

CHAPTER VIII

Non-tax Receipts

8.1 Results of audit

Test check of records of the Forest, Mines and Geology, Public Works, Sericulture and Finance Departments, conducted in audit during the year 2002-2003, disclosed under-assessments, non-recovery/short recovery of revenue amounting to Rs.659.73 crore in 67 cases, under the following broad categories:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
Forest Receipts			
Review : Detection and disposal of forest offence cases			
1	Non-recovery/short recovery of lease rent and licence fee	6	7.28
2	Non-recovery/short recovery of taxes and royalty	11	3.15
3	Short collection of seigniorage rates, etc.	5	2.78
4	Other irregularities	6	100.31
	Total	28	113.52
Mineral Receipts			
1	Non-levy/short levy of dead rent	5	0.24
2	Non-levy/short levy of royalty	5	0.68
3	Other irregularities	5	0.32
	Total	15	1.24
Public Works Receipts			
1	Non-recovery/short recovery of royalty	2	5.78
2	Other irregularities	4	2.12
	Total	6	7.90

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
Sericulture Receipts			
1	Loss of revenue due to low yield of Cross Breed Disease-free Layings	10	0.50
2	Other irregularities	6	0.12
	Total	16	0.62
Miscellaneous General Services			
1	Non-recovery of guarantee commission	1	136.10
2	Review : Working of Karnataka Computerised Network (Online) Lottery Scheme	1	400.35
	Total	2	536.45
	Grand Total	67	659.73

During the course of the year 2002-2003, the Forest Department accepted under-assessments of Rs.0.27 crore in eight cases which had been pointed out in audit in earlier years and recovered the entire amount.

A few illustrative cases involving Rs.639.40 crore including the results of two reviews, **Detection and disposal of forest offence cases** (Rs.95.96 crore) and **Working of Karnataka Computerised Network (Online) Lottery Scheme** (Rs.400.35 crore) are given in the following paragraphs. Of this, Rs.15.09 lakh had been recovered.

8.2 Review : Detection and disposal of forest offence cases

Highlights

The number of offence cases pending disposal increased from 32,346 at the beginning of 1997-98 to 42,737 at the end of 2000-2001 registering a rise of 32 per cent.

(Paragraph 8.2.6)

There were long delays in preparation of Enquiry Reports on the offence cases registered; during the period 1997-98 to 2001-2002, Enquiry Reports in only 10 to 16 per cent of the new cases were finalised within the prescribed time limit of 15 days.

(Paragraph 8.2.7)

Despite patrolling of 98 to 100 per cent Beats, the undetected cases formed 18 to 25 per cent of offences booked.

(Paragraph 8.2.8)

The pace of disposal of prosecution cases was very slow and showed a declining trend; during the period 1997-98 to 2001-2002. Out of 471 cases decided by Courts during this period, only 159 were in favour of Government.

(Paragraph 8.2.11)

Though damage caused to forests in cases of illicit felling and smuggling is required to be recovered from the offenders, such damage had not been assessed in any of the Enquiry Reports. The value of damages in the 15 Divisions test checked was estimated to be Rs.75.44 crore.

(Paragraph 8.2.12)

Over 92,111 hectares of encroached forest land continued to be in unauthorised occupation as of December 2002.

(Paragraph 8.2.19)

Introduction

8.2.1 Forests and forest produce in the State are governed under the Karnataka Forest Act 1963 (effective from June 1969) (hereafter called 'the Act') and the Karnataka Forest Rules 1969. The detailed procedures for working of the Department, including instructions for dealing with forest offence cases, are laid down in the Karnataka Forest Manual, the Karnataka Forest Code and the Karnataka Forest Account Code. The offences under the Act are classified into three broad categories, viz., offences against the forest itself^y, offences in relation to the forest produce in transit, and special offences. The detection of an offence involves direct and physical notice of the offence by the detecting agency, seizing the vehicles, tools and implements, if any, involved; and seizing the forest produce or other material involved.

Organisational set up

8.2.2 At the Government level, the general superintendence and control vests with the Forests, Ecology and Environment Department headed by the Principal Secretary. The Principal Chief Conservator of Forests (PCCF) who is the head of the Department, is responsible for the administration of forests as a whole. He is assisted by Chief Conservator of Forests (Protection and Management) and Additional Principal Chief Conservator of Forests (APCCF) (Vigilance). The Department has been divided into 13 Circles each headed by a Conservator of Forests. The Circles are divided into 98 Divisions comprising 37 Territorial, 12 Wildlife, 27 Social Forestry and 22 Others each headed by a Deputy Conservator of Forests (DCF) except 3 Wildlife Divisions which are headed by Assistant Conservators of Forests. The Divisions are sub-divided into Ranges each headed by a Range Forest Officer (RFO). The Ranges are further divided into Sections each in charge of a Forester. The Sections are again divided into Beats each looked after by a Forest (Beat) Guard. There are nine Forest Mobile Squads (FMS) under the charge of the APCCF (Vigilance) and 138 Check Posts.

Audit objectives

8.2.3 A test check was conducted with a view to ascertaining the adequacy and efficiency of the machinery for -

- (1) Detection, investigation and finalisation of forest offence cases;
- (2) Proper accounting and disposal of seized materials; and
- (3) Internal control mechanism regarding forest offences.

^y Trespass in a Reserved Forest or a Village Forest; cutting, collection and removal of forest produce and clearing or breaking up of any land for cultivation in a Reserved or Protected or Village Forest; hunting for wildlife; cattle trespass; and causing fire

Scope of audit

8.2.4 A Review was conducted from December 2002 to April 2003 by a test check of the records of 20* Divisions (15 Territorial Divisions and 5 Forest Mobile Squads) for the period from 1997-98 to 2001-2002 and a general scrutiny of the records of the PCCF. The important points noticed involving monetary effect of Rs.95.96 crore are narrated in the succeeding paragraphs.

Budget Estimates and Actuals

8.2.5 The receipts from forest offences are not separately classified in the Budget Estimates/accounts. The Budget Estimates and actual realisation thereagainst of the Department as also the total receipts, expenditure incurred on vigilance and realisation from forest offence cases (FOC) in respect of the test-checked Divisions for the years 1997-98 to 2001-2002 are given below:

(Rupees in crore)

Year	Budget Estimates	Actual	Total receipts of test-checked Divisions	Expenditure on vigilance	Receipts from FOC [∞] (Percentage of (4))
(1)	(2)	(3)	(4)	(5)	(6)
1997-1998	125.00	113.81	30.38	9.81	5.51 (18)
1998-1999	131.25	107.35	56.69	11.88	4.95 (9)
1999-2000	125.00	94.87	55.04	13.38	4.62 (8)
2000-2001	154.51	108.25	57.10	14.09	5.23 (9)
2001-2002	120.56	100.90	59.03	14.43	4.64 (8)

The receipts from FOC declined from 18 per cent of the total receipts in 1997-98 to 8 per cent in 2001-2002. While expenditure on vigilance increased by 47 per cent, there were reduction in receipts from FOC by 16 per cent over the period 1997-98 to 2001-2002.

* Territorial Divisions: Bangalore (Rural), Bangalore (Urban), Bhadravathi, Chickmagalur, Haliyal, Hassan, Hunsur, Kollegal, Koppa, Madikeri, Mysore, Sagar, Shimoga, Sirsi, Yellapur Forest Mobile Squads: Bangalore, Hassan, Madikeri, Mysore, Shimoga

[∞] Sale proceeds of seized materials, compounding fee, fine, etc.

