

About the Book

The government of Maharashtra had created Reserve Funds on the basis of taxes paid by the citizens to address important issues of public interest such as education, health and nutrition for expectant mothers and young children, connectivity by means of roads and bridges and electrification in rural areas. Simultaneously, a separate reserved fund was created for the EGS in which, professional tax and some other allied taxes were deposited in order to provide employment security to the unskilled, unorganized labor. The government was also required to deposit matching contribution in the EGS Fund.

However, all these provisions stand cancelled by 'Act no. V of 2008'. The huge balances in the Reserve Funds were merged with the Consolidated Fund of the state to be utilised by the government as it desires. Nevertheless, we will be required to pay professional and other taxes as before, but not for the purpose for which, they were levied.

The EGS Fund was a symbol of progressive identity of not just EGS, but also Maharashtra state at a global level, because it was a commitment of the 'haves' for the interests of 'have nots' and the guarantee had a legal base. Now EGS has been transformed into MREGS (which is a merger of EGS with NREGS) and as per Act no. V, Government is to deposit in it only Rs.2,000 crore per year, irrespective of the collection from the professional and allied taxes. This is a fundamental change having far reaching implications as none of the objectives for which the Reserved Funds were created is achieved. What is most disturbing is that the decision was taken without consulting the taxpayers and has been vigorously defended - a decision, which is against public interests.

It is against this background that we felt the need to study Act V and the process involved in arriving at it, along with arguments made in its favour. Our scrutiny reveals that three major factors responsible for this decision are: (i) reduced influence of civil society movement and its repression by the government machinery, (ii) lack of specific provisions for: a. participation of civil society in the process of policy-making, b. absence of mechanisms to make the government machinery accountable to people, and c. weak mechanisms for monitoring and grievance redressal in the EGS, and (iii) pressure on the state government to execute the Financial Responsibility and Budgetary Management Act.

While the first and third factors are common in all the states, the second factor, i.e. inherent lacuna in the EGS is also replicated in MREGS as well as NREGS, because both are based on the EGS. We, therefore, thought it appropriate to share the insights we have gained from this scrutiny with CSOs from other states, especially those working on NREGS, so that history does not repeat.

Restructuring of the EGS Fund



Scrutiny and Lessons in the Context of NREGS



Resources and Livelihoods Group,
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Resources and Livelihoods Group



Initiatives in Health, Energy and Learning and Parenthood

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Preface

In the budget session of 2008, the Government of Maharashtra made a highly critical decision regarding the Reserve Fund, which comprised of six funds, viz., Employment Guarantee Fund, Health and Nutrition Fund, Scarcity Relief Fund, Roads and Bridges Fund, Electricity Fund, and Education and Employment Guarantee (Cess) Fund. Money for these funds came from different types of taxes levied on the citizens. EGS Fund was unique among all these funds, because, it received annual contributions from seven taxes viz., professional tax, tax on non-residential urban constructions, additional tax on sales tax, surcharge on land revenue, special tax on irrigated lands, additional tax on four wheelers, and education and employment guarantee cess. In addition, the state government was required to deposit matching contribution in it. So these funds were really 'public funds'.

For various reasons, these funds were not fully utilized for a long period. As a result, when Act no. V was passed, there was a huge balance in all these funds, totalling to Rs. twenty-two thousand, eight hundred and sixty-seven point twenty crore point twenty-two lakh. Act no. V has merged this balance in the Consolidated Fund of the state, which means that the government can now spend it as per its own wish. It has also freed the

government from the responsibility of depositing matching contribution. The only responsibility that remains is, making available a trival amount of Rs. 2,000 crore in the MREGS Fund at the beginning of every year. (From 2008, EGS has been replaced by Maharashtra Rural Employment Guarantee Scheme, i.e., MREGS, which is a merger of the provisions from the EGS with some of the provisions from the NREGS). Establishment of the EGS Fund was a collective decision made in 1977, with wide participation of social and political activists, academicians and most important, industrial workers; but the Government did not even have the courtsey of, leave aside consulting, atleast informing the taxpayers about this change.

Act no. V can be described as a final blow to the EGS, because it has robbed the EGS of its unique feature viz., financial security. Our experience in EGS reveals that 'Act no. V' cannot be treated as a single isolated policy-level decision. In fact, it must be seen as a part of a chain of policy decisions, which aimed at removing all pro-poor provisions in the Act and were made in an arbitrary and non-transparent manner. Looking at the hold of vested interests on the policy making as well as implementation of EGS, there is every possibility that after a few years, the government of Maharashtra may propose another Bill in the state legislature, in order to do away the burden of contributing Rs. 2,000 crore, and instead run the scheme just for 100 days and that too solely on the basis of funds provided by the Central Government.

Taking into account the far-reaching implications of Act no. V, we felt the need to study the Act in detail, and examine the major arguments put forward by the Government in its defense. The results of this study are shared in this book in four chapters. The first chapter gives the provisions in the Act, and the process involved in getting the Act passed along with our observations on both, the Act, and the process. The next two chapters present the analysis of the Act from socio-political as well as financial angle. This analysis is based on the scrutiny of arguments by the Planning Department and Finance Department, which played a key role in the process of evolving and passing Act no. V.

The main argument of the Planning Department was, *'EGS often faces scarcity of laborers, which indicates that there is a very little demand for work by laborers'*. We have scrutinized in chapter two such and other arguments in the light of performance audit of EGS for the period from 1993 to 1999, and 2002 to 2007, by the Comptroller and Auditor General of India (CAG), experiences of laborers about the implementation of EGS, and review of key policy-level decisions during the three decades of its operation.

The main argument of the Finance Department was, *'Reserve Funds remained unutilized for a long period, and yet it was mandatory for the state government to annually contribute certain amount in these funds. It was further argued that removal of this obligation would reduce its revenue expenditure and in turn increase revenue income.'* The validity of this argument is examined on the basis of analysis of Kerala state's experience with Financial Responsibility and Budgetary

Management Act (FRBM), and analysis of the CAG reports on the 'revenue receipts' of the state during 2002 - 2006. The results of this exercise are given in chapter three.

The last chapter summarizes the key lessons drawn and insights we got from this entire exercise, which will be particularly useful in the context of NREGS.

One may rightly ask, what's the use of discussing an Act, which has been already passed? It is true that there is little we can do to change the Act, or even minimize its impact. However, decisions like this have a historic value. The analysis of such decisions and the process involved in arriving at them helps us to draw lessons that are relevant for the present, and at the same time, they offer insights that are useful for the future.

Repression of the civil society movement and its reduced influence on the policy-making by the government is a phenomenon common in all the states and this is exactly the reason of the present state of EGS. That is why, the lessons drawn from the analysis of Act no. V assume special significance not only for the CSOs in Maharashtra, but also for CSOs from other states.

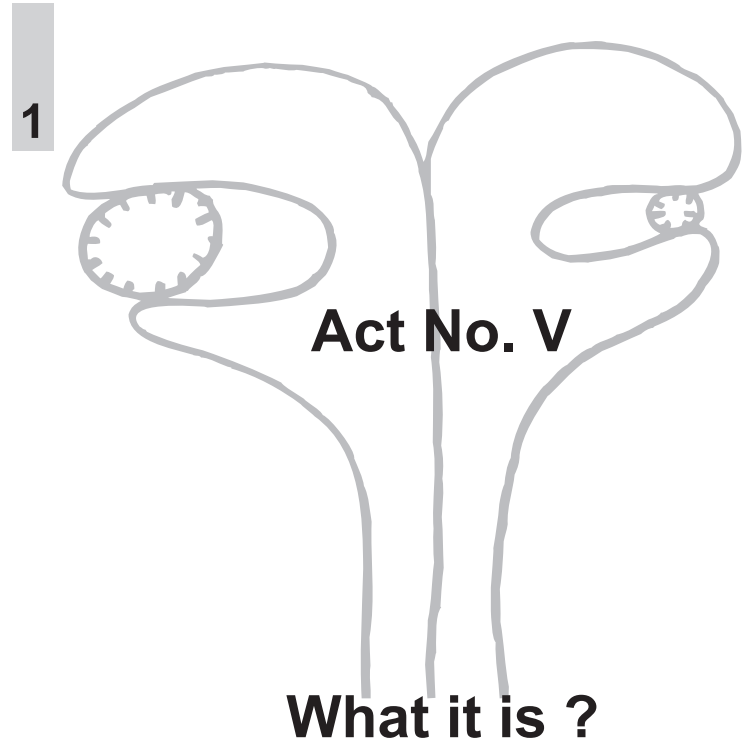
In case of EGS, it was also observed that three lacuna were primarily responsible for the reduced influence of civil society movements on the process of policy-making: i) lack of concrete provisions for participation of the non-government stakeholders in the process of policy-making, ii) weak mechanisms for monitoring and grievance redressal, and iii) absence of provisions for making the government answerable for its

decisions and actions. Experience from various states confirms that these lacunae have been replicated in the NREGS as well.

In addition, the guarantee provided by NREGS (100 days to a family) is certainly weaker than the 'throughout the year' guarantee provided by EGS and MREGS. It does not either have the sound financial base, which EGS enjoyed for a long period. Hence, possibility of further weakening of this guarantee cannot be ruled out. That is why lessons from the current policy-decision regarding the EGS and the other Reserve Funds assume significance for CSOs from other states.

It is clear that the pressure of executing Fiscal Responsibility and Budgetary Management Act (FRBM) was one of the key factors pressurizing the Maharashtra Government to cut down the expenditure for public interest. This pressure is also common to all the states, and hence, the current decision regarding the Reserve Funds in Maharashtra holds valuable lessons for groups and individuals working on issues related to rights and justice for the poor.

Finally, this book aims at reaching out to those who believe in democracy, and who are concerned about the broader well-being of society. It is our responsibility to register our protest against Acts like *Act V*, irrespective of which state has passed it. We should not forget that history repeats itself.



Need to Know About It

The National Rural Employment Guarantee Scheme (NREGS) today is perceived as a powerful tool in the hands of Civil Society Organizations (CSOs). The Employment Guarantee Scheme (EGS) of the state of Maharashtra, on the basis of which the NREGS was framed, was also a powerful tool in the hands CSOs in the decade of 1980s. However policy changes made from time to time weakened this once powerful tool. The latest policy development, i.e., *Act no. V of 2008* passed by the Government of Maharashtra comes as a fatal blow to the

EGS. This is because *Act no. V of 2008* has merged the so far reserved Fund of EGS in the Consolidated Fund of the state, and thereby robbed the EGS of its financial sustainability.

Before this Act was passed, the EGS had a separate and reserved fund, which comprised of professional tax, and certain other taxes levied specially for the EGS. In addition, the state government was required to contribute every year, an amount equal to the annual collection of these taxes. (This amount was known as 'matching contribution' of the state.)

One may rightly ask, what is the relevance of discussing an Act, which has been already passed? It is true that once a law is passed, we cannot do much about it. At the same time, we earnestly feel that the current policy development in the EGS has important lessons to offer to all of us, as citizens of a democratic country. These lessons will be relevant in the context of NREGS also. Particularly because, the present state of EGS is the result of increasing hold of vested interests on the process of policy making coupled by repression of the once vibrant social, political movement, which is a common phenomenon in almost all the NREGS states. The guarantee offered by the NREGS is already weaker than the EGS (just 100 days to a family), and it does not have a sound financial base, which EGS had for last three decades. Hence, the possibility of further weakening of NREGS cannot be ruled out. It would be therefore essential to learn from the experience of Maharashtra and take timely actions to protect and nurture the pro-poor core of NREGS.

It is with this standpoint, that we are presenting in this chapter the key details about Act no. V of 2008, which will help us analyze its implications.

The Decision

In the budget session of March 2008, the state government of Maharashtra passed an Act titled as: *The Bombay Motor Vehicles Tax, the Motor Vehicles (Taxation of Passengers), Maharashtra Education and Employment Guarantee (Cess), the Tax on Sale of Electricity, the State Tax on Professions, Trades, Calling and Employment Act, the Tax Acts (Amendment), the Employment Guarantee Act (Amendment), and Bombay Scarcity Relief Fund (Repeal) Act, 2008 (Mah. V of 2008)*

A closer look at this title shows that there are eight laws, which have been amended by this Act. As the titles of these laws suggest, they pertain to taxes collected under these heads. We have compiled a table (table no.1) showing amendments made in these eight laws; the column titled 'Before Act No.V' gives the original clause in the respective law, which has been changed, while the column titled 'After Act No.V' describes the amendments that have been made in those clauses. (A copy of the Act has been enclosed in Annex I)

Table No. 1

No.	The Name of the Law	Before Act No. V	After Act No. V
1	Bombay Motor Vehicles Act, 1958	<ul style="list-style-type: none"> The amount of tax collected through the sale of four wheelers should be deposited annually in the two reserve funds namely, 'Roads and Bridges' and 'Employment Guarantee.' These funds should be kept reserved for construction of roads in the rural areas, their repairs and maintenance. (Clause no. 11 - sub sections 1, 4, 5 and explanation 	<ul style="list-style-type: none"> Clause no. 11: 1, 4, 5 and explanation referred to in the first column have been omitted. The implication of this omission is that it is no more binding for the government of Maharashtra to keep the taxes collected on sale of motor vehicles reserved for any specific purpose.
2	Bombay Motor Vehicles (Taxation of Passengers) Act, 1958	<ul style="list-style-type: none"> Taxes levied on transport of passengers in four wheelers should be annually deposited in the 'Health and Nutrition Fund', to be utilized only for programs undertaken by the state government for providing nutrition to expectant mothers and children <p style="text-align: center;">(Section 5 A)</p>	<ul style="list-style-type: none"> Section 5-A has been omitted from this law. This omission implies that the taxes collected from vehicles transporting passengers will be no more deposited in the 'Health and Nutrition Fund'

No.	The Name of the Law	Before Act No. V	After Act No. V
3	Maharashtra Education and Employment Guarantee (Cess) Act, 1962	<ul style="list-style-type: none"> Tax levied on non-residential complexes and huge buildings should be deposited in the Education Cess and (from 1978) in the Education and Employment Guarantee Cess. This amount should be utilized solely for the purpose of spread of quality education and execution of employment guarantee scheme <p style="text-align: center;">(Section 6: 1-3), section 26: 2-A</p>	<ul style="list-style-type: none"> Section 6: 1-3, and section 26: 2-A have been deleted to the effect that the tax levied on non-residential complexes and huge buildings will no more be deposited in the 'Education and Employment Guarantee Fund'
4	Maharashtra Tax on Sale of Electricity Act, 1963	<ul style="list-style-type: none"> Tax levied on the sale of electricity should be transferred in the 'State Electricity Fund', which should be used strictly for the purpose of enhancing electricity supply in the state and electrification of rural areas. <p style="text-align: center;">(Section 5: 1-b,2,A)</p>	<ul style="list-style-type: none"> Section 5: 1-b, 2, A have been deleted, and the words '<i>transfer of the proceeds of the tax to Electricity Fund</i>', have been replaced by '<i>utilization of the proceeds of the tax</i>'. As a result, it will be no more binding to keep the tax collected from sale of electricity reserved.

