat had in his custody any record or money belonging to it, after his removal or suspension from or the termination of his Office is not likely to deliver such record or pay such money, the Sub-divisional Officer may, by a written order, require that the record or money so detained be delivered or paid to the Grama Panchayat forthwith.

(2) If any such person as aforesaid shall not deliver the record or pay the money as directed, it shall be lawful for the Sub-divisional Officer-

(a) for recovering such money, to direct that such money be re-covered as an arrear of land revenue and on such direction being given such money shall be recoverable as arrear of land revenue from such person; and

1. Substituted vide OGE No. - 156/10.02.09 Notif. No. 2219/1-Legis 52/08 Dt. 10.02.09

(b) for recovering any such record to issue a search warrant and to exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1898 (5 of 1898).

(3) No action under Sub-Section (1) or (2) shall be taken unless reasonable opportunity has been given to the person concerned to show cause why such action should not be taken against him.

CHAPTER - XII

ESTABLISHMENT AND CONDUCT OF BUSINESS

"122. Executive Officer of Grama Sasan :–(1) There shall be an Executive Officer, for every Grama Sasan who shall,–

(a) maintain the records of the proceedings of the meetings of Grama Panchayats;

(b) remain in custody of all such records and documents, cash and valuable securities belonging to or vested in or under the direction, management or control of the Grama Sasan as may be prescribed; and

(c) exercise such other powers, discharge such other duties and perform such other functions as may be prescribed.

[1]["(2) The V.L.Ws working in a district shall, for the purpose of sub-section (1), act as Executive officers within the local area of such Grama or Gramas as may be assigned to them by the Collector.

Explanation - For the purpose of sub-section (2), the expression 'V.L.Ws' means Village Level Workers appointed by the Collector for imple-menting different development schemes relating to different levels of Panchayats in the State.'; and

"(3) Subject to the proisions of sub-section (1), the Executive Of-ficer shall function under the control and superision of the Grama Panchayat".

NOTES

Sec. 122 - Post of Secretary of Grama Panchayat – Selection for –Examination – Resolution of Grama Panchayat Providing that examination to be conducted by nominated members of Board only– Examination con-ducted by persons who were not nominated members of Board – Partici-pation of nominated members of Board in process of question setting was also doubtful– Directions given to hold the examination afresh : 1999 Lab.

1. Omitted vide Orissa Act No. 9 of 1991.
2. Substituted ibid.
3. Added vide Orissa Act No. 9 of 1991.

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I. .C. 2934 (Ori.).

"123. Secretary and other employees of Grama Sasan :–(1) Sub-ject to such general or special order as may be made in this behalf by the State Government, a Grama Panchayat may appoint a Secretary and such other employees for the Grama Sasan as may be necessary for enabling the Grama Panchayat to perform its functions who shall discharge such duties and perform such functions as may be prescribed.

(2) The expenditure on remuneration or allowances of the Secretary and other staff appointed, if any, under Sub-Section (1) shall be borne by the Grama Panchayat.

(3) Notwithstanding anything to the contrary in Sub-Section (1) any person appointed as a Secretary prior to the commencement of the Orissa Grama Panchayats (Amendment) Act, 2004 shall be deemed to have been appointed as such under the said Sub-Section and he shall continue to receive the remunerations and other financial benefits, if any, as were ad-missible to him prior to such commencement."

124. Meeting :– (1) The Grama Panchayat in the transaction of its business shall follow the procedure provided in this Act and the rules made thereunder.

(2) The Grama Panchayat shall meet for the disposal of its business at least once every month and may hold special meetings whenever cir-cumstances so require.

(3) Without prejudice to the provisions of Section 19 and subject to the rules made in that behalf, the Collector or any other Officer empow-ered by him or not less than one-third of the members of the Grama Panchayat may requisition and call for special meetings of the Grama Panchayat.

(4) The quorum at any meeting, the manner or conduct of business and maintenance of the record of the proceedings at any such meeting shall be as may be prescribed.

[1][(5) The Collector or such other Officer or person authorised in that behalf by the State Government shall have the right to take part in the proceedings at any meeting of the Grama Panchayat or a Committee thereof, but shall not be entitled to Vote at any such meeting:]

Provided that the persons referred to in Clause (a) shall also be en-titled to a notice of all such meetings.

