

Thirteenth Kerala Legislative Assembly
Bill No. 144

**THE KERALA MUNICIPALITY (AMENDMENT)
BILL, 2012**

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[Translation in English of “2012-ലെ കേരള മുനിസിപ്പാലിറ്റി (ഭേദഗതി) ബിൽ” published under the authority of the Governor.]

THE KERALA MUNICIPALITY (AMENDMENT)

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further to amend the Kerala Municipality Act, 1994.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Municipality Act, 1994 for the purposes hereinafter appearing;

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

1. *Short title and commencement.*—(1) This Act may be called the Kerala Municipality (Amendment) Act, 2012.

(2) Section 2 of this Act shall be deemed to have come into force on the 1st day of November, 2010 and the remaining sections shall be deemed to have come into force on the 25th day of November, 2011.

2. *Amendment of Section 143A.*—In the Kerala Municipality Act, 1994 (20 of 1994) (hereinafter referred to as the principal Act), in sub section (1) of Section 143A, for the words “three months”, the words “fifteen months” shall be substituted.

3. *Insertion of new sections after Section 334.*—In the principal Act, after section 334, the following sections shall be inserted, namely:—

“334A. *Management of waste at source.*—(1) Notwithstanding anything contained in Sections 326 to 334 and in Sections 335 and 336 of this Act, the owner or the person having the lawful management or control of trade centres, hospitals, markets, slaughter houses, chicken stalls, marriage halls, flats, houses, having more than three storeys and such other establishments as may be notified by the Municipality, shall,—

(a) keep the waste originated in such buildings, establishment or places, segregated as biodegradable and non-biodegradable waste at the source itself, in the manner as may be prescribed and as provided in the bye-laws of the Municipality and arrange sufficient facilities in this behalf;

(b) process and dispose of in proper manner the biodegradable waste segregated as per clause (a) at source or with the written permission of the Secretary, at the neighbouring place under the ownership of such person, in accordance with the provisions of the Environment Protection Act, 1986 (Central Act 29 of 1986) and the Rules made thereunder and without pollution to water, air and sound and if there is shortage of space for this purpose, in order to ensure the processing of such waste through the Municipality, pay such fees, as may be prescribed, based on the quantity and nature of waste, to the Municipality;

(c) in order to manage the non-biodegradable waste segregated under clause (a), enter into agreement with the person, or with the establishment which, produces or distributes the goods which causes such wastes, to take back the wastes relating to such goods and on the other hand to remit the fees to the Municipality for such period, in such manner and at such rates, as may be prescribed; and

(d) process the waste water originated in such buildings or establishments or places scientifically at its source and shall not allow the waste water to flow into a water body, drainage or public way or public place.

(2) The buildings, establishments and places specified in sub-section (1) shall have the facilities for processing the waste as stated in the said sub-section at the time of construction itself and no permit or license shall be granted by the Municipality in respect of those which does not have such facilities and in the case of such existing buildings, establishments and places, the Secretary may allow a period not exceeding one year for making such facilities or for curing the defects in such facilities and the license or permit in respect of those institutions which do not make adequate facilities may be cancelled after giving the party concerned an opportunity of being heard.

(3) Whoever violates any of the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees or with both.

(4) Any person convicted under sub-section (3) shall be punished with a fine of not less than rupees two hundred and fifty for each day of continuation of the violation of the provisions of sub-section (1).

334B. *Restriction on plastic carry bags and covers and management of plastic wastes.*—(1) Subject to the provisions of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) and the Rules made thereunder,—

(a) the Municipality shall, by notification, fix the minimum price of various kinds of plastic carry bags and plastic covers and no institution or person shall sell such bags or covers at a price lower than the price so fixed or give free of cost and the Municipality shall take steps to ensure that institution or person shall not act in such manner;

(b) where an applicant who applies for license under section 447 intends to sell plastic bags or plastic covers through his establishment, such fact shall be stated in the application and the Municipality may, in addition to the usual license fee, realise a fixed amount as additional fee in this behalf for the period as may be prescribed, based on the approximate number or quantity of plastic bags or plastic covers intended to be sold;

(c) every consumer shall keep the waste plastic bags and plastic covers segregated from other wastes and shall be managed in accordance with the provisions in the bye-laws that may be made by the Council.

(2) The Secretary shall, in accordance with the provisions of the said Central Act and the Rules made thereunder, lodge complaint against any person who violates the provisions of clause (a) of sub-section (1).