No.	The Name of the Law	Before Act No. V	After Act No. V
5	Maharashtra State Tax on Professions, Trades, Callings and Employments, 1975	<ul style="list-style-type: none"> • Proceeds of tax levied on professions, trades and callings should be annually deposited in the Employment Guarantee Fund (Section 30) • The preamble of this Act states that the purpose of depositing the proceeds of this tax into the EGS funds is 'raising additional resources needed for implementation of the EGS, and to provide for establishment of the EGS Fund'. 	<ul style="list-style-type: none"> • Provision in section 30 has been changed as follows: <i>The amount deposited in the EGS funds from the proceeds of the tax shall not be less than Rs. 2000/- crores, at the beginning of every year.</i> • The reference (mentioned in the adjacent column) to the EGS and EGS Fund in the preamble of this Act has been deleted. • This amendment implies that the government is free from the obligation to utilize the professional tax only for EGS.
6	Maharashtra Tax (Amendment) Act 1975	<p>The amount to be deposited in the EGS Fund from the annual collection of profession tax, should be kept reserved for the same purpose. It would be mandatory for the state government to deposit an amount equivalent to the proceeds of professional tax, i.e. 'matching contribution' annually in the EGS Fund</p> <p>(Section 4)</p>	<ul style="list-style-type: none"> • Section 4 of this law has also been deleted as per the amendment made by Act No. 5. • The implication of this amendment is that the government of Maharashtra is no more required to make the 'matching contribution; to the EGS Fund.

No.	The Name of the Law	Before Act No. V	After Act No. V
7	Employment Guarantee Act 1978	<p>The following amounts will become part of the EGS Fund.</p> <ul style="list-style-type: none"> • Subsidies given by state and central government and local authorities, • Amounts received from any individual or institution, and • Any amount received from central government under clause 28 <p>(Section 12:3)</p>	<ul style="list-style-type: none"> • Section 12 (3: a) has been replaced by the following clause: <i>Following amount shall become part of the EGS Fund: Amounts transferred as per the requisite clause in the Professional Tax Act, 195</i> • Following clause has been added after 3 : a (section 12): <i>The state government shall allocate requisite funds for effective allocation of the fund.</i> • This amendment implies that the state government will not be responsible for making available any amount in the EGS fund other than Rs. 2000 crore (at the beginning of every year) as prescribed by the current amendment.
8	Bombay State Scarcity Relief Fund Act, 1958	<ul style="list-style-type: none"> • It is expected that this fund would be made available for employment generation and food supply in times of famine and scarcity 	<ul style="list-style-type: none"> • This Act itself is annulled. The implication is that now onwards there will be no separate provision for providing relief during famines. • Since there will no such fund, government of Maharashtra will be free to utilize the accumulated balance in this fund for any purpose.

The table reveals that only those clauses, which are beneficial to the poor have been omitted. Thus provisions for the five Reserve Funds viz., EGS, Roads and Bridges, Scarcity Relief, Health and Nutrition, and Electricity which aimed at providing support to the disadvantaged population have been cancelled. Not only the reserve funds have been cancelled, but section 15 of the Act also provides that *the securities including cash balances in these funds shall be deemed to be transferred to and to form part of the 'Consolidated Fund' of the state.*

The table below (table no. 2) gives the balances in various funds, which will now become part of the consolidated fund of the state.

Table No.2

Sr. No.	Name of the Fund	Balance on 31st March 2008 (Rs. in Crore)
1.	EGS Fund	11,569.09
2.	State Roads and Bridges Fund	10,027.30
3.	State Electricity Fund	1,224.39
4.	Education Cess Fund	33.27
5.	Scarcity Relief Fund	12.47
6.	Health and Nutrition Fund	0.7

(Source: Information given by the finance department of Maharashtra, in response to an application filed under Right to Information)

It is evident from this table that the EGS Fund is the largest in size among the six funds. Therefore no wonder, it is the real target of Act no.V. It is certainly not a mere

coincidence that most of the omitted or 'changed' provisions are in respect of the EGS Fund.

How come such a huge balance got accumulated in the EGS Fund? The answer is easy. So far, the most unique feature of the EGS Fund was that the unutilized amount used to be carried forward in the next year; it did not lapse, and that is why, it went on increasing with annual contributions from the taxpayers and the government. It was an assurance to the laborers that the scheme would not at any time suffer from want of funds. Act no. V has taken away this assurance from the laborers who are already devoid of any security.

The same applies to the other reserve funds, which have been disbanded by Act no. V. As the titles of these Reserve Funds indicate, they were expected to serve the purpose of reducing the gap between rural and urban areas, by providing security to the disadvantaged sections in the society. Merging the balances in these Reserve Funds into the Consolidated Fund of the state is almost like spending off one's savings for routine domestic expenses, instead of keeping them reserved for special purposes, which cannot be met without special cushion. The government in fact needed to give an explanation about the unutilized balance in all the six abandoned funds, when the aims for which they had been established are far from being achieved; but till this date, it has not bothered to do so, and unfortunately even the opposition parties have not raised any question about it.

The government may claim that the unique provisions have not been altogether cancelled, especially in case of EGS, though there have been some alterations.

The Act also says that 'requisite funds shall be made available for effective execution of the funds'. However a closer look at the wording of the concerned clause unveils its real implications.

According to the Act, the government is required to ensure that the availability of funds for EGS is not less than Rs. 2,000 crore, *at the beginning of every year*. These words imply, that suppose in a year, Rs.1,000 crore are spent for the execution of scheme, the balance amount which will be carried forward in the next year will be Rs.1,000 crore, and therefore, in order to ensure the availability of Rs. 2,000 crore at the beginning of that year, the government will be required to deposit only Rs. 1,000 crore! Suppose in a year only Rs. 500 crores are spent, which is quite possible looking at the apathy and resistance of government machinery, then the government will be required to deposit only Rs.500 crore at the beginning of the next year.

Though the Act makes it binding for the state to ensure availability of 'requisite' funds, no clarification is given on what is 'requisite', and it is left to the government to decide. Nor does the Act puts on government the liability to assess from time to time whether the availability of funds is sufficient for effective execution. In a nutshell, the Act has left sufficient space for the government to 'legally' escape its responsibility.

How did Government of Maharashtra 'managed' to take such a critical decision? What was the process involved?

The Process

Being a critical issue, merger of the reserve funds was in discussion for eight to ten months. This discussion was however limited to the inner circle of senior government officials and ministers. More specifically, it was limited to the cabinet level discussions between the Finance Minister and the EGS Minister, and their secretariat.

The News Item

The public came to know about the decision only through a small news published in Maharashtra Times (a daily newspaper in Marathi language) It stated that the cabinet ministers passed in a meeting the decision to dismantle the Reserve Funds including the EGS Funds. The news item also gave the rationale given by the finance minister for abandoning the Reserve Funds: the reserve funds, especially the EGS Funds remain unutilized, which reflects negatively in the revenue expenditure of the state.

Bill No. 41 & the 19-Member Committee

The Resources and Livelihoods Group of Prayas confirmed with the help of RTI, that the news item was valid. Eventually the finance department also tabled a Bill (Bill no. 41) in the monsoon session of the state legislature to propose merger of the Reserve Funds into the consolidated fund of the state. In the meanwhile, ReLi group had sent appeals to the members of the state legislature, urging them to put a halt on the process of making such disputable decision. As a result, one of the members of the lower house of the assembly (from the

Marxist Communist Party of India) raised a starred question about the proposed merger. In response to this question, a committee was appointed to study Bill no.41 and make recommendations. The committee comprised of 19 members from both the houses of the assembly, and paradoxically, it was chaired by the Finance Minister, Mr. Jayant Patil, who had proposed Bill no. 41! This process was also not made public. We had to trace it with the help of RTI.

Nothing could be traced about the functioning of this committee till the winter session of the assembly. There was no discussion on Bill no.41 in this session, though a casual discussion about utilizing the EGS funds for offering succor to the debt-ridden farmers in Vidarbha did take place in the assembly.

Ordinance No. II

Nothing was heard about the 19-member committee's proceedings almost till the next session of the state legislature, i.e. budget session. The only piece of information we could acquire was that the committee met several times (13 meetings) to discuss the matter during this period. It was just a few days before the commencement of the Budget Session of the state that the issue of 'merger of Reserve and EGS Funds' came into light. The Budget Session was scheduled from 10th March 2008.

In the first week of February, the finance minister organized two meetings with non-party political organizations in the state. In both these meetings he assured the participants that EGS would not suffer from want of funds, though the balance fund would be utilized

for compensating revenue deficit. During these meetings the participants pointed out that the reason behind low demand for EGS among the laborers was its ineffective implementation. The Finance Minister suggested the participants to discuss this issue with the EGS Minister, and assured that he himself will see to it that the EGS Minister organized an interaction for this purpose.

Against this backdrop, it was amazing to read in the newspapers within a fortnight about the dispute between the EGS Minister (Harshwardhan Patil) and the Finance Minister on the issue of merger of the EGS Fund into general budget of the state. Harshwardhan Patil's strong objection to such merger got high coverage in the media. However a compromise was made in the next two three days, to keep an annual balance of Rs. 2,000 crore reserved for EGS. The Finance Ministry immediately issued an Ordinance (ordinance no. II), and transferred the balance in the Reserve Funds into the Consolidated Fund of the state, in order to show 'increase' in the revenue income of the state.

Report of the 19-Member Committee

In the meanwhile, the 19-member committee, headed by the Finance Minister (which was expected to give recommendations about Bill no.41) submitted its report. This report contained nothing but the Finance Minister's statement of conclusion (which is half page), and dissent notes of two members. The Finance Minister's statement consisted of just two points: (i) the committee had invited suggestions on Bill no. 41 from all the members of the state legislature; however not a single member gave his/her suggestions within the given time

limit of one month. (2) the committee had 13 meetings, yet there was no consensus.

The two members (Ganpatrao Deshmukh, and Dattaji Nalawade) who submitted their dissent notes clearly condemned the government for issuing 'Ordinance no. II'. Both of them stated that merging the EGS Fund in general budget and restricting the availability of funds to Rs. 2,000 crore was completely in contrast with the basic purpose of EGS. Both of them have also criticized the replacement of original clause in the EGS Act (please refer to table no. 1) by the clause which states that government shall allocate *requisite* funds for effective execution of EGS, as a shallow promise.

The dissent note by Ganpatrao Deshmukh is an elaborate one. (He himself has worked as EGS minister for a long period, and as a leader of laborer union, he played an active role in the formation of the EGS law in 1970s.) It quotes some important historical references in defense of his argument. It would be worth to quote two major references quoted in his note. *The first reference* is to the history of genesis of EGS. It states that the decision to reserve the professional tax and some other allied taxes along with the government's matching contribution was a collective decision. Even the state legislature had at that time given a public assurance that the taxes collected will be kept reserved for EGS. Hence, the decision to delink professional tax and other taxes from the EGS fund is against the government's own promise. *The second reference* is to the High Court's judgement on the public interest litigation filed by a senior economist Prof. H.M.Desarda. This litigation objected that the state government had not paid the matching contribution

consecutively for three years. As per the High Court's directive, Government of Maharashtra submitted a written guarantee in the Court, which stated that the Government would deposit an annual contribution of Rs.350 crore in the EGS Fund for a period of 10 years between 2001 to 2010. However, the committee's report does not make any comments with respect to these historical references.

Protest by the Civil Society

Ordinance no. II received broad coverage from the media. Many activist organisations in the state including the ReLi Group voiced serious concerns about this ordinance, especially the restructuring of the EGS fund. A pressure group of tax-paying citizens from Chandrapur launched a signature campaign with tax-paying citizens and sent their dissent to the Governor of Maharashtra. A demonstration was also held on Azad Maidan in Mumbai on 11th March, i.e. on the second day of the budget session, by many grassroots activist forums and organisations. The demand was to put a halt on the decision to restructure the EGS fund, and instead concentrate on the effective execution of EGS and effective utilisation of EGS funds in turn. The EGS Minister took cognisance of this demonstration and invited the protestants to discuss the issue on 24th March.

ACtNo. V of 2008

Usually an ordinance is issued in a crisis or emergency; it is valid only for a period of six months. Hence, immediately after issuing Ordinance no. II, the Finance Minister started pressing hard for the formulation and sanction of a new Bill, which would be in

line with the content of ordinance no. II. Accordingly, a new bill was tabled in the Assembly. The members of the opposition party strongly raised their protest. In fact, a lot of chaos was created in the house on this issue. It was in this chaotic atmosphere, that the Financ Minister 'managed' to get the Bill sanctioned from the chairperson of the house, on 14th March. The process was easier in the Upper House of the Assembly. The Bill got passed on 17th March, when only few members were present in the House. The Ordinance thus got transformed into 'Act No.V of 2008'.

What Does this Process Signify?

- The process was a completely undemocratic and non-transparent process. Merger of the Reserve Funds into the Consolidated Fund was a critical decision relating to public money, and yet, the government did not bother to initiate any process of public consultation before this decision was finalized.
- Restructuring of the EGS Fund was a more grave decision. As mentioned by Ganpatrao Deshmukh in his dissent note, the decision to establish the EGS Fund in 1977 was a collective decision. Wide range of stakeholders, from almost all political parties, activists, academicians and trade unions agreed to pay professional tax, which was so far levied upon first and second class government officers. The state government (at that time also it was Congress) agreed to pay the matching contribution, and publicly assured the trade unions that professional tax collected from them will be used for the execution of EGS only. Against this background, is it wrong to

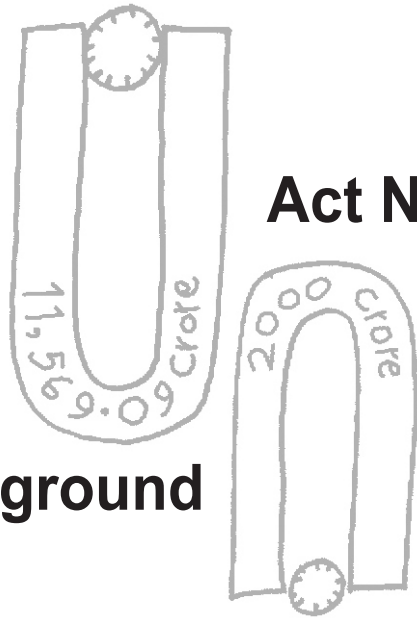
expect that the government of Maharashtra should have consulted the trade unions and taxpayers before making any fundamental change regarding the EGS Fund?

Was there any ground for the government to take a decision, which was clearly against wider public interest? The two key decision-makers, viz., EGS Department at the State level, and the Finance Department have of course defended their decision. They have put forth certain arguments in defence of the decision. It would be worthwhile to understand and further scrutinize these arguments in the light of some ground realities. The arguments made by the EGS department along with their scrutiny are discussed in detail in the next chapter.



