

Twelfth Kerala Legislative Assembly
Bill No. 256

**THE KERALA RECOGNITION OF TRADE
UNIONS BILL, 2009**

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A

BILL

to provide for the recognition of Trade Unions for facilitating collective bargaining and to check multiplicity of Trade Unions in industrial establishments and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS, it is expedient to provide for the recognition of Trade Unions for facilitating collective bargaining and to check multiplicity of Trade Unions in industrial establishments and for matters connected therewith or incidental thereto;

BE, it enacted in the Sixtieth Year of the Republic of India as follows:—

1. *Short title, commencement and application.*—(1) This Act may be called the Kerala Recognition of Trade Unions Act, 2009.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

(3) It applies to,—

(a) every industrial establishments situated in Kerala, except the industrial establishments for which Central Government is appropriate Government under Industrial Disputes Act, 1947, wherein fifty or more workmen, are employed or were employed on any day of the preceding twelve months;

(b) every registered trade union functioning in such industrial establishment:

Provided that the Government may, after giving not less than sixty days notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than fifty, as may be specified in the notification.

2. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

(a) “any class of industry” means such group of industries as may be notified by the State Government as comprising a particular class on the basis of their activities ;

(b) “constituent of joint bargaining council” in respect of an industry or an industrial establishment means a registered Trade Union recognised under section 9 of this Act, functioning in that industry or industrial establishment as the case may be;

(c) “employer” shall have the same meaning as in clause (g) of section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) ;

(d) “Government” means the Government of Kerala ;

(e) “industrial establishment” shall have the same meaning as in clause (ka) of section 2 of the Industrial Disputes Act, 1947 ;

(f) “industry” shall have the same meaning as in clause (i) of section 2 of the Industrial Disputes Act, 1947 ;

(g) “Local area” means such area comprising the whole or part of Kerala as the State Government may specify by notification in the Official Gazette, in relation to any class of industry ;

(h) “prescribed” means prescribed by rules made under this Act ;

(i) “principal bargaining agent” in respect of an industry or an industrial establishment means a registered Trade Union, recognised under section 9 of this Act, functioning in that industry or industrial establishment, as the case may be ;

(j) “recognised Trade Union” means a Trade Union recognised under section 9 of this Act;

(k) “Registrar” means the Registrar for recognition of Trade Unions appointed by the Government under section 3 of this Act and includes any Additional or Deputy Registrar for recognition of Trade Unions ;

(l) “sole bargaining agent” in respect of an industry or industrial establishment means a registered Trade Union, recognised under the provisions of section 9 of this Act, functioning in an industry or in that industrial establishment ;

(m) “Trade Union” means a Trade Union registered under the Trade Unions Act, 1926 (Central Act 16 of 1926) ;

(n) “workmen” shall have the same meaning as in clause (s) of section 2 of the Industrial Disputes Act, 1947.

(2) words and expressions used in this Act and not defined herein but defined in the Trade Unions Act, 1926 shall have the same meaning respectively assigned to them by the Central Act.

3. *Appointment and powers of Registrar.*—(1) The Government may by notification in the Official Gazette, appoint an officer subordinate to it to be the Registrar for recognition of Trade Unions, for the purpose of exercising such powers and performing such duties as may be prescribed.

(2) The Government may appoint as many Additional and Deputy Registrars for recognition of Trade Unions as it thinks fit for the purpose of exercising and discharging, under the superintendence and direction of the Registrar for recognition of Trade Unions, such powers and functions of the Registrar under this Act as it may, by order, specify and define the local limits within which any such Additional or Deputy Registrar for recognition of Trade Unions shall exercise and discharge the powers and functions so specified.

(3) Subject to sub-section (2), where an Additional or Deputy Registrar for recognition of Trade Unions exercises and discharges the powers and functions of a Registrar in an area within which the registered office of a recognised registered Trade Union is situated, the Additional or Deputy Registrar for Recognition of Trade Unions shall be deemed to be the Registrar for Recognition of Trade Unions for the purpose of this Act.

4. *Application for certificate for recognition.*—(1) Subject to sub-section (3), any registered Trade Union may apply in the prescribed manner together with such fee as may be prescribed, to the Registrar for issue of certificate for recognition as a recognised Trade Union for an industrial establishment or a class of industry in a local area, as the case may be.

