

COMPLIANCE AUDIT

CHAPTER II COMPLIANCE AUDIT

AUDIT OF SELECTED TOPICS

HEALTH AND FAMILY WELFARE DEPARTMENT

2.1. Implementation of Food Safety and Standards Act, 2006

2.1.1. Introduction

The Food Safety and Standards Authority of India (FSSAI) is an independent statutory authority responsible for the enforcement of various provisions of the Food Safety and Standards (FSS) Act and Rules in the States. In Kerala, the Commissioner of Food Safety (Commissioner) under the Health and Family Welfare Department was appointed in July 2008 for implementation of the Act in the State.

Kerala ranked fourth in the State Food Safety Index (SFSI) for the year 2019-20 and was elevated to second position in the SFSI for the year 2020-21⁹.

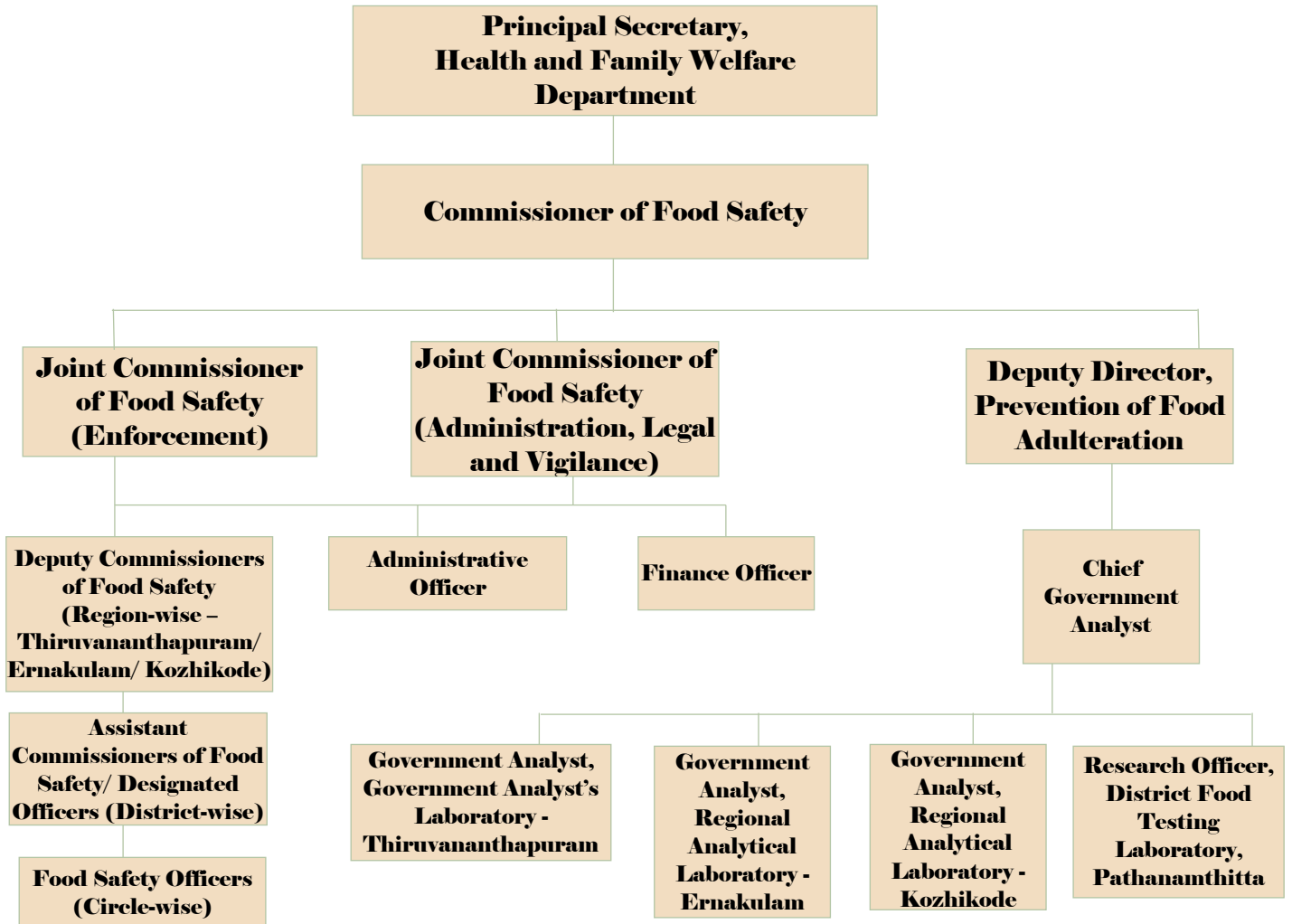
2.1.2. Organisational set up

Principal Secretary, Health and Family Welfare department is responsible for overall administration and Commissioner of Food Safety who is the State Food Authority is responsible for efficient implementation of the Act, Rules and Regulations in the State and is assisted by two Joint Commissioners, one for Administration, Legal and Vigilance and one for Enforcement and three Deputy Commissioners for three¹⁰ regions. Assistant Commissioners assist the Commissioner in implementation at the district level. The Food Safety Officers (FSOs) in charge of Circle Offices are responsible for field level functions. The organisational set up is shown in the Organogram given below.

⁹ Ranking for the year 2020-21 was released in September 2021 by the Ministry of Health and Family Welfare.

¹⁰ Thiruvananthapuram, Ernakulam and Kozhikode

Organogram



2.1.3. Audit objectives, scope and methodology

The Compliance Audit was conducted from January 2021 to September 2021 covering the period 2016-21 to examine whether;

- the provisions in the Act/ Rules/ Regulations were implemented effectively for ensuring the availability of safe and wholesome food for human consumption.
- the revenue was realised as per Regulations/ Orders issued from time to time by the Authorities stipulated under the Act and
- the organisation possessed adequate human resources and infrastructure facilities.

Records for the period 2016-21 were test-checked in the offices of the Commissioner of Food Safety, Kerala, three notified Analytical Laboratories (Thiruvananthapuram, Ernakulam, Kozhikode), Food Testing Laboratory at

Pathanamthitta, offices of four Assistant Commissioners (Thiruvananthapuram, Kottayam, Kozhikode and Kasaragod districts which were the four selected districts) and 13 selected circle offices under these Assistant Commissioners (**Appendix 2.1**). From each selected district and circle, 20 licences and six registrations respectively for each year¹¹ were selected for detailed scrutiny.

Entry Conference was held on 27 January 2021 with the Government wherein Audit objectives, Scope and Criteria were discussed and accepted by the Government. Exit Conference was conducted on 18 November 2021 with the Principal Secretary (Health and Family Welfare Department) wherein the audit findings were discussed in detail and responses of Government obtained.

Audit Findings

As per Section 31 of the FSS Act 2006, no person shall commence or carry on any food business in India without a licence or a registration¹². The deficiencies in various stages of implementation of the FSS Act such as Licensing and Registration, Inspection and Sample Collection, Food Analysis and follow up action/ monitoring were observed during the course of the audit, as detailed below.

2.1.4. Issue of licences and registrations

2.1.4.1. Deficiencies in issuing of licences and registrations

Section 31 of the Act read with Regulation¹³, licence is mandatory for any Food Business Operator¹⁴ (FBO) having an annual turnover of more than ₹12 lakh, while petty FBOs with annual turnover upto ₹12 lakh are required to register with such authority as specified in the regulations.

Further, as per Regulations 2.1.1 (3) and 2.1.4 (1), the registration certificate shall be issued within seven days of receipt of application and licence shall be issued within 60 days of date of issue of application ID¹⁵ respectively. If the application is either not rejected or any inadequacies intimated by the Food Safety Authorities and no registration or licence is issued within the prescribed time period, the FBO can commence the business. Audit test-checked the process of issue of licences and registrations in the selected districts and circle offices and noticed the following deficiencies.

¹¹ For the Audit period, total 100 licences from each selected district and 30 registrations from each selected circle were checked in detail.

¹² Registration is to be taken by Petty Food Business Operators as detailed in Regulation 1.2.1 (4) of Food Safety and Standards (Licensing and Registration of Food Businesses), 2011.

¹³ Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011

¹⁴ “FBO” means a person by whom the business is carried on or owned and is responsible for ensuring the compliance with the Act, Rules and Regulations made thereunder vide Section 3(o) of the FSS Act, 2006.

¹⁵ The ID generated by FoSCoS (software) on the same day of applying for licence.

Delay in issue of Licences/ Registrations

While the Designated Officers¹⁶ (DO) are empowered to issue licences except Central licences¹⁷, Food Safety Officers¹⁸ (FSOs) under DOs are delegated the function of registration.

On a scrutiny of records relating to issue of licences in the four selected districts for the period 2016-21, Audit noticed that there was delay in issue of licences in Thiruvananthapuram and Kottayam districts. Against a total number of 21,712¹⁹ applications for licence received in these two districts, 19,035 licences were issued. Of the 19,035 licences issued, delay was noticed in 3,844 cases (20 per cent). Analysis of licences issued after the specified time period of 60 days revealed that, 2,468 licences were issued between 61 and 100 days, between 101 and 500 days in respect of 1,317 cases and in 59 cases there was delay of more than 500 days.

Similarly, on a scrutiny of records in selected circle offices, Audit noticed that in all test-checked circle offices except Vaikom, out of 43,649 number of registrations issued, there was delay in 18,191 cases. In 14,967 cases the delay was upto 50 days and between 51 to 100 days in respect of 1,624 cases. In 1,600 cases, the delay for issue of registration was more than 100 days (**Appendix 2.2**).

Government replied (December 2021) that the migration to FoSCoS²⁰ platform from the erstwhile FLRS was carried out in November 2020. At the time of audit there were some issues reported in the FoSCoS software due to migration and the issue has been resolved and there was no pendency in issuing licence/ registration certificates to FBOs through FoSCoS.

The period covered by Audit was from 2016-17 to 2020-21, wherein delay was noticed in issue of licences/ registrations and the facts were agreed upon by the Assistant Commissioners/ FSOs of the selected districts/ circles. Moreover, in the minutes of the 29th meeting of Central Advisory Committee of FSSAI held on 05 August 2020, it was pointed out that Kerala was one among the States showing high pendency per district in the issue of licences/ registrations.

As the Regulation has set a time limit for issue of licences and registrations, this has to be adhered to. Non-compliance to the time limit would result in FBOs commencing operations without being included in the database of the Department and escaping scrutiny of the Department which may result in non-adherence to Act/ Rules/ Regulations.

¹⁶ Under Section 36 of the FSS Act 2006, the Commissioner of Food Safety shall appoint the Designated Officer for each district, who shall not be below the rank of a Sub-Divisional Officer, to be in-charge of food safety administration. Generally, the Assistant Commissioners of the district are appointed as designated officers.

¹⁷ Licence for commencing or carrying on food business, which falls under Schedule 1 of the Regulation, shall be granted by the Central Licensing Authority.

¹⁸ FSO is in-charge of a circle and there are 140 circles in the State.

¹⁹ Thiruvananthapuram - 15,939 and Kottayam - 5,773

²⁰ FoSCoS, the new software for registration and licensing introduced by FSSAI became operational pan India w.e.f. 01 November 2020 replacing the erstwhile software FLRS.

2.1.4.2. Database of food establishments

Rule 2.1.3 of the Food Safety and Standards Rules, 2011 envisages that the Food Safety Officer shall maintain a database of all Food Businesses within the area assigned to him. Audit noticed that in the selected circle offices, none of the FSOs were maintaining a comprehensive database of FBOs within the area assigned to them.

Government replied (December 2021) that earnest efforts would be made to obtain data from other departments. The Department has decided to increase the Information, Education and Communication (IEC) activities, conduct camps and strengthen enforcement activities for maintaining a complete database of food business establishments in the State.

Audit noticed that maintenance of database is an assignment mandated on the officials by the Act. In the absence of a comprehensive database, the possibility of existence of unauthorised FBOs cannot be ruled out, which could seriously compromise the health of citizens.

2.1.4.3. Exclusion of FBOs from FoSCoS software Database

In order to have a better understanding of the extent to which the FBOs in the selected district may have escaped the scrutiny of Food Safety Authorities due to non-inclusion in the database maintained by the Department, Audit made a comparative study of the FoSCoS data with the data of FBOs maintained by other Departments/ Local Bodies as detailed below;

Comparison with the licence issued by Local Self-Government Institutions (LSGIs)

Audit conducted a comparative study of the licences issued to food businesses under the Industries, Factories, Trade, Entrepreneurship Activities and Other Services Rules, 2018²¹ by LSGIs with the FoSCoS data pertaining to the selected districts for the year 2020-21. Audit compared 348 licences issued by four LSGIs²² of the selected districts for food business with FoSCoS data which revealed that 144 FBOs with licences did not feature in the FoSCoS data maintained by the Food Safety Authorities (**Appendix 2.3**).

Comparison with Goods and Services Tax data

Comparison done by Audit with the data on restaurant dealers available with State Goods and Services Tax (GST) authorities as on 31 March 2021 revealed that there were several FBOs functioning without a FSSAI licence. Out of 338 restaurants as per GST data, 122 FBOs in selected districts did not feature in the database of the Food Safety Department (**Appendix 2.3**).

²¹ Earlier, such licences for commencement of businesses issued by local bodies were licences issued under ‘Licences to Dangerous and Offensive Trades and Factories Rules 1996’. Currently, they are covered under the ‘Issue of Licence to Industries, Factories, Trade, Entrepreneurship Activities and Other Services Rules, 2018’

²² Thiruvananthapuram and Kozhikode Municipal Corporations; Kottayam and Kasaragod Municipalities

Government while agreeing to the audit findings (December 2021) informed that directions were issued to all Assistant Commissioners to collect data from GST Department and Local Self-Government Department (LSGD) and compare with the data available with the Food Safety Department within three months.

Slaughter houses

The comparison of data available with Food Safety Authorities regarding the number of slaughter houses with the data available with Animal Husbandry (AH) department (2020-21) revealed that though there were 17 slaughter houses in the selected districts, none appeared in the database of Food Safety Department (**Appendix 2.3**).

Government stated (December 2021) that licence to slaughter houses could be issued only in compliance with stipulated licensing conditions. Since the slaughter houses did not have the facilities as per schedule 4, Part IV of Regulations, FSSAI licence could not be granted. The matter would be taken up with LSGD.

The functioning of slaughter houses without licence/ registration and not adhering to conditions of Food Safety Authority pose risk to public health.

From the above paragraphs, it is evident that large number of FBOs in the selected districts were missing from the database of the Food Safety Authorities. In the absence of a comprehensive database, there is no mechanism available with the Commissioner of Food Safety to assess the total number of FBOs. Consequently, the Department was not able to monitor their activities including follow up of standards notified for manufacturing, selling and storing of food articles, etc. The Registration and Licence fee realisable are also lost due to the failure of the department to identify all functioning FBOs in the State.

Place of Worship

“Blissful Hygienic Offering to God” (BHOG) is an initiative put forth by Food Safety and Standards Authority of India (FSSAI) to encourage Places of Worship (PoW) to adopt and maintain Food Safety and hygiene as well as convey food safety messages through such places to the people to follow as responsible citizens. In Kerala, BHOG was implemented (January 2019) at the State level and it is one of the major flagship programmes of the Food Safety Department. The initiative aimed at creation of awareness amongst the places of worship to prevent malpractices and irregularities related to food and also to ensure regulatory compliance of the FSS Act, 2006 and Rules and Regulations made thereunder. Audit noticed that in the selected districts, only 647 PoWs²³ had either taken licence or registration (October 2021). However, the Department did not have details about the number of PoWs in the State which need to get licence/ registration. In the absence of details regarding number of

²³ Thiruvananthapuram - 241, Kottayam - 288, Kozhikode - 58 and Kasaragod - 60.

