

Twelfth Kerala Legislative Assembly

Bill No. 418

**THE KERALA CO-OPERATIVE SOCIETIES (SECOND
AMENDMENT) BILL, 2011**

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BILL

further to amend the Kerala Co-operative Societies Act, 1969.

Preamble.—WHEREAS it is expedient further to amend the Kerala Co-operative Societies Act, 1969, for the purposes hereinafter appearing;

BE it enacted in the Sixty-second Year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Co-operative Societies (Second Amendment) Act, 2011.

(2) Clause (i) of section 2 of this Act shall be deemed to have come into force on the 28th day of April, 2010 and clause (ii) shall be deemed to have come into force on the 5th day of June, 2007.

2. *Amendment of section 63.*—In section 63 of the Kerala Co-operative Societies Act, 1969 (21 of 1969) (hereinafter referred to as the principal Act),—

(i) in sub-section (3), after the words “to his subordinate officers”, the following words shall be inserted, namely:—

“or to the subordinate officers of the Registrar”;

(ii) after sub-section (7), the following sub-section shall be added, namely:—

“(8) The Government may issue notification, either prospectively or retrospectively, by publishing the same in the Gazette to carry out the purposes of this section.”.

3. *Repeal and Saving.*—(1) The Kerala Co-operative Societies (Amendment) Ordinance, 2011 (18 of 2011) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

Section 63 of the Kerala Co-operative Societies Act, 1969 (21 of 1969) was amended by the Kerala Co-operative Societies (Amendment) Act, 1999 (Act 1 of 2000). The said section and some other provisions of Chapter VIII of the Amendment Act were notified to have come into force on the 5th day of June, 2007 as per notification issued under G. O. (P) No. 158/2007/Co-op. dated the 16th June, 2007 and published as S.R.O. No. 526/2007 in the Kerala Gazette Extraordinary No. 1130 dated the 18th June, 2007. Sub-section (1) of section 63 as amended provides that the Government shall, by notification in the official gazette, appoint a person to be the Director of Co-operative Audit with jurisdiction over the whole of the State and as per sub-section (3) of section 63, the Government may by general or special order, confer on any officer all or any of the powers of the Director of Co-operative Audit under the Act.

2. Though an order sanctioning the creation of an ex cadre post of Director of Co-operative Audit for a period of one year was issued on the 10th June, 2009 and an officer was posted in the said post, the notification appointing him has not been issued. Since the Act does not empower the issuance of notification with retrospective effect and since all the audits conducted after 5th June, 2007 are likely to be rendered invalid for want of such notification, it is found necessary that the power to issue notification appointing the Director of Co-operative Audit as well as delegation of his powers should be given retrospective effect.

3. Since the Director of Co-operative Audit assumed office only on the 7th September, 2009, there is a situation that the powers of the Director of Co-operative Audit are delegated even before he actually assumed office. However, since all the audits conducted between the 5th June, 2007 and the 7th September, 2009 had actually been conducted by the empowered officers under the notification issued as per the unamended provisions, such audits also have to be regularised. Moreover, sub-section (3) of section 63 was amended by the Kerala Co-operative Societies (Amendment) Act, 2010 (Act 7 of 2010) which came into force on the 25th April, 2010.

4. As the Legislative Assembly was not in session and the said proposal had to be given effect to immediately, the Kerala Co-operative Societies (Amendment) Ordinance, 2010 was promulgated by the Governor on the 10th day of June, 2010 and the same was published as Ordinance No. 22 of 2010 in the Kerala Gazette Extraordinary No. 1334 dated the 11th June, 2010.

5. A Bill to replace Ordinance No. 22 of 2010 by an Act of the State Legislature was published as Bill No. 363 of the Twelfth Kerala Legislative Assembly, but the same could not be introduced in, and passed by the Kerala Legislative Assembly during its session which commenced on the 28th day of June, 2010 and ended on the 29th day of July, 2010. Therefore, the Kerala Co-operative Societies (Amendment) Ordinance, 2010 (49 of 2010) was promulgated by the Governor on the 8th day of August, 2010 and the same was published in the Kerala Gazette Extraordinary No. 1826 dated the 8th August, 2010.

6. Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No. 380 of the Twelfth Kerala Legislative Assembly, the same could not be introduced in, and passed by the Kerala Legislative Assembly during its session which commenced on the 21st day of December, 2010 and ended on the 3rd day of January 2011. Therefore the Kerala Co-operative Societies (Amendment) Ordinance, 2011 was promulgated by the Governor on the 22nd day of January, 2011 and the same was published as Ordinance No. 18 of 2011 in the Kerala Gazette Extraordinary number 154 dated the 23rd day of January, 2011.

7. The Bill seeks to replace the said Ordinance by an Act of the State Legislature.

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

1. Sub-section (3) of section 63 proposed to be amended by clause 2 of the Bill seeks to empower the Government to delegate the powers of the Director of Co-operative Audit to the subordinate officers of the Registrar.

2. Sub-section (8) proposed to be added by clause 2 of the Bill seeks to empower the Government to issue notifications to carry out the purposes of section 63.

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

G. SUDHAKARAN

EXTRACT FROM THE KERALA CO-OPERATIVE
SOCIETIES ACT, 1969

(21 of 1969)

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63. *Director of Co-operative Audit.*—(1) The Government shall, by notification in the official Gazette, appoint a person to be the Director of Co-operative Audit with jurisdiction over whole of the State.

(2) The qualification and the terms and conditions of the person to be appointed as the Director of Co-operative Audit shall be such, as may be prescribed.

(3) The Government may by general or special order, delegate all or any of the powers of the Director of Co-operative Audit, in the Act to his subordinate officers.

(4) It shall be the duty of the Director of Co-operative Audit to audit or cause to be audited through persons authorised by him, the accounts of every society, at least once in each year.

(5) The Government shall prescribe the manner, in which audit is to be conducted by the Director of Co-operative Audit.

(6) Notwithstanding anything contained in any other law for the time being in force, the Audit Certificate issued by the Director of Co-operative Audit, or by any officer authorised by him shall be valid for all purposes required to be filed before the State Government and Non-Governmental Authorities.

(7) The Director of Co-operative Audit shall be under the control of the Registrar of Co-operative Societies

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