Status of offence cases

8.2.6 As per the Annual Administration Report of the Department, the year-wise position of booking and disposal of offence cases for the period from 1997-98 to 2000-2001 was as under:

(Rupees in crore)

Year	Opening balance	Number of cases booked	Number of cases disposed	Number of cases pending	Value recovered	Compounding fee recovered
1997-1998	32,346	24,497	22,216	34,627	2.58	2.24
1998-1999 [#]	34,627	23,079	18,033	41,290	2.16	1.31
1999-2000 [#]	39,940	21,639	18,781	42,798	2.76	1.15
2000-2001 [#]	43,087	19,135	19,506	42,737	2.45	1.31

[#] Arithmetical inaccuracies in adopting the opening balance and computing closing balances have not been reconciled by the Department.

The number of pending cases increased from 32,346 as on 31 March 1997 to 42,737 as on 31 March 2001 registering an increase of 32 per cent. The Department has not furnished (January 2004) the age-wise break-up and reasons for pendency of the cases.

Preparation and disposal of enquiry reports (ERs)

8.2.7 Under the Karnataka Forest Manual, if as a result of the First Information Report (FIR), the RFO has reason to believe that an offence has been committed, he is required to prepare an Enquiry Report within 15 days and forward the same with other records to the DCF for passing necessary orders for disposal of the case. Where a longer time is necessary to complete the investigation, a preliminary report has to be submitted to the DCF explaining the circumstances of the case and indicating when the ER would be made finally.

The number of FIRs for which ERs were due, the number of ERs prepared, balance of FIRs pending, the number of ERs disposed and balance of ERs pending are detailed below:

Year	FIRs (old + new) for which ERs are due	ERs prepared				ERs disposed of		
		Within 15 days (Percentage of new FIRs)	After 15 days	Total	Balance FIRs pending	ERs due for disposal	Disposals ordered	Balance ERs pending
		1997- 1998	21224 (8913 + 12311)	1932 (16)	9036	10968	10256	19394*
1998- 1999	24798 (10256 + 14542)	1427 (10)	10302	11729	13069	20702	11901	8801
1999- 2000	23993 (13069 + 10924)	1434 (13)	9477	10911	13082	19712	11010	8702
2000- 2001	23110 (13082 + 10028)	1386 (14)	7408	8794	14316	17496	8929	8567
2001- 2002	24506 (14316 + 10190)	1490 (15)	8034	9524	14982	18091	8992	9099

* Includes opening balance of 8,426 ERs due for disposal as on 01.04.1997

ER: Enquiry Report

FIR: First Information Report

It could be seen that there were long delays in preparation of ERs and that only 10 to 16 per cent were finalised within the prescribed time limit of 15 days. Besides, no time limit had been fixed for disposal of ERs. The number of ERs pending disposal also increased from 8,426 as on 01.04.1997 to 9,099 as on 31.03.2002. In respect of delayed cases, information as to whether preliminary reports were submitted was not available.

Three cases where ERs were not drawn are indicated below:

- In Hanur Range (Kollegal Division), an offence case was booked (FOC 37/93-94) against nine police officials of the Special Task Force (STF) set up to nab Veerappan in August 1993 for illegally transporting beete logs measuring 0.119 cubic metre in two Government vehicles. Enquiry Report had not been drawn till December 2002. Further, in 13 cases relating to the same Division for 1995-96, Enquiry Reports had not been sent so far. The value of the materials seized and details of whereabouts of the seized materials were not available for verification.
- In Madikeri Division, illegal mining of red pearls was noticed in 0.13 acres of forest land. Details of quantity of red pearl stones mined and its value were not assessed. The FOC had been pending since August 2001 and no ER was drawn.

Undetected cases

8.2.8 Where offenders involved in forest offence cases are not traced, the cases are recorded as 'undetected cases'. The property seized, if found in the forest and believed to belong to Government, is taken possession and disposed of. During the process of investigation and enquiry, any damage which might have been caused to the forest shall also be investigated and assessed. The amount of damage should invariably be recorded in the evidence report.

The number of Beats patrolled, undetected offences recorded during 1997-98 to 2001-2002 in the test-checked Divisions and FMS and the value of seized material involved are given below:

Year	Number of guards/Beats	Number of Beats patrolled (Percentage)	Total number of offences booked	Number of undetected cases (Percentage)	Value of seized material (Rupees in crore)
1997-1998	1154/ 1105	1088 (98)	12311	3033 (25)	2.70
1998-1999	1132/ 1097	1087 (99)	14542	2624 (18)	2.72
1999-2000	1129/ 1096	1092 (100)	10924	2340 (21)	2.84
2000-2001	1118/ 1096	1089 (99)	10028	2457 (25)	2.26
2001-2002	1120/ 1097	1088 (99)	10190	2476 (24)	2.46
Total				12930 (22)	12.98

As could be seen from the above table that though the Department had conducted 98 to 100 per cent patrolling of Beats, the percentage of undetected offences was high and ranged between 18 and 25 per cent indicating that the Department was not able to find or locate the offenders. Steps needed to be taken for improvement in patrolling to increase its effectiveness. Besides, only material available at the spot was recorded as Rs.12.98 crore and the actual damage caused to forest had not been assessed and valued.

Compounding of offences

8.2.9 The Act authorises the State Government to empower a Forest Officer to accept a sum of money not exceeding Rs.50,000 (Rs.5,000 up to 10 May 1998) by way of and precedent to the composition of the offence from any person suspected to have committed an offence (excluding wrongful seizure, counterfeiting or defacing marks on trees or timber, altering boundary marks and transactions involving sandalwood). When any property has been

seized as liable to confiscation, the Forest Officer is empowered to release the same on payment of the value thereof, as estimated by such officer till 10 May 1998 and as may be prescribed thereafter, but no rules of fixation have been laid down so far. Further, the Karnataka Preservation of Trees (KPT) Act 1976 also enables compounding of any offence under that Act on payment of 25 per cent of the value of the property involved.

According to the Karnataka Forest Manual, after orders of compounding are passed, the RFO shall issue a notice stating the amount of composition fee, value to be recovered for the produce involved and for the damages and the date before which it is to be paid which would be normally 30 days. If no money is paid, the only alternative would be to prosecute the party concerned.

During the course of audit, it was noticed that in seven Divisions, there was short realisation of Rs.53.09 lakh, as detailed below:

(Rupees in lakh)				
Sl. No.	Name/ of Divisions/ FMS (Number)	Period	Nature of observation	Short levy of compounding fee/value
1	DCF, Sirsi (1)	1997-98 to 2001-2002	As against Rs.10.57 crore due from compounding, during this period only Rs.10.47 crore was recovered. This resulted in short recovery of Rs.10.28 lakh in Sirsi Division. Prosecutions should have been pursued but was not done.	10.28
2	DCF, Mysore, Hassan, FMS Mysore, Madikeri (4)	1991-92 to 2001-2002	In 75 cases of compounding under the KPT Act, the value of produce was Rs.39.16 lakh. However, compounding fee and value recovered was only Rs.3.16 lakh resulting in short levy of Rs.36 lakh.	36.00
3	FMS, Bangalore (1)	1997-98 to 2001-2002	Penalty at 5 times of royalty is payable under Karnataka Minor Mineral Concession Rules 1994. However, while compounding 26 cases of illegal transport of 71.98 cum of granite involving royalty	4.00

(Rupees in lakh)

Sl. No.	Name/ of Divisions/ FMS (Number)	Period	Nature of observation	Short levy of compounding fee/value
			of Rs.1.16 lakh, as against penalty of Rs.5.78 lakh due, only Rs.1.78 lakh was recovered resulting in short realisation of Rs.4 lakh.	
4	FMS, Mysore (1)	2000-2001	Against 11.49 cum of timber permitted, the permit holder transported 14.92 cum of timber. The timber carried in excess was not seized resulting in loss of Rs.2.81 lakh.	2.81
	Total			53.09

Prosecutions

The Forest Officer detecting an offence is required to send a copy of the FIR to the jurisdictional Magistrate. Where offenders are identified, charge sheets framed after preparation of Enquiry Reports by the RFO and orders of the DCF for prosecution are also sent to the Magistrate. If orders are to withdraw, a copy of the withdrawal order is sent to the Magistrate quoting the references of the FIR.