PoWs, there was no assurance that all PoWs had obtained licence/ registration as the case may be.

Government replied (December 2021) that necessary directions would be issued to all Deputy Commissioners and Assistant Commissioners to implement BHOG in their respective jurisdiction.

2.1.4.4. Classification issues of FBOs

Caterers

As per Regulation 1.2.1(4)(a) of the Food Safety and Standards (Licensing and Registration of food Businesses) Regulation, 2011, a petty food manufacturer means any manufacturer, who manufactures or sells any article of food himself or a petty retailer, hawker, vendor or temporary stall holder, or distributes food including any religious or social gathering except a caterer. Since the caterer does not come under the definition of a Petty Food Manufacturer, they have to take licence instead of a registration certificate.

Test-check of registration certificates issued during 2016-21 in the selected circle offices revealed that 58 FBOs²⁴ in seven circle offices who were engaged in catering services were functioning with a registration certificate instead of a licence. This is against the provisions contained in the Act and Regulations. Moreover, as the fee for obtaining a licence is ₹2,000 per annum, permitting a caterer to obtain a registration certificate for ₹100 instead of a licence resulted in short remittance of licence fee of ₹1.10 lakh²⁵ per annum.

Inaction on the part of FSOs led to violation of the provisions of the Act and Regulations and from the selected circles alone, this led to short remittance of ₹1.10 lakh to Government.

Government stated (December 2021) that a detailed report would be requested from all the districts and shortcomings would be addressed and steps were being taken to ensure that all caterers obtain FSSAI licence.

Sale of organic products

FSSAI directed (June 2018) that all FBOs engaged in manufacture/ processing or handling organic foods were to obtain licence under FSS Act, 2006 or get the organic food endorsed in the existing licence.

On a test-check of four FBOs engaged in selling of organic products, Audit noticed that three FBOs²⁶ selling organic products did not possess licence to sell such products. As per the Regulation²⁷, the organic food offered or promoted for sale shall comply with all the applicable provisions of one of the systems, viz. National Programme for Organic Production, Participatory Guarantee System for India or any other system or standards as may be notified by the

²⁴ Thiruvananthapuram - 19, Attingal - 5, Kazhakuttom - 20, Vattiyoorkavu - 6, Koduvally - 3, Kasaragod - 3 and Manjeshwaram - 2

²⁵ 58 x ₹1900 = ₹1.10 lakh

²⁶ Welgate shoppe in Kottayam district, Pathayam Organic health food restaurant and Welgate shoppe, Thiruvananthapuram

²⁷ Food Safety and Standards (Organic Foods) Regulations, 2017.

Food Authority from time to time. In the absence of FBOs engaged in handling organic food obtaining such licence/ endorsing in the existing licence, the possibility of the FBOs not adhering to the regulations cannot be ruled out.

Government stated (December 2021) that directions had already been given to all Assistant Commissioners to inspect organic shops to take necessary steps.

Three and four star hotels

As per Regulation 2.1.3 and the fees prescribed in Schedule 3 of Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011, fee for grant/ renewal of licence for hotels of category 3 star and above²⁸ is ₹5,000 per annum, whereas for other FBOs, it is ₹2,000 per annum.

On an analysis of the list of hotels with three and four star ratings in the 'National database for accommodation units' maintained (March 2021) by the Ministry of Tourism, Government of India, it was noticed that in all the selected districts except Kasaragod, 41 hotels had obtained FSSAI State licence without revealing their actual star category. This led to short-paying of licence fee of ₹2,000 instead of ₹5,000.

Failure on the part of the DOs in ensuring the correctness of classification of hotels as given in application form in the selected districts resulted in short remittance of ₹1.23 lakh²⁹ to the Government.

Government stated (December 2021) that a detailed report was requested from all Districts and shortcomings would be addressed based on the details. It was further stated that modifications would be done in the case of wrong classification.

2.1.4.5. Licences granted on the basis of incomplete documents

Regulation 2.1.3 of Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 describes the mode of application for grant of licence. The application should be made in Form B of Schedule 2 to the Licensing Authority concerned and shall be accompanied by a self-attested declaration in the prescribed format along with copies of documents viz., layout plan, proof of possession of premises, declaration, analysis report of water, No Objection Certificate from LSGIs etc. Audit noted that 259³⁰ out of the 400 test-checked licences from four selected districts were new licences. Scrutiny of the applications for 259 new licences revealed that 165³¹ applications (64 per cent) were incomplete with regard to availability of requisite documents/ declarations.

Government replied (December 2021) that as per the guidelines issued by FSSAI dated 19 March 2021, necessary documents to be uploaded vary with the kind of business, hence all documents mentioned in the Regulations are not

²⁸ As per fee structure, hotels with classification five star and above require a Central licence with an annual fee of ₹7,500

²⁹ 41 x ₹3,000 = ₹1.23 lakh

³⁰ Thiruvananthapuram - 72, Kottayam - 65, Kozhikode - 62, Kasaragod - 60

³¹ Thiruvananthapuram - 52, Kottayam - 39, Kozhikode - 46, Kasaragod - 28

mandatory for all kind of businesses. Necessary directions would be issued to all DOs/ FSOs to address the Audit findings.

Reply is not tenable as the said guidelines were applicable only to applications for new licences received after March 2021. The deficiencies pointed out pertain to the period from 2016-17 to 2020-21.

2.1.4.6. Non-submission of Returns by Manufacturer/ Importer

As per Regulation 2.1.13(1) of Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011, every manufacturer and importer, who has been issued a licence shall, on or before 31st May of each year, submit a return electronically or in physical form in respect of each class of food products handled by him during the previous financial year. Provided however that every licensee engaged in the manufacturing of milk and/ or milk products shall file half yearly returns and to be filed within a month from the end of the period. Delay in filing of annual returns attracts a penalty of ₹100 per day.

Audit noticed that 85³² out of 400 test-checked licences in selected districts were manufacturers, of which four were engaged in the manufacturing of milk and milk products. Scrutiny of records of 85 manufacturers during the period 2016-2020 revealed that seven of them had submitted their returns, of which two were milk manufacturers who had submitted half yearly returns. No fine was seen imposed by the Designated Officer from the defaulters.

Government replied (December 2021) that with the present manpower, it was very difficult to scrutinise data of annual returns filed/ pending. The matter is under consideration of FSSAI and is in the process of waiving the fine due to non-filing of annual returns.

Audit observed that the filing of returns by the manufacturers has been a mandatory requirement since June 2014 and since no decision has been taken (October 2021) to waive off the fine, the Department is duty bound to recover the fine. Further, even if the fine for non-submission of returns is waived, it does not exempt the Manufacturers/ Importers from filing the returns.

2.1.4.7. Inspection and Sample Collection

Shortfall in Inspections of FBOs

As per the provisions³³ contained in Food Safety and Standards Rules, 2011, it shall be the duty of the FSO to inspect, as frequently as may be prescribed by the Designated Officer (DO), all food establishments licensed for manufacturing, handling, packing or selling of an article of food within the area assigned to him. Sub-rule (b) states that the FSO should satisfy himself that the conditions of licence were being complied with by each of the FBOs carrying on business within the area assigned to him and report to the DO. Section 36 (3)(f) of the Act requires the DOs to maintain record of all inspections made by

³² Thiruvananthapuram - 19, Kottayam - 28, Kozhikode - 17, Kasaragod - 21

³³ Rule 2.1.3.4 (iii) (a)

FSOs and action taken by them in the performance of their duties. Further, as per Regulation³⁴, the Registering Authority or any officer or agency specially authorised for the purpose shall carry out food safety inspection of the Registered establishment at least once in a year. Thus, the Regulation does not prescribe the periodicity of inspection of FBOs holding licence and the same is to be determined by the DO, whereas the periodicity of inspection of registered FBOs is fixed as at least once in a year.

Audit examined the extent of inspection of FBOs by the authorities and observed as follows;

FBOs holding licence

Audit scrutiny revealed that out of the 32,268 licences issued in the test-checked districts during the period of audit, only 8,453 FBOs (26 per cent) holding licences were inspected. Further, Audit noticed that the DOs had not fixed the periodicity of inspection and were not maintaining any record of the inspections made by the FSOs and the action taken by them as required under the Act.

Designated Officers³⁵ reported that since the FSOs were entitled for inspections in all food establishments within the area assigned to them, no directions have been issued regarding the periodicity of the inspections to be conducted in the licensed establishments.

Reply of AC is not acceptable as the provisions require them to ensure the periodicity of inspection. Moreover, in the absence of any periodicity prescribed, a large number of licence holders were not being inspected.

In order to assess whether the licence holders were inspected at least once during the five year period of Audit, 100 licence certificates³⁶ from each selected district i.e. 400 licences were examined. Audit observed that only 119 licence holders³⁷ were inspected at least once during 2016-21.

FBOs holding Registration

Further examination of registered FBOs in the test-checked circles revealed that out of the 47,059 registrations issued during the period of Audit, only 4,062 FBOs (8.63 per cent) were inspected.

Government replied (December 2021) that shortage of Enforcement Officers and basic infrastructure including vehicles were the major impediments in carrying out more enforcement activities including inspection, sampling etc. An effective plan of action would be implemented based on the observations. Further, Government stated that FSSAI has assigned a target of 15 inspections per quarter/ FSO which have been fulfilled.

³⁴ Regulation 2.1.1 (6) of the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011

³⁵ Assistant Commissioner

³⁶ from FoSCoS data

³⁷ Number of FBOs inspected any time during 2016-17 to 2020-21 (at least once) – Thiruvananthapuram - 27, Kottayam - 47, Kozhikode - 32, Kasaragod - 13

Regarding the target of 15 inspections per quarter/ FSO, Audit observed that FSSAI directed all States (29th Central Advisory Committee (CAC) meeting, 05 August 2020) to use FoSCoRIS³⁸ actively for all inspections. However, Audit observed that the said meeting did not limit the inspections to 15 as stated in the reply, but the format attached to the minutes (formats developed for quarterly reviews of performance of States) was required to contain inspection details of 15 new eateries. Further, decision of the CAC cannot be deemed to supersede the directions regarding inspections contained in the Rules.

Audit noted that Food Safety Authorities are duty bound to inspect all registered establishments once in a year and DOs are to prescribe the periodicity of inspection of licensed establishments. Without carrying out the prescribed inspections, the authorities would not be able to ensure compliance of standards of food safety by the FBOs.

2.1.4.8. Non-follow up of improvement notices issued

As per Section 32(1) of the Act, if the Designated Officer (DO) has reasonable ground for believing that any FBO has failed to comply with any regulations, he may, by a notice served on that FBO (in the Act referred to as an improvement notice) require, *inter alia*, the FBO to take those measures which are at least equivalent to them, within a reasonable period (not being less than 14 days) as may be specified in the notice. Clause (2) states that, if the FBO fails to comply with an improvement notice, his licence may be suspended. Further, clause (3) stipulates that if the FBO still fails to comply with the improvement notice, the DO may, after giving the licensee an opportunity to show cause, cancel the licence granted to him.

Audit noticed that in two selected districts, *viz.*, Thiruvananthapuram and Kozhikode, out of the improvement notices issued, the details of compliance by the FBOs to the notice issued were not available with the DOs. Of the 85³⁹ cases, nine each were issued in 2017-18 and 2018-19, 30 in 2019-20 and 37⁴⁰ in 2020-21. In the absence of information about the compliance action taken by the FBOs, it could not be ensured whether the lapses noticed by the Food Safety Authorities were rectified or not.

Government stated (December 2021) that the observation would be viewed seriously and shortcomings addressed effectively and directions were issued to all Deputy and Assistant Commissioners to conduct surprise checks across all offices for ensuring strict compliance.

2.1.4.9. Non-lifting of enforcement samples in cases where surveillance samples were 'non-conforming'

Clause 4 iii (d) under Rule 2.1.3 of the FSS Rules 2011, states that it is the duty of the FSOs to draw samples for purposes of surveillance, survey and research which shall not be used for prosecution. As per the Manual for Food Safety

³⁸ FoSCoRIS means Food Safety Compliance with Regular Inspection and Sampling

³⁹ Thiruvananthapuram - 83, Kozhikode - 2

⁴⁰ Thiruvananthapuram - 35, Kozhikode - 2

Officers issued by FSSAI (2017), if any surveillance sample fails due to any non-conformity, then enforcement sampling may be executed and prosecution may be launched.

An analysis of enforcement samples taken in cases where the surveillance sample turned 'non-conforming' was conducted by Audit in the selected circles for the period 2016-21. Audit noticed that out of 708 non-conforming samples, enforcement samples were collected only in 56 cases in the test-checked 10 circles and three circles had not collected even one enforcement sample. Details are given in **Appendix 2.4**.

Non-lifting of enforcement sample resulted in consumption of non-conforming food articles by the public defeating the spirit of the Act and Regulations. Two such instances noticed by Audit are illustrated below.

The FSO, Kottayam circle had taken a surveillance sample of milk (23 July 2019) from Sankranthi Milk Cooperative Society based on a complaint. As per the analysis report of Government Analyst's Laboratory, Thiruvananthapuram (08 August 2019), the sample was substandard. Audit noticed that the enforcement sample of the substandard product was taken on 03 February 2021 after a lapse of 16 months from the date of analysis report. The result was pending (September 2021).

On the basis of a complaint, the FSO, Changanassery circle had obtained (22 June 2018) a surveillance sample of Dietary Fibrous drink. As per the analysis report of Government Analyst's Laboratory, Thiruvananthapuram, the product was unsafe since it contained synthetic colour (Amaranth CI 16185) which was not permitted in food materials as food additive. The FSO informed DO (December 2018) that since the product was available only online, no enforcement sample was taken.

Government replied (December 2021) that surveillance samples were drawn for the purpose of general surveillance, survey and research and could not be used for prosecution. This type of sampling was done to monitor the safety and quality of food manufactured, sold or imported in the country. The FSS Act, Rules or Regulations made thereunder did not mandate that enforcement samples must be lifted when surveillance samples were reported unsafe. The Department lifted enforcement samples after receipt of non-compliant sample reported as unsafe in relevant cases. It was further stated that prosecution is only one of the means to rectify the system.

Reply is not acceptable as the Manual issued in 2017 had clearly instructed that if any surveillance sample fails due to any non-conformity, then enforcement sampling may be executed and prosecution launched. Audit also noticed that no recall procedures were initiated by the Department when the surveillance samples turned unsafe and hence the possibility of unsafe food being consumed by public cannot be ruled out. It is pertinent to note that the Act came into force with an objective to provide safe and wholesome food for human consumption and hence the Department cannot shirk its responsibility of ensuring the same by stating that FSS Act, Rules or Regulations made thereunder did not mandate

that enforcement samples must be lifted when surveillance samples were reported unsafe.

The failure of FSOs to lift enforcement samples in instances of surveillance sample turning non-conforming is not acceptable as risk to the unwary consumer is allowed to continue by the authorities despite awareness of non-conformity.