334C. *Constitution of Waste Disposal Fund.*—The Municipality shall constitute a special fund, by name, ‘The Waste Disposal Fund’ for the purpose of disposal of waste, especially for the processing of plastic waste, originated within the Municipal area, and,—

(a) the additional fee realised as per clause (b) of sub-section (1) of section 334 B;

(b) the fine amount recovered in the cases relating to waste disposal; and

(c) the amounts that may be granted by the Government or given by other agencies or persons in this behalf;

shall be credited to the Fund and the same shall be managed in the manner as may be prescribed.”.

4. *Repeal and saving.*—(1) The Kerala Municipality (Amendment) Ordinance, 2012 (43 of 2012) (hereinafter referred to as the said Ordinance) 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:

Provided that no person accused of an offence under the provisions of the principal Act as amended by the said Ordinance during the period from the 23rd day of July, 2012 to the 13th day of August, 2012 shall be subjected to conviction.

STATEMENT OF OBJECTS AND REASONS

Sub-section (1) of Section 143A of the Kerala Municipality Act, 1994 (20 of 1994) provides that a councillor shall, within three months from the date of assuming his office, submit a statement of assets and liabilities of himself and other members of his family, in the prescribed form, to the competent authority authorised by the Government by notification in this behalf. But, the fact has come to the notice of the Government that as this time limit is very short, many of the Councillors in the State could not submit their statement of assets within this time limit. As it is the first election held after enhancing the reservation of women to fifty per cent and the members including the women members were engaged in the developmental activities of their wards, they could not, within the said short period of time, submit the statement of assets. Therefore, in order to avoid the elected members who could not submit the statement of assets within the fixed time limit from being disqualified, the Government have decided to amend the said Act with retrospective effect by extending the time limit of within three months in the said section to fifteen months.

2. The Government consider that along with the steps being taken for the effective management and disposal of various kinds of waste being increased in the State day by day, suitable legislation is also required for the same. Therefore, the Government have decided to incorporate provisions in the said Act for segregating the waste into biodegradable and non-biodegradable wastes at the source itself and to make the arrangements for waste disposal compulsory in trade centres, hospitals, markets, slaughter houses, chicken stalls, marriage halls, houses having more than three storeys, to impose fine to those who do not have such arrangements, to fix the minimum price of plastic covers and carry bags with the intention to reduce the use of plastic covers and carry bags, to levy additional fee for their sale, to constitute a special fund for the disposal of waste, by crediting the additional fee and the fine from the cases, being realised in this connection to Local Self Government Institutions. Besides, the Government consider that in order to make the processing and disposal of waste more effective, the punishment for those who deposit waste in public places and those who do not segregate the waste at source shall be enhanced.

3. Though the Kerala Municipality (Amendment) Bill, 2011 for amending Section 143A of the said Act was published as Bill No. 56 of the Thirteenth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative Assembly.

4. As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala Municipality (Second Amendment) Ordinance, 2011 was promulgated by the Governor of Kerala on the 23rd day of November, 2011 and the same was published as Ordinance No. 52 of 2011 in the Kerala Gazette Extraordinary No. 2220 dated 25th November, 2011.

5. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 9th day of December, 2011 and ended on the same day.

6. In order to keep alive the provisions of the said Ordinance, the Kerala Municipality (Amendment) Ordinance, 2012 was promulgated by the Governor of Kerala on the 18th day of January, 2012 and the same was published as Ordinance No. 10 of 2012 in the Kerala Gazette Extraordinary No. 147 dated 20th January, 2012.

7. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 1st day of March, 2012 and ended on the 23rd day of March, 2012.

8. In order to keep alive the provisions of the said Ordinance, the Kerala Municipality (Amendment) Ordinance, 2012 was promulgated by the Governor of Kerala on the 11th day of April, 2012 and the same was published as Ordinance No. 33 of 2012 in the Kerala Gazette Extraordinary No. 735 dated 11th April, 2012.

9. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 11th day of June, 2012 and ended on the 25th day of July, 2012.

10. As per the provisions of sub-clause (a) of clause (2) of article 213 of the Constitution of India, an Ordinance promulgated shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature. Accordingly the said Ordinance ceased to operate on the 23rd day of July, 2012.

11. As the Legislative Assembly was not in session and in order to keep alive the provisions of the said Ordinance again and to validate and perpetuate 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 Kerala Municipalities (Amendment) Ordinance, 2012 (33 of 2012) and anything done or any action taken after the cesser of operation of the said Ordinance, the Kerala Municipalities (Amendment) Ordinance, 2012 was promulgated by the Governor of Kerala on the 11th day of August, 2012 and the same was published as Ordinance No. 43 of 2012 in the Kerala Gazette Extraordinary No. 1698 dated 13th August, 2012.