(2) No such applications shall be entertained in respect of an industrial establishment or a class of industry in a local area, as the case may be, if there is already a recognised Trade Union under this Act in respect of such industrial establishment or class of industry, as the case may be, during the period of two years immediately following the date of recognition of that Trade Union by the employer concerned :

Provided that such application shall be filed with the Registrar within the period of two years referred to in sub-section (2), if the recognition of the Trade Union concerned is cancelled under this Act during that period :

Provided further that, in a case where a certificate for recognition has been granted, under sub-section (3) of section 5, subsequent application by any other union may be entertained by the Registrar on the expiry of a period of six months immediately following the date of recognition of a Trade Union by the employer concerned, subject to the condition that the Registrar shall not

entertain any such application unless accompanied by a document containing the signatures of such minimum number of eligible workmen as is necessary for support for recognition as a constituent of the joint bargaining council :

Provided also that the existence of recognised Trade Unions in respect of a class of industry in a local area shall not be a bar in submitting an application for issue of a certificate for recognition in a single industrial establishment belonging to that class of industry in a local area.

(3) No Trade Union shall be eligible to apply for issue of a certificate for recognition under sub-section (1) unless,—

(i) it has been functioning as a registered Trade Union in an industrial establishment or the class of industry in the local area, as the case may be, for a period of at least six months immediately preceding the date of filing of such application ;

(ii) the membership thereof is open to all workmen employed in the industrial establishment or the class of industry in the local area, as the case may be.

5. *Issue of certificate for recognition.*—(1) On receipt of an application under section 4 and on payment of prescribed fee, the Registrar shall give such notice to other Trade Unions functioning in an industrial establishment or a class of industry in a local area, as the case may be, and shall hold such enquiry as may be prescribed for determining whether the applicant Trade Union fulfils the conditions laid-down in section 4 and for ascertaining whether there is any other Trade Union interested in submitting application for recognition.

(2) If, on completion of the enquiry under sub-section (1), the Registrar is satisfied that the applicant Trade Union,—

(i) does not fulfill all or any of the conditions laid down in sub-sections (2) and (3) of section 4, he shall reject the application and intimate the reasons for such rejection to the Trade Union ;

(ii) fulfills all the conditions laid down in sub-section (3) of section 4 he shall proceed to take action as hereinafter provided.

(3) If there is only one applicant Trade Union in respect of an industrial establishment or a class of industry in a local area, as the case may be, fulfilling the conditions laid down in sub-section (3) of section 4, the Registrar shall enter the name of that union in the prescribed register to be maintained by him for this purpose and, as early as possible, grant a certificate in the prescribed manner to the applicant Trade Union directing recognition of that Trade Union

by the employer concerned and upon such recognition, that Trade Union shall be the sole bargaining agent in respect of the industrial establishment or the class of industry in the local area, as the case may be.

(4) If there are more than one applicant Trade Unions in respect of an industrial establishment or a class of industry in a local area, as the case may be, fulfilling the conditions laid down in sub-section (3) of section 4, the Registrar shall arrange to hold an election by secret ballot in the prescribed manner in order to ascertain which of the applicant Trade Union secures the largest number of votes, being more than fifty percent, of the votes cast by the workmen employed in the industrial establishment or the class of industry in the local area, as the case may be, and after recording the name of the Trade Union securing the largest number of votes as aforesaid in the prescribed register to be maintained by him for the purpose, grant a certificate in the prescribed manner to that Trade Union directing recognition of that Trade Union by the employer concerned and upon such recognition, that Trade Union shall be the sole bargaining agent in respect of the industrial establishment or the class of industry in the local area, as the case may be :

Provided that the rest of the Trade Unions obtaining ten percent votes in a class of industry or fifteen percent votes in an industrial establishment will have all the rights of a recognised Trade Union and will be a party to a settlement. But in the event a consensus could not be arrived at, the sole bargaining agent will have the right to sign the settlement which will be binding under Section 12(3) of the Industrial Disputes Act, 1947.

(5) The Registrar shall record the names of such Trade Unions as have secured not less than ten percent of votes cast by the workmen employed in any class of industry in the local area or not less than fifteen percent of votes cast by the workmen employed in the concerned industrial establishment, as the case may be, in the prescribed register to be maintained by him for the purpose and grant certificates in the prescribed manner to such Trade Unions directing the employer concerned to recognise such Trade Unions as constituents of the joint bargaining council in respect of the industrial establishment or the class of industry in the local area, as the case may be, and from amongst such unions, the Trade Union securing the largest number of votes shall be given a certificate in the prescribed manner directing the employer concerned to recognise the same as the principal bargaining agent in the joint bargaining council in respect of the industrial establishment or the class of industry in the local area, as the case may be, provided the said Union has secured not less than one third of the votes cast by the workmen.

(6) The constituents of the joint bargaining council shall have the right to participate in any negotiation, discussion or settlement concerning the workmen employed in the industrial establishment or the class of industry in the local area, as the case may be. Two or more Trade Unions recognised as constituents of the joint bargaining council together having more than fifty percent of the votes in such election shall be entitled to sign any settlement in a case where there is no principal bargaining agent.