2.1.4.10. Non-lifting of enforcement samples from Anganwadis

Under the Integrated Child Development Services (ICDS), the National Nutrition Mission (Poshan Abhiyan) is implemented and a key strategy of this mission was food and nutrition. To ensure quality of meals, the States were required to carry out sample checking. FSSAI directed (September 2020) all FSOs to draw three to five surveillance samples per day from Anganwadi centres in the State from 09 to 15 September 2020. Accordingly, directions were issued by the Commissioner of Food Safety (September 2020), to draw three to five surveillance samples from Anganwadi centres in the State during the second week of September 2020. Audit noticed that out of the 13 circles selected by Audit, food samples were taken for surveillance only in seven circles⁴¹. Of these, the food samples taken by FSOs of four circles were unsafe. The unsafe food samples included Amrutham Nutrimix⁴² from Thiruvananthapuram (15 September 2020), Kasaragod (14 September 2020) and Vaikom circles (11 September 2020), and Bengal gram from Kazhakuttom (09 September 2020). In Vaikom circle, the FSO had not taken enforcement sample citing non-availability of food product of the same batch. Regarding circle offices in Thiruvananthapuram district, the statutory samples were lifted (07 April 2021) i.e., from a different batch after a gap of four months from the manufacturing unit and the result was found to be satisfactory. In Kasaragod circle, the samples of Amrutham Nutrimix were lifted from one Anganwadi and two samples of different batches from a manufacturing unit (14 September 2020) and were analysed and reported unsafe (10 December 2020) and the statutory sample were taken on 13 August 2021 from a different batch after a lapse of eight months and the result was found to be substandard. Audit noticed that Amrutham Nutrimix containing 3,556.50 kilograms from the three circles, found to be unsafe, were already distributed. Similarly, the statutory sample of Bengal gram was taken from the supplier on 15 February 2021 from a different batch and the sample was tested to be satisfactory. However, Audit noticed that 444 kg of Bengal gram from the same batch that tested unsafe was utilised by Anganwadis. The directions of FSSAI regarding lifting of three to five surveillance samples from Anganwadis were not adhered to by other circle offices.

Government replied (December 2021) that surveillance sampling was done in Anganwadis and statutory sampling was carried out in manufacturing units of Amrutham Nutrimix. Further, it was informed that statutory sampling process

⁴¹ Thiruvananthapuram, Vattiyoorkavu, Attingal, Kazhakuttom, Vaikom, Koduvally and Kasaragod

⁴² Amrutham Nutrimix is a supplementary nutritional food given to children of the age six months to three years.

required a specific quantity of food products of a particular batch. Anganwadis always stock only the requisite quantity of food articles for children and if the Department lifts four packets for statutory samples, the children may be left out without food items, which is not feasible. To ensure quality of food products, enforcement samples were routinely lifted from manufacturing units.

Audit observed that though FSSAI directed all FSOs to draw three to five samples per day, FSOs in six out of 13 circles test-checked did not even comply with the directions. In three circles where the surveillance sample turned unsafe, there was a delay of four to eight months in taking enforcement samples from manufacturing units and one circle did not even take enforcement sample. Due to delay in timely action by the FSOs, the entire batch of unsafe food was distributed to the children.

Non-initiation of secondary action such as seizure, recall, etc., on finding the Amrutham Nutrimix as non-conforming has resulted in distribution/consumption of unsafe food by kids in the age group of six months to three years.

2.1.4.11. Non-monitoring of recall procedure

The FSS (Food Recall Procedure) Regulations, 2017 require that the food or food products that are determined or *prima facie* considered unsafe should be retrieved, destructed or reprocessed under recall. Regulation 9 states that the FBO shall determine whether the recall is progressing effectively and shall submit periodic status report to the State Food Authority to inform the progress of the recall. Further, Regulation 15 provides that the Commissioner of Food Safety shall inspect the FBO's capability of recall after receiving the recall alert information and supervise the FBO in completion of recall and assess their Recall Report. Commissioner of Food Safety had issued orders (May 2018) delegating powers to the DOs for food recall.

Audit noticed that 159 cases were found unsafe in the 13 selected Circles for the period 2017-21⁴³. Prosecution action was initiated in all the cases. Audit scrutinised the prosecution cases in the selected Circles and found that in 35 cases, DO did not intimate the FBO for initiating recall procedure. Also, it was noticed that in 106 out of 124 remaining cases, the FBOs did not report back to the DOs further action taken on recall notice and hence the action taken on recall notice was not available on record.

Food recalls are an appropriate method for removing or correcting marketed food products and their labelling that violate the laws administered by the regulatory authority. The absence of a monitoring system in recall procedure may result in non-compliance of the recall direction and thereby the unsafe product reaching market.

Government replied (December 2021) that necessary directions would be issued to all DOs to thoroughly check all reports and follow up action ensured in all

⁴³ Food Recall Procedure Regulation came into force on 18 January 2017

matters. The department had taken steps to sensitise the public about prohibited/banned food products being recalled through press releases and media.

However, Audit noticed that the prescribed procedures were not being followed and in most cases it could not be ensured that the unsafe food was totally recalled.

2.1.5. Food Analysis

One of the most important functions entrusted to the Food Safety Authority is ensuring the availability of safe and wholesome food fit for human consumption. Laboratory testing plays a very crucial role in achieving this. Audit test-checked a few areas of functioning of the laboratories under the Department. Besides that, Audit also test-checked the enforcement of the Act in laboratories established for testing raw materials and offering at Sabarimala temple, a famous pilgrimage centre, where lakhs of devotees offer prayers every year. Audit findings relating to the functioning of laboratories are as below.

2.1.5.1. *Non-assurance of safe food due to insufficient testing*

As per Section 43 (1) of the FSS Act 2006, the Food Authority may notify food laboratories and research institutions accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL) or any other accreditation agency for the purposes of carrying out analysis of samples by the Food Analysts.

The FSS (Food Products Standards and Food Additives) Regulations, 2011 specify the standards and permissible limit of essential composition and quality factors, food additives, contaminants, toxins and residues, hygiene, labelling and methods of sampling and analysis to be followed for each food and food products. Laboratories are required to test on such parameters as applicable to specific foods. On testing, food samples are classified as ‘conforms to specification’, ‘unsafe’⁴⁴, ‘sub-standard’⁴⁵ or ‘misbranded’⁴⁶.

The Department of Food Safety has notified three laboratories⁴⁷ for carrying out analysis of food samples in the State. Food categories that can be analysed in these laboratories are (i) Milk and Milk products (ii) Cereal and Cereal Products (iii) Spices and Condiments (iv) Tea, Coffee and Beverages (v) Fats, Oils and Confectionary (vi) Packaged drinking water (vii) Fish and Meat and (viii) Proprietary foods⁴⁸.

⁴⁴ Unsafe food means an article of food whose nature, substance or quality is so affected as to render it injurious to health.

⁴⁵ Sub-standard foods do not meet the specified standards but not so as to render the article of food unsafe

⁴⁶ Misbranded food is one which is sold with false, misleading or deceptive claims, sold by a name which belongs to another article of food or under a fictitious name, etc.

⁴⁷ Government Analyst’s Laboratory (GAL), Thiruvananthapuram, Regional Analytical Laboratory (RAL), Ernakulam and Regional Analytical Laboratory (RAL), Kozhikode

⁴⁸ Food that has not been standardised under Food Safety and Standards (Food Products Standards and Food Additives) Regulation 2011

Audit conducted a detailed analysis of the parameters being tested by these laboratories on samples of Milk, Fish, Coconut oil, Coffee and Packaged drinking water (other than Mineral water) for the period 2016-17 to 2020-21. Audit noticed that all the prescribed parameters for analysing the standards and permissible limits of contaminants, toxins, residues, antibiotics and microbiological aspects were not being carried out in any of these laboratories and hence it cannot be ensured that the food available for consumption is safe. For example, a range of 33 to 99 parameters were to be tested in milk for the period from 2016-17 to 2020-21, however a range of only seven to eight parameters were being tested in GAL, Thiruvananthapuram four to eight in RAL, Ernakulam and a range of seven to 42 in RAL, Kozhikode. Audit scrutiny of 2,769 milk samples analysed for the period from 2016-17 to 2020-21 in three laboratories revealed that 2,442 (88.19 *per cent*) were declared conforming to food safety standards without analysing all the standards and tests prescribed by FSSAI from time to time. It was noticed that 1.44 and 10.29 *per cent* of the samples were declared “unsafe” and “substandard” respectively. Details of testing of other products are detailed in **Appendix 2.5**.

Government replied (December 2021) that upto 2019-20, the insufficient testing in these three laboratories was due to lack of infrastructure facility including the procurement of high-end equipment and shortage of manpower. But in the year 2020-21, the high-end equipment were purchased and almost all the parameters were tested in the three laboratories.

However, Audit noticed that even after the stated purchase of high-end equipment, there was no substantial increase in the percentage of testing of prescribed parameters in the selected items except for milk⁴⁹, which increased from nine to 42 *per cent* in RAL, Kozhikode.

2.1.5.2. Testing of samples by Laboratories without NABL accreditation for some of the parameters prescribed by FSSAI

Analysis of food samples for physical, chemical and microbiological contamination is important to ensure the safety and quality of food that is produced domestically or imported. Section 38 of the Act empowers the FSOs to take samples and send them to the food analyst of the local area within which such samples have been taken.

In addition to the three analytical laboratories, the Department of Food Safety also has a District Food Testing Laboratory at Pathanamthitta. The laboratories carry out physical, chemical and microbiological contamination testing of food and water as per FSS Act 2006, Rules and Regulations, 2011 and in compliance with the requirements of ISO/ IEC-17025:2017⁵⁰.

Audit noticed that even though all the three analytical laboratories have NABL accreditation for chemical testing, the accreditation is limited only to certain

⁴⁹ In GAL, Thiruvananthapuram and RAL, Ernakulam there is no increase in the number of parameters being tested in milk during 2019-20 and 2020-21. However, in RAL, Kozhikode, the number of parameters being tested increased to 42 out of 99 during 2020-21 from nine out of 99 during 2019-20.

⁵⁰ Accreditation standard for NABL

specific parameters. It was observed that none of the three laboratories were accredited for checking chemical parameters concerning all food additives, pesticide residues, radioactive residues, metal/ crop contaminants, toxins, antibiotics.

Standards required for accreditation of a microbiology laboratory has been specified in the NABL accreditation standard ISO/ IEC 17025:2017. Requirements such as structural, laboratory requirements, facilities and environmental conditions, reference cultures and equipment have been clearly mentioned in it. Audit found that the microbiology laboratories at the three notified laboratories have not been NABL accredited for microbiological parameters due to want of infrastructure facilities and equipment.

Out of 23 microbiological parameters prescribed by FSSAI, the microbiology laboratory at GAL, Thiruvananthapuram was conducting tests only on 18 parameters. While RAL, Ernakulam was checking 11 parameters, RAL, Kozhikode was checking only 13 parameters. The left out parameters include E-coli 0157, Coronobacter sp, Clostridium botulinum, and Campylobacter spp. These are to be tested in the food samples of milk and milk products, fruits and vegetables, spices, meat and meat products, fish and fish products, egg and egg products, food poisoning samples, infant milk food, canned meat etc.

Coronobacter sp bacteria are pathogens linked with life-threatening infections in new-born babies and E-coli 0157 causes benign symptoms of fevers, haemorrhagic diarrhoea etc.

The Government analysts of these laboratories cited the reasons for the above deficiencies as lack of availability of infrastructural facility for highly pathogenic organism analysis, shortage of manpower and short indentation of chemicals and kits.

Due to the absence of required facilities, the checking done in microbiology laboratory is deficient to that extent. Besides, due to lack of NABL accreditation for all parameters, the results cannot stand the test of law in case of any dispute.

Audit checked 130 analysis reports pertaining to the year 2020-21 in the three laboratories and found that out of 1,425 parameters checked, 706 (49.54 *per cent*) were for parameters (chemical and microbiological) not accredited by NABL.

The Commissioner of Food Safety acknowledged (September 2021) that the microbiology wing of the three laboratories did not have NABL accreditation and that this was due to inadequate microbiology facilities and equipment. In the Exit Conference (November 2021) the Commissioner stated that the rate contract for microbiological laboratory was under processing by FSSAI and hence purchase of new equipment was pending. However, the reply furnished by the Commissioner was silent on the issue of testing of fewer parameters than what was required. Further the fact remains that ₹ one crore each released to three laboratories for setting up of a microbiological laboratory (March 2020), remains unutilised as of September 2021.

Necessary action should have been taken to improve the infrastructure facilities as non-testing of crucial parameters could lead to diarrhoeal diseases, life threatening infections in new born babies, etc.

2.1.5.3. *Improper testing of Surveillance samples/ raw material of offerings at Sabarimala*

Sabarimala Sree Dharma Sastha temple is one of the most famous pilgrimage destinations in Kerala where lakhs of devotees visit every year. Based on direction issued by the Honourable High Court of Kerala (1992 and 2012⁵¹), District Food Testing Laboratory was established in Pathanamthitta (October 1998) mainly for testing *vazhipad*⁵² articles of Sabarimala temple. Two other laboratories⁵³ were established at Pamba and Sannidhanam⁵⁴ for checking samples of raw materials and offerings at temple respectively.

Audit noticed that though the laboratory at Pathanamthitta started functioning in 1998, it was neither notified⁵⁵ by FSSAI nor accredited by NABL. During Sabarimala festival season, samples of food items from various shops at Sannidhanam, Pampa and Nilackal were tested as surveillance samples at Pathanamthitta laboratory. During the period 2016-21, 807 samples of food items were tested, of these, 685 were declared as satisfactory and 122 were declared as non-satisfactory. From the 685 samples declared satisfactory, Audit conducted a test-check of 30 sample results with reference to FSS (Food Products Standards and Food Additives) Regulations, 2011 and FSS (Contaminants, Toxin and Residues) Regulations, 2011. These Regulations specify the standards for various food items and the permissible limits for metals, insecticide residue and pesticide residue respectively. Among the test-checked cases, 25 samples (83.33 *per cent*) were declared 'satisfactory' after checking only some of the parameters specified by FSSAI. List of parameters not tested is given in **Appendix 2.6**.

Similarly, the raw materials for making offering items (Appam, Aravana, etc.), i.e. jaggery, rice, raisins, cardamom, dry ginger, sugar candy, cumin and dal were being tested at Food Safety Laboratory set up at Pampa. Out of 849 samples tested at this laboratory during the period of Audit, 834 samples were declared as satisfactory and 15 were declared as non-satisfactory. Test-check of 100 sample results out of those declared satisfactory revealed that only some of the parameters specified by FSSAI were tested.

The various parameters not being checked in the two laboratories included tests for food additives, metal contaminants, pesticide residue, etc. Hence, Audit observes that without checking all the parameters, the food was being certified

⁵¹ Laboratories at Pamba and Sannidhanam

⁵² Offerings at temple

⁵³ These laboratories, though set up by Travancore Devaswom Board under orders of Honourable High Court, were manned by officials from Food Safety Authority.

⁵⁴ Place where Sabarimala temple is located

⁵⁵ As per Section 43(1) of the Act, the Food Authority may notify food laboratories and research institutions accredited by NABL or any other accreditation agencies for the purpose of carrying out analysis of samples by the food analysts under this Act.

as ‘satisfactory’. As such, there is no assurance that these food items which are consumed by devotees every year meet the prescribed food safety standards.

Government stated (December 2021) that as per the judgement of the High Court of Kerala, Travancore Devaswom Board (TDB) had set up food testing laboratories at Pamba and Sannidhanam for testing *vazhipad* articles from Sabarimala. Since the temple is opened for short period, the functioning of these laboratories are also for short periods. The laboratory is testing the common adulterants including synthetic food colour in surveillance samples and raw materials and cited lack of infrastructure facilities as the main reason for improper testing of surveillance samples/ raw materials. Audit was informed that safe food is ensured in Sabarimala by deploying food safety officers during festival seasons.

Audit observed that High Court of Kerala in its judgement dated 12 January 2012 ordered that TDB should put up such infrastructure facilities for setting up of the food testing laboratory as may be required by the Commissioner of Food Safety. However, the Commissioner of Food Safety had not made any proposal to upgrade the laboratory functioning at Pamba for testing all the required parameters.

As Section 43(1) of the Act empowers the Food Authority to notify food laboratories and research institutions for the purposes of carrying out analysis of samples by Food Analysts under the Act and it is the Food Authority which is responsible for the effective and efficient implementation of the FSS Act, the Government may ensure that the Laboratory at Pathanamthitta also is adequately equipped so that the same could be notified under the Act.