8.2.10 The number of prosecutions initiated and the number of disposals during the period 1997-98 to 2001-2002 were as under:

(Rupees in crore)

Year	Opening balance	Additions	Total	Disposals	Closing balance
	Number of cases (Value of seizures)				
1997-98	1,710 (2.97)	1,644 (2.78)	3,354 (5.74)	150 (0.91)	3,204 (4.83)
1998-99	3,204 (4.83)	827 (2.00)	4,031 (6.83)	106 (0.58)	3,925 (6.25)
1999-2000	3,925 (6.25)	726 (0.91)	4,651 (7.17)	82 (0.13)	4,569 (7.04)
2000-2001	4,569 (7.04)	714 (0.72)	5,283 (7.76)	55 (0.29)	5,228 (7.47)
2001-2002	5,228 (7.47)	634 (0.60)	5,862 (8.08)	78 (0.67)	5,784 (7.41)

It would be seen from the above that the pace of disposals had been very slow and showed a declining trend. The number of cases pending disposal as on 31.03.2002 increased by 238 per cent as compared to 1997-98. Reasons for the declining trend of new prosecution cases have not been received (January 2004).

8.2.11 Out of 471 cases decided by the Courts during the period 1997-98 to 2001-2002, only 159 cases (34 per cent) were in favour of the Government and 312 cases were in favour of the accused. The success rate of prosecutions was only about one-third of the cases disposed of, for which no reasons were furnished by the Department.

Non-levy/non-assessment of damage to forest in cases of illicit felling and smuggling

8.2.12 According to the Karnataka Forest Manual, during the process of enquiry into an offence case, any damage caused to the forest is to be investigated and assessed. The extent of damage is to be invariably recorded in the evidence report and the value thereof as estimated by the departmental officials is also to be recovered from the offender.

The quantity of material seized during the years 1997-98 to 2001-2002 as furnished by 7 out of 15 Divisions test checked and its value were as under:

Year	Quantity (cum)	Value of seized property	Value of actual damage (Approximate)
		(Rupees in crore)	
1997-1998	5,033.683	3.32	10.58
1998-1999	3,686.525	2.74	9.81
1999-2000	3,885.709	3.42	8.81
2000-2001	2,487.801	2.33	8.01
2001-2002	3,752.816	2.29	9.46
Total	18,846.534	14.10	46.67

Audit scrutiny of records of these Divisions revealed that the Enquiry Reports contained data on only seized property. The value of actual damage was not recorded. The working of the value of actual damage was therefore not based on assessments in individual cases.

On proportionate basis, the value of actual damage in the remaining eight Divisions would work out to Rs.28.77 crore, as detailed below:

Year	Quantity (cum)	Value of seized property	Value of actual damage (Approximate)
		(Rupees in crore)	
1997-1998	3,453.481	1.87	7.26
1998-1999	2,540.654	1.85	6.77
1999-2000	1,562.492	1.50	3.54
2000-2001	2,479.150	1.29	7.98
2001-2002	1,279.482	1.28	3.22
Total	11,315.259	7.79	28.77

No action was taken by the Department for its recovery from the offenders.

Transportation of seized/confiscated material to depots

8.2.13 The forest produce involved in the offence and the vehicles, tools and implements, etc. used by the offender in the commission of the offence are to be seized at once and steps taken immediately to secure the seized property from being made away with.

During the course of audit, it was noticed that there were delays in transportation of seized materials to secured places, as detailed below:

Year	Transportation of seized materials					
	Within 3 months		After 3 months but before 6 months		After 6 months	
	Number of cases	Quantity (in cubic metres)	Number of cases	Quantity (in cubic metres)	Number of cases	Quantity (in cubic metres)
1997-1998	1,668	1,661.016	767	1,158.143	2,044	2,618.730
1998-1999	3,504	1,203.716	931	558.830	2,215	1,479.671
1999-2000	1,764	1,067.562	813	766.778	1,544	1,676.484
2000-2001	1,782	1,008.447	902	730.952	1,462	1,259.392
2001-2002	1,811	1,366.803	891	916.950	1,721	2,112.329

Delay in transportation of seized materials entailed loss of revenue as the materials were exposed to the vagaries of nature.

Stock accounting of seized property in depots

Every Depot Officer is required to maintain in the prescribed form a Register of Receipts, Disposals and Balance of Timber and other produce received at his Depot and a monthly return submitted to the DCF.

8.2.14 As per the Annual Administration Reports of the Department, 235.218 tonnes of sandalwood and 36,739.57 cum of timber were seized between 1997-98 and 1999-2000 and their value were Rs.7.11 crore and Rs.13.95 crore respectively. Details of quantity of forest produce in stock relating to seized materials and its value remaining with the Department but awaiting final disposal were not furnished.

8.2.15 During the course of audit of materials seized/confiscated, the following discrepancies in the accounts for the period 1997-98 to 2001-2002 were noticed resulting in short realisation of Rs.2.29 crore, as detailed below:

Sl. No.	Number of Divisions	Period	Description	Quantity of shortages	Value (Rupees in lakh)
1.	5	1987-88 to 2001-2002	Sandalwood of 78045.69 kg was seized but only 66466 kg were accounted for by the Department.	11,579.69 kg	53.85
2.	3	1991-92 to 2001-2002	Timber of 192.839 cum was seized against which 156.566 cum only was accounted for.	36.273 cum	7.29
3.	1	1999-2000 to 2000-2001	Closing balance of teakwood in two Ranges was 156.697 cum as on 31.03.2000 against which 123.177 cum was shown.	33.520 cum	9.56
4.	6	1985-86 to 2001-2002	Shortages found during physical verification by the Departmental officers- Sandalwood: Timber: no action was taken to recover the shortages.	32,553.700kg 23.222 cum	151.37 6.70
			Total		228.77

Disposal of seized and confiscated property

8.2.16 Under the Act, when there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles or cattle or any other property used in committing such offence are to be seized by any Forest Officer or Police Officer. Where the offence on account of which the seizure has been made is in respect of timber, ivory, canes, firewood or charcoal or gulmavu, dalchinni, bark or halmaddi belonging to the State Government or in respect of sandalwood, the property, including tools, etc., seized is to be ordered for confiscation by an officer authorised by the State Government in this behalf. In other cases, a report of seizure is to be made to the jurisdictional magistrate for trial.