(7) Where there is a principal bargaining agent in a joint bargaining council, no settlement shall be entered into the concerned industrial establishment or the class of industry in the local area, as the case may be, without the principal bargaining agent as a party.

6. *Withdrawal or cancellation of certificate for recognition.*—A certificate for recognition issued to a Trade Union may be withdrawn or cancelled by the Registrar, if he is satisfied that the certificate has been obtained by fraud or that the Trade Union has ceased to exist or the Trade Union has lost the requisite percentage of membership or has violated any of the provisions of this Act :

Provided that not less than 30 days previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate and opportunity of being heard shall be given by the Registrar to the Trade Union concerned before the certificate is withdrawn or cancelled.

7. *Appeals.*—(1) Any Trade Union, the certificate for recognition of which has been withdrawn or cancelled under section 6 or any Trade Union aggrieved by the refusal to issue of certificate for recognition by the Registrar under section 5 may within a period of three months from the date of such withdrawal or cancellation or refusal and on payment of such fees as may be prescribed, prefer an appeal before the authority specified by Government in this behalf.

(2) An appeal under sub-section (1) shall be in such form and contain such particulars and accompanied by such fee as may be prescribed.

(3) The appellate authority may, after such inquiry as it may deem sufficient and after giving opportunity to hear the affected parties, dismiss, reverse, confirm or modify the appeal or pass an order directing the Registrar to issue a certificate of recognition under the provisions of this Act and the Registrar shall comply with such order.

8. *Eligibility for voting.*—All workmen, who are above the age of eighteen years and are in service for a period of one hundred and twenty days in a period of twelve months immediately before the date of announcement of an election to be held for the purpose of section 5 in relation to such industrial

establishment or class of industry, as the case may be, shall be eligible for voting, provided any interruption caused by closure, lock-out, strike, lay-off or leave shall not count towards interruption of service for the purpose of this section.

9. *Recognition of Trade Union.*—(1) On receipt of the Registrar's certificate directing recognition of Trade Unions under section 5, the employer or employers, as the case may be, shall grant in the prescribed manner, recognition to the Trade Unions as the sole bargaining agent or principal bargaining agent or constituent of the joint bargaining council, as the case may be, in relation to the industrial establishment or class of industry in a local area, as the case may be, to which the certificate relates.

(2) A Trade Union recognised under sub-section (1) shall also be recognised as the sole bargaining agent or principal bargaining agent or as a constituent of the joint bargaining council, as the case may be, by every federation, association or organisation of employers pertaining to the same industrial establishment or class of industry in the local area, as the case may be.

(3) Any recognition granted under this section shall be operative, subject to the provisions of section 6, for a period of two years from the date on which such recognition is granted by the employer :

Provided that such recognition shall continue to be operative, after the expiry of two years, for a period of six months or until a fresh recognition is granted in its place, whichever is earlier.

10. *Rights of recognised Trade Union.*—(1) A Trade Union being the sole bargaining agent or a principal bargaining agent or a constituent of the joint bargaining council shall, in such manner and subject to such conditions as may be prescribed, have the right,—

(a) to raise issue and enter into collective agreement with the employer or employers on general questions concerning employment or non-employment or terms of employment and conditions of labour or any workmen in respect of the industrial establishment or class of industry in a local area, as the case may be, for which it is recognised :

Provided that where, in any local area, in addition to Trade Unions recognised for a class of industry, there are also recognised Trade Unions in individual industrial establishments belonging to that class of industry, the Trade Unions recognised for a class of industry shall have the right to raise only such issues which concern that class of industry as a whole ;

(b) to collect membership fees, subscriptions or any other dues payable by members of the Trade Union within the premises of the industrial establishment in such manner as may be prescribed ;

(c) to put up or to cause to be put up a notice board on the premises of the industrial establishment in respect of which it is recognised and affix or cause to be affixed thereon notices relating to meetings, statements of accounts of its income and expenditure and other announcements which are not abusive, indecent or contrary to discipline or otherwise against the provisions of any law for the time being in force ;

(d) for the purpose of prevention or settlement of any dispute regarding issues specified in clause (a),—

(i) to hold discussions with the workmen who are members of the Trade Union at a suitable place or places within the premises of the industrial establishment with the consent of the employer; and

(ii) to meet and discuss with the employer or any person appointed by him for the purpose;

(e) to nominate its representatives on non-statutory bipartite committees like Production Committee, Welfare Committee, House Allotment Committee, that might be set up by any employer in an industrial establishment.

