

# **GOVERNMENT OF GOA**

## **LAW COMMISSION**

**Amendment to the Goa Panchayat Raj Act 1994.**

**Re to provide for vesting first appeal powers on the Director of Panchayats and creation of Panchayat Tribunal to hear revision petitions and also to make applicable provisions of Code of Civil Procedure to proceedings before the judicial authorities under the Panchayati Raj Act.**

**Report No. 6**

**October 2009**

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**Forwarded to the Law Minister, Government of Goa by Shri Ramakant D. Khalap, Chairman, Law Commission, Goa on the 30<sup>th</sup> day of October 2009.**

The 2<sup>nd</sup> Law Commission was constituted for a period of one year in the first instance by Government Order No. 9/5/2008-LA/100 dated the 20<sup>th</sup> January, 2009 issued by the Law Department, Government of Goa.

The Law Commission consists of the Chairman, and the two Members.

**Chairman**

**Shri Ramakant D. Khalap**

**Members**

**Shri Cleofato Coutinho**

**Shri Mario Pinto Almeida**

The Law Commission is located at **B-S 1, 3<sup>rd</sup> Floor, Paraiso de Goa, Porvorim, Goa.**

## **Secretarial Support**

- 1. Shri Ashok Ulman**
- 2. Shri Manohar Shetye**

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**Any enquires relating to this Report should be addressed to the Secretary and sent either by post to the Law Commission, Goa, B-S 1, 3<sup>rd</sup> Floor, Paraiso de Goa, Porvorim, Goa or email to [chairman-glc.goa@nic.in](mailto:chairman-glc.goa@nic.in)**

## **REPORT**

The Goa Panchayati Raj Act 1994, was enacted by the Legislative Assembly of Goa to replace the previous enactments relating to Panchayats. It is a comprehensive Legislation and was framed in pursuance of 73<sup>rd</sup> Amendment to the Constitution of India. It provides for creating of three tier Panchayati Raj system at the Village Panchayat level, Taluka level and the Zilla Parishad level. The Government of Goa however, decided to establish a two tier system at the Panchayat and Zilla Panchayat level in terms of Article 242B of the Constitution of India, as the population of Goa does not exceed 20 lakhs. The Panchayat system is an important constituent of the overall democratic setup of the country. It is aimed at translating the principle of decentralisation of the democratic self governance at the grass root level. This purpose has broadly been achieved in the State of Goa. Accordingly, there exist 189 Village Panchayats and 2 Zilla Parishads. Elections to these bodies are regularly held. In compliance with the provisions of the Act, women, OBC, SC/ST enjoy representation in the Panchayati Raj system.

Chapter X of the Panchayat Raj Act 1994, deals with inspection, supervision, etc over the affairs of the Village Panchayats, and Zilla Parishads and empowers the Government functionaries including Secretary to the Government in charge of Panchayats, Director of Panchayats, Directors of departments etc to supervise and hold inspections of the Village Panchayats and Zilla Parishads and to issue appropriate directions and orders to these bodies and to call for returns, statements, reports, etc. It empowers the Director of Panchayats to suspend execution of alleged unlawful orders of the Village Panchayat or Zilla Parishad. The Government has overall powers to confirm or rescind the order of the Director as well as to regulate the activities of the Village Panchayat or Zilla Parishada and to appoint administrators to administer the Village Panchyat or Zilla Parishad.

Of late, an agitation was launched by section of the elected members of the Village Panchayat and Zilla Panchayat as well as some NGO's who perceived excessive interference of the Government in the affairs of the local bodies through an amendment proposed by the Government which proposes to empower the Secretaries of the Village Panchayats to execute the orders of the

Director within a specified period if the same was not complied with by the Sarpanch of the Village Panchayat.

A delegation comprised of some elected Village Panchayat members also met the Commission in this regard and submitted their representation in writing and through email opposing the proposed amendment bill.