2.1.5.4. Sabarimala ‘Aravana Prasadam’ - Non-Compliance of FSS (Packaging and Labelling) Regulations, 2011

‘Aravana Prasadam’ is one of the main offerings (*vazhipad*) in Sabarimala Sree Dharma Sastha temple, which is being offered to pilgrims in containers. Approximately 29 lakh litres of Aravana Prasadam is manufactured in Sabarimala every year.

Food Safety Standards (Packaging and Labelling) Regulations, 2011, refers to labelling of pre-packaged foods. As per the clauses under Regulation, the pre-packaged food shall carry a label containing information such as name, list of ingredients, nutritional information or nutritional facts per 100 gm or 100 ml or per serving of the product, declaration regarding food additives, name and complete address of the manufacturer, lot/ code/ batch identification, net quantity, FSSAI licence number, date of manufacture or packing, best before and use by date.



Figure 2.1: Aravana Prasadam container without full labelling details, Photograph taken by Audit party on 20.09.2021

Audit analysed the label on the Aravana Prasadam container and noticed that the label on the sealed container contains only name, batch number, name and address of the manufacturer and date of packing. All other details especially “use by date” as required under the Regulation are not being included in the label. The absence of food label with necessary details deprives the end user, information regarding its ingredients and date before which it can be used.

Government replied (December 2021) that the matter had been brought to the notice of Devaswom Commissioner for obtaining FSSAI licence and for complying with the FSS (Packaging and Labelling) Regulations.

2.1.6. Human Resources

2.1.6.1. Deficiencies in implementation of the Act due to shortage of FSOs

Under Section 37 of the FSS Act, the Commissioner of Food Safety shall appoint FSOs for the purpose of performing functions under the Act, Rules and Regulations made thereunder.

Food Safety Officers are the base level implementing officers of the FSS Act. Their duties include collection of samples, inspection of food establishments, seizing of articles, etc. There are 140 circle offices in the State headed by the FSOs. Besides these, FSOs are also posted in other offices⁵⁶. Audit noticed that out of the sanctioned strength of 160 FSOs in the department, there were only 126 FSOs as on 31 March 2021, a shortage of 21 *per cent*. Out of 140 circle offices, 34 circle offices had no full time FSOs resulting in additional charge⁵⁷ to other FSOs.

In the Exit Conference (November 2021), Commissioner stated that the Department was functioning with a shortage of 21 *per cent* of sanctioned posts of FSOs which was seriously compromising the functioning of the Department. Government stated (December 2021) that the vacant post of FSOs would be filled up shortly and the matter of creation of posts is under their consideration.

Shortage in the key cadre of FSOs badly affects the enforcement of various provisions of the Act such as collection of samples, inspection of the food establishments, etc.

⁵⁶ Food Safety Commissionerate, Office of the Assistant Commissioner

⁵⁷ 31 FSOs are holding additional charge of one circle office, two FSOs are holding additional charges of two circle offices and one FSO is holding additional charge of more than two circle offices

2.1.7. Punitive Mechanism

2.1.7.1. Delay in sending recommendations to the Commissioner for sanctioning prosecution

As per Section 42(3) of FSS Act, the Designated Officer, after scrutiny of the report of Food Analyst, shall decide as to whether the contravention is punishable with imprisonment or fine only. In case of contravention punishable with imprisonment, he shall send his recommendations within 14 days to the Commissioner of Food Safety for sanctioning prosecution.

Scrutiny of prosecution records for the period 2016-21 in the selected districts revealed that there was delay in 16 out of 18 instances (Thiruvananthapuram District) in forwarding the cases to the Commissioner by the Designated Offices where the offences were punishable with imprisonment. The delay in forwarding ranged from 30 to 300 days. Audit also noticed such delays were not seen in other test-checked districts implying that inordinate delay was avoidable.

Government stated (December 2021) that they had reviewed the pendency of cases during the review meeting with Deputy Commissioners, Assistant Commissioners and the matter would be closely monitored.

2.1.7.2. Delay in adjudication

The Adjudication officer not below the rank of Additional District Magistrate if satisfied that the person/ FBO has committed the contravention of provisions of the Act or Rules or Regulations made thereunder may impose such penalty as he thinks fit in accordance with the provisions relating to that offence. FSS Rules 2011⁵⁸ provide that the Adjudicating officer shall pass the final order within 90 days from the date of first hearing.

In the selected districts, Audit observed that 722 cases were referred for adjudication during the audit period 2016-21. Out of this, 269 (37.26 per cent) cases were pending with the adjudicating officer for more than 90 days from the date of first hearing.

2.1.7.3. Non-recovery of penalty

As per Section 96 of the FSS Act, if the penalty imposed under this Act is not paid, it shall be recovered as an arrear of land revenue and the defaulter's licence shall be suspended till the penalty is paid.

Scrutiny of records of the Commissioner of Food Safety revealed that a penalty of ₹1.88 crore out of ₹4.40 crore imposed during 2016-21 was pending in the State as of October 2021.

In the four selected districts, unrealised penalties amounted to ₹68.16 lakh against 225 cases and was pending as of March 2021. Out of this, 89 cases involving ₹23.95 lakh was pending for more than three years.

⁵⁸ Rule 3.1.1(9) of the FSS Rules, 2011

Audit noticed that though substantial amount was pending recovery, no licences had been suspended during the period of Audit.

Regarding paragraph 2.1.7.2 and 2.1.7.3, Government stated (December 2021) that they had taken up the matter with Land Revenue Commissioner to include review of adjudication cases during the monthly review meeting of Revenue Division Officers (RDO) and Sub Collectors. Further, they had requested the Land Revenue Commissioner to depute RDOs and Sub Collectors for a workshop on FSS Act, Rules and Regulations.

2.1.7.4. Pendency in Compounding cases

As per Section 69(1) of the FSS Act, the Commissioner of Food Safety, may, by order, empower the Designated Officer, to accept from petty manufacturers who manufacture and sell any article of food, retailers, hawkers, itinerant vendors, temporary stall holders against whom a reasonable belief exists that he has committed an offence or contravention against the Act, payment of a sum of money by way of composition of the offence which such person is suspected to have committed.

Scrutiny of records of the selected districts revealed that, against 324 cases, an amount of ₹18.39 lakh remained to be recovered from the defaulted FBOs as of 31 March 2021. Out of 324 cases, 225 cases (₹13.84 lakh) pertained to the period 2016-19.

On a scrutiny of compounding registers in the four selected districts, Audit noticed that no follow up action was initiated by the Designated Officers for recovering the amounts from the offenders. Huge pendency in recovery indicated that no serious efforts were being taken to recover the arrears from FBOs.

Government replied (December 2021) that directions were given by the Commissioner to all ACs to realise the penalty on time.

2.1.8. Follow up action/ Monitoring

2.1.8.1. Lack of monitoring mechanism

As per Section 29 (2) of the Act, the Food Authority and the State Food Safety Authority shall monitor and verify that the relevant requirements of law are fulfilled by FBOs at all stages of food business. As per section 63 of the Act, if any person or FBO, himself or by any person on his behalf who is required to obtain licence, manufacturers, sells, stores, or distributes or imports any article of food without licence, he shall be punishable with imprisonment for a term which may extend to six months and also with a fine which may extend to ₹ five lakh.

Clause 2.1.7 (1) to (5) of the Regulations⁵⁹ stipulate that a registration or licence shall be valid for a period of one to five years as chosen by FBO, from the date of issue of registration/ licence. Further, any application received for such

⁵⁹ Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011

renewal of registration/ licence shall be filed not later than 30 days prior to the expiry date of that registration/ licence; or if filed later, but before the expiry of the licence, on payment of late fee⁶⁰ for each day of delay. Registration/ licence for which renewal has not been applied for within the above period shall expire and the FBO shall stop all business activities at the premises, and apply for fresh registration or license if it wants to restart the business.

Audit observed that out of 166 licences⁶¹ selected for detailed scrutiny in the four selected districts, 65 FBOs neither renewed nor applied for new licence on the expiry of the existing licence and 69 FBOs were issued more than one licence in different periods after the expiry of the existing licence. Similarly, in selected circle offices, out of 120⁶² registrations selected for detailed scrutiny, 71 FBOs neither renewed nor applied for new registration on the expiry of the existing registration and 24 FBOs were issued more than one registration in different periods after the expiry of the existing registration. The issue of non-renewal of licence/ registration on the expiry of the existing licence/ registration may lead to functioning of FBOs without licence/ registration. Regarding the issue of more than one licence/ registration, Audit observed that on expiry of the licence/ registration, at some point of time the FBO had re-applied for new licence/ registration and the same were being issued after a time gap leading to functioning of FBOs without licence/ registration during the intervening periods.

The ACs/ FSOs replied that they were not aware whether the FBOs had stopped all business activities at their premises during the periods when they did not possess any licence/ registration (**Appendix 2.7**). In the Exit Conference (18 November 2021) Principal Secretary, Health and Family Welfare Department, GoK, informed Audit that creative measures involving the public such as appealing to them to provide information on the FBOs functioning without displaying their licence, a grievance portal based on mobile application through which people could share information with the Department etc., were being planned. Government replied (December 2021) that expiry of licence and registration could not be tracked using the current version of FoSCoS software and the matter would be taken up with FSSAI.

However, the Act provides that the food authorities shall monitor and verify that the FBOs adhere to the relevant requirements of law. For this purpose, the ACs/ FSOs are duty bound to ensure that the FBOs are functioning with valid licence/ registration.

In the absence of an alert mechanism in the software for timely renewal of licence/ registration and due to lack of monitoring, the possibility of FBOs functioning without licence/ registration cannot be ruled out.

⁶⁰ Payment of late fee is applicable only for renewal of licence and not for registration.

⁶¹ Out of 100 licences selected from each district, only 166 could be considered as FSSAI permitted a grace period till 20.04.2021 for renewal of licences that expired after 22.03.2020.

⁶² Out of 30 registrations selected from each circle, only 120 could be considered as FSSAI permitted a grace period till 20.04.2021 for renewal of registrations that expired after 22.03.2020.

2.1.8.2. Notification of food poisoning

As per Section 35 of the Act, the Food Authority may, by notification, require registered medical practitioners carrying on their profession in any local area specified in the notification to report all occurrences of food poisoning coming to their notice to such officer as may be specified.

In line with the above, the State Level Advisory Committee (SLAC)⁶³, in its meeting (October 2019) directed the Department of Food Safety to notify registered medical officers under Primary Health Centres to report all occurrences of food poisoning coming to their notice to FSOs.

Scrutiny however, revealed that the Commissioner of Food Safety had not issued any such notification till August 2021.

Government stated (December 2021) that as per Section 35 of FSS Act, the notification has to be issued by Food Authority (FSSAI) and this would be taken up with FSSAI. However, the reply is not acceptable as Section 30(1) of the Act stipulates that the State Government shall appoint the Commissioner of Food Safety for the State for efficient implementation of the food safety and standards and other requirements laid down under this Act and the Rules and Regulations made thereunder. Since Commissioner is the Food Authority of the State, the notification in this regard was to be issued by the Commissioner. Further, the SLAC directed (October 2019) the Department of Food Safety to notify registered medical practitioners, action in this regard is yet to be taken by the Commissioner.

2.1.8.3. Shortfall in IEC allotment and expenditure

Information, Education and Communication (IEC) activities involving electronic and print media and in other manner have to be undertaken to make stakeholders aware about the essential elements of the Acts, Rules and Regulations. In addition, awareness among various stakeholders indicating Dos and Don'ts, hygiene, labelling, adulteration, shelf period of foods, etc., could be developed through newspaper advertisements, posters, leaflets, booklets, etc. In the Eighth Central Advisory Committee (CAC) meeting (July 2012), FSSAI highlighted that IEC activity is the backbone for enforcing the Act and awareness generation is one of the important components in rolling out the FSS Act. CAC advised that Food Safety Commissioners should take up with their Governments the need to plough back at least 75 per cent of licence fee collected for carrying out IEC activities.

On a scrutiny of records, Audit noticed that out of ₹55.18 crore⁶⁴ received by GoK by way of licence and registration fees during the audit period, the Department received only ₹5.58 crore for IEC activity and ₹4.18 crore was utilised for IEC activities. Thus, the amount spent was only 7.58 per cent of revenue earned (₹55.18 crore) through licence and registration fee.

⁶³ SLAC is constituted under Regulation 2.1.15 of FSS (Licensing and Registration of Food Businesses) Regulations, 2011, with Chief Secretary as Chairperson.

⁶⁴ Includes Licence fee and Registration fee

Besides this, National Health Mission had released ₹41.50 lakh (2019-21) and GoI ₹63.65 lakh (2020-21) towards various IEC activities. Out of the ₹41.50 lakh received, ₹10.32 lakh was utilised and balance surrendered to NHM. No fund released by GoI was utilised till date (September 2021).

Audit noticed that though CAC had suggested to utilise *75 per cent* of fund received on account of licence fee, only *7.58 per cent* was used for such activities. The funds received from agencies like NHM and GoI were also not fully utilised. It was seen that even though IEC activities are the backbone of the enforcement wing, the department did not give much importance to it.

Government stated (December 2021) that the decision of FSSAI in CAC meeting (2012) was for that period. However, during the Exit Conference, the Commissioner informed Audit that the Department would utilise *100 per cent* of the amount received for IEC activities.

However, the fact remains that IEC activities are essential for creation of awareness among the stakeholders.

2.1.9. Conclusion

Despite ranking high in the SFSI rankings for the years 2019-20 and 2020-21, efficient implementation of the Food Safety and Standards Act, 2006 in the State suffered from deficiencies relating to various stages of implementation such as licensing and registration, inspection and sample collection, food analysis and monitoring. Monitoring by the department was insufficient as reflected in the absence of mechanism to follow up on FBO whose licences had expired, non-adherence to the norms for inspection of registered FBOs etc. There was delay in issue of licences and registrations by the Food Safety Department. Comparison of database of FBOs maintained by the Food Safety Department with similar data available with other Government agencies/ LSGIs revealed that a large number of FBOs remained outside the ambit of monitoring by the Department. Providing registration instead of licences to FBOs had resulted in revenue loss to the State. The Designated Officers did not prescribe the periodicity for inspecting licensed FBOs and the provisions of inspecting all registered FBOs annually was not adhered to by the Department. The Department could not ensure that non-conforming products do not reach the public. The FSSAI notified laboratories in the State are not NABL accredited for all the parameters and are not equipped to test all the parameters essential for declaring a particular food sample as safe. The laboratories entrusted with the function of testing offerings at Sabarimala temple and the raw materials used in making of offerings were declaring the food as safe without testing all required parameters. The recovery of penalty and compounding charges from erring FBOs was in arrears. There was shortfall in utilising funds for IEC activities meant for creating awareness about provisions of the Food Safety Act/ Rules/ Regulations.

2.1.10. Recommendations

- The Department should ensure that all licences and registration applications are processed and decision on it conveyed to the FBOs within the prescribed time, so that no FBOs commence business without the knowledge of the Department.
- The Department may take up with FSSAI for enabling an alert system in the software, by which the FSOs are notified about the licences/ registrations which are due to expire soon, so that the Department can have an oversight over the FBOs.
- The Department may take time bound action to ensure that all the FBOs are holding valid licence/ registration as the case may be. The Department may also cross verify the data of FBOs available with them with the data maintained by other Government agencies to identify FBOs which do not hold valid licence/ registration.
- Government may ensure the adequacy of manpower available with the Department to ensure effective discharge of its statutory functions.
- As quality of food consumed by its citizens is a primary concern of the State, Government may devise methods for testing of maximum number of food samples and early removal/ seizure/ recall of non-conforming food items from the market.
- Infrastructure facilities may be improved in laboratories under the Department to test all parameters of food samples as prescribed by FSSAI and efforts made to ensure strict compliance of FSS (Packaging and Labelling) Regulations, 2011.
- Efforts may be taken to obtain NABL accreditation for testing parameters in all laboratories under the department.
- IEC activities may be strengthened to make the stakeholders aware of hygiene, adulteration, shelf-life period of food products etc.