(2) The rights of a Trade Union referred to in sub-section (1) shall be without prejudice to the rights that any unrecognised Trade Union enjoys under the Industrial Disputes Act, 1947.

11. *Returns by recognised Trade Union.*—Every recognised Trade Union shall submit such returns to the Registrar on such dates and in such manner as may be prescribed.

12. *Failure to submit returns.*—If default is made on the part of any recognised Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every office bearer or other person bound by the rule of the Trade Union to give or send the same, or, if there is no such person, every member of the executive of the Trade Union, shall be punishable with fine which may extend to five rupees and, in the case of continuing default, with an additional fine which may extend to five rupees for each week after the first week during which the default continues:

Provided that the aggregate fine shall not exceed fifty rupees.

13. *Penalty for failure or refusal to grant recognition.*—If any employer fails or refuses to grant recognition to a Trade Union as required under section 9, he shall be punishable with fine which may extend to one thousand rupees or with imprisonment which may extend to six months or with both.

14. *Protection of lawful union activity.*—Every employer shall give protection in the prescribed manner for lawful union activity and such other reasonable opportunity including leave for attending negotiations/conciliations to representatives of sole bargaining agent or principal bargaining agent or joint bargaining council members.

15. *Power to exempt.*— The State Government may, by notification in the Official Gazette, exempt any industrial establishment or class of industry in a local area, as the case may be, from the operation of the provisions of this Act.

16. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear it to be necessary or expedient, for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid as soon as may be after it is made, before the Legislative Assembly.

17. *Power to make rules.*—(1) The Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment, shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The Trade Unions Act, 1926 (Central Act 16 of 1926) provides for registration of Trade Unions and in certain respects to define the law relating to registration of Trade Unions. The said Act does not contain any provision for recognition of Trade Unions registered thereunder. Due to multiplicity of Trade Unions registered under the Trade Unions Act in an establishment there often arise avoidable disputes. In order to get over the above difficulties, Government have decided to enact a Legislation to provide for the recognition of Trade Unions for facilitating collective bargaining in respect of each industrial establishment if certain conditions are satisfied, and to check multiplicity of Trade Unions in industrial establishments and connected issue.

The Bill seeks to achieve the above object.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (2) of clause 1 of the Bill empowers the Government to bring the provisions of the Act into force, by notification in the Official Gazette, on such date as it may appoint.

2. Proviso to sub-clause 3(b) of clause 1 of the Bill seeks to empower the Government, by notification in the Official Gazette, to apply the provisions of the Act to any industrial establishment employing such number of persons less than fifty, after due notice to them.

3. Sub-clause (1) of clause 3 of the Bill seeks to empower the Government, by notification in the Official Gazette, to appoint an officer subordinate to it to be the Registrar for recognition of Trade Unions, and to prescribe his powers and duties.

4. Sub-clause (1) of clause 4 of the Bill seeks to empower the Government, to prescribe the fee for issue of certificate for recognition and the manner in which the application may be filed.

5. Clause 5 of the Bill seeks to empower the Government, to prescribe the register to be maintained by the Registrar and the manner in which the certificate for recognition is to be granted.

6. Clause 7 of the Bill seeks to empower the Government, to prescribe the fees, form and other particulars of Appeal preferred before the authority.

7. Clause 9 of the Bill seeks to empower the Government, to prescribe the manner in which the recognition of Trade Unions shall be granted.

8. Sub-clause (1) of clause 10 of the Bill seeks to empower the Government, to prescribe the manner of collecting the membership fees, subscription or any other dues payable by members of the Trade Union within the premises of the industrial establishment.

9. Clause 11 of the Bill seeks to empower the Government, to fix the date and prescribe the manner in which returns are to be filed by the recognised Trade Unions.

10. Clause 15 of the Bill seeks to empower the Government, by notification in the Official Gazette, to exempt any industrial establishment or class of industry in a local area, as the case may be, from the operation of the provisions of the Act.

11. Sub-clause (1) of clause 16 of the Bill seeks to empower the Government, by order published in the Official Gazette, to make such provisions, not inconsistent with the provisions of this Act for the purpose of removing the difficulty which arises in giving effect to the provisions of this Act.

12. Sub-clause (1) of clause 17 of the Bill seeks to empower the Government, by notification in the Official Gazette, to make rules to carryout the purposes of the Act.

13. The matters in respect of which rules may be made or orders or notifications may be issued, are matters of procedure and are of routine or administrative in nature. Further, the rules and orders which are made, are subject to scrutiny by the Legislative Assembly. The delegation of legislative power is, thus, of a normal character.

P. K. GURUDASAN