During the course of audit, it was noticed that 53.278 cum of timber and 4,501.71 kg of sandalwood seized between June 1986 and August 2002 were not disposed of resulting in non-realisation of Rs.30.19 lakh, as detailed below:

Sl. No.	Division	Number of cases	Period	Quantity	Value (Rupees in lakh)
1.	FMS, Mysore	8	June 1986 to October 1994	3,195 kg of sandalwood	14.86
It was stated that the cases had been disposed of by the Court but the dates of disposal were not on record. Copies of the judgements were not obtained by the Department. The quantity remained undisposed of.					
2.	DCF, Mysore	6	1997-98	6.42 cum of teak	1.63
Reasons for non-disposal were not furnished.					
3.	DCF, Bhadravathi DCF, Chickmagalur, DCF, Koppa and DCF, Sagar	44	July 1989 to October 2002	1,306.71 kg of sandalwood	6.08
The material was recorded as stolen but details of action taken were not furnished.					
4.	DCF, Bhadravathi and DCF, Mysore	NA	1983-84 to 1995-96	30.749 cum of timber	1.96
The timber had deteriorated and could not be sold. Reasons for non disposal in time were not furnished.					
5.	DCF, Yellapur	3	1997-98 , 1998-99 and 2000-2001	16.109 cum of teak	5.66
Reasons for non-disposal were not furnished.					
	Total				30.19

In addition to the above, it was noticed that in Kanakapura under Bangalore (Rural) Division, 391 granite blocks were seized during 1993-94 to 1998-99. Their valuation was not done. Out of these, 313 blocks were stated to have been handed over to Karnataka State Forest Industries Corporation. However, neither acknowledgement nor details of recovery, if any, was forthcoming.

8.2.17 Section 63 of the Act empowers a Forest Officer to release seized vehicles, boats, tools, etc. on production of bank guarantee, equal to the value as estimated by such officer, which shall be renewable from time to time till the final disposal of the related criminal proceedings.

During the course of audit, it was noticed that 3810 vehicles were seized and 1164 were confiscated by the Department during the years 1997-98 to 2000-2001. The details of seized/confiscated motor vehicles for 2001-2002 were not furnished.

The number of confiscated motor vehicles released on production of bank guarantees (BGs) and number of vehicles for which BGs were not renewed and also, the value of vehicles where FOCs were pending in Courts (both with magistrate/DCF Courts) were not furnished.

A few irregularities noticed are as under:

- In eight^o Divisions, 42 vehicles seized in forest offences registered during 1984-85 to 2000-2001 had been released under the orders of the authorised officers by obtaining BGs for Rs.21.77 lakh. However, in these cases, the BGs, the validity of which expired during 1986-87 to 2002-2003, had not been renewed and kept valid.
- 13 vehicles valued at Rs.5.03 lakh seized in Madikeri and Hunsur Divisions between 1987-88 and 2000-2001 were released on BGs/indemnity bonds between November 1996 and May 2001. In these cases, orders were passed for confiscation and disposal of the vehicles. However, the vehicles had not been taken possession of or amounts realised (March/ April 2003).

Locking up of funds due to not obtaining permission from Courts for disposal of sandalwood

8.2.18 According to the Karnataka Forest Act 1963, when an order for confiscation of any property has been passed and such an order has become

^o Bangalore (Rural), Bhadravathi, Chickmagalur, Hassan (including FMS), Koppa, Mysore, Shimoga, Sagar

final, the property or its sale proceeds are to vest in the State Government free from all encumbrances.

The Hon'ble High Court of Karnataka had opined in September 2000 that it was for the authorities to seek permission from Criminal Courts for disposal of seized sandalwood in each case as there was likelihood of damage to seized sandalwood when retained for unduly long period. Based on the above directions, both Government and the PCCF instructed in September 2001 and November 2001 respectively to make appropriate applications to the trial Courts seeking release of seized sandalwood.

In 13^γ Divisions, 368486 kg of sandalwood and in Madikeri Division 219.400 kg of sandal oil seized during 1978-79 to 2001-2002 were lying undisposed of. This resulted in locking up of Government revenue of Rs.17.39 crore. However, no efforts were made by six^Σ Divisions to obtain permission of the Courts for disposal of the property. Loss of revenue in the sale of seized sandalwood due to efflux of time is not ruled out.

On this being pointed out, the DCF stated that concerned Ranges would be asked to obtain the necessary permission of the Courts in light of the judgement.

Encroachment of forest land

8.2.19 The Act prohibits clearing of forest land for cultivation or any other purpose. It also stipulates that any person unauthorisedly occupying any forest land is to be summarily evicted. The cost of removal of any crop, building or other work and of all works necessary to restore the land to its original condition is recoverable from the encroacher. The Act, however, provided for declaration of forests as non-reserved forests by the State Government in case a resolution to that effect was passed by the State Legislature. By an amendment to the Act effective from 27 April 1978, this requirement was dispensed with for regularisation of unauthorised occupation made prior to that date. But, with the enactment of the Forest (Conservation) Act 1980 by the Government of India, the power of ordering use of any forest land for any non-forest purpose could be exercised by the State Government only with the prior approval of the Central Government.

The position of encroachment of land and evictions made as of December 2002 as furnished by the Department is given below:

^γ Bangalore (Rural), Bhadravathi, Chickmagalur, Haliyal, Hassan, Hunsur, Kollegal, Koppa, Madikeri, Mysore, Sagar, Shimoga, Sirsi

^Σ Bangalore(Rural), Chickmagalur, Haliyal, Kollegal, Madikeri, Mysore

Period	Total encroachment		Evicted		Balance area to be evicted	
	Number of families	Area (Ha)	Number of families	Area (Ha) (Percentage)	Number of families	Area (Ha) (Percentage)
Prior to 27.04.1978	20,814	18,378.390	1,030	1,127.205 (6) [#]	19,784	17,251.185 (94) [#]
From 27.04.1978	1,24,938	97,182.376	18,589	22,321.986 (23) [#]	1,06,349	74,860.390 (77) [#]

[#] Percentage has been worked out with respect to actual encroached area.

Thus, more than three-fourth of the area encroached after 27.04.1978 still remained to be cleared.

8.2.20 215.89 acres of land notified as Reserved Forests spread over four villages (Byaravatti, Shirgur, Masakari and Avathi) of Avathi Hobli in Chickmagalur district were awarded as land grant in 1997-98 and onwards by Revenue authorities. The FOC for encroachment of forest lands were booked in 1998-99 and the matter is pending in Court (December 2002). The grant of land in reserve forests without the approval of Government of India was incorrect and the occupants did not vacate the land inspite of being asked by the Department. Thus, the offence could have been avoided had the Department not granted land to the occupants.

8.2.21 According to the Act, any person unauthorisedly occupying any forest land may be summarily evicted.

In Madikeri Division, forest land to the extent of 2439.43 acre held under lease was being used for 'Ek Sali*' crops, rubber plantations, water channels, etc. from as far back as 1910 in 20 cases without payment of lease rent of Rs.1.67 crore. Of these, in four cases eviction had been made while in 16 cases though eviction orders had been passed in September 2001, the lands measuring 2427.93 acres were yet to be resumed even as of March 2003.

Lack of internal control

A few illustrative cases of non-exercising/lack of internal control noticed during the course of Audit Review are mentioned below:

8.2.22 The Karnataka Forest Manual prescribes maintenance of FOC Registers by the Divisions/Ranges. The Karnataka Forest Department Code provides for submission of returns that should accompany the Annual Administration

* 'Ek Sali' means one year

Report of the Department. Information pertaining to 'Breaches of Forest Laws and Rules' is required to be furnished in Form-29 circle-wise along with other information. Such returns, if received, were not made available by the PCCF for audit scrutiny.

It was also noticed that there was improper maintenance of Forest Offence Registers at the Divisions/Ranges. In six^φ Divisions, entries regarding date of submission of enquiry reports had not been mentioned in the relevant columns of the registers. In three^ψ Divisions, the opening balance of offence cases had not been brought forward in the abstracts drawn up during 1997-98.