[1][(6) The members of the Samiti elected under clause (b) of Sub-Section (1) of Section 16 of the Orissa Panchayat Samiti Act, 1959 from the concerned Grama shall take part in the proceedings at any meeting of the Grama Panchayat in relation to the said Grama except the meeting convened under Section 24 of the Act but shall not be entitled to Vote at

1. Omitted ibid.

any such meeting.]

125. Committees :– (1) For the efficient discharge of its functions the Grama Panchayat shall constitute Standing Committees whose num-ber, composition, powers and functions and the procedure for the conduct of business shall be as may be prescribed.

(2) Subject to the rules as may be made in that behalf a Grama Panchayat may from time to time constitute such other Committees to assist it in the discharge of any specified duties or Class of duties for such specified periods as the Grama Panchayat may deem it expedient.

(3) The State Government shall have the power to specify the num-ber of persons as may be co-opted from outside by the Grama Panchayat to any Standing Committee or other Committees.

126. Joint Committees :– (1) Subject to such rules as may be pre-scribed, two or more Grama Panchayats may combine by means of a writ-ten instrument subscribed by them, to appoint a Joint Committee consist-ing of their representatives for the purpose of transacting any business in which they are jointly interested and may–

(a) delegate to such Committee, powers with such conditions as they may think proper to impose, to frame schemes binding on each such Grama Panchayat as to the construction and future maintenance of any joint work and the power which may be exercised by any such Panchayat in relation to such scheme; and

(b) frame or modify rules regarding the constitution of such Com-mittee and the term of Office of members thereof and the method of conducting proceedings and correspondence thereof.

(2) If any difference of opinion arises amongst the Grama Panchayats acting under this Section, it shall be referred to the prescribed authority whose decision thereon shall be final.

127. Vacancy not to invalidate proceedings :– No act or proceed-ings of the Grama Sasan or Palli Sabha or of the Grama Panchayat or any of the Committees shall be deemed to be invalid by reason merely of the existence of any defect in the Constitution of the Grama Sasan or Palli Sabha or of the existence of any vacancy in or defect in the constitution of the Grama Panchayat or any Committee thereof, or any vacancy in the Office of the Sarpanch or Naib-Sarpanch, or by reason of any defect, error, omission or irregularity in the Election or Nomination of the Sarpanch, Naib-Sarpanch or any other member of such Grama Panchayat.

CHAPTER - XIII

GRAMA PANCHAYATS MANUAL

PENALTIES AND PROCEDURE

128. Penalty for infringement of the provisions of the Act :– Who-ever contravenes any of the provisions of this Act, or fails to comply with any notice or direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of the said provisions, shall, in the absence of any express provision in that behalf and without prejudice to any other liability under any of the other provisions of this Act, be, on conviction punishable with fine not exceeding an amount of rupees twenty-five and when the contravention or non-compliance is a continuing one with a further fine which may extend to one rupee for every day after the first conviction during which an offender is proved to have persisted in committing the offence.

129. Penalty for infringement of rules and bye-laws :– In making a rule, the State Government and in making a bye-law the Grama Panchayat with the sanction of the prescribed authority, may direct that a breach of it shall be punishable with fine, which may extend to ten rupees and when the breach is a continuing one with a further fine which may extend to one rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the commission of the offence.

130. Penalty for tampering with Grama Panchayat's Property :– (1) Whoever removes, displaces or makes an alteration in or otherwise inter-feres with the pavement, gutter or other materials of a Public street, or the fences, walls or posts thereof, or bracket,

direction-post, stand-post, hy-drant or property of the Grama Sasan without the written sanction of the Grama Panchayat or other lawful authority shall be punishable with fine which may extend to ten rupees.

(2) If through an act, neglect or default, on account whereof a per-son has incurred a penalty imposed by Sub-Section (1) and has caused any damage to the property of a Grama Sasan such person shall also be liable to make good such damage as well as to pay such penalty, and the damages may be recovered from the offender in accordance with the pro-visions of this Act.