FAILURE OF OVERSIGHT/ADMINISTRATIVE CONTROLS**AGRICULTURE DEPARTMENT****2.2. Implementation of projects by State Public Sector Undertakings under Rashtriya Krishi Vikas Yojana**

Deficiencies in Detailed Project Reports, diversion of project fund by implementing agencies, deficiencies in implementation and monitoring of projects etc., resulted in delayed completion of projects and underutilisation of assets created with consequent non-achievement of targets and intended benefits of the projects.

2.2.1. Introduction

As per Rashtriya Krishi Vikas Yojana (RKVY), funds were released to State Governments on the basis of projects approved by State Level Sanctioning Committee (SLSC). The Director of Agriculture was the Nodal Officer in the State and projects under RKVY were implemented through various agencies⁶⁵ including Public Sector Undertakings (PSUs).

During the period 2014-15 to 2018-19, the Government of Kerala (GoK) implemented 119 projects under RKVY through 12 PSUs, of this, Audit examined 33 projects⁶⁶ implemented by 10 PSUs⁶⁷ during September 2019 to January 2020 (**Appendix 2.8**). The objective of audit was to assess the level of compliance of RKVY guidelines and other relevant Government Orders in planning, implementation and monitoring of projects. Audit criteria were derived from RKVY Operational Guidelines 2014 and RKVY-RAFTAAR⁶⁸ Operational Guidelines (2017-18 to 2019-20). Audit findings are discussed in the succeeding paragraphs.

⁶⁵ Departments of Animal Husbandry, Fisheries and Dairy Development.

⁶⁶ Selected through stratified random sampling.

⁶⁷ Kerala State Poultry Development Corporation Limited (KSPDCL), Kerala Feeds Ltd. (KFL), Kerala Live Stock Development Board Ltd. (KLDB), Kerala Land Development Corporation Ltd. (KLDC), Kerala Agro Industries Corporation Ltd. (KAICO), Vazhakkulam Agro and Fruits Processing Company Ltd. (VAFPCL), Kerala State Coconut Development Corporation Ltd. (KSCDC), Kerala Agro Machinery Corporation Ltd. (KAMCO), Meat Products of India Ltd. (MPI), Plantation Corporation of Kerala Ltd. (PCK).

⁶⁸ Based on the feedback received from States and inputs provided by stakeholders, RKVY guidelines were revamped as RKVY-Remunerative Approaches for Agriculture and Allied Sector Rejuvenation (RAFTAAR).

2.2.2. Planning

Deficiency in preparation of Detailed Project Report

The Scheme guidelines 2014 stipulated that Detailed Project Reports (DPR) should be prepared for all projects incorporating all necessary ingredients including feasibility studies. In this regard, Audit observed the following.

2.2.2.1. Kerala Agro Industries Corporation Limited (KAICO) did not prepare DPR as envisaged or conduct any technical feasibility of using Combined Harvesters (CHs) while implementing ‘Agricultural Mechanisation’ project. As part of this project, KAICO purchased (April 2011) 50 CHs of Kubota make at a cost of ₹10.80 crore. It was envisaged that the CHs would be utilised for 400 hours per annum.

Audit noticed that the CHs were not suitable for the soggy paddy fields and wet conditions due to which there was hesitance from farmers in using them. Hence, 20 CHs remained idle without utilisation while the utilisation of remaining 30 CHs during 2014-15 to 2020-21 varied from 1.70 per cent to 75.64 per cent⁶⁹ of the standard 400 hours per annum.

Government stated (October 2021) that CHs were purchased after detailed technical study and those machineries which qualified in the field trial were only purchased. But some farmers had hesitancy to use machines of a particular brand due to which the machines remained idle.

The reply was not tenable as no field trial was conducted before purchase of Kubota make CHs. Field trials were conducted before purchase of subsequent lots in which Kubota make did not qualify.

2.2.2.2. The Report of Comptroller and Auditor General of India on Public Sector Undertakings for the year ended 31 March 1999 included a paragraph on abandoning of ‘Feed Mixing Plant at Mala’ project by Kerala State Poultry Development Corporation Limited (KSPDCL). The Committee on Public Undertakings (CoPU) discussed (March 2005) the Report and recommended to continue the project after availing fund from financial institutions if it was feasible. The SLSC approved (March 2011) this project under RKVY and GoK released ₹15.36 crore upto 2014-15 based on a project report submitted by KSPDCL.

Audit noticed that the project report did not contain any justification for proposing a selling price of ₹11,000 per MT of poultry feed based on which the project was found feasible. Similarly, no marketing plan was included in the project report to sell 80 per cent of the total finished product. The project report stated that existing demand for poultry feed in Kerala was met by six to seven private firms and KSPDCL could supply poultry feeds to farmers at a lesser price, without giving any further details regarding the price of competitors or

⁶⁹ Upto 10 per cent (three CHs), between 11 per cent and 20 per cent (11 CHs), between 21 per cent and 30 per cent (five CHs), between 31 per cent and 40 per cent (four CHs), between 41 per cent and 50 per cent (four CHs) and between 51 per cent and 76 per cent (three CHs).

the price at which it proposed to sell the finished product in the market. Hence, viability of the project was not established.

Audit further noticed that though this project was sanctioned (July 2011) by GoK at an estimated cost of ₹ seven crore, the consultant of the project estimated (August 2012) the project cost to ₹22.63 crore. Government accorded (March 2016) revised sanction for ₹17.97 crore. The project was not completed (March 2021) even after spending ₹15.36 crore. In a meeting (October 2019) chaired by the Minister for Animal Husbandry, GoK, it was informed that the project would not be viable even after infusing additional fund of ₹18 crore required for completing the remaining works. This indicated that KSPDCL submitted the project without detailed feasibility study.

Government stated (October 2021) that feasibility study was not conducted, but a cost-benefit analysis was prepared and submitted while approving the project. It was added that the audit finding was noted for future guidance.

The fact, however, remained that the recommendation of CoPU was not adhered to while taking up the project for implementation in 2011 or at the time of revising the project cost subsequently.

2.2.2.3. Kerala Feeds Limited (KFL) prepared (August 2012) a DPR for implementing 300 tons per day (TPD) Integrated Cattle and Goat Feed project. The DPR relied on data regarding livestock and poultry population upto 2007, sale of compounded cattle feed upto 2004-05 and supply and demand of green and dry fodder during 1995 to 2010 for estimating the cattle feed production and sales levels. Hence, the viability of the project was not established based on realistic estimation of the current as well as future demand for cattle feed in the State, especially in areas where the finished products from the plant was to be sold.

Government stated (October 2021) that there existed potential market in northern Kerala and KFL was hopeful of capturing this market with the commencement of new plant. KFL was producing 5,000 MT to 5,500 MT per month from this plant and there was potential to increase it to 7,000 MT to 7,500 MT per month.

The reply was to be viewed against the fact that KFL found the project viable with capacity utilisation of 80 *per cent* in the first and second years and 90 *per cent* in the third year and 100 *per cent* thereafter. The actual capacity utilisation since commissioning and upto August 2021 ranged between 14.11 to 62.10 *per cent* only. This proved that KFL proposed the project with unrealistic projection regarding demand for cattle feed based on redundant data.

2.2.2.4. Government approved (January 2013) a project of Kerala Agro Machinery Corporation Limited (KAMCO) for manufacturing New Generation Power Tillers (NGPT) at an estimated cost of ₹20.22 crore. The project was to be implemented based on a technical collaboration agreement (September 2011) with a foreign firm. Based on a proposal (April 2013) of KAMCO, GoK

sanctioned ₹10 crore under RKVY for this project and released ₹ seven crore upto 2015-16.

Audit observed that KAMCO prepared the DPR without assessing the technical feasibility of proposed model of NGPT offered by the foreign firm. The technology offered by the foreign firm was found (March 2014) not suitable to Indian climatic conditions by an internal committee of KAMCO after a field study. Further, the cost of manufacturing NGPT was found to be high (September 2015) compared to existing tillers. Hence, KAMCO could not commence the manufacturing of NGPT till March 2021.

Government stated (October 2021) that commencement of NGPT production was delayed due to delay in selection of engine suitable for a model offered by the technology partner. A suitable engine for another model offered by the technology partner was sourced and regular production of NGPT would commence by December 2021.

The reply was not tenable as KAMCO did not assess the technical feasibility of the model proposed by foreign firm before preparation of the DPR which delayed the commencement of the project even after nine years of approval of the project.

2.2.3. Financial Management

Diversion of fund

2.2.3.1. Audit observed that two PSUs diverted fund received for implementation of RKVY projects for other purposes as given in the following table.

Table 2.1: Details showing diversion of fund by PSUs

Name of PSU	Name of project	GoK/ RKVY fund	Fund diverted	Actual use / Remarks
		(₹ in crore)		
VAFPCL	Modernisation of Tetra Pack unit	1.97	1.97	Maintenance of existing machineries and working capital
MPI	Establishment of pig satellite unit	7.26	4.78	Working capital expenses
Total		9.23	6.75	

(Source: Data extracted from records furnished by PSUs)

From the above, it may be noted that these two PSUs diverted ₹6.75 crore out of ₹9.23 crore received for implementing RKVY projects. Hence, the intended objectives of these projects were not achieved. Audit noticed that the diversion of fund was attributable to the following.

- Government sanctioned (November 2016) a project with an estimated cost of ₹8.54 crore to VAFPCL, but provided (January 2017) RKVY assistance of ₹1.97 crore only without assessing the capacity of VAFPCL to mobilise the remaining fund.

- Government sanctioned three projects to MPI during 2009-10 to 2014-15 for establishment of pig satellite units and released ₹7.26 crore without ascertaining the level of achievement of target.

GoK stated (October 2021) that since the PSUs were facing acute shortage of fund, RKVY fund was used for repairs and maintenance of existing plant/working capital expenses.

The fact remained that the fund was not used for the purpose for which it was sanctioned.

2.2.3.2. Audit also noticed that KLDC levied supervision charges of five *per cent* of the sanctioned cost amounting to ₹92.43 lakh against 10 projects. This was not in line with RKVY guidelines which provided for administrative cost at one *per cent* of RKVY allocation till 2017 and at two *per cent* thereafter.

Government stated (October 2021) that all the projects under RKVY were under the control of Directorate of Agriculture, GoK and KLDC was only an implementing agency. KLDC was entrusted with project management consultancy and eligible for centage charges on par with Government Orders for execution of projects under RKVY. Hence, KLDC was eligible for five *per cent* centage charges.

The reply was not tenable as implementation of RKVY projects was to be carried out in line with the guidelines issued for this purpose. Further, centage charge at five *per cent* was not levied by other implementing agencies covered in audit.

Non-maintenance of project-wise accounts and submission of incorrect utilisation certificates

2.2.3.3. RKVY guidelines prescribed that project-wise accounts were to be maintained by the implementing agencies and utilisation certificates (UCs) were to be furnished. Audit, however, observed that:

- Project-wise accounts were not maintained in respect of five projects implemented by four⁷⁰ PSUs.

Government stated (October 2021) that KSCDC, KAICO and MPI henceforth would maintain separate project-wise accounts. KFL maintained separate accounts for each responsibility centre and project/party-wise details of expenditure could be easily drawn from these accounts.

The reply regarding KFL was not acceptable as it confirmed that RKVY project-wise details were not readily available and it could be drawn from a set of accounts maintained for accounting expenses under broad headings.

⁷⁰ MPI, KAICO, KFL (two projects) and KSCDC.

- In respect of 13 projects implemented by nine⁷¹ PSUs, UCs were submitted for ₹61.18 crore though the actual expenditure was only ₹22.96 crore (**Appendix 2.9**).

Government stated (October 2021) that KAICO, KSCDC and MPI furnished revised UCs, while KFL and KLDB submitted UCs expecting that the entire amount would be spent. KSPDCL submitted UC after they fully utilised the fund while KLDC submitted UC for the actual amount received and not for the sanctioned amount. VAFPCCL stated (February 2020) that they submitted UC for the actual utilisation of fund.

The replies were not tenable as the PSUs were expected to submit UCs for the actual amount spent till submission of UC in respect of each project.

- Government directed (May 2010) KAICO to open separate bank account for depositing hire charges to be received against hiring of machines procured under Farm Mechanisation projects⁷². Government also instructed to create a redemption fund for replacement of machines on expiry of its life.

Audit observed that KAICO neither opened separate bank account for depositing the hire charges nor created the redemption fund as envisaged.

Government stated (October 2021) that as sufficient hire charges were not generated, separate bank and redemption fund were not created and that the audit observation was noted for future guidance.

2.2.4. Project Implementation

Out of 33 projects selected for audit, only one project was completed in time and 14 were completed with delays ranging from seven to 48 months. While six projects were partially implemented, eight were in progress, three were abandoned and implementation of one was yet to commence (March 2021). Various issues relating to implementation and monitoring of projects are discussed below.

Non-compliance with Kerala Public Works Department Manual

2.2.4.1. As per Section 2009.6 of the Kerala Public Works Department (KPWD) Manual, successful bidder shall execute agreement within 14 days from the date of selection notice. Fine at the rate of one *per cent* of the contract amount subject to a minimum ₹1,000 and a maximum ₹25,000 shall be levied if agreement is not executed within 10 days after the notified period of 14 days. In case of failure to execute the agreement within this period, tendering authority shall cancel the offer of contract forfeiting the Earnest Money Deposit

⁷¹ KFL, VAFPCCL, KLDB, MPI, KSCDC, KAICO, KLDC, PCK and KSPDCL.

⁷² Farm Mechanisation for integrated Kule development and Agriculture Mechanisation under Kuttanad Package.

(EMD) and taking such other action as mentioned in the bidding document and the work should be retendered.

In respect of three⁷³ works by KLDC valuing ₹5.46 crore, Audit observed that there were delays in executing the agreement ranging from 31 days to 50 days from the notified date for signing the agreement. KLDC, however, did not collect any fine as prescribed for this delay.

Government stated (October 2021) that KLDC levied or directions were issued to levy the penalty as stipulated in the KPWD Manual.

2.2.4.2. As per the Section 2102.1 of the KPWD Manual, contractor should take over the site and commence the work within 10 days from the date of contract.

Audit observed that in six sub-works valuing ₹1.21 crore in respect of Salinity Control project at Devikulangara implemented by KLDC, contractors did not commence the work even within the originally estimated time of completion of six months (by 28 February 2015 in five cases and by 10 June 2015 in one case). KLDC, however, did not bring the non-commencement of work to the notice of the contractors on time⁷⁴ and take remedial action.

Government stated (October 2021) that since the project was to be carried out at the mouth portion of the canals and tidal variations affected their execution, time of completion was extended. In some cases, commencement of work was delayed due to dispute in proposed site.

The reply was not addressing the audit finding. Further, site conditions were known to KLDC and necessary No Objection Certificate, if required, should have been obtained before tendering the works to provide free access to the project sites.

Non-revision of hire charges for Combined Harvesters

2.2.4.3. As per GoK direction (May 2010), KAICO was to meet expenditure for repair and maintenance of CHs from the hire charges to be collected from the farmers for using them. KAICO procured 200 CHs under two packages sanctioned under RKVY.

Audit observed that KAICO did not prescribe any norm either for fixation of hire charges or its revision. KAICO though fixed the hire charges at ₹900 per hour initially, it was reduced (March 2012) to ₹750 per hour. The rent was last revised to ₹800 per hour in October 2014 and no revision was made thereafter. A revision of hire charges even at the rate fixed initially would have generated an additional income of ₹71.47 lakh⁷⁵.