8.2.23 As per the Act, offences involving rosewood can not be compounded. However, 2.569 cum of rosewood valued at Rs.2.20 lakh were confiscated and the offence compounded during March 1996 by recovering Rs.7000 as fine. Compounding ordered was improper and instead prosecution should have been resorted to. This indicated that there was no control in monitoring of cases involving even cognizable offences.

8.2.24 Range Officers could compound a case involving produce valued up to Rs.50 and Assistant Conservator of Forests up to Rs.500. However, 294 cases were finalised between 1997-98 and 2001-2002 by five RFOs of Bangalore (Urban) Division by realising Rs.5.34 lakh though the value of material ranged between Rs.200 and Rs.36000 and thus beyond their powers of compounding. This indicated that powers for compounding were being misutilised and there was no check at the apex level to prevent such acts.

8.2.25 In 11 cases of Yellapur Division involving 5.105 cum of jungle wood valued at Rs.0.66 lakh, compounding was done by realising Rs.0.30 lakh. In the same Division, in 27 other cases involving 46.272 cum of teak wood valued at Rs.6.38 lakh, only Rs.0.13 lakh was realised on compounding. Thus the compounding fee levied for teak wood was Rs.281 per cum much less than Rs.5877 per cum levied in respect of jungle wood. This indicated that exercise of discretion was not judiciously made.

8.2.26 In the following cases Department, had failed to realise the value of forest produce due to its inaction. No monitoring was done at the apex level to ensure timely assessment, proper maintenance and disposal of forest produce.

- In 126 cases of two^{*} Divisions for the years 1997-98 to 2001-2002 involving illegal quarrying/removal of stones, jelly, boulders, etc., compounding was ordered by realising Rs.2.10 lakh. The quantity of materials extracted was not assessed for realisation of value.
- In respect of 14 cases pertaining to the period 1977-78 to 1992-93 (DCF, Kollegal), no records were available either with RFOs or with Kollegal Division and the seized materials had been presumed to be lost, thus resulting in loss of Rs.8.65 lakh.

^φ Kollegal, Koppa, Mysore, Shimoga, Sirsi, Yellapur

^ψ Kollegal, Mysore, Yellapur

^{*} Haliyal, Sagar

- In HD Kote Range (Mysore Division), during 1997-98 in 5 cases (FOC No.48,49,53,57 and 62 of 1997-98), though FOC numbers were assigned, no FIRs had been filed (January 2003) and blank FIRs had been enclosed to the Mahazar Report. Details of material seized/confiscated or disposed of were not produced to audit.
- Under the Karnataka Forest Manual, reporting of an offence case is required to be made to the concerned Magistrate as soon as possible. Further, under the Criminal Procedural Code where offender is punishable with fine and imprisonment, the period of limitation for drawing up of reports for prosecution is one year from the date of filing of FIR.

It was noticed that in 31 cases pertaining to three⁶ Divisions involving forest produce valued at Rs.5.40 lakh, charge sheets had been submitted to Courts after delays ranging from 13 to 55 months from the date of filing FIRs and hence, these cases had become barred by limitation of time. Though requests for condoning of delay were made, orders, if any, passed by the courts were not produced to Audit.

Recommendations

Test check revealed that there was laxity in the Department in monitoring the forest offence cases from the stage of their initiation to disposal. The success rate of prosecutions was very low. There were delays in transportation of seized materials and in disposal of confiscated materials. Discrepancies were noticed in accounting of seized forest produce. Records for watching the progress of cases were incomplete.

8.2.27 Government may consider taking following steps to enhance the effectiveness of machinery for prevention, detection and proper/timely disposal of forest offences.

- Ensure the preparation of Enquiry Reports within the prescribed time.
- Fix time-frame for disposal of Enquiry Reports and eventual finalisation of the cases.
- Analyse reasons for low success rate of prosecutions and strengthen standards of evidence and presentation of cases in Courts.
- Strengthen internal control mechanism to ensure exercise of discretion judiciously in composition cases and ensure proper accounting and disposal of seized/confiscated materials.

The points mentioned above were referred to Government in June 2003; their reply has not been received (January 2004).

⁶ Bhadravathi, Chickmagalur, Koppa

8.3 Review : Working of Karnataka Computerised Network (Online) Lottery Scheme

Highlights

Against the gross sale proceeds of Rs.256.13 crore realised by the Marketing Agent during the year 2002-2003 which was required to be remitted to Government on daily basis, the actual remittance amounted to only Rs.52.27 crore. On the shortfall of Rs.203.86 crore, the Marketing Agent was liable to pay interest of Rs.253.80 crore which had also not been demanded. Further, sale figures are based solely on the information given by the Marketing Agent and are not independently verifiable by Government.

(Paragraph 8.3.6)

According to the revenue sharing pattern agreed with the Marketing Agent, minimum assured revenue of Rs.62.50 crore was due to the Government till March 2003. Since the remittance was only Rs.50.14 crore, there was a shortfall of Rs.12.36 crore. Though this could have been realised from bank guarantees furnished by the Marketing Agent, the same was not done.

(Paragraph 8.3.7)

The value of prize money up to Rs.5000 each claimed to have been distributed by the Marketing Agent amounted to Rs.113.80 crore, for which no proof of payment was available. The Department had not ensured the correctness of the claim of the Marketing Agent.

(Paragraph 8.3.8)

Introduction

8.3.1 In order to augment resources for developmental activities of the State, Government introduced a lottery scheme under the Karnataka State Lottery Rules 1969 (reframed in 1983). In 1998, the Central Government enacted the Lotteries (Regulation) Act, 1998 to govern lotteries in India. Though the Act empowers the Central Government to give directions to the State Governments and to make rules to carry out the provisions of the Act, so far no directions/rules have been issued. However, the State Government, as authorised by the Act, replaced the existing rules by the Karnataka State Lottery Rules 1999, effective from September 2000, in conformity with the provisions of the Act. With a view to “curbing the menace of single digit lottery and fake lottery schemes arising out of paper lottery schemes”, the Karnataka Computerised Network Lottery Rules 2001, effective from 16 May 2001 and hereafter called KCNL Rules, have also been brought into force. Thus, while the existing scheme of sale of pre-printed tickets under conventional lottery scheme conducted by the State Government continued, a

computerised network lottery, popularly called online lottery, has also been brought into operation.

In the conventional system, all lottery tickets are printed with numbers in advance and sold through agents. Customers pick up a ticket of their choice out of stock with the agent and there could not be two tickets with the same number. In the online system, though tickets are generated by using computers at the time of purchase with State logo, etc., the number of customers' choice depending on the scheme, is printed at the time of sale by retail outlets with computers (kiosks) linked to a Central Computer System Server/CCS. Hence, there could be more than one ticket with the same number. Further, in the conventional system, the prize money is decided in advance and printed on the tickets. If prizes are won by unsold tickets, lots are drawn again and the results are announced at the spot of drawing the lots as also in newspapers, etc. In the Computerised Network Online Lottery system, such provisions do not exist.