131. Disobedience to notice issued :– Save as otherwise expressly provided in this Act and without prejudice to any other liability that may be incurred thereunder if a notice has been given to a person under the provi-sions of this Act or any rule or bye-law made thereunder requiring him to execute a work in respect of any property movable or immovable, Public or Private, or to provide or to do anything within a time specified in the notice and such person fails to comply with the Notice, then the Grama Panchayat may, after giving the person an opportunity of making a representation, cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by it on such account from the said person in accordance with the provisions of this Act.

132. Notice not to be invalid for defect of form :– No notice shall be invalid for defect of form.

NOTES

Sec. 132 (3) - Orissa Grama Panchayat Rules - Rule 216 - Removal of Secretary from service - Charge-sheet not served - Opportunity to show cause not provided - Violation of mandatory provisions of Rule 216 - Ter-mination not sustainable : 1996 (II) OLR 661 : 1997 Lab. I.C. 476.

133. Appeal :– (1) Save as otherwise provided in this Act or the rules made thereunder, any person aggrieved by an order or direction made or issued by a Grama Panchayat under this Act or under any rule or bye-law may, within thirty days from the date of such direction or order, appeal to the Sub-divisional Officer, who may vary, set aside or confirm the said order or direction.

(2) Any person aggrieved by an order made under Sub-Section (1) may, within thirty days from the date of the order, prefer a second appeal to the Collector, who may vary, set aside or confirm the said order.

(3) The appellate authority may, if he thinks fit, extend the period allowed by Sub-Section (1) or (2), as the case may be, for filing an appeal.

(4) The appellate authority shall have power to award costs at his discretion.

(5) The orders passed in an appeal under Sub-Section (1) or (2), as the case may be, shall be final.

134. Finality of orders :– No order or direction referred to in the preceding Section shall be questioned in any other manner or by any au-thority other than the authority provided therein.

135. Suspension of prosecution in certain cases :– When an order or direction of the kind specified in Section 133 is subject to appeal and an appeal has been filed, all proceedings to enforce such order or direction and all prosecution for a breach thereof may, by order of the appellate authority, be suspended pending the decision of the appeal.

136. Power to compound offence :– (1) Subject to such rules as may be prescribed a Grama Panchayat may, either before or after the insti-tution of proceedings, compound an offence against this Act or any rule or bye-law made thereunder.

(2) When an offence has been compounded no further proceedings shall be taken against the offender in respect of the offence so compounded.

(3) All sums paid by way of compensation under this Section shall be credited to the Grama Fund.

137. Entry and inspection :– The Sarpanch of any Grama Panchayat
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and any other member, Officer or servant thereof specially authorised in this behalf by the Grama Panchayat may enter into or upon any building or land, with or without assistants or workmen, in order to make an inspec-tion or survey or to execute a work which a Grama Panchayat is authorised by this Act or by rules or bye-laws made thereunder, to make or execute, or which it is necessary for a Grama Panchayat for any of the purposes or in pursuance of any of the provisions of this Act or of the rules or bye-laws to make or execute :

Provided that–

(a) except when otherwise expressly provided in this Act or in the rules or bye-laws no such entry shall be made between the hours of sunset and sunrise;

(b) except when otherwise expressly provided in this Act or in the rules or bye-laws no building which is used as a human dwell-ing shall be so entered upon except with the consent of the occupier thereof without giving the said occupier not less than four hours' previous written notice of the intention to make such entry;

(c) sufficient notice shall in every instance be given even when any premises may otherwise be entered without notice to en-able the inmates of an apartment set apart for females to remove to some part of the premises where privacy shall no be disturbed; and

(d) due regard shall always be paid to the social and religious usages of the occupation of the premises entered.

138. Suits against Grama Panchayats or their Officers :– (1) No suit or other legal proceedings shall be instituted against a Grama Sasan or a Grama Panchayat or against member, Sarpanch, Naib-Sarpanch, Officer or other employee of the Grama Panchayat or against any person acting un-der its or his direction for anything done or purporting to have been done under this Act, until the expiration of one month next after notice in writ-ing has been, in the case of Grama Sasan or Grama Panchayat, delivered in or left at the Office of the Panchayat and in the case of a member, Officer or Servant or any person acting under his direction or the direction of the Grama Panchayat, delivered to him or left at his Office or place of resi-dence, explicitly stating the cause of action, the nature of the reliefs sought, the amount of compensation, if any, claimed and the name and place of residence of the intending plaintiff; and the plaint shall contain a state-ment that such notice has been so delivered or left.