Act No. V

Background



Arguments by Planning Department

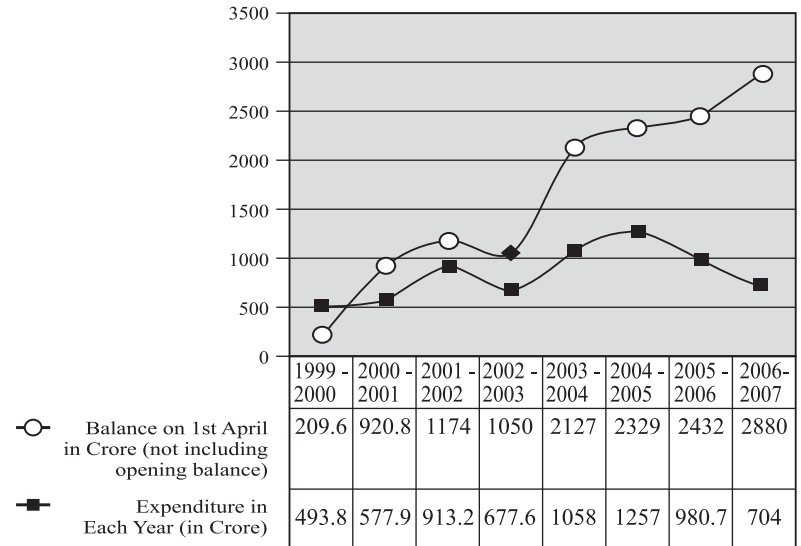
In Maharashtra, Planning Department is the overall incharge of the scheme. It is responsible for key functions in the EGS viz., policy making, planning, administration, provision of finance, monitoring and evaluation. There is also a separate Minister for EGS, which the highest designation in the organisational hierarchy of the EGS. (At present, Mr. Harshawardhan Patil is the EGS Minister). Therefore it goes without saying that the EGS Minister and the Planning Department were closely involved in the decision to restructure the EGS Fund. As mentioned earlier, the EGS Minister had strongly opposed Ordinance no. II. What is his response to the 'Act no. V,' or more specifically, to the 'Restructuring of the EGS Fund?

Mr. Harshavardhan Patil has expressed satisfaction that at least Rs. 2000 crore could be kept reserved for the EGS, else the EGS funds would have been completely terminated under the previously proposed Bill no. 41. The EGS Minister is of the opinion that the annual expenditure on EGS has never crossed a boundry of Rs. 1200 crore, during the last five years, and therefore, the provision of Rs. 2000 crore is certainly more than what is required.

A closer look at the receipts and expenses from the EGS funds from 1999-2000 confirms the observation by the EGS Minister. It is also observed that the annual credits in the EGS funds have never been completely utilized, and as a result, the surplus in the EGS funds has been consistently on the rise. The statistics and graph (no.1), which are presented below illustrate this scenario.

Graph 1

Inverse Proportion of Income with Expenditure



Balance Sheet of EGS: 1999-2000 to 2006-2007

Year	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007
Opening Balance on 1st April	3740.53	4824.49	5167.36	5427.89	5800.38	6869.34	7941.77	9392.66
Receipts from Professional Tax	69.47	790.16	1133.6	1015.53	1033.46	1064.95	1086.28	1277.89
Receipts for Allied Taxes	35.31	30.59	40.17	34.52	30.06	99.73	129.5	162.33
Total Receipts from Taxes	104.78	920.75	1173.77	1050.05	1063.51	1164.68	1215.78	1440.22
Matching Contribution from the State	104.78	0	0	0	1063.51	1164.68	1215.78	1440.22
Total Receipts (not including opening Balance)	209.56	920.75	1173.77	1050.05	2127.03	2329.36	2431.56	2880.44
Expenditure in Respective Year	493.75	577.88	913.24	677.56	1058.07	1256.93	980.67	704.01
Balance on 31st March	3456.34	342.87	5427.89	5800.38	6869.34	7941.77	9392.66	11569.09

Source: Information Accessed from Finance Department of Maharashtra under Right to Information

(Figures in Crore)

It is true that there is a huge balance in the EGS Fund, to the extent of Rs. 11,569.09 crore. CSOs in Maharashtra interpret this as inefficient use of funds, while the planning department has taken this to mean that EGS does not need this much provision. More specifically, it has put forth the *following three arguments*:

1. After several years of operation, there are hardly any works, which can now be taken up under the EGS.
2. EGS often faces scarcity of laborers, as they prefer to work under contractors, rather than work on EGS. Many EGS works are pending incomplete for years together, just due to unavailability of local laborers.
3. Funds remain unutilized for want of adequate demand from the laborers. So why not utilize them to compensate the revenue deficit of the state?

These arguments do appear vindicated. Even the statistics given in the table support the logic behind these arguments. Then what is so objectionable in the restructuring of the EGS funds?

A close look at the recent CAG (Comptroller and Auditor General of India) report gives the answer.

Balance Sheet of EGS by CAG

CAG, which is an authentic mechanism at the national level, is known for its impartial and candid audit reports. It is also known that the reports usually focus on the financial inefficiencies involved in the concerned matter. The observations, the objections emanating from this scrutiny, along with necessary action to be taken, are submitted to the state government and the concerned

department. It is expected that the government and the concerned department should comply with this submission within a period of one month, and also submit an 'Action Taken Report', within a period of six months. CAG follows up with the concerned departments by sending them reminder letters during this period. After this response, the concerned departments are followed up for six months for the necessary action to be taken, and then the verification report is published on the website.

CAG has recently prepared a report based on the performance audit of EGS for a span of five years, between 2002 and July 2007. The statistics and the observations in this report are based on test-check of various records in eight districts. Five out of these eight districts are MREGS districts, namely Ahmednagar, Amaravati, Aurangabad, Nandurbar, and Yavatmal. (Maharashtra Rural Employment Guarantee Scheme, which is an outcome of merger of the original EGS with NREGS, was launched in these districts since December 2006.) The remaining three districts are EGS districts namely, Nasik, Sangli, Solapur. (MREGS was not launched in these districts at the time of audit.)

The report was submitted to the planning department in July 2007. The planning department however did not respond to this report during the stipulated one-month's period, i.e. by August 2007. It is after a follow-up of six months (with the concerned departments) that the CAG has made this report available on its official website (www.cag.gov.in).

Objections are often raised from many quarters of the voluntary sector about the mis-management,

diversion and misappropriation of the EGS Fund. Usually, such objections are easily brushed aside terming them as baseless or as extreme opinions. However, the strong statistical evidence as well as other critical observations about the performance of EGS during a period of consecutive five years (2002 - 2007) by an impartial organ like CAG indisputably demonstrate that these objections do hold ground. Let's scrutinize the Planning Department's arguments against the select statistics and observations from this report, which are presented below:

A) Under Utilization of Funds

As can be seen from the following, the CAG reiterates the planning department's observation about the under-utilization of the EGS Fund at all levels, viz., village, district and state level:

Gram Panchayat: As per the stipulation in the MREGS, at least 50% of the funds allocated are expected to be routed through the Gram Panchayats (GPs: the village level Panchayat Raj Institution: PRI). In practice, it was observed that the five MREGS districts covered under the audit, the GPs were able to spend just Rs. 97 lakh out of the total allocation of Rs. 50.58 crore. As a consequence, a huge sum of Rs. 49.61 crore, i.e. more than 90% of the total allocation of funds, remained unutilized during 2006-2007.

District level: The CAG report states that the same scenario (underutilization of the allocated funds) is observed in all the eight districts.

The report also points out that there is a huge gap between the funds demanded and the funds sanctioned at the district level, as can be seen from the following figures:

Demanded funds	Rs. 3971.20 crore
Allocated funds	Rs. 636.32 crore (21%)
Spent funds	Rs. 596.62 crore (19%)

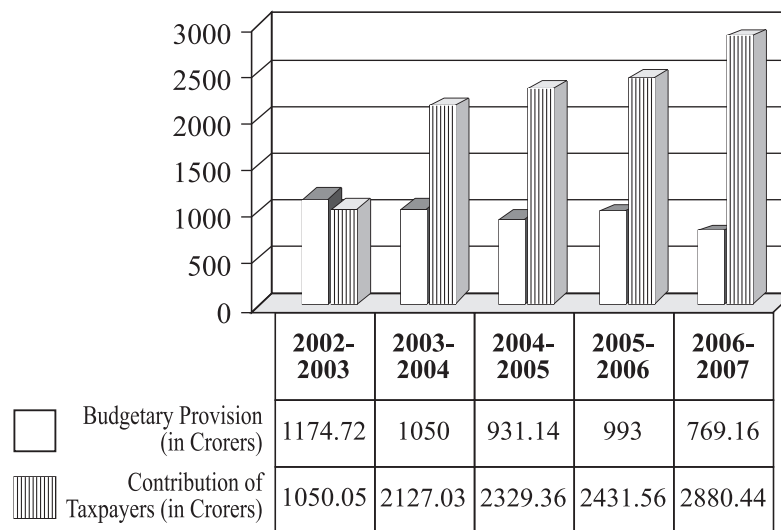
State level: The report further states that the underutilization of the EGS funds is not restricted to the eight districts alone, it is in fact a representative phenomenon in the entire state. To illustrate this conclusion, the report points out the gap between the constantly rising proportion of revenue receipts from the taxpayers and the shrinking proportion of budgetary provision, as well as expense on the EGS.

The report specially draws our attention towards the fact that the gross underutilization of the EGS fund (which draws mainly from the annual collection of taxes) results in an undue burden on the taxpayers. The report gives apt statistics in this respect, which is presented in the form of a bar diagram (Graph 2)

It is evident that the CAG report differs with the planning department on the issue of under-utilization of the funds.

Graph 2

Rising Contribution of Taxpayers and Falling Budgetary Provisions



Figures in Crore

B) Why does the EGS Fund Remain Unutilized: Assessment by the CAG

▪ *Shortcomings in the Process of Planning*

Guarantee of work within 15 days to anyone demanding it involves estimation of labor potential preparation of manpower budget, and preparation of the annual plan. The EGS law assigned these responsibilities to the district collector. The report states that in all the eight test-checked districts, the collectors demanded funds merely on the basis of guesswork, without actually doing this exercise. Even the collectors of the eight districts accepted this omission.

Similar is the case with block level officers. As per the procedures laid down in the EGS, the block level officers were expected to prepare a 'shelf' of works in respect of each approved work in their respective blocks. The shelf of works means, consists of minute details such as when, where and how to execute each work. It was expected that the shelf should contain one and half times the number of works needed in the concerned block (i.e., Plan for 150 works when actually 100 works were required). The scrutiny by CAG revealed that in six (210 villages) of the sixteen test-checked blocks, the scheme was being implemented without preparing such shelves. When his/her superiors are doing random work, how can we expect a block level officer to behave differently?

Such serious lapses in the vital process of planning explain the large-scale prevalence of complaints such as delay in commencement of works, failure of government machinery to provide employment even after persistent demands by the laborers. Against the backdrop of such apathy, it is no wonder that even the minimal amounts of allocated funds (minimal in comparison with the funds demanded) remain unutilized.

▪ *Shortcomings in the Process of Registration*

Registration process is the tool created by the EGS law for ensuring that the scheme reaches to the maximum number of needy laborers. It is expected that every laborer registering under MREGS gets a 'job card', while everyone registering under the EGS (which was prevalent till 2007) gets an identity card, with a photo of the laborer and registering family members for the purpose of identification. The precise number of laborers can be calculated from these cards. The scrutiny by the

CAG revealed that identity cards were not issued to 2.89 lakh out of the total 6.02 lakh registered laborers in the five EGS districts; while in the three MREGS districts it was noticed that not a single job card out of the total 12.98 lakhs issued had photo on it, till June 2007, i.e., even after six months from the commencement of the scheme.

Though registration of the laborers under MREGS takes place at the GP level, the block level officers are expected to consolidate all the registrations in the respective GPs, and use this information of demand at the block level for planning and providing employment at the village level. The CAG noticed in its scrutiny that such consolidation did not take place at the block level, and as a consequence, employment was provided without taking into account the actual demand!

Under the MREGS, the laborers are required to fill in a separate application for getting work, once they are registered. It was noticed in the scrutiny that 37 works were sanctioned for 17 GPs, however out of these, 35 works could not be started, just because the laborers did not fill up the application for demanding employment.

The report observes the same apathy about the process of registration, at the state level also. The fact that the administrative department (i.e. planning department) could not furnish details regarding the total number of laborers registered under MREGS is a glaring example of apathy at state level.

The district level officers were expected to maintain an update of employment generation in the district under EGS. In practice, these records were not updated regularly in all the eight test-checked districts. It was also

observed that the number of laborers employed under MR/EGS was often less than the number of those who registered as laborers. The report also notes that maximum employment generation in these districts was just 5 to 24 percent of the expected employment generation in the district.

It is on the basis of all these observations that the report concludes that the process of registration has miserably failed in achieving its basic purpose of providing guarantee of employment to each laborer who is in need of it.

- *Non-execution of the Scheme in Certain Areas*

CAG attributes the underutilization of the EGS funds to one more factor, that is, non-execution of the scheme at certain places, such as 'C' class municipal areas, though it is mandatory by the EGS law. The report states that during 2002 to 2006, EGS was never executed in the 42 municipalities and town councils within the eight test-checked districts. In addition, the concerned district collectors did not even bother to maintain the records regarding registration of laborers from these areas.

It is evident from this discussion, that serious lacunae in vital processes of planning and registration play a major role in the underutilization of funds. The next argument by the planning department is: EGS often faces scarcity of laborers. Many EGS works are pending incomplete for years together, just due to unavailability of sufficient work-force at local level. This argument implies that EGS funds remain unutilized due to lack of demand by the laborers. Let's have a look at some of the interesting observations put forth by CAG in this respect.

C) Why does EGS face Scarcity of laborers?

The CAG report highlights two factors relating to wage payment, which are responsible for low response from the laborers.

- *Delay in Payment of Wages*

Test-check of 1,376 attendance sheets maintained during 2002 - 2007 revealed that 45,388 laborers received their wages late; the delay ranged from 2 days to as long as 13 months, and the amount involved was approximately four crore twenty lakh ! The fact that the CAG report for the period from 1993 to 1999 also delay ranging from 25 days to 16 months shows that the scenario of late payments to laborers has not changed over last decade, despite clear-cut instructions from the Planning Department to make weekly or at the most fortnightly payments to the laborers. The implementing agencies ascribe the delay in payment of wages to lack of timely supply of funds; whereas the CAG points out that these agencies themselves used to be late in sending their fund requirements to the senior officers.

- *Fraud/Irregularities in Wage Payment*

The EGS law has entrusted the Collectors with the responsibility of personally conducting investigations in cases where the wage payment made is less than 75% , or higher than 150% of the minimum wage.

The test-check revealed that the payments of wage by 22 implementing agencies to 2746 labourers ranged from Rs. 8.32 per day to Rs. 182 per day, when the minimum daily wage was Rs. 45/-

The report cites one such case of underpayment in respect of a road work undertaken by an Executive Engineer (EE), PWD, Miraj, District Sangli. In the technical sanction, 4,991 mandays were estimated, for which Rs.1.89 lakh were sanctioned. However, the actual mandays generated were 6,497, so the laborers got only Rs. 29/- per day, as against the minimum wages of Rs 45 per day.