⁷³ Construction of VCB and side protection works at Kottakunnu in Mogral Puthur Panchayat in Kasaragod District, Infrastructural development works by KLDC in Nedungad pakkali padasekharam, and Nattayam padasekharam.

⁷⁴ Notices were sent to the contractors for starting the work only in October 2015 (four works), June 2016 (one work) and January 2017 (one work).

⁷⁵ Calculated based on the actual hourly utilisation of 150 CHs during 2014-15 to 2020-21, i.e., 71,469 hours x (₹900-₹800).

Government stated (October 2021) that hire charge fixed initially was reduced to ₹750 as part of social commitment. The hire charge was exclusive of cost of fuel, handling charge, transportation etc. Considering the hire charge (₹1,600 to ₹1,900) levied by private parties in the neighbouring States which included fuel, handling charge and transportation, the rate charged by KAICO was comparable.

The reply was not acceptable as the hire charges collected were not sufficient for meeting even the routine repair and maintenance of CHs. Hence, KAICO could not create the redemption fund for replacement of CHs as directed by GoK.

Non-provision of hindrance free land

2.2.4.4. As per Section 2003 of KPWD Manual, 100 *per cent* possession of hindrance free land should be ensured before inviting tender for a work.

Audit noticed that in respect of four⁷⁶ projects, KLDC, however, did not ensure availability of hindrance free land before inviting tenders.

Government stated (October 2021) that hindrance free land was ensured initially through a mutual tripartite understanding with farmers, Panchayat concerned and KLDC. However, issues related to possession of land arose during execution which was resolved by mutual discussion.

The reply indicated that KLDC did not obtain any undertaking from the concerned for extending their willingness to carry out the work.

Delay in completion of projects

2.2.4.5. As per Section 2116.1 of the KPWD Manual, delay in completion of work attracted Liquidated Damages (LD) at the rate of 0.1 *per cent* of contract price for every week of delay subject to maximum of 10 *per cent* of the contract price.

Audit noticed that in 20 completed projects⁷⁷ there were delays ranging from seven to 48 months⁷⁸. Eight projects were not completed even after delays upto 72 months⁷⁹. Reasons for major delays as noticed in audit are detailed in **Appendix 2.10**. The PSUs, however, did not levy LD for the delays. Further, in respect of 10 projects, KLDC granted exemption from payment of LD on the grounds like quarry strike, waterlogging etc. In the case of four projects, the delay was due to delayed taking over of land by the contractors.

Government stated (October 2021) the following:

- Lack of permanent staff in KSCDC and treasury restrictions delayed the work. Fire and safety equipment and new transformer were installed and the plant was inaugurated in June 2021.

⁷⁶ Vidyarkuni, Salinity Control Project, Karikkattuchal, Nettam thodu.

⁷⁷ Six projects were partially implemented.

⁷⁸ 'KLDC- Improvements to Nettam thodu in Angamaly' completed in March 2019 as against the scheduled date of March 2015.

⁷⁹ 500 TPD Cattle Feed plant at Arikuzha in Idukki of KFL.

- KLDC did not levy LD as the work was delayed due to flood and climatic conditions in one work and action against the contractor in respect of another work was pending due to legal case.
- KAMCO would deduct applicable LD from the final bill of the contractor.
- In the case of KSPDCL, action against the contractor was pending due to legal case.
- KFL levied LD in the case of 300 TPD project and decision would be taken upon final closure of contract in the case of 500 TPD project.

Audit, however, noticed that KSCDC could not complete the fire and safety and transformer works despite availability of fund which was not justified. Further, one project of KLDC which commenced only in December 2019 due to flood was not completed even after eight months from the scheduled date of completion.

2.2.5. Performance of Projects

Non-achievement of target and idling of infrastructure

2.2.5.1. RKVY envisaged increase in public investment in agriculture and allied sectors. It was, therefore, important to achieve the project-wise target set while sanctioning the projects. Audit observed that six PSUs did not achieve the envisaged target as per DPR in eight projects as detailed in **Table 2.2**.

Table 2.2: Statement showing non-achievement of targets

PSU/ Project (cost)	Target	Achievement
PCK - Area expansion of cashew plants in three districts (₹10 crore)	<ul style="list-style-type: none"> • Plant 10 lakh cashew saplings in 4,500 Ha in three districts (700 Ha in estates of PCK and 3,800 Ha by farmers). • Estimated cost included ₹ five crore towards the cost of saplings and ₹ five crore towards management cost to farmers/ beneficiaries. 	<ul style="list-style-type: none"> • PCK planted 89,800 saplings in 252.50 Ha. • Farmers planted 6,17,214 saplings in 3,087 Ha. • Disbursed ₹1.05 crore out of ₹3.54 crore to beneficiaries including PCK.
MPI - Establishment of pig satellite units (₹8.10 crore ⁸⁰)	<ul style="list-style-type: none"> • Distribute 20 piglets each to 60 beneficiaries (2009-10). • Distribute 20 piglets each to 300 beneficiaries (2010-11). • Distribute 20 piglets each to 500 beneficiaries (2014-15). • Beneficiaries to return the grown-up pigs to MPI and to make good any loss due to lapses on their part. 	<ul style="list-style-type: none"> • Distributed 687 piglets to 48 beneficiaries (2009-10), 3,253 piglets to 235 beneficiaries (2010-11) and 1,343 piglets to 96 beneficiaries (2014-15). • Out of 3,940 piglets distributed against 2009-10 and 2010-11 projects, 558 (14.16 per cent) were reported dead. • MPI received 2,359 pigs only from the beneficiaries and no information was available about 1,023 pigs.

⁸⁰ ₹1.83 crore (2009-10), ₹3.27 crore (2010-11), ₹ three crore (2014-15).

PSU/ Project (cost)	Target	Achievement																				
KFL - 300 TPD Cattle Feed plant (₹52.90 crore)	<ul style="list-style-type: none"> 300 TPD plant to produce 90,000 MT cattle feed per annum. DPR envisaged 80 per cent capacity utilisation in the first two years and 90 per cent in the third year and 100 per cent thereafter. 	<ul style="list-style-type: none"> Yearly production after commencement of commercial production were as under: <table border="1"> <thead> <tr> <th rowspan="2">Year</th> <th colspan="2">Production</th> </tr> <tr> <th>(MT)</th> <th>(per cent)</th> </tr> </thead> <tbody> <tr> <td>2017-18⁸¹</td> <td>10,585.05</td> <td>14.11</td> </tr> <tr> <td>2018-19</td> <td>45,179.24</td> <td>50.20</td> </tr> <tr> <td>2019-20</td> <td>49,509.98</td> <td>55.01</td> </tr> <tr> <td>2020-21</td> <td>55,252.40</td> <td>61.39</td> </tr> </tbody> </table>	Year	Production		(MT)	(per cent)	2017-18 ⁸¹	10,585.05	14.11	2018-19	45,179.24	50.20	2019-20	49,509.98	55.01	2020-21	55,252.40	61.39			
Year	Production																					
	(MT)	(per cent)																				
2017-18 ⁸¹	10,585.05	14.11																				
2018-19	45,179.24	50.20																				
2019-20	49,509.98	55.01																				
2020-21	55,252.40	61.39																				
KAICO – Farm mechanisation for Integrated Kole Development (₹14 crore)	<ul style="list-style-type: none"> Operate and maintain a fleet of machines for Kole wetlands including 50 Combined Harvesters (CHs) to provide adequate machinery service facility to the paddy planting and harvesting activity. Targeted standard operating hours for CH was 400 hours per annum. Provide training on modern farm machineries. 	<ul style="list-style-type: none"> No trainings imparted for operating modern farm machines which affected actual utilisation of CHs. The actual average utilisation of 200 CHs procured under the two projects during 2014-15 to 2020-21 were as under. <table border="1"> <thead> <tr> <th rowspan="2">Number of CHs</th> <th colspan="2">Average utilisation</th> </tr> <tr> <th>From</th> <th>To</th> </tr> </thead> <tbody> <tr> <td>50</td> <td colspan="2">Not utilised</td> </tr> <tr> <td>68</td> <td>1 hour</td> <td>50 hours</td> </tr> <tr> <td>40</td> <td>51 hours</td> <td>100 hours</td> </tr> <tr> <td>38</td> <td>101 hours</td> <td>150 hours</td> </tr> <tr> <td>4</td> <td>151 hours</td> <td>217 hours</td> </tr> </tbody> </table>	Number of CHs	Average utilisation		From	To	50	Not utilised		68	1 hour	50 hours	40	51 hours	100 hours	38	101 hours	150 hours	4	151 hours	217 hours
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68	1 hour	50 hours																				
40	51 hours	100 hours																				
38	101 hours	150 hours																				
4	151 hours	217 hours																				
KAICO – Agricultural mechanisation (₹38.33 crore)	<ul style="list-style-type: none"> Purchased 150 CHs, 92 Tractors, 10 Trailers and 50 Power Tillers under Kuttanad Package at a cost of ₹36.36 crore. Targeted standard operating hours for CH was 400 hours per annum. 	<ul style="list-style-type: none"> Location and utilisation details of other machines were not maintained. 																				
KSCDC - Agro based coconut processing complex (₹ two crore)	<ul style="list-style-type: none"> Produce three lakh litres of Virgin Coconut Oil per annum. 	<ul style="list-style-type: none"> KSCDC produced only 24,032.51 litres of oil during March 2019 to March 2020 and no production made thereafter. 																				
KLDB - Genetic Improvement in Cattle and Pig Population (₹5.20 crore)	<ul style="list-style-type: none"> Distribute/ utilise 16,000 doses of imported female sex sorted semen of HF breed Distribute/ utilise imported 10,000 doses of female sex sorted semen of Jersey breed. 	<ul style="list-style-type: none"> KLDB procured 26,000 doses of HF breed female sex sorted semen and 320 doses of porcine frozen semen. Distributed only 7,020 doses upto March 2021. 																				
KLDB - Artificial insemination to the cattle and buffaloes in the State (₹5.25 crore)	<ul style="list-style-type: none"> Distribute 28,760 doses of frozen semen and 650 doses of sex sorted semen during 2011-12 to 2014-15. 	<ul style="list-style-type: none"> Distributed 13,461 doses of frozen semen and 327 doses of sex sorted semen upto March 2021. 																				

(Source: Data obtained from DPRs and respective PSUs)

In this regard, Audit observed that:

- PCK distributed 7.07 lakh saplings as the sanctioned amount was reduced to ₹8.25 crore. PCK, however, accounted ₹ five crore towards the cost of 10 lakh saplings. This resulted in ineligible benefit of ₹1.47 crore (i.e., 10 lakh saplings – 7.07 lakh saplings x ₹50 per sapling) due to which management cost to the farmers for planting 2.93 lakh saplings were not distributed (September 2021).

Government stated (October 2021) that since project cost was reduced to ₹8.25 crore, plantation area was revised to 3,339.50 Ha and

⁸¹ Production data pertains to the period June 2017 – March 2018.

management cost of ₹1.05 crore was credited to beneficiaries. On receipt of balance fund, management cost would be credited to the remaining farmers.

The fact, however, remained that ineligible accounting of cost against undistributed saplings led to non-payment of management cost to the farmers for 2.93 lakh saplings. Despite availability of fund PCK failed to obtain the beneficiary list from the Department of Agriculture which led to resumption of ₹ two crore by GoK in March 2021.

- MPI achieved only 57 per cent, 54 per cent and 13 per cent as against the targeted distribution of piglets during scheme years 2009-10, 2010-11 and 2014-15 respectively. MPI distributed piglets till January 2020 and utilised only ₹2.26 crore out of ₹7.26 crore received for these projects. Since MPI did not maintain any information regarding 1,023 pigs to be returned by beneficiaries, it could not recover any claim from the beneficiaries.

Government stated (October 2021) that there was resistance from neighbourhood in raising pig units which affected achievement of targets. At regular intervals, beneficiaries were contacted to bring back the pigs and loss due to mortality could not be claimed from beneficiaries.

The reply was not tenable as MPI proposed similar project in 2010-11 and 2014-15 knowing that it did not achieve the target in 2009-10 due to constraints in raising pig units. Non-returning of significant number of pigs even after regular follow up highlighted lack of effective mechanism to ensure accountability by the beneficiaries.

- Even after starting commercial production (May 2017), production from 300 TPD plant of KFL ranged between 14.11 per cent to 61.39 per cent till March 2021, while the DPR envisaged 80 per cent capacity utilisation in the first two years, 90 per cent in the third year and 100 per cent thereafter. Hence, intended objective of the project was not achieved. Further, in order to maintain production at the new plant, production from other plants (Kallettumkara and Karunagapally) was correspondingly reduced.

Government stated (October 2021) that the production from 300 TPD plant increased from 2018-19 to 2020-21 and sale in northern Kerala increased from an average of 30,000 MT to 55,000 MT per year over a period of five years.

The fact, however, remained that the average annual production from the new plant was 43,250 MT only as against annual installed capacity of 90,000 MT.

- KAICO fixed the target for utilisation of CHs at 400 hours per annum. None of the CHs procured under Kuttanad Package and Kole Land scheme were, however, operated as per norms except five CHs which

were used for more than 400 hours in one year each during 2014-15 to 2020-21. In the absence of details regarding basis of fixing the targets, the correctness of projected utilisation of CHs could not be ascertained. In the case of 150 CHs procured under Kuttanad Package, 120 CHs were with KAICO, 21 CHs were found to be distributed to various agencies and details of the remaining nine were not on record. Similarly, the details such as utilisation, location etc., of Tractors/ Power Tillers/ Trailers procured under Kole Land scheme were not maintained.

Government stated (October 2021) that for maximum utilisation of machines purchased under Kuttanad Package, machines were transferred to other districts. Hence, a consistent list of machines deployed could not be made. Since training programme for operation and maintenance of machines could not be conducted due to paucity of fund, the actual utilisation of machines procured under Kole Land Scheme was affected.

The reply was not tenable as the actual utilisation of the machines procured under Kuttanad Package did not improve even after transferring them to other districts. The exact location of 23 CHs, 62 Tractors, five Trailers and 22 Power Tillers were not made available to Audit. Further, the reply was silent on the efforts taken by KAICO in arranging the training for ensuring operation of machines procured under Kole Land Scheme.

- KSCDC was able to sell only 873 litres upto September 2020 out of total production of 24,032.51 litres of virgin coconut oil. KSCDC, however, did not analyse the reasons for the lack of market demand for virgin coconut oil.

Government stated (October 2021) that the project was taken up realising the potential for virgin coconut oil. Being a new player in the market, paucity of fund limited the market reach. Since virgin coconut oil has great potential in export market, efforts were being taken to promote it along with other coconut-based products.

The reply, was, however, silent on the efforts taken by KSCDC to solve the working capital issues to achieve the intended benefits from the project.

- In the case of two projects undertaken by KLDB, there was non-moving stock of 15,299 doses of frozen semen and 323 doses of sex sorted semen as on 31 March 2021 in the first project. Similarly, against the second project, only 6,955 doses of HF frozen semen and 65 doses of porcine semen were used for insemination and the balance 19,045 doses of HF breed and 255 doses of porcine semen were lying in stock (March 2021). This indicated that KLDB procured the imported semen without any action plan to distribute the same. Though the frozen semen could be stocked for a long period, the amount spent on procuring it remained idle until it was used.

Government stated (October 2021) that KLDB supplied the semen based on indents received from the Artificial Insemination centres of Animal Husbandry Department.

The huge stock of frozen semen, however, underlined the fact that subsequent purchases were made without any plan for actual utilisation in consultation with the Animal Husbandry Department which led to avoidable blocking up of fund. Further, actual utilisation was not monitored before sanction of subsequent project by the SLSC.