(2) If the Grama Panchayat, members, Sarpanch, Naib-Sarpanch, Officer or other employee or the person as aforesaid has tendered amends, sufficient in the opinion of the Court to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered and shall also pay all costs incurred by the defendant after such tender.

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(3) No suit or other legal proceeding referred to in Sub-Section (1) shall be instituted after the expiry of a period of six months from the date of the accrual of the alleged cause of action.

NOTES

(i) Section 138 - Notice under Section 138 not necessary for pros-ecution of Sarpanch.

Held, Section 138 of the Act deals with the suits or other legal proceedings using the expression, cause of action, the nature of relief sought, the amount of compensation and plaint – The words underlined are common words used in civil proceedings and not in prosecution Sec-tion 139 of the Act refers to "suits or prosecution" When the Legislature in the same statute used the words "suit", "legal proceeding", "prosecu-tion", each word is to be given its own meaning and omission of the word from a particular provision in the statute is not to be lightly brushed aside : 1986 (I) OLR 137 : 1986 Cr LJ 1025.

(ii) Section 138 (1) – Notice before institution of legal proceeding against an employee of Grama Panchayat necessary only if the act done or purported to have been done under the Act : 1984 (I) OLR 1073.

139. Protection to Grama Panchayats :– (1) No suit or prosecution shall be entertained in any Court against a Grama Sasan or Grama Panchayat or the Sarpanch, Naib-Sarpanch or any other member or Officer or other employee thereof or any person acting under its or his direction in respect of anything in good faith done or intended to be done under this Act or any rule or bye-laws made thereunder.

NOTES

Section 139 - Sarpanch acting what is prohibited under law-He can-not take advantage of protection of having done in good faith.

Held, there being specific prohibition under the rules, the act cannot be said to have been done in good faith - Therefore, the protection under Section 139 of the Act is also not available to the respondent in this case : 1986 (I) OLR 137 : 1986 Cr LJ 1025.

140. Duties of Police in respect of offences and assistance to Panchayats :– Every Police Officer shall give immediate information to the Grama Panchayat of an offence coming to his knowledge which has been committed against this Act or any rule or bye-laws made thereunder and shall assist all members and Servants of the Grama Panchayat in the exer-cise of their lawful authority.

141. Penalty for failure to handover charge by ex-Sarpanch and others :– (1) Whoever after ceasing to hold Office as Sarpanch, Naib-Sarpanch, Member, Officer or other employee of the Grama Panchayat and having remained in possession at the time of such cessation, of any docu-

ment, cash, valuable security or other property which or the custody whereof lawfully belongs to the Grama Sasan, without sufficient cause fails to deliver up the same within seven days from the date of such cessation–

(a) in the case of the Sarpanch, to his successor in Office or to the Collector or any other person authorised by him in that behalf; and

(b) in any other case to the Sarpanch or any employee of the Grama Panchayat authorised by the Sarpanch in that behalf,

shall without prejudice to any other liability under this Act or any other law for the time being in force, on conviction, be punishable with rigorous imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(2) The offence under Sub-Section (1) shall be cognizable.

(3) The person convicted under Sub-Section (1), if he had been the Sarpanch, Naib-Sarpanch or Member, shall notwithstanding anything con-tained in this Act be disqualified for a period of five years from the date of such conviction for being chosen as or continuing to remain a member of the Grama Panchayat.

Explanation – For purposes of this Section–

(a) "Successor in Office" shall include any succeeding Sarpanch or any other person exercising the powers of the Sarpanch under the provisions of this Act or the rules made thereunder; and

(b) "Document" and "Valuable Security" shall have the same mean-ing as defined in Sections 29 and 30 respectively of the Indian Penal Code (45 of 1860).