In respect of a road work undertaken by the EE, PWD, Aurangabad, against the projected 30,416 mandays in the technical sanction for Rs 14.30 lakh, the actual number of mandays generated were 781 for an expenditure of Rs 0.97 lakh. In this case, wages ranging from Rs 47 to Rs 182 were paid to the labourers as against the minimum wages of Rs 45 per day payable.

The Collector did not feel these cases of that importance to investigate.

In August 2004, CAG conducted a close scrutiny of musters for seven EGS works (road construction), which were being implemented by the public works department in Sholapur District. Special assistance was sought from the Finger Print Bureau, CID, Mumbai for this scrutiny. The report of the Bureau found that thumb impressions of 80 out of 292 labourers were identical! Wage payment to these laborers with 'identical thum impressions' was to the tune of Rs. 54,140/-

Daily wages is the only source of earning bread for laborers who work on EGS. how can they afford to work for a job, which does not give them wages immediately after finishing work?

D) Why do EGS Works Remain Incomplete?

Incomplete works is a typical phenomenon in EGS. Incomplete works imply a double loss: loss with respect to expenditure incurred upon them, and loss with respect to creation of productive assets to be generated from them. It is often argued by the government that non-availability of laborers is the main reason responsible for this sorry state of implementation. CAG report gives us some concrete data to scrutinize this argument.

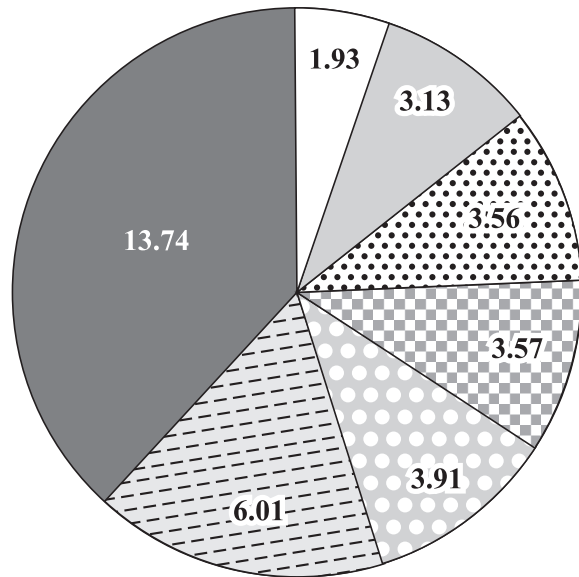
We have presented this data in the form of a graph (Graph no.3)

The argument advanced by the government appears to be just, because even the graph shows that loss of incomplete works due to non-availability of workers is the highest. CAG has specifically probed into this matter to find out the ground reality. It was noticed that 352 works started by 15 implementing agencies had to be closed down due to non-availability of laborers. It is not understood, why 93 new works were started by the same agencies in the same block.

The CAG rightly concludes that it is far from reality to state that works in this case remained incomplete due to paucity of laborers. On the contrary, as the graph shows, loss due to apathy, negligence and mismanagement on the part of government machinery account for more than 50% of the loss due to incomplete works.

Graph 3

Loss due to Incomplete Works : Reasons and Scale
(Figures in Rs. Crore)



- Abandoned Farm-Ponds due to Striking of Hard Starta
- Percolation Tanks without George Filling
- Construction of Pakka Roads : Want of Essential Material
- Construction of Roads and Percolation Tanks without Prior Permissions of Private Land-Owners
- Pending Revised Administrative Approvals
- Incomplete Works due to 'Non-availability' of Labourers
- Works in Forest Areas without Clearance from Forest Department

Coming to the argument by the government, that since the scheme has been in operation for several years, it is now natural that there are hardly any works, which can be undertaken. This means that durable and productive assets have been created in sufficient numbers by the EGS, so there is neither any scope, nor any need for more work.

Graph no. 3 however shows that community assets such as percolation tanks, works in forest area, and roads have suffered a major loss during 2001 to 2006. We get the same picture for schemes aimed at creating assets for individual beneficiaries. Jawahar Well and Horticulture are the 'poster schemes' for EGS department, and are often showcased as 'innovative and successful' schemes by the government. The CAG report throws light on this also:

- *Ground Reality of Jawahar Wells*

A total of 35,478 wells were sanctioned in six districts viz., Ahmednagar, Amaravati, Aurangabad, Sangli, Sholapur, Yavatmal during 2002 to 2006. What happened to these wells is shown in the table below along with expenditure incurred upon them:

Status Regarding Completion	Number	Spending (In crore)
Completed	27606	165.64
Incomplete	5507	8.95
Cancelled due to Withdrawal of Beneficiaries	2365	0.31

It is evident that nearly one third of the sanctioned wells are incomplete, and as many as 2365 have been cancelled because the beneficiaries got 'disinterested'. Though small, the number of wells and loss caused is certainly not negligible, and at the same time, it puts the process of identifying the beneficiaries in question.

▪ *Ground Reality of Horticulture Program*

Individual farmers are given subsidy for developing horticulture on their farms for three subsequent years under the Horticulture Program. In order to be eligible for the subsidy, the survival rate of 75% of plantation was prescribed. The superintending agricultural officers and block level agricultural officers were expected to monitor this survival rate, and were also entrusted the responsibility of recovering subsidy together with 10% interest, in case of failure to achieve this survival rate. CAG in its report points out that during 2002 to 2007, a total of Rs. 87.06 crore were spent on this programme. However subsidy was distributed without actually inspecting survival rate of plantations. Since the survival of plantations was not monitored from year to year, it was also not possible to identify non-performing farmers and recover subsidy from them.

Surprisingly CAG had raised the same issues about these celebrated schemes in its report for 1993 to 1999. The most disturbing fact is that this trend of *incomplete works relating to natural resources resulting in non-realization of their full potential* continues in 2002 - 2007 also. Thus for period of more than a decade, rural and tribal areas are continuously suffering from loss due incomplete works. Against this backdrop, is it still valid to say, that there is no scope for executing EGS works?

E) Misappropriation of Funds

Incomplete Works can certainly be considered as an indicator of misuse of the EGS Fund. However, the report provides ample examples of direct misuse of the EGS Fund. Some glaring examples from the report are quoted below:

▪ *Deployment of Guards*

Under EGS, only physical manual work is expected to be provided as clarified (May 2003) by the Planning Department. It was noticed in the eight test-checked districts that the Deputy Conservators of Forest and Deputy Directors of Social Forestry had deployed guards for security of plantation works carried out under EGS and incurred an expenditure of Rs 2.35 crore on them during 2003-07 from EGS funds, which was not admissible; moreover, nobody took an objection on it.

▪ *Diversion of EGS Fund*

The CAG found that the State Government had devised ways and means to draw advances/overdrafts from the Reserve Bank of India by frequently mortgaging the EGS Fund during 2002-07. The statement that is made by CAG in this respect is '*the Government was diverting the EGS Fund for other purposes.*'

The CAG report throws light on the blatant misuse of EGS Fund by policy-makers. It is no wonder that the district level officers follow their superiors. The CAG report unveils the 'performance' of district level officers in this respect. It shows how delayed or short credits to the EGS Fund by district level senior have resulted in substantial loss of the fund.

Municipal Corporations and Municipalities have been given the responsibility for collection and remittance of other taxes and surcharges (tax on motor vehicles, education and employment guarantee cess, surcharge on land revenue) to be deposited in the EGS Fund. Subject to delay in remittance within the prescribed period, they are also expected to pay fine along with the remittance in case of delay beyond the permitted limit. It was shocking to note from the CAG report that Nashik, Sholapur, Amaravati, Jalgaon, Nagpur and Mumbai Municipal Corporations and Pusad and Yavatmal Municipalities did not at all remit the Education and Employment Guarantee Cess amounting to Rs. 23.78 crore collected during 2002 to 2007, into the EGS Fund. In turn, the government also did not deposit its matching contribution. So it was a double loss to the EGS Fund, totalling to Rs.47.56 crore during 2002 to 2007.

CAG noticed another case of such loss due to non remittance of taxes. Six municipal corporations were expected to remit the Education and Employment Guarantee Cess of Rs. 41.74 crore to the government. This money was reserved for EGS only, but the Urban Development Department “adjusted” this amount against the subsidy payable to these corporations for construction of roads. Here also the EGS fund was deprived of addition of Rs. 83.48 crore, as the Corporations could not deposit the taxes collected, so did not the government.

Thus, the EGS Fund suffered a loss totalling to Rs. 131.04 crore during 2002-07, not because of evasion by the tax-payers, but because of unabashed defiance of the legal obligations by these corporations and the state

government. The report sites *two more* glaring examples, where the government machinery has overruled the provisions of law without any hesitation:

- (i) In Maharashtra, before the commencement of NREGS, i.e., till 2006, the district level Panchayat Raj Institutions were linked with EGS, only for the implementation of schemes for individual beneficiaries (such as Jawahar Well, Horticulture) They were annually allocated certain amount of funds for this purpose. It was legally binding for them to deposit back the balance amounts into the EGS Fund at the end of every year. Test check by CAG revealed that 10 implementing agencies deposited the balance amount of Rs.1.92 crore in the revenue account of general use, instead of EGS account. It was further shocking to note from the CAG report, that Amaravati, Nandurbar, Nashik and Sangli districts deposited the balance of 9.03 crore neither into the EGS account, nor into the revenue account. Thus, an amount totalling to Rs. 10.95 crore was utilized for non-EGS purposes during 2002 to 2007.
- (ii) In September 2002, Executive Engineer of the Public Works Department, Nashik, and in May 2006, Executive Engineer of the Public Works Department, Sholapur sold out two non-working vehicles, which were purchased specially for the execution of EGS, at the cost of Rs. 4.08 lakh and Rs.10.05 lakh respectively. Instead of depositing this amount in the EGS account, they deposited it in the revenue account of general use.

These findings based on 'test-check' reveal that EGS Fund has been tampered with several times, not by any outside vested interests, but by those very persons who have are responsible for ensuring effective execution of the law. CAG provides further evidence, how the government machinery itself is violating the boundaries, it is expected to abide by.

F) Flaws in Monitoring and Regulation

Monitoring and regulation are powerful tools to ensure check on irregularities on one hand, and effective execution of the scheme on the other hand. The EGS law provides various mechanisms, which serve the purpose of both monitoring as well as regulation. Let's have a look at the CAG's observations made with respect to these mechanisms.

- *Records*

Registration Register, Employment Generation Register, Asset Generation Register, Job Card Distribution Register, Muster Receipts are some of the basic essential records to be maintained by the village and block level officials. These records are an important tool for monitoring the governance of the scheme at grassroots level. CAG found that these records were not at all maintained by 32 implementing agencies from Nandgaon, Khandeshwar and Chandur Railway from Amaravati district, and Pusad and Babhulgaon Gram Panchayats as well as programme officers from Yavatmal district.

- *Monitoring Committees*

EGS has a three tier system of 'monitoring committees', i.e., from block to state level. The block level and district level committees comprise of government officers at respective level, elected representatives of people, and representatives of laborers unions, and disadvantaged groups such as women, dalits and tribals. Guardian Minister of the District is responsible for the formulation of these committees and appointment of their members. The state level committee (Employment Guarantee Council) is formulated in the state legislature and it consists of elected members from both the Houses. CAG found that block level committees were not formed in 26 out of 71 blocks from Ahmednagar, Amaravatui, Nashik, Sangli, Sholapur and Yavatmal districts during 2006-2007; while in Sangli district, the district level committee was not formulated during 2006-2007. Sholapur district made a record by not formulating the district level committee consecutively for five years from 2002 to 2007! Employment Guarantee Council, which is entrusted the responsibility of giving advice on policy matters, was not active since January 2005.

- *Vigilance Squads*

Special vigilance squads are formulated in EGS at block and district level. The district collector, deputy collector (EGS) and executive engineer (EGS) are expected to play a key role in these squads. CAG found that these officers did conduct the inspections as per the norms prescribed by the EGS law, however, their reports contained only superficial observations, such as absence of necessary facilities at the worksite, while

irregularities such as problematic musters, which required critical comments were left unaddressed.

- *Internal Audit*

The EGS law requires every district collector to establish an internal audit cell, which is expected to audit the annual expenditure on EGS. CAG noticed that though these cell were established in all the eight districts, they were completely non-functional during 2002 to 2007, due to scarcity of human resource. All the eight district collectors assured the CAG, that the cells will be immediately activated, once adequate human resource is available.

These observations underscore the sorry state of governance of EGS, which is known as a model scheme on paper. CAG has specially drawn the government's attention towards serious issues such as, unsatisfactory functioning of the audit cells, monitoring committees, gross mismanagement of the Fund, delayed payments, and incomplete works. It clearly states that sheer apathy, neglect and mismanagement on the part of the government machinery are real bottlenecks in the effective execution of the EGS. The gravity of the situation gets underscored by the fact that this scenario has not changed during last 14 years, i.e. from 1993 to 2007.

In the light of eye-opening evidences by CAG, do the arguments put forth by the Planning Department hold valid? Certainly not. The CAG reports (for 1993-1999, and 2002-2007) also validates the grievances by laborers and social groups who work with them. It is noteworthy

that these grievances have also not changed over the last two decades. The essence of these grievances can be summarized as follows:

How do Laborers Perceive EGS?

It is often argued that availability of employment opportunities has increased after the economic reforms. This may be true in case of skilled or semi-skilled laborers, but certainly not in the case of unskilled laborers, who mainly hail from tribal communities. They remain unemployed for most part of the year, as the scheme celebrated at national level does not reach them. If per chance it reaches them, it does not provide guarantee. First of all, works do not start on time; many a times they are closed down within 10 days, at times even within 4 days also. In case works continue for longer period, wage payment is delayed, and that too much below the minimum wages prescribed under the EGS. Wages are given on the basis of work done. It involves calculations, which the semi-literate or mostly illiterate laborers do not understand. Nor are they familiar with formal units of measurement to monitor the measurements by the implementing machinery. The EGS law puts no obligation on the machinery to equip the laborers with skills necessary for calculations.

In most of the cases, the laborers who depend on wage-payment for survival, are unorganized and lack adequate information to be able to negotiate effectively. However when they start asserting their rights the implementing agencies play various tricks to entice as well as intimidate them.

Unemployment allowance is expected to be a powerful tool for ensuring the guarantee. However, in the history of EGS, there is not a single example when workers demanded unemployment allowance, and they got it. For instance, laborers from Chandrapur demanded unemployment allowance, and did a meticulous follow up in the Court with the help of two grassroot organisations namely 'Vrikshmitra' and 'Shrishti'. Even after 27 years of follow-up, the Court has not given clear cut instructions to the government machinery to give unemployment allowance. Two of the (six) laborers deceased during this long span. This case is a classic example of apathy and carelessness of the government machinery.

As per the Minimum Wages Act (1936), the government is required to revise the wage rate to keep pace with inflation. From 1974, the minimum wage has been revised just six times, resulting in minimal increase in the wage rate. It was only in 2007, after the commencement of NREGS, that the Government of Maharashtra increased the wage rate from Rs. 45 to Rs.66/-.