2.2.6. Monitoring and Evaluation

2.2.6.1. As per RKVY guidelines, SLSC shall meet as often as required but shall meet at least once in a quarter to review the progress of implementation. Similarly, as per Government Order (August 2008), State Level Monitoring Committee (SLMC) was to review implementation of RKVY projects on a monthly basis and submit report to SLSC.

Audit observed that meetings of SLSC and SLMC were held nine times and three times respectively as against the required 28 and 84 times during the period 2014-15 to 2020-21. Hence, regular monitoring of implementation of RKVY projects was not carried out. Absence of monitoring led to continuation of projects without revalidation for years without any tangible achievement, non-achievement of targets and intended benefits, diversion of fund etc. Further, perusal of minutes of meetings of SLSC and SLMC revealed that reasons for shortfall in achievement of targets of various projects, strategy to overcome the constraints in achieving targets etc., were not discussed.

Government did not furnish any reply in this regard.

2.2.6.2. In pursuance of Government Order (March 2015), NABARD Consultancy Services Private Limited (NCSPL) conducted third party monitoring and evaluation of RKVY projects implemented during 2014-15 and submitted (December 2015) a report. Further, SLSC decided (06 September 2016) to entrust an impact assessment of all RKVY projects in the State since inception to Institute for Social and Economic Change, Bengaluru.

Audit observed that GoK did not initiate any action to overcome the constraints pointed out by NCSPL in its report. In the case of projects covered in audit, the constraints included difficulties in importing frozen semen in case of KLDB, non-feasibility of installation of pig-farm in the case of MPI etc. Similarly, no further action was taken for conducting the impact assessment of RKVY projects in the State. Since 25 out of 33 projects covered in audit intended to achieve qualitative improvements in the fields of agriculture and animal husbandry, the extent of benefits derived from these projects could only be evaluated by way of an impact assessment study.

Government stated (October 2021) that an agency was selected for conducting third-party evaluation which could not be commenced due to Covid-19 pandemic and it would be completed by January 2022.

The reply was, however, silent regarding taking action to overcome the constraints pointed out in the third-party evaluation study during 2014-15 and conducting the impact assessment of RKVY projects in the State as decided by SLSC in September 2016.

2.2.6.3. As per the DPRs, yearly maintenance of projects implemented by KLDC would be done by the beneficiaries of *Padasekhara Samithi* and Panchayats.

Audit observed that KLDC did not make any arrangement for ensuring yearly maintenance of projects. On joint physical inspection of two projects⁸², Audit observed that the canal was damaged and plants were growing on the sides of the canal reducing its capacity. A part of the construction was broken and excavated earth was not removed from the canal disrupting the flow of water.

Government stated (October 2021) that steps would be taken in future to handover the works to Agriculture Department/ Panchayat authorities/ registered *Padasekhara Samithi* with the support of an agreement.

2.2.7. Conclusion

Deficiencies in Detailed Project Reports, diversion of RKVY fund by implementing agencies, deficiencies in implementation and monitoring of projects etc., resulted in delayed completion of projects, underutilisation of assets created with consequent non-achievement of targets and intended benefits of the projects.

2.2.8. Recommendations

Government may ensure that:

- Projects approved under the Scheme are feasible.
- The implementing agencies comply with the Scheme guidelines and other relevant rules and regulations in the implementation of projects.
- SLSC and SLMC review the progress of implementation of projects on a regular basis and ensure their timely completion.
- A post-implementation evaluation of projects is carried out to assess the benefits derived from RKVY projects.

⁸² Side protection and forming bund at Vidyarkuni, Nadathodu and Kannakaithodu in Azhiyur in Kozhikode District and Improvements to Vanthodu between Nenmenichira and Chalakkudypuzha in Kuzhur Panchayat in Thrissur District.

HIGHER EDUCATION DEPARTMENT

2.3. Loss of revenue due to short collection of material testing charges by educational institutions

Failure of Higher Education Department/ Directorate of Technical Education to seek clarification about Government Order resulted in loss of ₹65.27 lakh.

Government of Kerala (GoK) collects fees/ user charges in connection with various services/ facilities rendered by Government Departments. In order to ensure maintenance of minimum standard of service rendered and mobilise additional resources for the State, GoK decided (September 2014) to enhance the prevailing fees/ user charges in all Government departments other than educational fees/ charges. The existing rates⁸³ of ₹10 to ₹1,000, ₹1,001 to ₹10,000 and above ₹10,000 were enhanced by 50 per cent, 25 per cent and 15 per cent respectively, with effect from 01 October 2014.

As per the Government Order (May 1991) the Engineering Colleges and Polytechnics conduct tests on payment basis for engineering materials like brick, tiles, bitumen, power transformers etc., for both private and government agencies, at rates approved by GoK. The charges thus collected are required to be shared between GoK and the institution in the ratio of 60:40. Other connected expenses such as travel allowance of staff, transportation of equipment, collection and sending of samples, other contingencies etc., were to be additionally collected.

Audit of Government Polytechnic College, Kannur, College of Engineering, Thiruvananthapuram and Government Polytechnic College, Perinthalmanna functioning under the Directorate of Technical Education (May 2019, August 2019 and July 2021) revealed that these three institutions did not implement the Government Order No. GO (P) No.409/2014/Fin dated 23 September 2014 enhancing fees/ user charges as they continued to collect the charges at the pre-revised rates. This resulted in short collection of testing charges by the institutions during the period from October 2014 to March 2019⁸⁴ as shown in **Table 2.3** below.

Table 2.3: Institution-wise details of short collection of material testing charges
(₹ in lakh)

Name of institution	Short collection		
	GoK share	Institution share	Total
College of Engineering, Thiruvananthapuram	33.80	22.54	56.34
Government Polytechnic College, Kannur	2.51	1.67	4.18

⁸³ The rates which were effective from January 2012

⁸⁴ The rates were further enhanced from April 2019

Name of institution	Short collection		
	GoK share	Institution share	Total
Government Polytechnic College, Perinthalmanna ⁸⁵	2.85	1.90	4.75
Total			65.27

(Source: Details obtained from respective institutions)

The College of Engineering, Thiruvananthapuram informed Audit (August 2019) that the Government Order of 2014 was not implemented as it was not received in the College. Government Polytechnic College, Perinthalmanna stated (July 2021) that they were not aware of the matter. The Director of Technical Education (DTE) informed Audit (April 2021) that the decision of revision of non-tax revenue by GoK was not communicated to sub-offices since the revision was not applicable for all fees administered in educational institutions. The Finance Department, GoK which issued the Government Order enhancing the fees/ user charges clarified to Audit (June and September 2021) that only educational fees/ charges were exempted from the revision and the exemption did not cover services such as testing charges provided by Engineering Colleges/ Polytechnics. Further, Finance department informed that the Government Order No. GO (P) No.409/2014/Fin dated 23 September 2014 enhancing the rates had led to confusion in educational institutions and a clear note would be issued specifying all exemptions applicable to the Education Department.

Additional Chief Secretary, Higher Education Department (HED), GoK stated (January 2022) that the Finance Department had now clarified that only educational fees/ charges were exempted from the revision and the exemption did not cover services such as testing charges provided by Engineering Colleges/ Polytechnics. The lack of clarity in the non-tax revenue revision order was cited as the reason for non-collection of revised charges.

Thus, the lack of clarity in Government Order and the failure of HED/ DTE to obtain timely clarification regarding the Government Order issued by Finance Department resulted in revenue loss of ₹65.27 lakh.

LOCAL SELF-GOVERNMENT DEPARTMENT

2.4. Unfruitful expenditure on construction of a private bus stand

Infructuous expenditure of ₹ five crore incurred by Karunagappally Municipality on construction of a private bus stand.

Karunagappally Municipality formulated (December 2012) a project for the construction of a private bus stand with an estimate amount of ₹4.10 crore⁸⁶.

⁸⁵ Collected revised GoK share from January 2019

⁸⁶ ₹1.53 crore from Development Fund, ₹56.73 lakh out of Finance Commission Grant and ₹ two crore from Own Fund

The Municipality identified 100 cents of land owned by a private firm, Trinity Real Estate, Kollam on the left side of Karunagappally-Sasthamcotta main road, for the bus stand. Administrative sanction for the project was received in March 2013.

The Secretary, Karunagappally Municipality executed a sale deed on 25 March 2014 for purchase of land for ₹4.05 crore with the Managing Partner of Trinity Real Estate, Kollam. As the selected site was a low lying and marshy wetland⁸⁷, it had to be filled up with quarry muck and raised, for which the Municipality incurred an expenditure of ₹25.32 lakh. Additional works at a cost of ₹69.70 lakh⁸⁸ including construction of approach road, toilet, waiting shed, concreting the yard of the bus stand etc., were executed. The site for bus stand was at a distance from the main road and was connected to the main road through a 120 metre long and three metre wide passway. Though the bus stand was inaugurated on 09 February 2018, it could not however be made operational till date (October 2021).

Audit observed that the location chosen for the project was not suitable for the functioning of a bus stand, as it was situated 400 m away from town area and about 100 m inward with a narrow accessway from the main road. The current Secretary of the Municipality informed Audit (March 2021) that if the buses plying from various panchayats were compelled to utilise the bus stand, it would result in extreme traffic congestion in the Karunagappally-Sasthamcotta road. It was also stated that the matter was brought to the notice of the Traffic Advisory Committee of the Municipality several times and the Committee advised that the site was unsuitable for the private bus stand.

Audit further observed (February 2019) that the sale deed signed by the land owner and the Secretary of the Municipality contained a conditional clause that the purchased land should be used by the Municipality exclusively for the construction of private bus station or shopping complex and not for any other purpose. The Municipality failed to undertake a feasibility study on the prospects of a bus stand at the selected location or prepare a Detailed Project Report (DPR) considering factors such as nature of terrain, absence of approach road wide enough to enable two buses to ply at the same time, possibility of traffic congestion, etc., before finalising the site.

Government replied (October 2021) that no loss will be sustained to the Municipality as pointed out in audit and the bus stand will get operational as decided by the Council. It was also stated that the Municipal Traffic Regulatory Committee has decided to make the bus stand operational from 01 November 2021, after issuing urgent notice to remove the materials for a construction work carried out by KIIFB⁸⁹ which were collected and stored at the said bus stand premises. Further, the Council is considering the possibility of constructing a road of three metre width along the six metre width owned by the Municipality

⁸⁷ The land was classified as 'wet' in the Basic Tax Register and Settlement Register of Village Office.

⁸⁸ Construction of approach road (₹19.02 lakh), construction of toilet, waiting shed, urinal etc. (₹19.27 lakh) and concreting the floor of the bus stand (₹31.41 lakh).

⁸⁹ Kerala Infrastructure Investment Fund Board

and is mulling over the option of acquiring the said land under the Kerala Municipality Act.

However, despite expending a total of ₹ five crore (2014 and 2017), the bus stand constructed for the use of the public remained unutilised even after three years. Further, the restrictive clause in the sale deed permitting utilisation of land only for bus station/ shopping complex would limit the scope of utilising the land for alternative purposes in future.

2.5. Unfruitful expenditure on the construction of a Children's Park

Expenditure of ₹25 lakh incurred on construction of a Children's Park in Vanimel Grama Panchayat became unfruitful as the project was left incomplete even after a lapse of nine years.

Vanimel Grama Panchayat (GP) formulated (July 2012) a project for the construction of a Children's Park on a *Puramboke*⁹⁰ land by the side of Vanimel river. The project was taken up for implementation by the GP in a piecemeal manner from 2013-14 to 2015-16 due to shortage of funds. The first phase of construction of retaining wall was taken up at a cost of ₹11.02 lakh in 2013-14 and the balance work of retaining wall was executed in the second phase in 2014-15 for ₹9.97 lakh by a single contractor. In the third phase, the GP entrusted (2015-16) the work of completion of the park with Recreation Hall and Snack bar and Landscaping and Fencing to COSTFORD⁹¹, at a cost of ₹20 lakh to be met out of the funds of Kerala Local Government Service Delivery Project (KLGSDP)⁹². Technical sanction was accorded (May 2015) by the Chief Engineer (CE), COSTFORD and ₹ four lakh was paid in advance to COSTFORD (March 2016).

The Office of the Deputy Superintendent, Vigilance and Anti-Corruption Bureau (VACB), Kozhikode conducted a surprise check (January 2017) of estimates of the work, on the basis of an allegation that the rates allotted for the work in the approved estimate were much above the admissible Schedule of Rates (SOR). The surprise check revealed that the preparation of data, estimate, etc., by COSTFORD was not in accordance with the existing admissible SOR of Public Works Department (PWD) and was based on an unknown SOR. The VACB thereafter recommended effective implementation of work, assuring quality of work and without irregularities. Based on the Vigilance Report, the Deputy Director of Panchayats, Kozhikode (DDP) instructed (February 2017) the GP Secretary not to incur any expenditure on this project until further orders were issued. Accordingly, GP issued notice to COSTFORD (March 2017) to stop the work. The work of fencing alone was completed by COSTFORD.

⁹⁰ The land belongs to Government and does not fall under the list of revenue records.

⁹¹ Centre for Science and Technology for Rural Development.

⁹² A World Bank aided project of Government of Kerala.

Audit observed that Government had conveyed (October 2018) detailed instructions to the Director of Panchayats to revamp the work, as per which revised estimate for the work had to be prepared and Technical Sanction accorded by the Chief Engineer, LSGD instead of CE, COSTFORD. Though the Director of Panchayats communicated (October 2018) the above instructions of Government to the Secretary of the GP, these were not complied with. Thus, the failure of the GP to comply with the Government instruction to prepare revised estimates led to the work remaining unfruitful for three years even after expending ₹25 lakh.

The Secretary of the GP informed Audit (April 2021) that as clearance was not obtained from VACB/ DDP and the KLGSDP fund allotted for the project lapsed by the end of 2016-17, the work could not be completed. The reply is not justifiable as the GP had not initiated any action in line with the instruction of Government in 2018, to revamp the project with a revised estimate. Government replied (October 2021) that the Panchayat Committee is exploring the decisions of reviving the project as envisaged at the initial stage.

Local Self-Government Institutions may ensure that the estimates prepared by accredited agencies entrusted with execution of projects conform to the State PWD rates and that the works entrusted to these agencies are completed in a timely manner.

2.6. Short realisation of fee for additional floor area of buildings

Incorrect levy of additional fee for excess floor area by Adat Grama Panchayat at the time of issuing building permits in two instances, led to short realisation of ₹1.11 crore.

According to Rule 35(2) of Kerala Panchayat Buildings Rules, 2011 (KPBR) for residential (A1) (b) buildings⁹³ in category II Grama Panchayats, maximum permissible FAR⁹⁴ without additional fee is 1.75 and with additional fee is 2.5. The Government of Kerala (Government) enhanced the rate of additional fee per sq.m of additional floor area for a maximum permissible FAR of 2.5 from ₹500 per sq.m (from 14 February 2011) to ₹5,000 per sq.m with effect from 31 October 2017. As per the instructions issued by Government (September 2010), additional fee was to be realised in accordance with the Building Rules prevalent on the date of issue of permit and not those existing on the date of application.

Scrutiny of records in Adat Grama Panchayat (GP) in Thrissur district in August 2018 revealed that the GP failed to collect additional fee for excess FAR at the rates applicable as per extant rules in two instances, while issuing building permits.

- The GP issued (January 2017) building permit to the Director, Sowparnika Projects and Infrastructure Private Ltd., Bengaluru for the

⁹³ Residential building with floor area more than 300 sq.m.