CHAPTER - XIV

MISCELLANEOUS

142. Delegation of Powers :– The State Government may, by notifi-cation from time to time, direct that any of their powers and functions under this Act, subject to such conditions and restrictions as they may impose, and except the powers conferred on them

by Sections 3, 71, 73, 81, 100, 109,115, 116, 117, 120, 150, 151 and 152 shall be exercised or discharged by any Officer or authority subordinate to the State Govern-ment.

143. Members and Servants of Grama Panchayat to be Public Ser-vants :– All members of a Grama Panchayat or of any Committee thereof constituted under this Act and all Officers and other employees of a Grama Panchayat, every contractor or agent appointed by it for collection of any tax, toll, rates or fees and every person employed by such contractor or agent, shall be deemed to be Public Servants within the meaning of Sec-

tion 21 of the Indian Penal Code (45 of 1860) and in the definition of "legal remuneration" in Section 161 of the said Code, the word "Government" shall for the purpose of this Section, be deemed to include a Grama Sasan and a Grama Panchayat.

NOTES

Section 143-A Sarpanch is a Public servant and is employed in connection with the affairs of the State-Not removable by any authority other than the State : 1986 (I) OLR 137 : 1986 Cr LJ 1025.

144. Responsibility of the member for misappropriation of Grama Fund :– Every member, Sarpanch and Naib-Sarpanch and every member of any Committee constituted under this Act shall be personally liable for the misapplication of any Fund or property of the Grama Sasan to which each has been a party or which has happened through or being felicitated by gross neglect of his duty as a member, Sarpanch or Naib-Sarpanch, as the case may be, and may be used for recovery of the money or property so misapplied or loss suffered thereby either by the Grama Sasan or by the State Government.

145. Liability of Officers and employees for misappropriation of Fund :– Every Officer or other employee of the Grama Sasan shall be personally liable for the loss, waste, misappropriation or misapplication of any money or other property held for the Administration of the Grama Sasan where such loss, waste, misappropriation or misapplication is a direct conse-quence of his neglect or misdconduct in his capacity as a Servant of the Grama Sasan and a suit for compensation for the same may be instituted against him either by the Grama Panchayat or by the State Government.

146. Settlement of disputes between different Grama Sasans and between Grama Sasan and other local authorities :– (1) Notwithstanding anything in any other law for the time being in force disputes in respect of any matter arising under the provisions of this Act or any other law–

(a) between two or more Grama Sasans–

(i) if within the same Block shall be decided by the Samiti;

(ii) if within different Blocks in the same district shall be decided by the Parishad;

(iii) if within different districts shall be decided by the Rev- enue Divisional Commissioner having jurisdiction or such Commissioner as may be authorised by the State Gov- ernment in that behalf;

(b) between one or more Grama Sasans and any other local au-thority–

(i) if within the same districts shall be decided by the Col- lector;

(ii) if within different district shall be decided by the Rev- enue Divisional Commissioner having jurisdiction or such Commissioner as may be authorised by the State Gov- ernment in that behalf.

(2) An appeal against the decision of the Samiti, Parishad, or Rev-enue Divisional Commissioner, as the case may be, under Sub-Section (1) shall respectively lie to the Collector, Revenue Divisional Commissioner and the State Government and an appeal against the decision of the Col-lector shall lie to the Revenue Divisional Commissioner; and all such ap-peals shall be preferred within thirty days from the date of such decision.

(3) The decisions made under Clauses (a) and (b) of Sub-Section (1) shall, subject to the decisions in appeal under Sub-Section (2), be final.

(4) No suit shall be entertained by a Civil Court in respect of any dispute referred to in Sub-Section (1).

147. Disposal of Claims – (1) Save as otherwise expressly provided in this Act where any dispute arises between the Grama Sasan and any person as regards the ownership of or interest in any property vested in or under the management, direction or control of the Grama Sasan, the Grama Panchayat shall give such person an opportunity of being heard and decide by order giving reasons therefor to be recorded in writing, whether the ownership of or interest in such property is to be treated as that of the Grama Sasan.

(2) Any person aggrieved by an order under Sub-Section (1) may appeal to the prescribed authority within the time and in the manner as may be prescribed.