We feel that as per the amendment proposed by the Government vide Bill No. 4 of 2009 does not encroach upon the rights of the elected bodies. The scheme of all Acts relating to the elected bodies clearly demarcates the powers of elected functionaries and the executive functionaries. Elected bodies take decisions and these decisions are then executed by the executives like secretary to the Panchayat. At the Central and State level Governments the decisions are taken by the Councils of Ministers which are executed by the Secretaries to the Government. At the Municipal and Zilla Parishad level the decisions of elected bodies are executed by their respective Chief Officers / Chief Executive Officers. There cannot be a different yardstick in case of Village Panchayats. The decisions of the Village Panchayat are naturally to be executed by the Secretaries to the Panchayats. The Sarpanch cannot be expected to function as an Executive Officer. Bill No.4 of 2009 in fact provides that the decision of the appellate/ revisionary authority is to be executed by the Panchayat Secretary if it is not executed by the Panchayat.

This brings us back to Chapter X. We feel that every Act has to provide for checks and balances at every stage in such a manner that the aggrieved parties feel confident that they have a competent judicial authority before whom they can challenge any decision which they perceive to be against law or justice.

Section 178(1) provides that the Director of Panchayat may suspend the execution of order or resolution of a Panchayat or Zilla Panchayat or prohibit the doing of anything which is to be done or is being done by or on behalf of the Village Panchayat or Zilla Panchayat if in the opinion of the Director such order or resolution or the doing of such an act is unjust, unlawful or improper or may cause or is likely to cause injury or annoyance to the public or lead to the breach of peace.

Section 178(2) provides that the Director shall forward his order or direction to the Government and the Government may confirm or rescind or modify the order, etc. We feel that this power vested in the Government to confirm, rescind or amend the order passed by the Director is not conducive to the healthy growth of an independent elected body.

The Government headed by elected persons are subject to political inclinations of the elected echelons. If the Director is deemed to be a quasijudicial Authority which in fact he is, then it would be in fitness of things to invest him with first appellate powers against the decision of the Village Panchayat or Zilla Parishads and further to create a Tribunal to hear challenges to the decision of the Director of Panchayats under second appellate jurisdiction or revisionary jurisdiction. Having accepted this as a principle, this Commission feel it prudent also to suggest amendments to section 201 and 201 A appropriately and to introduce a definition clause to define Panchayat Tribunal to hear revision against the order of Director of Panchayats. Since the Director of Panchayat and Panchayat Tribunal are quasi judicial bodies we feel it appropriate to make applicable the provisions of Code of Civil Procedure to all enquires, appeals, revision and proceedings before the Officer/Appellate authority, Panchayat Tribunals, etc.

A draft Bill further to amend the Goa Panchayati Raj Act 1994 on the above line is annexed herewith.

### **Recommendations:-**

The Law Commission is pleased to make the following recommendation:

- 1) Director of Panchayat be vested with powers to hear and decide appeals against any order or resolution of the Panchayat or of any officer under Panchayati Raj Act.
- 2) That the Panchayat Tribunal be created at the District level to hear revision petition against any order passed by the Director of Panchayat.
- 3) That the provisions of the Civil procedure Code be made applicable to all inquiries and proceeding before Panchayat Tribunals or any officer under the Panchayat Raj Act.

**Draft Bill incorporating the above recommendations is enclosed for ready reference and appropriate decisions,**

**THE GOA PANCHAYAT RAJ (AMENDMENT) BILL 2009**

**(BILL NO. OF 2009)**

A

BILL

Further to amend The Goa Panchayat Raj Act 1994

(Goa Act 14 of 1994)

Be it enacted by the Legislative Assembly of the State of Goa in the sixtieth Year of the Republic of India, as follows:

1. Short title and commencement- (1) This Act may be called the Goa Panchayat Raj (Amendment) Bill 2009

(2) It shall come into force at once

2. Insertion of new section :- After the section 2 sub-section 16 of the Panchayat Raj Act 1994 (Goa Act 14 of 1994) (hereinafter called the principal Act the following section shall be inserted namely:

16A - Panchayat Tribunal means the Principal District Judge, and/or Additional District Judge , of the District within whose jurisdiction the Panchayat with respect to which such order refers falls

3. Amendments to Sections 173, 174, 175,176, 178 and 181 of Chapter X .

i) In section 173 the words 'the secretary to the Government in charge of Panchayat Raj Department in case of Zilla Panchayat and the Chief Executive Officer and' shall stand deleted.

ii) In sub section 3 of section 174 the words 'the Chief Executive Officer or' shall stand deleted and after the words 'the Secretary' insert the following 'in charge of Panchayat Raj Department'.

iii) The title to section 175 should read as 'powers of director'.