In a nutshell, laborers face humiliation at every stage, right from registration to wage-payment. For them, EGS is 'EGS sans guarantee, dignity and justice'. They are not educated enough to counter exploitation, nor are they empowered to break the chain of vested interests. It is no wonder they prefer to go with contractors who offer them advance, which becomes a critical support during their lean periods. Being unskilled they cannot avail of 'ample employment opportunities' which are created mainly for skilled and

semi-skilled workforce. Hence, for them migration is a way out for survival and not for upward mobility.

While the CAG report brings out the inefficient functioning of government machinery, the experience of individuals and groups working with unorganized laborers illustrates its impact.

Changing Face of EGS

Activists and academicians from Maharashtra have raised objections on the policy making in EGS. Review of key policy decisions in the EGS during the last decade reveals that their objections do hold ground. Let's have a look at some of the key policy-level changes during the three decades of its implementation. These policy changes reveal that there have been several efforts to distort the pro-poor focus of EGS. The beginning of such efforts can be traced right from the commencement of the scheme.

Policy Changes at the Commencement Stage

As is known, Maharashtra Government passed the EGS Act in 1977. Politics in those days was not as detached from public interest as it is today, and yet there was a lot of resistance by the then dominant farmer lobby to passing of such an Act, which would have an 'adverse' effect on the availability of laborers to work in their farms. The advocates of EGS had to take cognisance of this objection in order to make the proposal of EGS politically acceptable. Accordingly, two clauses were inserted in EGS: (i) EGS should be executed only when there is no agricultural work; and (ii) laborers will not have choice of work, but accept the work allotted to them.

As a result of the first clause the implementing agencies started implementing EGS only during periods of draught. As a result of the second clause, works which were 'more beneficial' to the government machinery or local politicians, received highest priority in EGS. These two clauses in EGS thus clearly illustrate how the politically strong lobby was successful in influencing the design and scope of EGS.

Changes During the Decade of 1980s

Still during the first decade after the commencement of EGS, i.e. in the 1980s, the scheme depicted a positive picture. As mentioned earlier, the movement on the issue was also very strong during this decade. EGS requires the government machinery to directly work with the laborers, and it also involves complex operations. The government machinery was neither used to nor motivated do such demanding work. As a result, the efforts of the civil society were met with severe backlash from the government machinery, which resulted in decreasing influence of the civil society on the implementation of EGS, and increasing hold of vested interests. As a result, policy decisions in the post-ninety period were primarily governed by the influence of vested interests.

Changes During the Post-ninety Period

It is observed that majority of the policy-decisions in the post-ninety period had considerably changed the 'pro-poor nature' of the scheme. Pro-poor provisions in the EGS were either changed or cancelled one by one, and at times replaced by another provisions, which allowed diversion of the EGS Fund as per the wishes of the vested interests.

▪ *Emergence of 'Schemes of Individual Benefit':*

Large-scale employment generation through creation of productive assets is the primary and immediate objective of EGS. That is why works of community benefit such as percolation tanks, forest development, roads, land-harvesting and water conservation measures were to be executed through EGS. These works were obviously labor-intensive works. They served both the purposes of the scheme, viz, large-scale employment generation for unskilled laborers, and creation of productive assets of community benefit. As these works demanding heavy physical work were not attractive to non-poor, it was ensured that only the poor will be the primary beneficiaries of the scheme.

Schemes of individual benefit were started in order to make EGS attractive to non-poor. The first such scheme introduced in 1990 by the Chief Minister was, 'Horticulture Scheme'. In the initial year or two, the benefit of this scheme was restricted to only small farmers from scheduled tribes and castes. However, this ceiling was extended to include 'any farmer, having 2 to 5 hectares of land'. Another scheme for individual benefit, which was started during the same period, was 'Jawahar Wells'. As mentioned earlier, both these schemes were portrayed as successful schemes. Both these schemes were land-based schemes. They were obviously attractive for the non-poor farmers, while small farmers remained on the margin though eligible on paper, and landless laborers were completely excluded from the benefit of these schemes. Priority to schemes for individual benefit had an adverse impact on schemes for community benefit, which in turn affected employment generation from EGS.

- *Involvement of District Level Panchayat Bodies*

Originally, the responsibility of execution of EGS was delegated to the revenue department. At a later stage, district level Panchayat Bodies, i.e., 'Zilla Parishads' (Z.P.), which are especially famous for playing politics, were given the responsibility of execution of 'schemes for individual benefit'. In Maharashtra, Z.P.s stand for politics. Schemes for individual benefit became an easy tool in the hands of these bodies for strengthening their interests.

- *Priority to Techno-Intensive Works*

The figures for budget allocation to various works under EGS show, that the allocation to schemes for individual benefit, as well as works, which involve infrastructure building, was on the rise after the 1990s. Infrastructure development works such as road construction, various structures for watershed development, provide more space for the entry of contractors and use of machinery, in comparison with purely labor-intensive works, such as forest development, land-development etc.

The case of 'Shramashaktitoon Gramavikas Program' in EGS is revealing in this respect. Lt. V.S. Page, the main architect of EGS evolved this program (Village Development through Labor Power). The program involved planning of EGS works at Panchayat level, with appropriate convergence of various other schemes for an integrated development of the village and its surrounding. It also required laborers to contribute their labor free of cost, amounting to 50% of the expenditure of the work. The scheme, though novel, did

not materialize due to various techno-social difficulties; it was nearly closed down after the initial two-three years, i.e. after 1993. In 1999, Government of Maharashtra initiated Water Conservation Campaign through EGS, and also 'merged' the 'Shramashaktitoon Gramavikas' into this campaign. As mentioned earlier Horticulture and Jawahar Wells programs were launched on a big scale from 1994 onwards, which had an adverse impact on implementation of other programs in EGS. 'Shramashaktitoon' was certainly a program with greater potential for creation of assets of community benefit compared to watershed development', and yet it was 'merged' in a program with less wider scope.

Clearly the decision was taken under the influence of Watershed Development Department, which assumes a powerful position in the hierarchy of government departments due to its economically strong position. Similar is the case with Public Works Department. Changing the 'skilled-unskilled' ratio from 40:60 to 49:51, especially in case of works related to watershed works, was clearly a decision in favor of Watershed Development department, which paved smooth passage for contractors and for machinery.

- *Cancellation of Provision for Committee at Local Level*

EGS had a provision for block, district and state level monitoring and vigilance committees. Before 1999, there was also a provision for establishment of 'local works committee', with the involvement of laborers, and local representatives of government machinery. The committee was given powers to inspect and supervise the concerned work. This was a powerful provision, which

could help the laborers exert their influence on the execution of the scheme in their village.

Changes from 2000 onwards

After 2000, a new dimension was added to this process; decisions were taken at a more rapid pace. A review of three such important policy decisions, which were taken within a period of three years (from 2005 to 2007), is given below:

- *Review of EGS: an Indefinitely Pending Process*

In 1999, senior economist pro. Desarda had filed a public interest litigation case in the high court against the mismanagement in EGS. The high court took note of this petition and issued an order to the state government to appoint a committee to review the success and failure of EGS and accordingly make appropriate changes. This committee started its work in 2003 and its report was submitted to the government on 9th March 2005. (Pro. H. M. Desarda, pro. Chhaya Datar and Popatrao Pawar were nominated as non-governmental members on this committee).

The report presented in all, forty recommendations. Barring a few recommendations such as, Separate account for EGS Fund, reduction of horticulture plantation limit up to two hectares, uncultivated land pattern in the hilly areas, productive scheme on rented lands for the needy women's small savings groups, payment of wages by cheques, production of literature for the scheme, regular annual evaluation of EGS, all other recommendations made by the committee addressed the concerns of bureaucrats and contractors, and hence, were in complete contrast with the core

principle of EGS. The entire report was written from the sole perspective of engineers and bureaucrats, leaving no scope for the perspectives of laborers and civil society. Furthermore, even the non-governmental members of the committee were excluded from the process of finalizing the report. The report was presented to the government without allowing these members any opportunity to submit dissenting notes!

There was a strong reaction on the undemocratic process and anti-poor content of the report from various activists and civil society groups. Employment Guarantee Minister Harshavardhan Patil took note of these objections and invited three representative groups to discuss the issue of restructuring of EGS. These three groups were: Prayas, Shetmajur, Kamgaar and Rojgar Hami Samanway Samittee (a forum at state level, which consists of networks working on issues of unorganized laborers. Two such meetings took place in the Planning Department. In first meeting, the EGS Minister emphasized the need to make EGS a 'people's movement', and suggested that CSOs and Government should join hands in order to 'revive the past glory' of EGS. He gave an assurance that the government will once again conduct a process of review with extensive participation of labour organizations and other civil society organisations in the state. In the second meeting, which was held on 7th March 2006, he accepted the CSOs' demand to organize region-wise workshops in the state in order to invite suggestions on 'restructuring of EGS. It was decided in this meeting that the next meeting to discuss the schedule and program of these workshops will be conducted on 20th April,

2006. However this meeting was 'postponed' due to busy schedule of EGS Minister.

Till today, the EGS Minister neither called this meeting nor has he kept his own word. The process of finalizing the recommendations of Review Committee is also incomplete till today. Committee's report was tabled before both Houses of legislature during the monsoon session in 2005. No decision has been taken on this report till today, i.e., 2008.

Irrespective of the fact that the process of 'reviewing and restructuring of EGS' was incomplete, the EGS Department made three major policy changes viz., transition from EGS to MREGS (Maharashtra Rural Employment Guarantee Scheme), Jatropa Plantation for individual beneficiaries, and restructuring of the EGS Fund during 2006 to 2008. Let's discuss the first two policy changes and their implications in brief.

- *Transition from EGS to MREGS*

It was after the commencement of NREGS that EGS in Maharashtra became 'MREGS' (Maharashtra Rural Employment Guarantee Scheme). MREGS is recognized as a revised version of EGS, because, in addition to the original progressive provisions in EGS, it also consists important provisions from NREGS such as, social audit, involvement of village-level panchayat bodies in planning and execution, convergence with 'Right to Information', and so on. The EGS has historic background in Maharashtra. This background has left a sizeable impact on the attitude and mentality of labourers and of Government machinery also. The new scheme cannot be implemented in an effective manner without

changing this mentality and gearing up the Government machinery for a smooth changeover. EGS to MREGS is a major transition. It cannot be brought about overnight. Any transition requires a lot of groundwork to be successful. Further, actual labourers and organizations working with them, as well as the researchers will need to be involved in it.

Maharashtra Government had three occasions of doing so: First, during the first phase of MREGS, when it was launched in just twelve districts. Government could have completed the process of 'reviewing and restructuring of EGS', which was pending for long, before transforming it into MREGS even on a pilot scale. This would have initiated the process of transition right from the first phase. Later on MREGS was extended to eighteen districts; that was the second opportunity. It was essential to draw lessons from the experience of twelve districts and integrate them with the second phase. The third opportunity was in April 2008, when MREGS was applied to the entire state. None of these opportunities were utilized by the state, beyond organizing trainings. However the outcome of these trainings was not as expected. Otherwise one would have not seen utter confusion, dissent and ignorance among both, the government machinery and the people about MREGS. The very fact that Maharashtra government continually ranks the lowest among the other NREGS states, and is pranked from the central government about this substandard performance, indicates that the transition has failed miserably. Maharashtra should actually be in a leading position as a state having longest experience of execution of EGS.

▪ *Experience with Jatropha Plantation Programme*

In one of the meetings to discuss the Review Committee's report, the EGS Minister had expressed his reservation about starting 'Jatropha Plantation Program' through EGS. The reason was that he was not sure about the safeguards in the market, that would be available to a small farmer who plants Jatropha in his farm. Paradoxically, within a month, i.e., on 26th April 2006, we came across a government resolution (GR), which stated that Jatropha Plantation Program was to be started through EGS as a scheme for individual beneficiaries. The GR was issued by the Department of Agriculture, Animal Husbandry, Milk and Fishery; there was no mention in this GR about why it was issued by a department other than EGS. The GR declared that approximately 1,11,10,000 Jatropha plants were to be planted on an 'experimental basis'. Since, this programme was to follow the pattern of 'Horticulture Program', subsidy of Rs. 18.40 per plant was to be spent from the EGS funds. This means, experiment of Jatropha Plantations costed Rs. 20,44,24,000 (Rupees Twenty crore, Forty Four lakhs, Twenty Four Thousand) to the EGS Fund (as subsidy only).

EGS is expected to benefit marginal landholders and landless labourers; a study by Resources and Livelihoods Group of Prayas on the techno-economic feasibility of Jatropha Plantation for small farmers concludes, that Jatropha Plantation is not feasible for these two classes at least in the present scenario. (This study is available on the website of Prayas). Research on Jatropha by the National Oilseeds and Veg Oils Development Corporation (NOVOD), which involves forty-two

leading Agricultural Universities in the country, is still in a nascent stage. Availability of quality plants and seeds depends on the completion of this research, which plays a critical role in the success of Jatropha Plantation. The logic behind hastily including Jatropha Plantation Program through EGS on an 'experimental basis', that too without giving any scientific base, is indeed not understood, when the research at national level is not complete. The previous experience of schemes of individual benefit under EGS has also not been taken into consideration while taking this decision. One is compelled to infer that Jatropha Plantation through EGS is a clandestine misuse of the EGS Fund, which is public money.

As mentioned earlier, it was the Review Committee's recommendation that Jatropha Plantation be started under the Horticulture Programme of EGS. The process of finalization of recommendations of the Review Committee is just half way, but the recommendation of Jatropha Plantation has been accepted. A paradox is noticeable here that a recommendation by the same Review Committee for a separate account for the Funds has not been considered by the government.

A review of all these decisions reveals that 'restructuring of the EGS Fund' is not a single isolated decision; it is a part of a chain of decisions aimed at complete reversal of EGS, from a pro-poor scheme to a 'pro-politicians and pro-vested interests' scheme. What is noteworthy is, the characteristic, common to all of them viz., non-transparent, conspicuous and most important, arbitrary manner of taking these decisions.

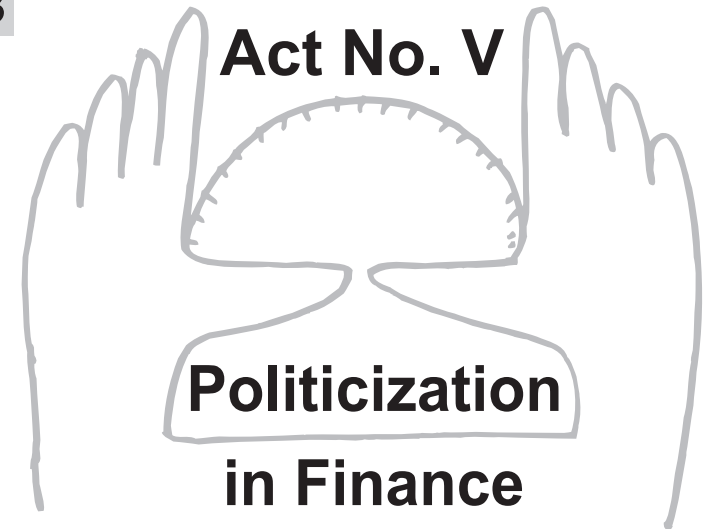
All the three sections presented in this chapter, viz., observations and findings by CAG, laborers' experiences and the trend in policy-making underscore the deteriorating situation with respect to EGS, and that is why it could not become attractive to the laborers.

