

## **Press Brief**

### **Report of Comptroller & Auditor General of India on Performance Audit on Efficacy of Implementation of 74<sup>th</sup> Constitution Amendment Act, 1992**

The Report No. 1 of the year 2022 of the Comptroller & Auditor General of India - Performance Audit on Efficacy of Implementation of 74<sup>th</sup> Constitution Amendment Act, 1992 – Government of Himachal Pradesh was forwarded to the Government on 1<sup>st</sup> July 2022 and laid on the table of the Vidhan Sabha on 03 April in accordance with the provisions of Article 151 of the Constitution of India.

This Report contains significant results of the performance audit conducted to ascertain the “Efficacy of Implementation of 74<sup>th</sup> Constitution Amendment Act, 1992” covering the period from April 2015 to March 2020.

#### **Introduction**

The Constitution (Seventy-fourth Amendment) Act, 1992 (74<sup>th</sup> CAA) was enacted, which came into force on 1 June 1993, to give Constitutional recognition to the Urban Local Bodies (ULBs) for decentralizing urban governance along with the Constitutional right to exist. The 74<sup>th</sup> CAA authorized the State Government to enact laws to empower ULBs with powers and authority as may be necessary to enable them to function as institutions of self-government to transfer various responsibilities to Municipalities and to strengthen Municipal level governance. The Twelfth Schedule of the Constitution enumerates 18 specific functions to be devolved to ULBs.

In the State, ULBs are categorized into three types of Municipalities viz., Municipal Corporation, Municipal Councils and Nagar Panchayats on the basis of population and revenue generated by local administration specified by Himachal Pradesh Municipal Act 1994. As of March 2020, there were 54 ULBs in Himachal Pradesh. The Municipal Corporations and other Municipalities viz., Municipal Council and Nagar Panchayats are governed by the Himachal Pradesh Municipal Corporation Act, 1994 (HPMC Act amended October 2016) and the Himachal Pradesh Municipalities Act, 1994, (HPM Act amended September 2016).

#### **Audit framework**

The overall objective of this performance audit was to ascertain whether ULBs have indeed been empowered in terms of funds, functions and functionaries to establish themselves as effective institutions of local self-government and whether the 74<sup>th</sup> CAA has been effectively implemented in the State. The main objectives of performance audit were to assess adequacy in coverage of provisions of 74<sup>th</sup> CAA in the State Legislation; whether ULBs in the State were empowered to discharge their functions effectively through creation of appropriately designed institutions/

institutional mechanisms and extent of devolution of functions by the State Government; and whether ULBs have been empowered to access adequate financial resources and human resources for discharge of functions stated to be devolved to them.

The audit findings, conclusions and recommendations relating to each of the audit objectives have been reported in four distinct chapters viz., chapters III to VI.

### **Compliance with provisions of 74<sup>th</sup> CAA**

The State statutes complied with the provisions of the 74<sup>th</sup> CAA. However, compliance to the constitutional provisions by law does not guarantee effective decentralisation on ground, unless followed by effective implementation of functions enlisted in Twelfth Schedule of Constitution. The legal provisions were not backed by decisions and actions. This was especially true in case of provisions pertaining to the devolution of functions.

### **Devolution of Functions & Empowerment of Urban Local Bodies**

Though the State Government carried out amendments in the State statutes viz., HPMC Act & HPM Act to comply with the provisions of 74<sup>th</sup> CAA, these amendments were not supported by firm action in terms of empowerment of ULBs to discharge their functions freely and effectively. This defeated the spirit of the Constitutional amendment, as is evident from the inconsistencies noticed during the course of performance audit.

The notification regarding devolution of functions had been issued (August 1994). Out of 18 functions, one function was not devolved to ULBs. In case of remaining 17 functions, ULBs were solely responsible for five functions; were mere implementing agencies for four functions; had limited role with overlapping jurisdiction of state departments/parastatals for six functions; and had no role for two functions.

Composition of municipalities in respect of test-checked ULBs was in accordance with the provisions. Seats for the direct elections were being reserved for SC/ST and women as per the prescribed norms and the seats of councillors were being rotated as per the reservation policy for each election. The term of the office of the Mayor and Deputy Mayor was not coterminous with the duration of the House of Municipal Corporations. However, the term of offices of the Presidents and Vice Presidents of Municipal Councils and Nagar Panchayats were coterminous with the duration of Municipalities.

Meetings of Houses of ULBs were not held regularly. The percentage of number of meetings of House of ULBs held when compared with mandatory number of meetings, ranged between 35 *per cent* and 95 *per cent* during 2015-20.

All three Standing Committees were formed in the test-checked 14 ULBs. However, against prescribed number of 3640 meetings, only 173 meetings were held in three

ULBs (MC Solan: 44, MC Nahan: 83 and NP Sunni: 46). No meetings were held in remaining 11 selected ULBs.

Ward Committees (WCs) were not constituted in any of the test-checked ULBs except in Municipal Corporation Shimla.

District Planning Committees (DPC) were constituted in all the Districts of test-checked ULBs, however the ULBs had not prepared and submitted respective development plans to DPC.

There was delay in constitution of three SFCs (third, fourth & fifth) by 12, 24 and 06 months from scheduled date. Further, there were delays in submission of reports to the State Government by 17, 25 and 21 months.