Background

8.3.2 Open tenders were called for appointment of Marketing Agent for Computerised Network Lottery by the Director of Small Savings and State Lotteries in May 2001 under 'two cover bid system' viz., technical and financial, from Indian companies having net worth of Rs.2000 crore. In response, three offers were received in July 2001. While one tenderer had not produced the requisite earnest money deposit of Rs. 50 lakh, another bidder had not been incorporated as a company and both these bids were rejected. Messrs. Ultra Entertainment Solutions Pvt. Ltd. (a private company with registered office at Mumbai), the third bidder, was appointed as the Marketing Agent for the online lottery scheme in March 2002. Under the terms of the agreement concluded in May 2002, to be valid for a period of five years, the financial commitment was to commence from the date of commercial operation. The Marketing Agent also appointed in June 2002 Messrs. Playwin Infravest Private Limited (another private company with registered office at Mumbai) as its sole sub-agent for providing all forms of infrastructure facilities, appointment of retailers, distribution network and marketing of online computerised lottery for the State. The commercial operations of the Scheme called "Lucky 3" started from 14 August 2002, after the Marketing Agent furnished a bank guarantee for Rs.1 crore. Though its currency expired on 13.02.2003, it had not been got renewed.

Organisational set up

8.3.3 According to the KCNL Rules, the scheme is to be administered by the head of the Finance Department (presently Principal Secretary). It is to be implemented by the Director of Small Savings and State Lottery. The draw is

to be conducted by a Committee consisting of the head of the Finance Department (as chairperson), the Director (as vice-chairperson), a person nominated by the State Government to represent the Marketing Agent, two persons appointed by the State Government, Secretary to Government in the Department of Information Technology with the Deputy Director of State Lottery as member-secretary.

Scope of audit

8.3.4 With the objective of ascertaining the extent of compliance with the agreement by the Marketing Agent and realisation of the anticipated revenue by Government as also observance of the provisions of the Lotteries (Regulation) Act 1998, a review of implementation of the online lottery scheme was conducted by a test-check of records of the Director during April-May 2003. The results thereof involving a financial implication of Rs.400.35 crore are given in the succeeding paragraphs.

Printing of tickets

8.3.5 According to the KCNL Rules, the printing of lottery material bearing the imprint and logo of the State is to be got done by the Director at any security printing press. Such pre-printed tickets bearing the facsimile signature of the head of the Finance Department are to be used at the retail terminal where tickets are sold after printing the numbers selected by the players.

However, in practice, the entire process of printing of tickets including providing thermal paper, printing of imprint, and facsimile signature as prescribed and printing the number of the buyer's choice were all being carried out by the retail outlets set up by the Marketing Agent. This procedure was unauthorised and reduced the security checks exercisable by the State Government on the quantum of paper used and the number of tickets printed for each 'draw'.

The Director stated in January 2004 that the procedure of printing the emblem and the facsimile signature instantaneously at the time of printing the selected numbers at the retail outlet was adopted since thermal paper on which the imprint would stay only for a short period had to be used.

Since the printed lottery tickets were to be preserved by the purchasers for claiming the prize and by the Department for record in support of the payment made after the 'draw', involving considerably longer time periods, this reply is not tenable.

Payment of sale proceeds

8.3.6 Under the KCNL Rules, the Marketing Agent was required to make payments of all the sale proceeds of lottery tickets to the treasury on every day with regard to the sale transactions of the previous day. For delayed payments, interest of one per cent per day was chargeable.

The Department had not independently collected details of the number of tickets sold and proceeds realised. On the basis of the information provided by the Marketing Agent, during the period from 14 August 2002 to 31 March 2003, a total of 230 'draws' were held by which the Marketing Agent realised Rs.256.13 crore. Though the entire amount was to be remitted to Government, the actual remittances amounted to Rs.52.27 crore (including State share, prize pool account and unclaimed prize amount) only as of 31 March 2003. On the short remittance of Rs.203.86 crore, interest of Rs.253.80 crore was chargeable but had not been demanded by the Director.

On this being pointed out, Government directed the Director of Small Savings and State Lottery in January 2004 to inform the Marketing Agent to pay the interest. Further report has not been received (February 2004).

Revenue sharing pattern

8.3.7 According to the agreement, the Marketing Agent is required to pay to the State Government a 'minimum assured revenue' which would be payable irrespective of the gross income from the sale of lottery tickets achieved during each year. This is to be worked out at the agreed percentage of gross income or as a specified fixed sum, whichever is higher and is to be paid during the term of the agreement. During the first year, the minimum assured revenue to the State Government was 21 per cent of the gross income subject to a minimum of Rs.100 crore. The proportionate minimum revenue till 31 March 2003 worked out to Rs.62.50 crore (being higher than Rs.53.79 crore at 21 per cent of total sales of Rs.256.13 crore).

The Marketing Agent was also required to provide, along with the agreement, a bank guarantee (BG) for 25 per cent of the 'minimum assured revenue' per year for each quarter within 15 days from the end of the previous quarter. The Marketing Agent had furnished four BGs for Rs.20 crore by the date of commencement of commercial operations on 14.08.2002 and one BG for Rs.5 crore subsequently on 02.11.2002. Of this, one BG for Rs.1 crore was not from a nationalised bank as required. Besides, its currency expired on 30.11.2002 and had not been got renewed. The agreement provided for realising the amounts of shortfall in remittance of the minimum assured revenue from BGs furnished by the Marketing Agent who was required to always maintain them at the prescribed level.

The actual amount remitted by the Marketing Agent was Rs.50.14 crore and fell short by Rs.12.36 crore, as detailed below:

(Rupees in crore)

Quarter	State's share due	Actual remittance	Shortfall
I (August-September 2002)	12.50	3.86	(-) 8.64
II (October – December 2002)	25.00	17.77	(-) 7.23
III (January-March 2003)	25.00	28.51	(+) 3.51
Total	62.50	50.14	12.36

The Department had not invoked BGs furnished by the Marketing Agent for realising the shortfall of any quarter.

The Director stated in May 2003 that the Marketing Agent had been requested to make good the shortfall in remittances of Government share along with interest. Further report has not been received (February 2004).

Verification of tickets and payment of prizes

8.3.8 According to the KCNL Rules, the Director is authorised to make payment against the prize winning tickets. For this purpose, he is required to receive the prize winning tickets for verification of genuineness and correctness of the claim. However, the Director is authorised to make arrangements with the Marketing Agent for payment of prizes of Rs.5000 and below. Accordingly, the agreement with the Marketing Agent provided for payment of prize amounts not exceeding Rs.5000 by the sub-agent/retailer subject to submission by the Marketing Agent to Government of all prize winning tickets for necessary verification.

According to the accounts rendered by the Marketing Agent, a total of Rs.113.80 crore had been disbursed by him (through sub-agent/retailers) on tickets winning prizes up to Rs.5000, amounting to 44.43 per cent of the total sale proceeds of Rs.256.13 crore. The Marketing Agent had not surrendered any of the prize winning tickets in these cases with date and signature on revenue stamp as also name and address of the prize winners as required under the agreement. Thus, the Department was not in possession of proof of payment of Rs.113.80 crore claimed to have been paid out in prize money by the Marketing Agent.

The Director stated in May 2003 that the Marketing Agent had expressed practical difficulty in collecting prize winning tickets of less than Rs.5000 sold all over India. The Director further stated in February 2004 that it was decided at Government level that vouchers for payment of prizes above Rs.5000 only should be retained.

The Department has not, therefore, ensured the correctness of the claim of the Marketing Agent regarding payment of prizes up to Rs.5000.

Unclaimed prize money

8.3.9 Under the KCNL Rules, prize moneys are to be claimed within 90 days from the date of 'draw'. The Director is authorised to entertain claims made within 30 days after such period where delays were for reasons beyond the control of the claimant. Prizes not claimed within the stipulated time limit become the property of the State Government. Under the terms of the agreement with the Marketing Agent, only after the delay is condoned by the Director/Deputy Director, the prize money would be paid to the claimant. Under no circumstances, the sub-agent/retailers are allowed to condone the delay and make payment.