It is evident that MREGS will also not be able to attract laborers in its present condition. This in turn will result in increase in unutilized balance in the MREGS Fund. There is every possibility that Government of Maharashtra may be tempted to interpret this situation as 'decrease in the need for MREGS'. The result will be: another Bill from government of Maharashtra to reduce the present scope of MREGS from 365 days to 100 days, so that it can execute it merely from funds given by the Central Government, thereby relieving it from the financial 'burden' of executing the scheme for the entire year. It goes without saying that this proposal will also be speedily accepted by the elected as well as nominated members of the state legislature.

Planning department and Finance department are the two departments, which played a key role in the decision of restructuring of the EGS Fund and cancelling Reserve Funds. In this chapter, we scrutinized the arguments by the Planning Department with the help of CAG Report, laborers' experiences, and review of policy decisions. Let's discuss the arguments by Finance Department in the next chapter.



3



Arguments by the Finance Department

The Finance Department took a major initiative in the decisions about restructuring and scrapping of reserved funds of the EGS. While taking these decisions, it not only disregarded the protests of the opposition parties but also cheated them. It put up an explanation which prima facie looked correct. The justification put forth by the Finance Department for these decisions may sound reasonable to many people. Hence, the arguments of the Finance department, supported by the necessary explanations in technical parlance, have been reproduced below along with their implied meaning.

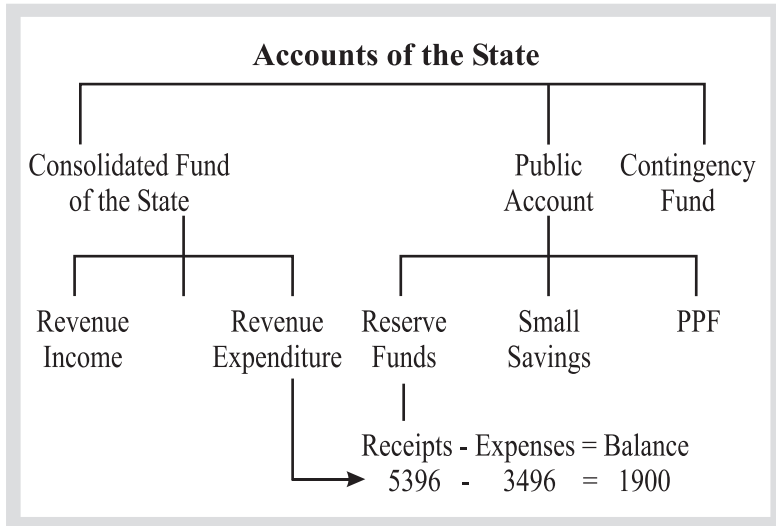
- *Increase in Revenue Expenditure and Deficit*

As there is an obligation to use the Reserve Funds only for the specific reasons, they can not be used elsewhere. Because the funds cannot be used for purpose other than what is stipulated, and collection of taxes prescribed by respective laws is required to be credited to the funds every year, the Reserve Funds go on increasing. This unnecessarily increases the revenue expenditure of the state and consequently create revenue deficit. In order to understand the logic of relationship between under-utilization of Reserve Funds and revenue/fiscal deficit, we first need to realize that the financial dealings of a State are divided into three parts, namely, Consolidated Fund, Contingency Fund and Public Accounts. Consolidated Fund comprises of revenue receipts and revenue expenditures. Contingency Fund, as the very name suggests, is meant for expenditure during emergencies (such as natural disasters). Public Account is made of small savings, Provident Fund and Reserve Funds. The revenue income of the State i.e. receipts from different taxes paid to the government as well as earning from other sources, first get accumulated in the Consolidated Fund of the State. Every year, as per the relevant laws, specific amounts are transferred from the Consolidated Fund to the Contingency Fund and Reserve Funds. These transferred amounts are entered as 'revenue expenditure' of the state. Besides, the expenditure incurred on various developmental schemes is also entered as revenue expenditure. If the amount of revenue expenditure is more than revenue income, then, of course, the result is revenue deficit, and vice-versa.

The Finance Department argues that there is an 'unnecessary' increase in the revenue expenditure and consequently revenue deficit of the state, because, it is legally binding for the government to transfer the entire proceeds of collection of respective taxes into the Reserve Fund, which is in excess of the actual need. The Finance Department claims that in budgetary estimate for 2007-2008, as per the respective laws, it had to set aside Rs. 5396 crore as amount to be transferred to the Reserve Funds from the Consolidated Fund, when the actual expenditure expected was just Rs. 3496 crore, which means an excess amount of Rs. 1900 crore (pl refer to the diagram below) was unnecessarily transferred to the Reserve Fund, and it had to be shown as revenue expenditure of the state. Thus there was an unnecessary increase in the revenue expenditure, which in turn resulted in revenue deficit.

- *Increase in Revenue Surplus*

The Finance Department maintains that if the Reserve Funds are scrapped, and necessary expenditure is incurred directly from the Consolidated Fund, only the actual expenditure will be shown as revenue expenditure. This will save transfer of excess amount from the Consolidated Fund, which in turn will save unnecessary revenue expenditure leading to revenue surplus of Rs. 1900 crore. The Finance Department expects a surplus of Rs. 511 crore in 2007-2008. Add to it Rs. 1900 crore saved because of scrapping the Reserve Funds (please refer to the diagram), the total revenue surplus of the state is Rs. 2411 crore.



Thus the Finance Department had the opportunity to present a budget with a handsome revenue surplus for the third time in succession. (As per the modified budgetary estimates of 2007-2008 it is 13,631 crore 47 lakh due to transfer of unspent balances from the Reserve Funds to the Consolidated Fund)

Why does the Finance Department feel the pressing need to decrease revenue deficit and increase revenue surplus? Why did the opposition parties too, while protesting the decision to scrap Reserve Funds not counter the above arguments by the Finance Department? Many people may think that the surplus of revenue income over revenue expenditure is an indication of the progress of the state on economic front. But is it really so? Is the logic of 'balancing expenditure with income' necessary for the 'progress' of a State? Is it in any way necessary for welfare of common public in the state? When and how did this logic emerge?

While searching for the answers to these questions, we happened to lay our hands on the Financial Responsibility and Budgetary Management Act (FRBM). We found that this law is the source of logic of balancing expenditure and income. There is an enormous pressure on the Central as well as the State Governments for the implementation of this law. The politics and the economics behind the superficially logical arguments of the Finance Department will not be noticeable unless the reasons of the pressure as well as the reality of implementation of this law are understood.

FRBM Law: Mastermind behind the Curtain

The Central Government passed the Financial Responsibility & Budget Management Act in 2002. This law made it obligatory for Central as well as all the State government to bring down the 'revenue deficit' to zero, and the fiscal deficit to 3% of GSDP of the State. Using this provision, the Central Government immediately began to pressurize the States to enact this law. Besides pressurizing, the Central Government also offered some concessions to the States in matters of loan on the condition that the latter enacts this law. These concessions would help the states to get some respite from the burden of loan. In Maharashtra, the revenue and fiscal deficit have been rising rapidly in last few years due to various contributing factors. The loan on the Maharashtra government went to staggering Rs. 115,000 crore in 2005-2006. Naturally, there was an increasing pressure on the Maharashtra Government to

enact the law. Consequently, like other states, Maharashtra also succumbed to this pressure and passed the FRBM law.

When and Why did the Central Government Enact this Law?

The Central Government passed this law in the year 2002, under the pressure of international donor agencies, which made 'economic efficiency' as an important qualification for credibility in credit market, and considered Revenue and Fiscal Deficit as indicators of 'economic efficiency' of the state. As a result, pressure started mounting on the State Governments to present respective 'Revenue Surplus' budgets. Before this law came into force, deficit budgets were presented many a times, and moreover, a section supporting deficit budgeting was also active in the nineties.

Deficit Budget

To understand what a deficit budget means the budget of, 2005-06 may be taken as an example. That year the total expenditure was Rs. 69,165.14 crore and receipts (barring loan amount) Rs. 52,693.19 crore. As the receipts were less than the expenditure, the state had to face a deficit of Rs. 16,471.95 crore (69,165.14 less 52,693.19). In short, Total Expenditure exceeds Total Receipts and a Fiscal Deficit Results in a Deficit Budget.

When the expenditure of a State exceeds its receipts, the government has to raise a loan for balancing the deficit. The government may obtain the required loan from National Small Savings, loan-bonds, domestic or

foreign financial banks. The foreign banks include, of course, institutions such as the World Bank, International Monetary Fund, Asian Development Bank (ADB) or Department for International Development (England). The postulation behind the borrowing is that, these loans would be used for developmental works. As development gains the momentum, agriculture and industry in the state/country will benefit and grow thereby increasing the revenue of government. This increased revenue will help the government to repay the loans. The postulation did not find favour in the leftist philosophy. However, the viewpoint adopted by few others was that, the postulation could be acceptable in the exceptional situations as per the need of that particular state or the country.

On the basis of this postulation, the Centre and especially various states took big loans in the eighties and nineties. The burden of these loans grew over the years. Acceptance of the recommendations of the fifth pay commission added to the burden of the government. High and regular subsidy that was being paid to the sugar industry increased the load further. Consequently, at the close of nineties, both the load on the Maharashtra government and the financial deficit went on increasing. Financial situation in the Centre also worsened during this period. It is against this background, that the Economic Reforms Programme began in India.

The logic of 'sound finance' developed as a part of this Economic Reforms Programme. On the basis of this logic, it was stated that in order to keep the repayment of the domestic and foreign loans taken by the Centre and states in limit, it is extremely necessary that the revenue and the fiscal deficit should remain under control.

Economists in the country started to approve this approach because of the financial misery suffered by the Centre and the states at the end of the nineties. Reducing the revenue and the fiscal deficit was considered an important solution for making the financial situation strong and safe. International financial institutions were already advocating this solution. Hence, the acceptance of FRBM Act by the Centre in the year 2002 is considered to be an end result of all these factors.

The FRBM law has made it obligatory for Maharashtra government to achieve the target of clearing the revenue deficit completely. On successful implementation of this Act, the state will be able to get the benefit of some concessions and facilities offered by the Centre. Maharashtra government has started implementing provisions of this Act, realizing that its credibility in the international credit market will also go up, and the road to secure more and more loans from international institutions would open up as well. Scrapping the reserve fund to show increase in the revenue surplus by reducing revenue deficit is also a part of process of execution of the FRBM Act. Maharashtra government however seems to have ignored the experience of state of Kerala. It would be worthwhile to narrate the experience of Kerala, in order to have an idea about the ground reality of FRBM Act.

Kerala Experience with FRBM Act

We all know Kerala as being the leading state in education, health and decentralized administration, but we do not know its identity as being the first state in India to have enacted FRBM Act. Now, Maharashtra is

progressing fast towards the implementation of this Act. It is essential for all of us to learn from the severe setback that Kerala received due to religious execution of the Act.

The financial status of Kerala went down rapidly after 1990 because of reduction in funds allocation from Centre; failure of the state government to recover of central taxes forced it to take high interest rate loans. Acceptance of the pay commissions' recommendations further added to a burden of Rs. 1000 crore per year. Further Kerala state is known for its heavy expenditure on developmental schemes. Its expenditure on the education and the health fields is also sizeable. Similarly, due to the policy of strengthening Local Government Institutions, these bodies were given a good chunk of money. As referred to earlier, all this expenditure was recorded as 'revenue expenditure' of the state. As a consequence, while the revenue income showed a slimming trend continuously, revenue expenditure went on swelling. The revenue expenditure went up to 4.5% of GSDP and the state was required to take an overdraft from the Reserve Bank every now and then.

Against this background, coalition government of United Democratic Front (UDF), which came into power in 2001, published a White Paper. This White Paper argued that the economic situation of the state was miserable and therefore it was imperative to cut down the revenue expenditure of the state. This paper suggested a full-fledged program for this purpose, which was very soon executed under the name of 'FRBM' Act. The UDF government embarked upon this program to reduce revenue deficit by withdrawing subsidies, pensions, closing down ailing public sector undertakings,

initiating privatisation of education and health sector. The UDF government did succeed in partially reducing the revenue and fiscal deficit. However these efforts received no financial incentives from the Centre. On the other hand Kerala government had to face stiff opposition from the government employees as well as social movements. Withdrawal of programs of public interest led to a feeling discontent among the people. As a result it was voted out in 2005-06 and the Left Democratic Front (LDF) came in power. Obviously, this government faced the pressure to give high priority to (spend heavily on) the health, education, and local governmental institutions. But immediately thereafter, the revenue deficit went up suddenly owing to an implementation of recommendations made by the state pay commission. Kerala state was not in a position to bear a burden of Rs. 2992 crore and there were restrictions on the loans to be sought by the state government because of the provisions of FRM Act. The state government again posed hardships. It had adverse effect on the investments in the social sectors and the expenditure on developmental programmes. At last, the Central Finance Ministry had to bow before mounting pressure from Kerala state and it raised the limit of loans for the state. After this episode, the Kerala state has taken a firm stance advocating elasticity in the provisions of FRBM Act. It has also submitted an alternative reforms programme to the Central government to bring down the revenue deficit. This programme *does not* envisage any reduction in the plan outlays necessary for the social and economic developments. On the contrary, it has suggested some basic solutions like special efforts for raising the revenue

and non-revenue income of the government, heavy hand action on tax evaders, and application of VAT on saleable items other than those of basic needs etc.

It has been made amply clear by the Kerala example that implementation of FRBM Act in a mechanical and forcible manner without paying attention to development needs of the states and the situation present, is only possible by sacrificing the interests and benefits of the public at large. Similarly, Kerala has also set an example that a state can give priority to public welfare program, and yet reduce revenue deficit by increasing revenue income.

In the implementation of FRBM Act, the most important part is reducing revenue deficit by reducing revenue expenditure and increasing revenue income. Are there no alternatives of increasing the current revenue income? We will have answers to these questions in the CAG report on 'revenue receipts' of Maharashtra for the year 2005-2006.

Revenue Income of Maharashtra State: Audit by CAG

The report prepared by CAG after examining the documents of the Government of Maharashtra on revenue receipts for the year 2005-2006 is available on the website of the CAG (www.cag.nic.in). Some important conclusions emerging out of this report are as follows:

A) Outstanding Taxes: Recovery of outstanding taxes levied by the Finance and the Home departments

amounted to Rs. 15,236.56 crore. Of this, the dues for Sales Tax alone accounted for Rs. 1,226.79 crore.