⁹⁴ FAR: Floor Area Ratio is the ratio between the floor area of the building to the plot area

construction of a residential flat with floor area and plot area of 5,591.66m² and 2,260.25 m² respectively. For the given floor area and plot area, the builder was to restrict the construction to a maximum area upto 3,955.44 m² to be within the permitted FAR of 1.75. Since the permit was for a floor area of 5,591.66 m², the corresponding FAR would be 2.47. Accordingly, the GP realised (January 2017) additional fee at the rate of ₹500 per m² for an additional area⁹⁵ of 1,636.22m², amounting to ₹8.18 lakh from the builder. On 31 October 2017, the builder applied for a revised permit for a revised floor area of 5,632.82 m², raising the FAR to 2.49 and the area for which additional fee leviable increased to 1,677.38 m²⁹⁶. The permit was issued on 16 May 2018. As the Building Rules in force at the time of issue of permit were to be followed for the calculation of fee for additional floor area, the GP should have applied the revised rate of additional fee at the rate of ₹5,000 per m² for the area in excess of the permissible floor area. However, Audit noticed that the GP reckoned additional fee for the excess area at the pre-revised rate of ₹500 per m² only. Failure to collect additional fee at the revised rate of ₹5,000 per m² resulted in short collection of ₹75.69 lakh⁹⁷ from the builder.

- In another case, the GP issued a revised building permit on 22 December 2017 to an individual on the basis of his application (06 September 2016), for which the mandatory 'No Objection Certificate' from Fire and Rescue Services Department was submitted by him in November 2017. The floor area and plot area were 2,915.74 m² and 1,214 m² respectively. For the given floor area and plot area, for the FAR to be 1.75, the builder was to restrict the construction upto a maximum area of 2,125 m². As the revised application was for a floor area of 2,916 m², FAR increased to 2.40. Though additional fee leviable on 791 m² (2,915.74 m² – 2,125 m²) was to be calculated at the rate of ₹5,000 per m², the GP collected (December 2017) additional fee at the rate of ₹500 per m² only. Collection of fee at a lower rate resulted in short collection of ₹35.60 lakh⁹⁸.

Thus, reckoning of rates of additional fee as per Building Rules in force at the date of application instead of date of sanction of permit in the above cases, resulted in short collection of ₹1.11 crore (₹75.69 lakh + ₹35.60 lakh). The details of short collection are shown in the **Table 2.4** below:

⁹⁵ Permitted Floor area for 1.75 FAR = plot area 2,260.25 x 1.75 = 3,955.44 m²; Additional floor area = 5,591.66 – 3,955.44 = 1636.22 m²

⁹⁶ 5,632.82 – 3,955.44

⁹⁷ 1,677.38 m² x ₹5,000 = ₹83,86,900; ₹83,86,900 - ₹8,18,110 (1,636.22m² x ₹500 per m², already collected) = ₹75,68,790

⁹⁸ 791 m² x ₹5,000 = ₹39,55,000 - ₹3,95,500 (791 m² x ₹500 per m² already collected) = ₹35,59,500

Table 2.4: Details of short collection of additional fee for excess FAR in two cases

Case no.	Details of permit	FAR Applicable	Rate of additional fee to be applied (per sq.m) for building permits issued on or after 31.10.2017 ⁹⁹	Rate of additional fee levied (per sq.m)	Area on which rate to be levied (sq.m)	Area on which rate levied (sq.m)	Total Additional fee collected (₹ in lakh)	Total amount to be collected (₹ in lakh)	Short-collection (₹ in lakh)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8) = (7)*(5)	(9) = (6)*(4)	(10) = (9) - (8)
I	Revised permit dated 16.05.2018	2.49	5000	500	1677.38	1636.22	8.18	83.869	75.69
II	Revised permit dated 22.12.2017	2.40	5000	500	791	791	3.955	39.55	35.60
Total short collection									111.29

(Source: Data furnished by GP)

On Audit seeking confirmation of the above from the Chief Town Planner, Thiruvananthapuram (CTP), it was clarified (April 2021) that the additional fee in accordance with the Rules prevalent at the date of sanctioning of revised permit, (i.e., at the rate of ₹5,000 per sq.m) were to be realised for additional FAR. The additional fee collected at pre-revised rate was also to be deducted from the amount collected at enhanced rate. Further, the Government had issued (September 2010) instruction to CTP, the Director of Panchayats and the Director of Urban Affairs that the Building Rules existing on the date of sanction would govern the matter and not those existing on the date of application. The dates of sanction in both the above cases were after the date of issue of the Government Order revising the rate of additional fee for excess FAR.

Government replied (October 2021) that the Secretary, Adat GP had again issued notices to the applicants, demanding the payment of additional fee. It was also stated that there was no further remarkable progress in collecting the additional amount, and occupancy certificate has not been issued so far in both the cases. The reply is not fully acceptable as it was the responsibility of the GP to ensure correctness of rates of additional fee being collected and having failed to do so, effect timely recovery of short collected amount from the applicants.

It is recommended that the Local Self-Government Institutions may ensure timely recovery of additional fee to be realised for excess FAR from applicants, at the rates as per Rules prevalent at the date of sanctioning of permits/ revised permits.

⁹⁹ As per Government of Kerala Order No. GO (P) No. 81/2017/LSGD dated 31 October 2017

2.7. Infructuous expenditure on the construction of a playground

A playground construction project initiated by Kollam Municipal Corporation had to be abandoned after incurring expenditure of ₹13.54 lakh, due to resistance from local population.

Kollam Municipal Corporation (KMC) formulated (2014-15) a project, 'Open Playground in Kollam Port in Division 47' for the benefit of local residents with an estimate of ₹34.32 lakh, to be completed in three months. The patch of land 140 metre long and 110 metre wide was to be transformed into a playground, by executing stage-wise work relating to earthwork excavation, dry rubble masonry, random rubble masonry, cement concrete pavement, supplying and filling contractor's own earth and GI pipe¹⁰⁰ for goal posts. Administrative sanction was accorded (January 2015) for the project by the Secretary, KMC and the single contractor¹⁰¹ who took part in the tendering and re-tendering (April/ May 2015) was awarded work for ₹34.11 lakh. Agreement was signed (June 2015) between the contractor and Superintending Engineer (SE) of KMC and the work commenced on 07 August 2015, with the date of completion fixed as 06 November 2015.

Meanwhile, the work was stopped temporarily owing to local protest/ disputes¹⁰² at the site. The Councillor intimated SE, KMC subsequently (February 2017) that consequent upon several discussions held with local public, the conditions were conducive for commencing the work. Thereafter, the work was resumed. Audit noticed that the contractor undertook only the fifth item of work, viz., supplying and filling contractor's own earth, and supplied (March 2017) 4,402.15 cu.m.¹⁰³ of earth against the specified quantity of 6,818 cu.m, for which he was paid ₹13.54 lakh. It was also observed that the remaining items of work could not be taken up due to further resistance from local population, contrary to the assurance of the Councillor.

The Corporation Council decided to cancel the work (January 2018), stating difficulty in completing the work owing to public protests. Joint site verification (August 2019) conducted by Audit along with the Assistant Engineer, KMC revealed that the proposed project site was not utilised, and was covered with grass, strewn with waste materials, etc.

Audit observed that KMC finalised the tender and entered into contract with the sole bidder even without consulting the local residents about the proposed project. As a result, the project which commenced in August 2015 was abandoned in January 2018, after partial execution of work in two and a half years. The Secretary, KMC informed (April 2021) Audit that there was no

¹⁰⁰ Galvanised Iron pipe

¹⁰¹ N K Constructions, Kottiyam, Kollam

¹⁰² In connection with apprehensions about construction of a cement factory

¹⁰³ Cubic metre

prospect of including the project in the upcoming plan proposal of KMC. Thus, the expenditure of ₹13.54 lakh incurred on the project remained unfruitful.

Government replied (October 2021) that KMC had not conducted a special feasibility study as the playground was under construction and the Port Department had given special permission for the playground. It was also stated that the Corporation Council has been taking steps to complete the playground from 24 February 2021 as part of the project proposal for the financial year 2021-22 by resolving local disputes.

The reply of Government that the project would be completed by resolving local disputes contradicts the statement of the Secretary KMC that there was no prospect of including the project in the upcoming plan proposal of the Corporation, and hence is not acceptable.

LSGIs may, while undertaking projects, conduct feasibility study and ensure that the conditions in the selected sites facilitate unhindered progress of work so that projects taken up are completed in a time bound manner.

2.8. Recovery of damages to the tune of ₹63.89 lakh

Inadequate internal controls in seven Municipalities resulted in non-recovery of Employees' Provident Fund contribution from employees and non-remittance to Employees Provident Fund Organisation. Further, ₹63.89 lakh had to be utilised from the own funds of the Municipalities to pay the penalty and interest levied.

Municipal Councils employing 20 or more persons were brought under the purview of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 vide Government of India (GoI) Notification No. S.O. 30 (E) dated 08 January 2011. Accordingly, Employees Provident Fund Organisation (EPFO) informed all Urban Local Bodies (ULBs) that the said Act shall apply to ULBs w.e.f. 08 January 2011. In accordance with Section 6 of the above Act, every Municipal Council was to contribute to the fund, 12 per cent of the basic wages payable to each employee including those employed through a contractor. Besides, the employee's contribution shall be at least equal to the contribution payable by the employer in respect of him/ her. In accordance with the said provisions, the Government instructed all ULBs in the State to comply with the provisions of the Act (March 2013).

Further, under Sections 6, 6A¹⁰⁴ and 6C¹⁰⁵ of the Act, read with Para 38 and Para 3 of the Employees' Pension Scheme, 1995 and Para 8(1) of the Employees' Deposit Linked Insurance Scheme, 1976, the employer of the

¹⁰⁴ Employees' Provident Funds and Miscellaneous Provisions Act, 1952 Section 6A states that the Central Government may by notification in the official Gazette, frame a scheme called the Employees' Pension Scheme.

¹⁰⁵ Employees' Provident Funds and Miscellaneous Provisions Act, 1952 Section 6C states that the Central Government may by notification in the official Gazette, frame a scheme called the Employees' Deposit-linked Insurance Scheme.

establishment is required to remit the contributions to these funds along with the administrative charges to EPFO within 15 days of the close of every month. In the case of an employer making default in payment of the contributions to Employees' Provident Fund (EPF), the Commissioner, EPFO is required to recover such damages from the employer by way of penalty, not exceeding the amount of arrears. The employer is also liable to pay simple interest at 12 per cent per annum or at such higher rate as may be specified until the date of its actual payment.

Audit observed¹⁰⁶ (2018-19) that in the absence of adequate internal controls, seven¹⁰⁷ out of 41 Municipalities falling under the jurisdiction of the regional offices of EPFO at Kannur and Kozhikode had not remitted employees' contributions towards EPF. Even though EPFO informed the Municipalities of the GoI Act¹⁰⁸ (June 2017) and reminded them of the default in timely remittance, the Municipalities did not comply with the instructions. Consequently, EPFO recovered the damages along with interest by way of penalty from the own funds of the Municipalities. The details of amount recovered by EPFO are as given in **Table 2.5**.

Table 2.5: Details of recovery of Damages and Interest by EPFO

Municipality	Damages recovered from own funds (₹)	Interest (₹)	Total amount recovered (₹)	Period of damages
Feroke	235150	118256	353406	11/2015* to 03/2019
Ponnani	1145267	567981	1713248	01/2011 to 11/2019
Malappuram	528355	254349	782704	01/2011 to 03/2019
Manjeri	1006114	489463	1495577	01/2011 to 03/2019
Kottakkal	342839	168788	511627	01/2011 to 03/2019
Kuthuparamba	478704	232703	711407	01/2011 to 03/2019
Shornur	545271	275311	820582	01/2011 to 03/2019
Total			6388551	

* *Feroke Municipality was a Grama Panchayat before November 2015.*

(Source: Data furnished by Municipalities/ EPFO)

The Municipalities stated (March/ April/ June 2021) in reply that anticipation of orders exempting from payment of contribution, shortage of staff to effect recovery, ignorance of instructions, workload, technical issues, etc., had resulted in lack of timely recovery and remittance.

The replies are not justifiable in view of the fact that the Municipalities were liable to comply with the provisions of the Acts and instructions of Central/ State Government. Further, EPFO had reminded all seven Municipalities to contribute to EPF without default.

Thus, inadequate internal controls and poor diligence in ensuring compliance with the statutory requirement, resulted in recovery of ₹63.89 lakh from own

¹⁰⁶ During local audit of Kuthuparamba Municipality and audit for specific purposes of the remaining Municipalities

¹⁰⁷ Feroke, Ponnani, Malappuram, Manjeri, Kottakkal, Koothuparamba and Shornur.

¹⁰⁸ Employees' Provident Funds and Miscellaneous Provisions Act, 1952

funds of the seven Municipalities by way of interest and penalty. The Municipalities were deprived to that extent, of these funds which were meant to be utilised for developmental activities. This could have been avoided had the Municipalities ensured due care in remitting the EPF contributions in timely manner besides financial prudence in utilisation of their own funds. The Municipalities informed that the amount of damages and interest seized by EPFO have not been recouped from the employees till date (March/ April/ June 2021).

In reply, Government confirmed (October 2021) the amount of EPF contribution made and damages recovered from each Municipality referred to in the draft paragraph for the period mentioned.

Government/ Director of Urban Affairs may put in place stringent internal controls in all Municipalities to ensure that they remit EPFO contributions without any delay. Introduction of provision for recovery (from the responsible Municipal officers) of amounts spent on payment of penalty and interest attributable to lack of diligence of Municipal officers may also be considered.

WATER RESOURCES DEPARTMENT

2.9. Loss of revenue of ₹56.57 lakh to Government

Failure on the part of Kerala Water Authority to adhere to the amended provisions of the Kerala Stamp Act, 1959 resulted in loss of ₹56.57 lakh to the Government exchequer.

The provisions of the Kerala Stamp Act, 1959 reveals that the responsibility of ensuring that the agreements by Kerala Water Authority (KWA) with contractors/ service providers were duly stamped lies with the officials of KWA.

Scrutiny of records (March – April 2019) maintained in all the 12 Circle Offices (3,167 agreements scrutinised) under the KWA revealed that the value of stamp papers for agreements executed between KWA and contractors/ service providers were not as prescribed by the Kerala Finance Act, 2018 (instances of short collection were noticed in 1,450 agreements). The use of stamp papers of pre-revised value by KWA for execution of agreements with contractors/ service providers resulted in loss of revenue of ₹56.57 lakh (**Appendix 2.11**) to the Government.

KWA issued a Circular in June 2020 stating that based on the remarks of the Audit, instructions were issued to the field offices concerned for effecting recovery of stamp duty at the revised rates. KWA further directed all the subordinate officers of KWA to remit the shortfall in stamp duty so collected before 25 June 2020.


Subsequently, Government of Kerala replied (January 2021) that revision to provisions of Stamp Act did not come to the notice of the Head Office of KWA

as well as to its subordinate offices. When the matter came to the notice of the officials of KWA, instructions were issued to subordinate offices of KWA to collect stamp paper as per the revised rates. Further, KWA informed (December 2021) that ₹52.99 lakh was collected from the contractors and that the balance amount would also be collected soon.

The reply of Government is not tenable as Audit noticed that an email (November 2018) from Nodal Officer, KWA e-tendering instructed all offices to execute agreements in revised value stamp papers. Further, even after passage of more than one year (as of December 2021) since the issue of Circular by KWA in June 2020, an amount of ₹3.58 lakh remained due/ outstanding to be collected and remitted to the Government. Audit also noticed that no action was taken against officials responsible for the lapse which resulted in loss of revenue.


KWA may take proactive steps to update its offices about the changes in statutory provisions and thereby, avoid such instances of loss of revenue to the Government. Further, KWA may expedite the process of recovery of dues on priority and also fix responsibility on officials for the lapse.

**Thiruvananthapuram,
The 12 April 2022**


**(ANIM CHERIAN)
Principal Accountant General
(Audit I), Kerala**

Countersigned

**New Delhi,
The 21 April 2022**


**(GIRISH CHANDRA MURMU)
Comptroller and Auditor General of India**