In the 230 draws held up to 31 March 2003, prizes exceeding Rs.5000 payable only by the Director involving Rs.2.06 crore were won. So far, the Directorate had received from the Marketing Agent Rs.2.01 crore for payment of such prizes. Of the winning tickets, the claims received by the Directorate and paid out were only for Rs.1.86 crore, the remaining Rs.0.20 crore (10 per cent) constituting unclaimed prizes.

According to the Department, the Marketing Agent had remitted Rs.12.55 lakh towards unclaimed prizes of lower denomination (less than Rs.5000). However, in the absence of verifiable information regarding the total number of tickets winning prizes up to Rs.5000 and those for which payments had been made on behalf of the Marketing Agent, the correctness of this could not be ascertained. If unclaimed tickets of prizes up to Rs.5000 were also taken to be to the same extent as of prizes exceeding Rs.5000, the Marketing Agent was required to remit Rs.11.38 crore. Against this, only Rs.12.55 lakh was remitted. The correctness of this amount is even doubtful.

The Director stated in January 2004 that unclaimed prize amount could not be determined on a comparative basis and in the absence of an auditor, the figures given by the Marketing Agent were being accepted.

In the absence of any alternative basis of calculation, unclaimed prize money has been estimated on the comparative position of unclaimed prizes of higher denomination tickets. Securing remittance of sale proceeds of tickets on daily basis as required by the terms of the agreement would have automatically ensured retention of all unclaimed prize money with Government.

Utilisation of Prize Pool

8.3.10 Under the terms of the agreement with the Marketing Agent, during the first year of its operation, the Prize Pool was to comprise 45 per cent of the gross income from sale of lottery tickets. Since the number of tickets to be sold for each 'draw' was uncertain, the amount of prizes that could be won could be less or more than the Prize Pool. Neither the KCNL Rules nor the agreement specified the manner in which the surplus/deficit in the Prize Pool is to be dealt with.

During the 230 'draws' held up to 31 March 2003, while the sale proceeds were Rs.256.13 crore, the prize amounts totalled Rs.115.86 crore, working out to 45 per cent. An analysis in audit revealed that only in four 'draws', the prize amounts won worked out to exactly 45 per cent. In respect of 134 'draws', the Prize Pool was utilized to the extent of 13 to 44 per cent only. In the remaining 92 'draws', the utilization of the Prize Pool ranged between 46 and 127 per cent. This showed that the prize structure was faulty.

The Director stated in January 2004 that the Marketing Agent had been requested to bear the difference amount by which the Prize Pool exceeded 45 per cent and to remit the difference amount by which the Prize Pool was less than 45 per cent.

Omission to deduct income-tax at source

8.3.11 Under the Income-tax Act 1961, where any payment is made by way of commission/remuneration to a person who is or has been stocking, distributing or selling lottery tickets, income-tax at the rate of 10.5 per cent (including surcharge) is to be deducted from the payments made to him.

In terms of the agreement with the Marketing Agent, during the first year of operation, he is entitled to a commission of 34 per cent of the gross sale proceeds. During the period up to 31 March 2003, the gross sales amounted to Rs.256.13 crore. The commission to which the Marketing Agent was entitled was approximately Rs.87.08 crore. On this, the income-tax deductible was Rs.9.14 crore. Since the Department did not ensure remittance of the entire sale proceeds to Government as stipulated in the agreement, and no payments to the Marketing Agent had been made, no deduction of income-tax at source could be made. The Department did not even insist for remittance of Rs.9.14 crore by the Marketing Agent to enable it to discharge its obligation of making deduction of income-tax at source.

The Director stated in January 2004 that since no commission was paid to the Marketing Agent by the Department, no tax was deducted at source. He further stated that the Marketing Agent would be requested to remit income-tax at the rate applicable.

Conduct of ‘draws’ and declaration of prizes

8.3.12 According to the KCNL Rules, the ‘draw’ is to be conducted by the State Government in public at a place located in the State in the presence of the Committee. The result of the ‘draw’ is to be announced under the signature of the Director and released to the Press by the Marketing Agent. All records, including the register in which the results are entered and attested by the Committee members are to be in the custody of the Director. Wide publicity is to be given to the results of the ‘draw’ including through ‘live’ telecast of the ‘draw’ process. However, publication in the Official Gazette or in other manner decided by the State Government constituted the official announcement of the results.

In practice, the ‘draw’ was being held at a recording studio in the presence of a representative of the Director, the process including announcement of the results being only telecast ‘deferred live’ on a private television channel. Thus, the process of conducting the ‘draws’ and the announcement of the results were in contravention of the Rules.

Non-appointment of auditors/technical experts

8.3.13 The KCNL Rules empowered the State Government to appoint a chartered accountant or any other person with requisite qualifications to conduct an independent audit of all accounts pertaining to the lottery. The Rules also empowered the State Government to appoint computer engineers or experts to conduct audit and inspection of the computer system network installed by the Marketing Agent to check and count the tickets being sold, to detect computer-related errors, mistakes, frauds, misuse, data manipulation, etc.

In order to protect the interests of the Government and the public, these appointments were to be made before the commencement of the commercial operations. However, as of February 2004, i.e., even 18 months after the commencement of commercial operations, no appointments in this regard had been finalised by the Government. Thus, the authenticity of the data/information furnished by the Marketing Agent to Government and the integrity of the system was not ascertainable.

Delay in deposit of Escrow

8.3.14 According to the agreement with the Marketing Agent, before the start-up of operation or at any time as decided by the Director, the Marketing Agent was required to deposit Escrow at Bangalore, with mutually agreed persons,

the source programmes, programme documentation, operation manuals, service manuals and written procedures along with programme source and object code of all software programmes.

Deposit of Escrow was, however, made only on 28.05.2003, over nine months after commencement of the commercial operations and turnover of over Rs.250 crore.

Monitoring

8.3.15 According to the agreement, the Marketing Agent was required to establish a Central Computer System (CCS) comprising a system of multiple computers installed for diverse functions of computing data, communication, ticket transactions, prize amount calculation, etc. The agreement did not specify the place of location of the CCS. The Marketing Agent had established the CCS at Mumbai from where all operations were controlled. The Marketing Agent was also required to locate a CCS Interface at Bangalore. As per the agreement, the area of location of the interface was to be declared as 'secure area' for the purpose of maintaining the security of the lottery. The Directorate did not make available log book for the CCS Interface with details of entries recorded, dates of inspection of the log book by the officials of the Directorate with copies of inspection notes.

- The Marketing Agent was required to provide an online system to indicate all tickets sold anywhere in the country, on day-to-day basis from the data stored at the CCS duly authenticated by the Marketing Agent. This was to be conclusive evidence of having sold those tickets to the players. These ticket lists were to indicate serial number, code number or validation number of the retail outlet, date and time of issue and the numbers chosen by the players in the same order as has been issued by the network. Such list was to be drawn up till the time and date of 'draw break'^Ψ. Any prize winning ticket received for payment of prize was not to be paid, if such ticket was not found in the list.

Though an online system had been set up, no independent verification of the information furnished by the Marketing Agent was possible in the absence of an auditor/technical expert.

- According to the agreement, the Marketing Agent is required to provide a plan of retail distribution network with complete addresses of retailers both within and outside Karnataka.

^Ψ 'Draw break' means the date and time at which lottery tickets of a scheme cease to be sold prior to the draw for such scheme being held.