The State Government had overriding powers over the Urban Local Bodies in relation to various matters viz., power to frame Rules; power to cancel and suspend a resolution or decision taken by ULB; power to dissolve ULBs; cancellation of bye-laws by Government; sanction to borrow money; sanction of regulations by Government; power in regard to taxes, budget estimates etc.

The parastatal bodies were being controlled by the Government and were having their own governing bodies which did not include adequate elected representatives of ULBs. Shimla Municipal Corporation (SMC) had limited control over the functioning of the Shimla Jal Prabandhan Nigam Limited (SJPNL), thereby defeating the purpose of devolution of functions. The power regarding approval of building construction plan was being discharged by Himachal Pradesh Housing and Urban Development Authority (HIMUDA) for development of housing colonies without any involvement of ULBs except seeking NOC for use of land. Further, there is no representation of ULBs in the Governing Body of HIMUDA. The function of 'Urban planning including town planning' and 'Regulation of land-use and construction of buildings' in industrial areas falling within jurisdiction of the ULBs is being performed by Himachal Pradesh State Industrial Development Corporation (HPSIDC), even after devolution of the function to ULBs vide notification of State Government in August 1994.

In Himachal Pradesh, two cities viz., Dharamshala and Shimla were selected to be covered under the Smart City Mission and two Special Purpose Vehicles (SPVs) were constituted under Companies Act 2013 for Smart City Dharamshala and Shimla. These SPVs were directly accountable to State Government than to ULBs, and the representatives of ULBs had only 25 *per cent* (Dharamshala Smart City Limited) and 17 *per cent* (Shimla Smart City Limited) representation in the Board of Directors. Further, the functions devolved to ULB were being executed by other agencies on direction of SPV.

### **Financial Resources of Urban Local Bodies**

The 74<sup>th</sup> CAA provided for fiscal transfers from the Central and State Governments to the ULBs besides empowering them to raise their own revenue. However, the ULBs were having limited access to the financial resources.

ULBs were largely dependent on fiscal transfers, which constituted about 78 *per cent* of their total revenue and own revenue of ULBs constituted only 22 *per cent* of their total revenue.

During 2015-16, funds of ₹ 4.08 crore were released in excess of the mandated devolution by the State Finance Commission, whereas there was a shortfall in funds released to ULBs against mandated devolution by an extent of ₹ 6.07 crore during 2016-17 to 2019-20.

Allocation of performance grants of ₹ 32.44 crore for the years 2017-18, 2018-19 & 2019-20 was yet to be received.

The State laws revealed that while the authority to collect certain taxes like property tax vested with ULBs but the powers pertaining to the rates and revision thereof, method of assessment, exemptions vested with the State Government.

There was no uniformity in method of levying the property tax. Surveys to enumerate the properties was not as per time schedule envisaged. Digitizing property database using Geographic Information System (GIS) and automating property tax calculations was not put in place for all the ULBs. Recovery on account of property tax (₹ 14.69 crore); conservancy tax (₹ 3.82 crore); rent from commercial establishments (₹ 10.66 crore) was outstanding thereby showing ineffectiveness of ULBs in augmenting of their own revenue.

Water supply management in the State was done by Jal Shakti Vibhag except MC Shimla (SJPNL) and MCs Solan and Palampur. Supplying of bulk water to ULBs at higher rates resulted in accrued liability in the test-checked Municipalities (MC Shimla ₹ 229.64 crore and MC Solan ₹ 78.67 crore). Non-revenue Water ranged between 34 *per cent* and 47 *per cent* in MC Solan during the period 2015-20.

Sewerage management in the State was being done by Jal Shakti Vibhag, except ULBs Shimla, where this function is being discharged by Shimla Jal Prabhandan Nigam Ltd. and MC Solan where collection of sewerage charges was the responsibility of MC. Non-levy of sewerage charges (MC Solan) resulted in revenue loss of ₹ 38.03 lakh.

Budget exercise was flawed and resulted in preparation of unrealistic and unscientific budgets. Percentage variation in budgeted and actual receipt ranged between 21 and 403 per cent, and it ranged between 22 and 274 per cent in case of budgeted and actual expenditure, in the test-checked ULBs.

The capital expenditure i.e. programme expenses and expenses out of grants incurred by ULBs constituted about 43 *per cent* of the total expenditure and revenue expenditure i.e. human resource expenses, general expenses and operation & maintenance and finance charges was about 57 *per cent* of total expenditure.

ULBs were able to utilise on an average about 63 *per cent* of the available funds each year.

The powers of ULBs were limited in respect of administrative approvals and technical sanctions.

### **Human Resources of Urban Local Bodies**

The ULBs were having minimal control over human resources and the number of employees as per requirements were inadequate, as is evident from the following:

The State Government had the powers to regulate method of recruitment and condition of service, pay and allowances of ULBs.

The vacancy ranged from 35 *per cent* to 57 *per cent* among the various categories (except Group A) of all the ULBs.

In the test-checked ULBs the vacancy ranged from 13 *per cent* to 67 *per cent* among the various wings/sections, thereby hampering effective discharge of functions.

No mechanism of capacity building either in the ULBs or in the Directorate of UDD for enhancement of working quality of official was in place.