B) Loss of Revenue From Taxes

- Revenue income of **Rs. 1607.49 crore** was lost because of wrong assessment of tax and revenue, under assessment, no or less recovery of fine in respect of Sales Tax, State Excise duty, Tax on Motor Vehicles, Stamp Duty, Registration fee, Land Revenue and other departments. The department-wise breakup of this loss was as follows:
- Loss due to improper classification of documents, lack of levy of proper amount of revenue, and wrong concessions was **Rs. 197.42 crore**, out of which, Rs. 184.94 crore pertained to Stamp Duty and Registration Fee, Rs. 4.20 crore to State Excise Fee, and Rs. 8.28 crore were in respect of the Motor Vehicle tax.
- Loss of Land Revenue amounted to **Rs. 128.75 crore**. This loss occurred due to: non-regularization of encroachments and non-remittance of the collected revenue to the state government by Municipal Corporations of Pune, Nagpur, and Greater Mumbai (Rs. 61.32 crore); non-distribution of licenses for regularizing encroachments and non-recovery of fine for illegal use of land (the credit for this goes to two renowned Trusts from Sangli and Thane) were the causes for loss of revenue of Rs. 41.34 crore) whereas use of land without license and wrong assessment of revenue were responsible for loss of revenue of Rs. 16.76 crore

- **Rs. 67.31 crore** on account of non-execution of special cess that is levied on the lands and buildings in Mumbai and wrongly given rebates in the cess, non-remittance of the collected revenue to the State Government
- Loss due to non-remittance of tax collected by the Maharashtra State Electricity Board: Rs. 65.76 crore
- Loss of revenue of **Rs. 19.77 crore**: Municipal Corporations in Mumbai, Pune, Nagpur levied Education and Employment Guarantee Cess on big non-residential urban complexes, but did not remit the amount to the state government exchequer.
- Loss by Sales Tax Department: **Rs. 12.28 crore** because of wrongful litigations, wrongful rebates, wrongful set-offs, under and non-levying of taxes
- **Rs. 98.04 lakh** by way of wrongful rebate to six movies (Chakachak, Dil to ho Gaya Pardesi, Kids no. 1, Black, Lakshya, Swades)
- **Rs. 62 lakh**, as the government did not do the necessary follow up for recovery of the outstanding dues of Profession Tax

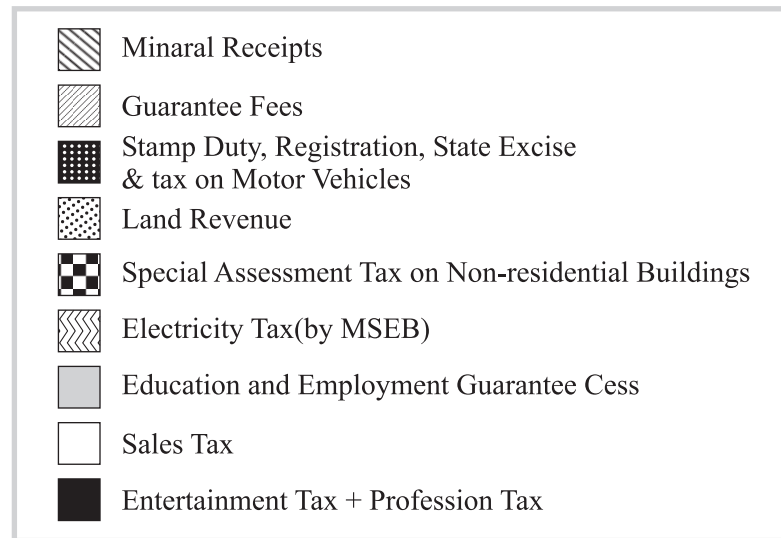
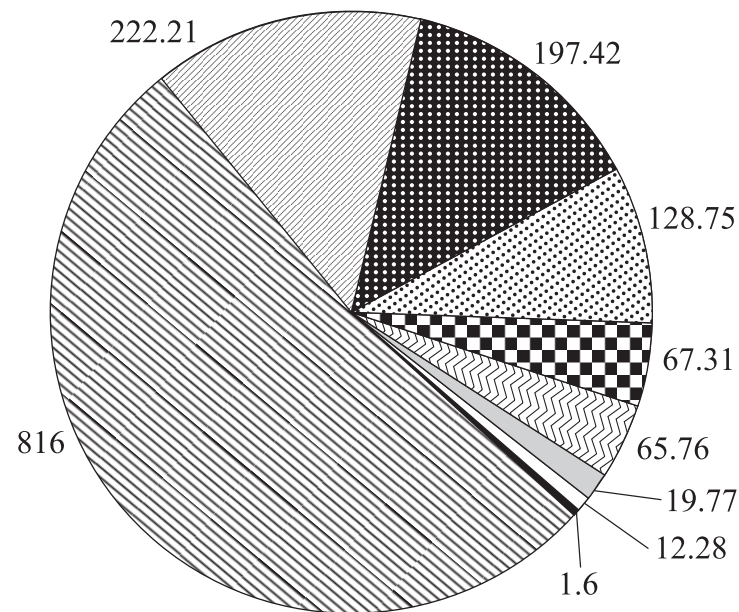
C) Loss of Non-Tax Revenue Income

CAG found out after examining the documents related to income from sources other than taxes that the state had incurred a loss of revenue amounting to Rs. 1,083 crore in the year 2005 -2006. (Sources other than taxes include interests from various places, royalty income from mines, irrigation etc., income from the police and forest departments, grants given by the Centre etc.)

- Of the above, nearly 80% of the revenue loss amounting to Rs. 816 crore was due to improper assessment of mineral-products alone. Out of these, the loss of Rs. 796 crore is owing to non-recovery of fine for illegal excavation of secondary minerals
- There were five big irrigation development corporations involved in the unauthorized mining of secondary minerals. Excavation without obtaining licence by paying stamp duty and registration fee as also without paying royalty. They have not paid th fine too. The five corporations are; Godavary Marathwada (Aurangabad), Konkan (Thane), Maharashtra Krishna Valley Development (Pune), Tapi (Jalgaon), and Vidharbha (Nagpur). These five irrigation development corporations carried out invalid mining of murum, stones, crush-stones, earth and used the material in 307 projects and schemes.
- Loss of revenue to the tune of Rs. 221.21 crore occurred when five departments of the state did not pay the fee on guarantee-amount on various debentures secured from the government, and also the interest over them (This guarantee fee is charged on the guarantee paid through the consolidated fund of the State.) These five departments included all the above mentioned irrigation corporations, except Tapi and they evaded a fee of Rs. 47.80 crore. The Public works department evaded the fee of Rs 95.19 crore; Water Supply and Cleanliness (Jeevan Pradhikaran), Industry, Energy and Personnel department (Maharashtra State Finance Corporation), Rural Development and Water

Graph No. 4

'Credits' for Revenue Loss



Conservation Department evaded guarantee fees totalling Rs. 38.39 crore, Rs. 27.04 crore, and Rs. 13.77 crore, respectively. No efforts were made by the state government to recover these dues

The concerned departments were provided with this information regularly by CAG. Barring few exceptions, it was in vain. Some departments did accept these objections but took no concrete action while some other departments took nominal action. The response given by the government to an institution like CAG is very deplorable. This is a blatant evidence that the state government does not handle seriously an issue like revenue.

The conclusions in the CAG report show that there are two main reasons for the huge dues as well as the loss of revenue from taxes and non-tax sources: (1) Administrative lethargy and improper dealings: for example, no proper compliance of documents, and (2) Allowing unauthorised dealings, unlawful behaviour of political and established people for safeguarding their own interests. Outstanding dues of Sales Tax, loss of land revenue, loss of non-taxable income are some prominent examples of it.

D) Scenario from 2002-2006

This scenario does not pertain only to 2005-2006. The picture for the three preceding years from 2002 to 2005 is not different.

- **Improper levying of Tax, Wrongful Concession/rebate etc.:** The audit report of revenue income for the year 2004-2005 concludes that because of improper levying of tax, wrongful

concession/rebate, the State had suffered a loss of Rs. 1066 crore till June 2005. In the same year, outstanding tax dues were Rs. 12,584.30 crore in case of taxes levied by the Home and Finance departments. Of this amount, outstanding dues of Sales Tax alone accounted for Rs. 12,380.76 crore. In the two years 2002-2003 and 2003-2004, the amount of outstanding dues is less in comparison; nevertheless, the share of the Sales Tax department in those two years also is well above 70%. Similarly, although the revenue deficit amount is comparatively low (i.e. below Rs. 1000 crore), the two main reasons behind this deficit are, as mentioned above, namely administrative lethargy and improper deals, and allowing unauthorized dealings and unlawful behaviour for safeguarding political and economic vested interests. Some prominent examples of these are: -

- **Non-remittance of education and employment guarantee cess to the government by the municipal corporations despite collection done:** It has happened every year during the three year period between 2002 and 2005. As a result, there was a loss of Rs. 11.33 crore, 22.79 crore and Rs. 27.76 crore respectively. Municipal Corporation of Greater Mumbai and Nagpur failed in this respect for all the three years while Pune and Amaravati for two years in succession.
- **Non-remittance of the tax levied on big residential buildings and housing complexes to the government by the municipal corporations despite the collection done:** Due to non-remittance

of this amount, the state exchequer suffered a loss of revenue amounting to Rs. 3.72 crore in the year 2003-2004, and Rs. 6.35 crore in the year 2004-2005. The *credit* for this also goes to eminent Municipal Corporations such as those of Greater Mumbai, Pune, Solapur and Amaravati.

- **Non-remittance of electricity duty:** Electricity duty charged for supply of electricity was not remitted to the government by the Maharashtra State Electricity Board (MSEB) during two years period from 2003 to 2005. The government then deducted 70% of this amount from the grants to be given to the MSEB. As MSEB did not remit the remaining 30% amount, the government suffered a revenue loss of Rs. 214.55 crore and Rs. 570.61 crore, respectively for two years. Besides, the respective interest amounts of Rs. 60.49 crore and Rs. 71.08 crore on these duties also remained unpaid.
- **Non-Remittance of Guarantee Fee levied on debentures given to various departments, institutions by the government:** This forms an important source for non-tax revenue of the State. As in 2005-2006, the government suffered a heavy loss of revenue from this source during the two year period between 2003 to 2005. In the year 2003-2004 the loss was Rs. 1263.25 crore and out of this amount, Rs. 1032.78 crore accounted for the guarantee fee plus the fine for non-remittance by the concerned departments and institutions.
- **Non-Repayment of loans and the interest on the loans:** During the period April 1998 to March 2003, the Co-Operative and Textile Industry Department,

the Urban Development Department and various Corporations in the Revenue and Forest Departments, neither repaid the loan amount of Rs. 347.65 crore, nor the interest amount of Rs. 206 crore nor the fine for non-payment of these amounts. The office of Commissioner of Sugar did not repay the loan of Rs. 172.82 crore nor paid the interest of Rs. 191.50 crore. At the end of the year 2003-2004, the government had to bear a revenue loss of Rs. 233.84 crore towards (loan) and Rs. 276.20 crore towards interest on account of non-payment of loans by Commissioners of Co-Operative and Registration, Fisheries, Cattle Development, as well as, the directors of Marketing Federation.

- **Incomplete records:** The Finance Department did not have complete details about the outstanding dues of debentures given to various Corporations of the government and these outstanding dues amount was Rs. 9693.37 crore!

By citing these and such examples, the Auditor General and the reviewers have shown some important shortcomings in the existing legal provisions. These shortcomings are as follows:

E) Shortcomings in the Existing Legal Provisions

- There is no provision to check the details of taxable income. As a result, no internal control / coordination system is available in the revenue and the forest departments even at the highest level.
- The law does not specify any upper limit on the amount of debentures, which are issued by the

government. In case of non-payment of the guarantee fee by the institutions taking loans, there is no system by which the concerned administrative or finance department can demand it.

- Budget estimates as well as revised estimates are prepared by a 10% addition to last year's receipts and payments. As a result, there is always a big gap between the actual and expected. Due to lack of a well-defined frame for preparing budget estimates, this important economic activity is planned in such a sketchy fashion. Leave aside taking note of the serious issues put forth by the Auditor General and reviewers, the government has not even bothered to pay attention to the letters sent by them regarding recovery of revenue.

In a nutshell, to summarize, the subject of revenue needs to be handled with due seriousness, then only efficient recovery of revenue income becomes possible. This is the surest way of increasing revenue income. At present, tax-evaders know that nobody will punish them. Administration knows that their inefficiencies will always be concealed. No one dares to challenge politically vested interests. So instead of taking stern action against tax-evaders irrespective of who they are, government is using the Reserve Funds specially meant for poor to increase revenue income. That will no doubt show decrease in revenue deficit for a year. Next year, some other public interest will have to be sacrificed, but that will also not solve the basic problem of recovery of outstanding balances and loss of revenue and non-revenue income.

The same is true of revenue expenditure. If transferring a fixed amount to Reserve Funds increases revenue expenditure and becomes the cause for altogether cancelling of the Reserve Funds, then there are so many other matters, which increase revenue expenditure, and need to be scrutinized. A few examples by which the revenue expenditure (and also revenue deficit) goes up, are:

- Expenditure on travel and lodging of elected members, financial loss occurring owing to legislature proceedings being held for less days than the stipulated ones, and loss due to insufficient attendance. This type of expenditure can be certainly reduced.
- The accounts for the year 2007- 2008 show that 33% of the revenue is spent on the salaries of government employees. The fifth pay commission recommendations raised the burden by Rs. 3400 crore. The Sixth pay commission will also add a similar burden of about Rs. 4000 crore. This is not purported to put up a point against the pay hike. If the government is prepared to take a burden like this for the secured constituent, the government should not feel it difficult to keep a small amount as reserved fund for the insecure component of the society.
- There should not be two opinions about the fact that the motive behind large-scale grants given to sugar factories in co-operative sector where political constituents are strong, is purely political

- Of the total revenue expenditure in 2007-2008 7% is for repayment of interest on the big loans taken from International Financial Institutions.

If the Reserve Funds are not required as they increase revenue expenditure, how can the above-mentioned items be called necessary? On which parameters is the expenditure for developmental works (such as unnecessary fly-overs, big constructions) called necessary or justifiable, when such developmental works do not benefit the poor and ordinary public in any way?

To summarize, taking strict measures for improving collection of taxes, instead of cancelling Reserve Funds, and bringing transparency in all government transactions is the true path of economic development.

The lessons and insights gained from this analysis of the Planning Department and Finance Department, particularly with reference to NREGS are given in the next chapter.



4

Role We Can Play As Aware Citiznes...



Our Stand about Act no. V

EGS once represented 'progressive' identity of the state of Maharashtra. It was a model, which demonstrated how 'haves' (taxpayers) and state government together shouldered the responsibility of ensuring financial space for the interests of 'have nots' in the society, that too on a sustained basis. The EGS Minister himself used to proudly say that EGS would never suffer from lack of funds. However Act no. V recently passed by the Maharashtra Government cancels all the Reserve Funds including the EGS Fund, and merges the balance of these reserves in the Consolidated Fund of the state, and thereby it deprives the laborers of an assurance that the scheme would not at any time suffer from want of funds. Thus Act no. V put an end to the financial sustainability of the scheme.