(3) Any such person dissatisfied with the order in the appeal, if any under Sub-Section (2) may within six months from the date of such order institute a suit in a Court of competent jurisdiction for establishment of his rights, if any.

(4) The order under Sub-Section (1) shall, subject to the order under Sub-Section (2) or the decision of the Court, it any, as the case may be, be final.

148. Reconstitution of Grama :– (1) Where a new Grama is consti-tuted by the inclusion in one Grama or a part of another Grama–

(a) the new Grama Panchayat for the new Grama shall comprise of–

(i) the members of the Grama Panchayat of the Grama whose area is increased;

(ii) the Sarpanch and Naib-Sarpanch of the said Grama Panchayat who shall hold Office as such in the new Grama Panchayat; and

(iii) the members of the Grama Panchayat of the Grama whose area is reduced, representing the area by which

it is so reduced;

and the term of Office of the new Grama Panchayat shall be the remainder of the term of the Grama Panchayat referred to in Sub-clause (i);

(b) the members specified in Sub-clause (iii) of Clause (a) shall cease to be members of the Grama Panchayat of the Grama whose area is reduced and if there is a consequential reduc-tion in the total membership in the Grama Panchayat below the minimum required under this Act the Collector may redelimit the words;

(c) upon such redelimitation being made the Sarpanch, Naib-Sarpanch and other Members of the Grama Panchayat shall be deemed to have vacated their Offices and the Grama Panchayat shall be reconstituted in the same manner as if it were a Grama Panchayat to be constituted for the first time; and

(d) when a Grama Panchayat is reconstituted under Clause (c) the Collector, until the date of reconstitution thereof, and the re-constituted Grama Panchayat thereafter, shall be entitled to all assets and shall be subject to all the liabilities of the Grama Panchayat as on the date of redelimitation and on the date of reconstitution, respectively.

(2) Where a new Grama is constituted by the amalgamation of two or more Gramas–

(a) the members of the Grama Panchayats of all such Gramas together shall, notwithstanding the maximum number provided by this Act, constitute the Grama Panchayat for the new Grama and shall elect its Naib-Sarpanch; and

(b) for the purpose of computation of the terms of Office, the members constituting the Grama Panchayat of the new Grama shall be governed by the provisions of Section 17 as if the Grama Panchayat were constituted for the first time :

Provided that the persons holding Office as Sarpanch of the Grama Panchayats so amalgamated shall cease to hold such Office and the Sarpanch of the new Grama Shall be elected in accordance with the provi-sions of Section 10.

(3) Where an area not within a Grama is included within a Grama, the Constitution of the Grama Panchayat shall be as the State Government may by general or special order direct.

(4) If the whole of the area within a Grama is included in a Munici-pality or a Notified Area, the Grama Sasan shall cease and the Grama Panchayat Constituted therefor shall stand abolished.

149. Matters ancillary to abolition or reconstitution of Gramas –(1)(a) Whenever the State Government, decide upon a general re-organisation

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of the Gramas within the State they may for the said purpose by order direct all steps to be taken in accordance with this Act and the rules made thereunder in the matters of redelimitation of Gramas, division thereof into wards and for the Constitution of Grama Panchayats for such Gramas.

(b) The redelimitation, division and Constitution made in pursu-ance of an order under Clause (a) shall not affect the constitu-tion of the existing Grama and Grama Panchayats but shall have effect only on the date following the date of expiry of the term, or, as the case may be, extended term of Office of the existing Grama Panchayats and the new Grama Panchayats shall enter Office on the date earlier mentioned.

(2) The State Government may, as in their opinion the expediency of the circumstances requires, by general or special order in that behalf pro-vide for all or any of the following matters, arising out of or in relation to the abolition or reconstitution of Gramas, namely :

(a) amalgamation, allegation utilisation or apportionment of as-sets and liabilities and procedure for enforcement of rights and obligations in relation thereto;

(b) continuance or termination of or alterations in the conditions of service of Officers and Servants of such local authorities immediately before such abolition or reconstitution and the allocation of such persons to the different bodies thereafter;

(c) reorganisation and constitution of the Committees, their func-tions, or term of Office of the members thereof as were there prior to the abolition or reconstitution; and

(d) any matter necessary, ancillary or incidental to such abolition or reconstitution for which this Act makes no provision or makes insufficient provision and provision in the opinion of the State Government is necessary.