From sub section 1 of section 175 the words 'Chief Executive Officer' and the sub sections 2 and 4 of section 175 shall stand deleted.

iv) The title to section 176 should read as power of director to provide for performance of duties in default of Panchayat or Zilla Panchayat.

The words 'when the Government in case of Zilla Panchayat or the director in case of Panchayat appearing in the beginning of section 176 be substituted by the words 'when the director'.

v) After Section 178 add the following:-

178(1) (a) After passing an order under sub-section 1 the Director may give such further directions as required in the matter .

The Section 178 (2) be substituted by the following:-

178(2) When the Director makes an order under sub-section 1 or gives direction under sub-section (1)(a) the party aggrieved by such an order or direction may file a revision petition to the Panchayat Tribunal and the Panchayat Tribunal shall upon the perusal of records and upon hearing the parties determine if such order if allowed to stand would occasion a failure of justice or cause irreparable injury to the parties against whom it is made and upon such determination shall decide to proceed the case on merits.

Every revision petition shall be decided as expeditiously as possible and endeavour shall be made to decide the revision petition within three months from the date on which the revision petition is presented to the Panchayat Tribunal.

The order pronounced on such a revision petition shall be final.

vi) The title to section 181 to read as Government power to specify the role of Panchayats. The word 'director' appearing in sub section 1 of section 181 be substituted by the word 'Government'.

Sub section 2 of section 181 shall stand deleted

And the existing proviso of section 181 shall be substituted by the following provided that the Government shall not pass any order under this section

without giving the Panchayat, Taluka Panchayat, or Zilla Panchayat concerned without a reasonable opportunity of showing cause against the proposed order.

#### 4- Amendments to sections 201 and 201 A

The existing Section 201 and 201 A shall stand substituted by the following sections

201. Appeals.- (1) any person aggrieved by any order or resolution of the Panchayat or of any order of the Officers under the Panchayat Raj Act, may within thirty days of such order appeal to the Director.

(2) The Director may, after giving an opportunity to the appellant and the respondent to be heard and after such inquiry as it deems fit, decide the appeal and such decision shall be subject to revision petition as provided in the section 201 A.-

201 A.- When the Director of Panchayats makes an order under any of the provisions of this Act or as an appellate authority under this Act a revision petition may be filed by any party aggrieved to the Panchayat Tribunal of the District within thirty days from the date of the order and the Panchayat Tribunal of the District shall call for the records of any case decided by the , Director as the case may be

The Panchayat Tribunal shall upon the perusal of the records and upon hearing the parties determine if such order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it is made and upon such determination shall proceed to decide the case on merits.

The order pronounced in such revision shall be final..

5- In Section 239 of the Act after the sub-section 4 of section 239 C the following shall be added

(4) Wherever under this Act or rules no procedure has been prescribed the provisions of the Code of Civil Procedure for the time being in force in this State shall apply to all inquiries, appeals, revisions and proceedings before the Officers, Appellate Authorities, the Panchayat Tribunal and all other Authorities under this Act.

## **2 RECOMMENDATION**

**2.1 It is therefore suggested that The Goa Panchayat Raj (Amendment) Bill 2009 may be introduced in the forthcoming Assembly Session as proposed.**

**2.2 We recommend accordingly.**

**(Ramakant D. Khalap)  
Chairman**

**(Cleofato Coutinho)  
Member**

**(Mario Pinto Almeida)  
Member**