Analysis of arguments of both the Planning and the Finance department, which were in support of the Act, reveals that the decision to pass 'Act no. V' was certainly not an 'inevitable' decision. 'Unutilized balance' would not have remained pending, if it was utilized for rebuilding and rejuvenating of rural and tribal areas of the state. The co-existence of unspent balance and large-scale survival migration of laborers is itself an indication of the failure of the state to act as a custodian of public interest. Maharashtra government should not have increased its revenue income at the cost of depriving the poor of the money reserved to help them live a better life, especially when, just and sustainable ways of doing so were not impossible, provided there was political will. It is further felt that instead of passing such detrimental Acts, Maharashtra Government, which has the longest experience of implementing EGS, should provide guidance to other states for implementing NREGS effectively.

As aware citizens, we appeal to you to take a firm stand on the basis of this analysis, and take it on as many forums, and in as many ways as possible. At the same time, we would like to draw your attention to some insights and lessons that need to be taken into consideration in the context of NREGS, which has as its basis EGS.

Some Considerations for CSOs from Other States

How could Maharashtra Government take a critical decision like this in an absolutely non-participatory, non-transparent, and non-accountable manner?

A major factor responsible for this was, absence of specific provisions in EGS, which could ensure meaningful participation of non-government stakeholders in the process of making policy-level decisions. As a result, the activist and grassroots groups representing the concerns of laborers, which were vibrant during the initial years of EGS, got cut off from the process of policy making during the later years. The taxpayer society, especially the trade unions who willingly accepted the commitment to pay professional tax for EGS at the time of establishment of the EGS Fund also did not bother to ask what happened to the tax they paid. In turn, policy-level efforts to remove whatever internal checks were there in the scheme, succeeded many times. Even while passing Act no.V, the state government was sure that there would be no or nominal opposition from the civil society. Some sundry groups and individuals did make efforts to counter this policy development, however they did not succeed, because EGS did not provide them with appropriate provisions for making the government answerable for its decisions, and the taxpayers who could pressurize the government to be accountable, were completely oblivious of the gravity of this development at policy level.

As discussed in the second chapter, the transition from EGS to MREGS was done in an arbitrary and haphazard manner. In effect, the above-mentioned lacuna got replicated in MREGS. Furthermore we see that the same lacuna not replicated in the NREGS also.

It is true that there are certain provisions in NREGS, which provide space for community participation and thereby make the functionaries at grassroots-level

accountable to the people. However there are no provisions in the NREGS, which ensure meaningful participation of the non-governmental stakeholders in the process of taking policy-level decisions; nor are there any provisions, to make the government accountable for their decisions. There were extensive provisions for monitoring and grievance redressal in the EGS. However, experience with these provisions has been far from satisfactory in Maharashtra. The experience of states where NREGS is in operation, is not different.

In addition to the above-mentioned lacuna, two factors, which played a critical role in Maharashtra, viz., reduced influence of socio-political and civil society movement on the process of policy making, and pressure to be 'economically efficient and competent' in the global market and consequent reduction in the expenditure on items of public interest, are applicable in almost all the states. Taking into account the fact that the guarantee in the NREGS is already weaker than the one provided by EGS, or even MREGS, there is every possibility that efforts for further weakening of this guarantee will take place more easily and rapidly, unless efforts are made to:

- strengthen the 'guarantee' component in NREGS, by mobilizing demand for:
 - a) expansion of its scope from 100 days to a family, to throughout the entire year to every individual seeking it; (b) preparing the states to accept legal commitment to contribute for the NREGS Fund, (c) establishing a separate account for NREGS Fund
- engage proactively in a dialogue with policy makers, in order to keep track of policy changes on

the one hand, and influence them from the viewpoint of public interest on the other hand. Why are we emphasising only the policy level changes when we know that all Government projects suffer from apathy, corruption and lack of motivation in implementation?. It should however be noted here that implementation inefficiencies often get addressed, while policy decisions and the process of policy making, which has far-reaching implications for implementation remains unaddressed.

- spread awareness about the importance of effective execution of NREGS among the civil society groups, especially the taxpayers, and encouraging them to take up financial responsibility of NREGS
- engage the civil society groups, especially taxpayers, who would be willing to participate in the monitoring of NREGS on an ongoing basis

Finally, we as aware citizens, should keep in mind that all such efforts would be a step towards preservation of democracy. This is the biggest lesson that we all need to draw from the history of Act no. V.



ANNEXURE

MAHARASHTRA ACT NO. V OF 2008

Rules of Maharashtra Legislative Assembly, Ordinances issued by the Governor, and Bills from Law and Justice Department (Translated Version)

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Bombay Motor Vehicles Tax, the Motor Vehicles (Taxation of Passengers), the Maharashtra Education and Employment .Guarantee (Cess), the Tax on Sale of Electricity, the State-Tax on Professions, Trades, Callings and Employments, the Tax Acts (Amendment) and the Employment Guarantee (Amendment) and the Bombay State Scarcity Relief Fund (Repeal) Act, 2008 (Mah.V of 2008), is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

A. M. SHINDEKAR,
Secretary to Government,
Law and Judiciary Department.

MAHARASHTRA ACT NO. V OF 2008

(First published after having received the assent of the Governor, in the "Maharashtra Government Gazette", on the 19th March 2008).

An Act further to amend the Bombay Motor Vehicles Tax Act, 1958; the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958; the Maharashtra Education and Employment Guarantee (Cess) Act, 1962; the Maharashtra Tax on Sale of Electricity Act, 1963; the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975; the Maharashtra/Tax Acts (Amendment) Act, 1975, and the

Maharashtra Employment Guarantee Act, 1977; and to repeal the Bombay State Scarcity Relief Fund Act, 1958.

WHEREAS both Houses of the State Legislature were not in session;

AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Bombay Motor Vehicles Tax Bom. Act, 1958; the Bombay Motor Vehicles (Taxation of Passengers) the Maharashtra Education and Employment Guarantee (Cess) the Tax on Sale of Electricity Act, 1963; the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975; and the Maharashtra Tax Acts (Amendment) Act, 1975 and to repeal the Bombay State Scarcity Relief Fund Act, 1958, with a view to abolish the funds established and maintained under the said Acts; and further to amend the Maharashtra Employment Guarantee Act, 1977; and, therefore, promulgated the Bombay Motor Vehicles Tax, the Motor Vehicles (Taxation of Passengers), the Maharashtra Education and Employment Guarantee (Cess), the Tax on Sale of Electricity, the State

Bom. LXV of 1958. Bom LXVII of 1958 Mah. XXVII of 1962. Mah. XXI of 1963 Mah. XVI of 1975. Mah. XVII of 1975 Bom. LXXXIII of 1958. Bom. LXXXIII of 1958. Mah. XX of 1978. Mah. Ord. II of 2008.

Tax on Professions Trades, Callings and Employments, the Tax Acts (Amendment) and Mah. the Employment Guarantee (Amendment) and the Bombay State Scarcity Relief Fund (Repeal) Ordinance, 2008, on the 22nd February 2008.

AND WHEREAS it is expedient to replace the said Ordinance, with certain modifications, by an Act of the State Legislature; it is hereby enacted in the Fifty-ninth Year of the Republic of India as follows : —

CHAPTER I

PRELIMINARY

Short title and commencement

1. (i) This Act may be called the Bombay Motor Vehicles Tax, the Motor Vehicles (Taxation of Passengers), the Maharashtra Education and Employment Guarantee (Cess); the Tax on Sale of Electricity, the State Tax on Professions, Trades, Callings and Employments, the Tax Acts (Amendment) and the Employment Guarantee (Amendment) and the Bombay State Scarcity Relief Fund (Repeal) Act, 2008.

2. It shall be deemed to have come into force on the 22nd February 2008.

CHAPTER II

AMENDMENTS TO THE BOMBAY MOTOR VEHICLES TAX ACT, 1958.

- Amendment of section 11 of Bom LXV of 1958. 2. In section 11 of the Bombay Motor Vehicles Tax Act, 1958 (hereinafter, in this Chapter, referred to as “the Motor Vehicles Tax Act”), (a) sub-sections (1), (4) and (5) shall be deleted; (b) Explanation shall be deleted.
- Amendment of section 23 of Bom LXV of 1958. 3. In section 23 of the Motor Vehicles Tax Act, in sub-section (2), In clause (g), the words “and the manner in which the amount standing to the credit of the State Road Fund shall be expended under that section” shall be deleted.

CHAPTER III

Bom LXVII of 1958.

AMENDMENT TO THE BOMBAY MOTOR VEHICLES (TAXATION OF PASSENGERS) ACT, 1958.

Deletion of section 5A of Bom. LXVII of 1958.

4. Section 5A of the Bombay Motor Vehicles (Taxation of Deletion of Passengers) Act, 1958, shall be deleted.

CHAPTER IV

Bom
LXXXII of
1958.

REPEAL OF THE BOMBAY STATE SCARCITY RELIEF FUND ACT, 1958.

5. The Bombay State Scarcity Relief Fund Act, 1958, is hereby Repealed.

Repeal of
Bom.
LXXXIII of
1958.

CHAPTER V

Mah.
XXVII of
1962.

AMENDMENTS TO THE MAHARASHTRA EDUCATION AND EMPLOYMENT GUARANTEE (CESS) ACT, 1962.

6. In Chapter II of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962 (hereinafter, in this Chapter, referred to as “the Education and Employment Guarantee (Cess) Act”), in the heading, the words “and State Education Cess Fund” shall be deleted, of 1962.

7. Section 6 of the Education and Employment Guarantee (Cess) Act shall be deleted.

8. In section 26 of the Education and Employment Guarantee (Cess) Act, in sub-section (2), clause (a) shall be deleted.

Amendment
to the
Heading of
Chapter II
of Mah.
XXVII of
1962.

Deletion of
section 6 of
Mah.
XXVII of
1962.

Amendment
of section
26 of Mah.
XXVII of
1962.

Mah. XXI
of 1963.

CHAPTER VI

AMENDMENTS TO THE MAHARASHTRA TAX ON SALE OF ELECTRICITY ACT, 1963.

9. In section 5 of the Maharashtra Tax on Sale of Electricity Act, 1963 (hereinafter, in this Chapter, referred to as “the Tax on Sale of Electricity Act”),

(a) in sub-section (1), clause (b) shall be deleted;

(b) in sub-section (2), the words “and the State Electricity Fund” shall be deleted; (c) in the marginal note, for the words “Transfer of proceeds of tax to State Electricity Fund, etc.” the words “Utilisation of proceeds of tax,” shall be substituted.

10. Section 5A of the Tax on Sale of Electricity Act shall be deleted.

Amendment
of section 5
of Mah. XXI
of 1963.

Deletion of
Section 5A
of Mah. XXI
of 1963.

CHAPTER VII

AMENDMENTS TO THE MAHARASHTRA STATE TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS ACT, 1975.

Amendment
of Preamble
of Mah.
XVI of
1975.

11. the preamble of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (hereinafter, in this Chapter, referred to as “the Tax on Professions Act”) the words “ for

Mah. XVI
of 1975

raising additional resources needed for implementing the Employment Guarantee Scheme of the State Government and to provide for establishment of the Employment Guarantee Fund” shall be deleted.

Substitution of section 30 of Mah. XVI of 1975.

12. For section 30 of the Tax on Professions Act, the following section shall be substituted, namely :—

Mah. XX of 1978

Amounts to be paid into the fund established under the Maharashtra Employment Guarantee Act 1977

30. The proceeds of the tax levied and collected under this Act, together with penalties and interest and fees recovered thereunder, shall first be credited to the Consolidated Fund of the State, and after deducting the expenses of collection and recovery as determined by the State Government and the amounts of grants made to the local authorities under section 29, out of the remaining amount, the amount necessary to ensure that, at the beginning of every Financial Year, the amount standing to the credit of the Fund established under the Maharashtra Employment Guarantee Act, 1977, is not less than Rupees 2,000 crore, shall, under appropriation duly made by law in this behalf, be entered into, and transferred to, the Fund established under that Act.”

CHAPTER VIII

Deletion of section 4 of Mah. XVII of 1975.

AMENDMENT TO THE MAHARASHTRA TAX ACTS (AMENDMENT) ACT, 1975.

Mah. XVII of 1975.

Deletion of Section 4 of the Maharashtra Tax Acts (Amendment) Act, 1975, shall be deleted.

CHAPTER IX

AMENDMENT TO THE MAHARASHTRA EMPLOYMENT GUARANTEE ACT, 1977.

Amendment of section 12 of Mah. XX of 1978

14. In section 12 of the Maharashtra Employment Guarantee

Mah. XX of 1978

(a) in sub-section (3), for clause (a), the following clause shall be substituted, namely

Mah. XVI of 1975

(a) the amounts transferred to the Fund under section 30 of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975”.

(b) after sub-section (3), the following sub-section shall be inserted, namely :—

(3A) The State Government shall allocate requisite funds for effective implementation of the Scheme.”

Bom. LXV
of 1958.
Bom.
LXVII of
1958.
Bom
LXXXIII of
1958.
Mah.
XXVII of
1962.
Mah. XXI
of 1963.

CHAPTER X

MISCELLANEOUS

15. On the date of commencement of this Act, all the securities (including cash balances, if any) in the State Road Fund established under section 11 of the Bombay Motor Vehicles Tax Act, 1958, the Health and Nutrition Fund established under section 5A of the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958, the Consolidated of 1958. Maharashtra State Scarcity Relief Fund established under section 3 of state the Bombay State Scarcity Relief Fund Act, 1958, the State Education of 1958. Cess Fund established under the Maharashtra Education and Employment Guarantee (Cess) Act, 1962, and the State Electricity Fund established under section 5 of the Maharashtra Tax on Sale of Electricity Act, 1963 shall be deemed to be transferred to, and to form part of the Consolidated Fund of the State and shall be held in, or transferred to the name of the Secretary to the Government of Maharashtra, Finance Department.

Provision for transfer of amount standing to the credit of various funds to the Consolidated Fund of the State.

Mah. Ord. II
of 2008.

16.(1) The Bombay Motor Vehicles Tax, the Motor Vehicles (Taxation of Passengers), the Maharashtra Education and Employment Guarantee (Cess), the Tax on Sale of Electricity, the State Tax on saving Professions, Trades, Callings and Employments, the Tax Acts (Amendment) and the Employment Guarantee (Amendment) and the Bombay State Scarcity Relief Fund (Repeal) Ordinance, 2008, is hereby repealed.

Repeal of
Mah. Ord. II
of 2008 and
saving

(2) Notwithstanding such repeal, anything done or any action taken under the Bombay Motor Vehicles Tax Act, 1958, the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958, the Maharashtra Education And Employment Guarantee (Cess) Act, 1962, the Maharashtra Tax on Sale of Electricity Act, 1963, the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, the Maharashtra Tax Acts (Amendment) Act, 1975 and the Maharashtra Employment Guarantee Act, 1977, as amended by the said Ordinance, shall be deemed to have been done or taken under the relevant Act, as amended by this Act.

Bom. LXV
of 1958.
Bom LXVII
of 1958.
Mah.
XXVII of
1962.
Mah. XXI
of 1967
Mah.
XVI of
1975.
Mah. XVII
of 1975.
Mah. XX of
1978.