(3) The Provisions of Section 148 and of this section shall have effect notwithstanding anything to the contrary in any of the other provi-sions of this Act or the rules made thereunder.

150. Power to make Rules – (1) The State Government may, after previous publication, make rules not inconsistent with the provisions of this Act to carry out all or any of the purposes thereof and prescribe forms for any matter for which they consider that a form should be provided.

(2) In particular and without prejudice to the generality of the fore-going powers such rules may provide for–

(i) regulating the duties, functions and powers of a Grama Panchayat;

(ii) generally determining relations between Parishads, Samitis and

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Grama Panchayats and for the guidance of Grama Panchayats in all matters connected with the carrying out of the provi-sions of this Act;

(iii) fees payable in respect of applications, including applications for appeal, review or revision that may be filed before different authorities under the provisions of this Act;

(iv) any matter which has to be or may be prescribed under this Act.

(3) All rules made under this Section shall be laid before the Legisla-tive Assembly as soon as possible after they are made for a total period of fourteen days which may be comprised in one or more sessions and shall be subject to such modifications as the Assembly may make during the said period.

151. Power to make bye-laws – (1) Subject to such rules as may be made the Grama Panchayat may with the approval of the State Govern-ment make bye-laws for carrying out any of the purposes for which it is constituted.

(2) The State Government shall have power to make rules regarding the procedure for making of bye-laws, the publication thereof and the date on which they shall come into effect.

152. Issue of order and removal of difficulties – (1) The State Gov-ernment may from time to time with a view to ensure the proper function-ing of the Grama Sasans, Palli Sabhas and Grama Panchayats and the proper implementation of the provisions of this Act and the rules made thereunder issue such administrative orders, directions and instructions as they deem fit not inconsistent with the aforesaid provisions for the guid-ance of the aforesaid bodies.

(2) Without prejudice to the provisions of Sub-section (1), if any doubt or difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion may require, do anything which ap-pears to them necessary for the purpose of removing the doubt or diffi-culty.

153. Repeals – (1) The Orissa Grama Panchayats Act, 1948 (Orissa Act 15 of 1948) (hereinafter referred to as the said Act) is hereby repealed :

Provided that–

(a) repeals or amendments of any other enactment by the said Act shall continue to have force and effect as fully and effec-tively as if such repeals or amendments had been done by virtue of this Act;

(b) Gramas, Grama Sasans, Grama Panchayats, Committees and
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Grama Funds constituted under the said Act shall be deemed to have been constituted under this Act;

(c) members, Sarpanches and Naib-Sarpanches holding Office in a Grama Panchayat immediately before the date of commence-ment of this Act shall continue to hold Office after the said date and shall, subject to the notification, if any, issued under the provision to Sub-Section (2) of Section 17 cease to hold such Office, with effect from the 15th day of August, 1965 subject however that provisions relating to disqualification, resignation, and removal and to supersession and dissolution of the Grama Panchayat shall be as provided in this Act;

(d) all rules and bye-laws and orders made, notifications and No-tices issued, licences and permits granted, taxes, rates, tolls and fees levied, imposed or assessed, contracts entered into, suits and proceedings instituted and all actions taken and things done under the said Act shall be deemed to have been respec-tively made, issued, granted, levied, imposed or assessed en-tered into, instituted, taken or done under this Act and shall continue in force until new provisions are made under the ap-propriate provisions of this Act;

(e) the provisions in respect of the Panchayat Police and Adalti Panchayat contained in Chapters VI and VII of the said Act, and in Schedules II and III thereto shall, subject to the provi-sions of Section 154 continue to apply as if enacted in this Act :

Provided further that elections for filling up a vacancy if any, arising prior to the 15th day of August, 1965, in respect of any Office of a Mem-ber, Sarpanch or Naib-

Sarpanch in a Grama Panchayat and elections de-clared by the State Government to be necessary for constituting a Grama Panchayat and bringing it into Office at any time prior to the said date shall be held in accordance with the provisions of the said Act and the rules made thereunder.