The records made available to Audit did not show that the Directorate had made periodical inspections of the outlets to ensure compliance of the terms of their setting up.

Conclusion

8.3.16 According to the Act, the State Government was required to print the lottery tickets in such manner that the authenticity of the lottery was ensured. The State Government was also required to itself conduct the 'draws' of all the lotteries.

Since the printing of the lottery tickets and conducting of 'draws' were not being done by the Government and in the absence of an independent management information system, Government had virtually no control over the operations. Hence, the Lucky 3 Scheme operated in the State was only State-authorized and not State-organized and hence was in contravention of the Act.

The provisions in the agreement including those relating to remittances to Government of the sale proceeds and the minimum assured revenue were not complied with by the Marketing Agent. Therefore, Government also did not realise the anticipated revenue.

Recommendations

8.3.17 According to the Director, the KCNL Rules were framed well before the commencement of the Online Lotteries and proposals to amend several clauses of the Rules were pending with Government. Based on the above observations, Government may consider redrafting terms and conditions of the agreement to favour Government revenue and also put in place an effective and efficient control mechanism to ensure timely revenue collection.

The points mentioned above were reported to Government in June 2003; their reply has not been received (February 2004).

Forest Receipts

8.4 Non-levy of transport pass fee

According to the Karnataka Forest Rules 1969, the transport or movement of any forest produce (which includes all products of mines) is to be covered by a pass. Under the Rules, no pass should cover more than one load, irrespective of the mode of conveyance. The fee for issue of a pass was Rs.5 from December 1983 and Rs.15 from November 1997 for 30 cubic meter (approximately 10 tonnes) load of produce transported.

Messrs. Kudremukh Iron Ore Company Limited, engaged in extraction of iron ore on a mining lease covering 4605 hectare of forests in Chickmagalur district from July 1969, removed 90388000 tonnes of concentrate during the years 1983-84 to 2001-2002 for export. At the rate of 10 tonnes per load, 9038800 transport passes were to have been obtained by them. However, no pass had been obtained. The Department had also not insisted on compliance of the requirement. While allowing transport of minerals without pass was incorrect, it also deprived Government of the fee of Rs.6.66 crore.

On this case being pointed out the Principal Chief Conservator of Forests reported in July 2002/April 2003 recovery of Rs.50 lakh and also raised demand for recovery of the balance amount.

The matter was referred to Government in June 2003; their reply has not been received (January 2004).

Mineral Receipts

8.5 Non-recovery of royalty

Under the Karnataka Minor Mineral Concession Rules 1994 which govern the levy of royalty in respect of minor minerals, royalty is to be paid before removal of the mineral from the site. In respect of works executed on behalf of Government where minerals like metal, sand, jelly, murrum, etc. are used, royalty is required to be recovered from the bills for work done payable to the contractor. In March 1997, Government issued circular instructions duly stating the position of law that where providing material was the responsibility of the contractor and the Department provided the contractor with specified

borrow areas for extraction of the required construction material, the contractor would be liable to pay royalty charges.

It was noticed in the office of the Executive Engineer, National Highways Division, Belgaum that in respect of 50 bills passed for payment between May 2001 and March 2002 relating to 16 contractors for various works, royalty charges in respect of minor minerals amounting to Rs.32.69 lakh had not been recovered. In three other cases, Rs.1.55 lakh recovered had been held under 'Deposits' instead of being credited as revenue. Non-deduction of royalty was incorrect and resulted in non-recovery of Rs.32.69 lakh.

On these cases being pointed out, Government intimated in October 2003 recovery of Rs.15.09 lakh from 14 contractors and stated that notices for payment had been issued to the remaining two contractors for payment of the balance amount. Further report has not been received (January 2004).

Miscellaneous General Services

8.6 Non-recovery of guarantee commission

In exercise of the powers conferred by Article 293 of the Constitution of India, the State Government guarantees the repayment of loans obtained by public sector undertakings, statutory boards and corporations and certain other bodies. Under the Karnataka Ceiling on Government Guarantees Act 1999, a commission of a minimum of one per cent is to be charged by Government from the beneficiary institution in all such cases. Though the Act does not specify the manner of its computation and the periodicity of payment, according to the guidelines of Government in Finance Department issued in September 1969, the amount of commission chargeable is calculated on the actual amount of loan due and outstanding, including interest, at the end of each month and is to be paid once in six months. The Act prohibits waiver of the commission under any circumstance. Watching the recovery of the commission on the due dates is the responsibility of the concerned Heads of Departments.

Test check of records of four Departments showed that as of March 2003, guarantee commission levied at one per cent aggregating Rs.136.10 crore was outstanding for payment by five bodies, as detailed below:

(Rupees in crore)

Sl. No.	Department/ Name of the body	Sums guaranteed outstanding on 31 March 2003	Amount of guarantee commission
Commerce and Industries			
1	Karnataka State Industrial Investment and Development Corporation Limited (KSIIDC)	346.54	0.76
Remarks : The dues of KSIIDC related to the period 1999-2000 (Rs.0.58 crore), 2000-2001 (Rs.0.16 crore) and 2001-2002 (Rs.0.02 crore). Though it had made provision for the entire liability in its accounts, it had sought from Government in May 2002 clarification as to the period over which the commission was payable. Despite Finance Department's guidelines of September 1969 which clearly lay down the periodicity of payment of the commission, clarification had not been received by it even of October 2003, and the amount remained outstanding.			
2	New Government Electric Factory Limited (NGEF)	3.53	3.08
Remarks : According to NGEF, it had incurred losses continuously, stopped production activities since December 2002 and was unable to remit the commission due to Government. As of June 2003, the dues were awaiting settlement before the Board of Industrial and Financial Reconstruction (BIFR).			
Home and Transport			
3	Karnataka State Road Transport Corporation (KSRTC)	34.80	10.22
Remarks : KSRTC had reported to Government in June 2003 of its decision to clear its liability in monthly instalments over a period of three years; orders of Government had not been received (January 2004).			
Urban Development			
4	Karnataka Urban Water Supply and Drainage Board (KUWSDB)	590.85	13.33
Remarks : In respect of KUWSDB, the guarantees related to loans obtained by it for implementation of water supply and underground drainage works. The guarantee commission was payable by the municipalities for whom the works were carried out. KUWSDB was made responsible to arrange for proper and due remittance of the commission to Government. KUWSDB stated that since ULBs had not paid the commission dues, it could not clear the arrears and that this fact had been reported to Government. It added that the matter would be taken up with ULBs for early settlement.			
Water Resources			
5	Krishna Bhagya Jala Nigam Limited (KBJNL)	4,044.99	108.71
Remarks : In respect of KBJNL, it was noticed that fresh guarantees were sanctioned during 2001-2002 for Rs.900 crore and during 2002-2003 for Rs.1055 crore even when commission of Rs.21 crore and Rs.57.02 crore were outstanding for 2000-2001 and 2001-2002. Government stated that there was no specific provision in the Act to deny issue of fresh guarantees in such cases. Government also stated that KBJNL's request for waiver of commission had been turned down.			
Total		5,020.71	136.10

Neither the Act nor the sanctions issued for standing guarantee specified the consequences of non-payment of the commission on the due dates, such as

levy of interest and disqualification for fresh guarantees, and hence there was no deterrence.

The matter was referred to Government in June 2003; their replies have not been received (January 2004).

**Bangalore
The**

**(Sudha Krishnan)
Accountant General (Audit)-II
Karnataka**

COUNTERSIGNED

**New Delhi
The**

**(Vijayendra N.Kaul)
Comptroller and Auditor General of India**