(2) In the Orissa Panchayat Samiti and Zilla Parishad Act, 1950 (Orissa Act 7 of 1950) Section 23 shall be omitted.

(3) In the Orissa Zilla Parishad (Amendment) Act, 1961 (Orissa Act 24 of 1961) Section 49 shall be omitted.

154. Savings in respect of Panchayat Police and Adalti Panchayat –(1) All rules, orders, bye-laws, notices or notifications made or issued un-der the said Act in respect of matters relating to the Panchayat Police and the Adalti Panchayats specified in Clause (e) of the First proviso to Sub-Section (1) of Section 153 shall continue to apply as if made or issued under this Act and may by like instruments made or issued thereunder, be cancelled, altered or modified or as the case may be, made or issued for

the first time for any of the said purposes by the corresponding authority or in case of doubt or difficulty by such authority as the State Government may direct.

(2) Without prejudice to the generality of Sub-section (1) the provi-sions thereof shall in particular apply in respect of rules, orders, bye-laws, notices or notifications in respect of the following matters, relating to the Panchayat Police and the Adalti Panchayat, namely :

(a) constitution, establishment, funds and expenses in relation to the Panchayat Police or Adalti Panchayat;

(b) meetings and conduct of business of Adalti Panchayats proce-dure for the conduct of elections of members thereof and fill-ing up of vacancies therein;

(c) fees including Court-fees leviable by or in relation to any in-strument, proceeding or matters before the Adalti Panchayats;

(d) Procedure for execution of decrees, orders, sentences passed by Adalti Panchayats and for issue, service and execution of processes thereof;

(e) appropriation to the Grama Funds or fees paid to Adalti Panchayats; and

(f) any matter ancillary or incidental to matters covered by the foregoing clauses.

(3) All fines realised in cases tried by the Adalti Panchayats shall be credited to and all expenses thereof and of the Panchayats Police be charged to the Grama Funds; provided that in case of the Adalti Panchayat the expenses shall be charged to the Grama Fund of each Grama Sasan within the circle in equal shares.

(4) All members of the Adalti Panchayat shall be deemed to be Public Servants within the meaning of the Indian Penal Code (45 of 1860); the provisions of the Judicial Officers' Protection Act, 1850 (18 of 1850) shall apply to them; and they shall be subject to the provisions relating to dis-qualification as provided in this Act in respect of the members of a Grama Panchayat.

(5) The President of the Adalti Panchayat may resign his Office by writing under his hand addressed to the Collector, who within fifteen days of the receipt thereof shall nominate one of the Panchayats to carry on the duties of the President till a new President is elected and upon such nomi-nation being made the President shall be deemed to have vacated Office.

(6) Members of the Orissa State Legislative Assembly and such other Officers as may be nominated by the State Government shall be visitors, ex officio, of an Adalti Panchayat.

(7) Every Police Officer shall assist the members and servants of the Adalti Panchayats in exercise of their lawful authority.

(8) [1][Civil Judge (Junior Division)] with reference to an Adalti Panchayat shall mean the [1][Civil Judge (Junior Division)] having local juris-diction in the area in respect of which such Adalti Panchayat is consti-tuted.

SCHEDULE

Tax on vehicles

[See Section 83 (b)]

	Tax per half year Rs. P.
For every four-wheeled carriage drawn by horse	9.00
For every two-wheeled vehicle including a cart, Jhatka and Tanga but excluding a bicycle	4.00
For every bicycle	1.50
For every rickshaw	1.50
For every cycle-rickshaw	3.00

*Repeal and Savings – (1) The Orissa Grama Panchayats (Second Amendment) Ordinance, No. 4 of 1993 is hereby repeated,

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

**Repeal and Savings – (1) The Orissa Grama Panchayats (Amend-ment) Ordinance, 1994 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

***[Saving – The amendments made by this Act shall not apply to the law in force in the Scheduled Areas referred to in Clause (7) of Article 244 of the Constitution.

(1) Repeal and Savings – The Orissa Grama Panchayats (Amend-ment) Ordinance, 1995, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.