12. This Bill seeks to replace Ordinance No. 43 of 2012 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (1) of Section 334A and clause (a) thereof proposed to be inserted by clause 3 of the Bill provides to empower the Government to prescribe the method of management of waste being accumulated in trade centres, hospitals, markets, slaughter houses, chicken stalls, marriage halls, flats, houses having more than three storeys and also to empower the Municipalities to make bye-laws for the same and also to bring other institutions within the purview of the law by notification.

2. Clause (b) of Sub-section (1) of section 334A proposed to be inserted by clause 3 of the Bill provides to empower the Government to prescribe in the case of the persons who have the lack of place, the fees according to the quantity and nature of waste, to ensure the processing of waste through Municipality.

3. Clause (c) of sub-section (1) of Section 334A proposed to be inserted by clause 3 of the Bill provides to empower the Government to prescribe the rate of fees to be remitted to the Municipality and the manner of payment and the period, if no agreement has been entered into with the establishment which or the persons who, produces or distributes the goods which causes for the waste, to take back such waste.

4. Clause (a) of sub-section (1) of Section 334B proposed to be inserted by clause 3 of the Bill provides to empower the Municipalities to fix by notification, the minimum price of various kinds of plastic carry bags and plastic covers.

5. Clause (b) of sub-section (1) of Section 334B proposed to be inserted by clause 3 of the Bill provides to empower the Government to prescribe the period for realising a fixed amount as additional fee in addition to the usual licence fee if an applicant who applies for licence intends to sell plastic bags or plastic covers through his establishment.

6. Clause (c) of sub-section (1) of Section 334B proposed to be inserted by clause 3 of the Bill provides to empower the Municipality to make bye-laws regarding the method of segregation of waste plastic bags and covers by the users, from other wastes.

7. Clause (c) of Section 334C proposed to be inserted by clause 3 provides to prescribe the manner in which the fund by name "The Waste Disposal Fund" shall be managed.

8. The matters in respect of which rules or bye-laws may be made or notifications may be issued are matters of procedure and are of routine or of administrative in nature. Further, the rules after they are made, will be subject to scrutiny by the Legislative Assembly. The delegation of legislative power is, therefore, of a normal character.

MANJALAMKUZHI ALI.

EXTRACT OF RELEVANT PORTIONS FROM THE
KERALA MUNICIPALITY ACT, 1994
(20 OF 1994)

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143A. *Councillors to declare Assets.*—A Councillor shall within three months from the date of assuming his office submit a statement of assets and liabilities of himself and of other members of his family in the prescribed form, before the competent authority as may be authorised by the Government by notification in this behalf:

Provided that a person who is a Councillor at the time when this Act comes into force, shall submit such a statement before the competent authority, before the date specified by the Government in this behalf.

(2) Where a Councillor after submitting a statement under sub-section (1), acquires any further assets in his name or in the name of any other members of his family, or disposes of or mortgages any property specified in the statement, he shall submit a statement to that effect before the competent authority within three months from the date of such acquisition or disposal or mortgage; as the case may be.

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334. *Removal of solid waste, rubbish and solid waste accumulated on non-residential premises.*—(1) The Secretary may, if he thinks fit, by notice in writing require the owner or the occupier of any premises used as—

- (i) a factory, workshop or a place for carrying on any manufacturing process, or
- (ii) a market or trade premises, or
- (iii) a slaughter house, or
- (iv) a hotel, eating house, or restaurant, or
- (v) a hospital or a nursing home, or
- (vi) a warehouse or godown, or
- (vii) a place to which large number of persons resort,

where rubbish, offensive matter, filth, trade refuse, special wastes, hazardous wastes or excrementitious and polluted matters are accumulated in large quantities,

to collect such matters accumulating thereon and to remove the same to a depot or place provided or directed by the Secretary at such time and in such manner and by such routes as may be specified in the notice:

Provided that if such solid waste cannot be removed to a place or to a depot, as is required by the Secretary on reasons related to health the Secretary may, by notice require such owner or occupier, to dispose of such things by themselves within the time as specified in the notice and if such persons make default in such disposal, he shall on conviction be punished with a fine extending up to ten thousand rupees and after such conviction if reluctant to comply with that direction he may be punished with a further fine at the rate of one hundred rupees for each day during which the offence is continued.

(2) Where the owner or occupier fails to carry out the instructions under sub-section (1), the Secretary may, after giving a notice, cause all rubbish including building rubbish, offensive matter, trade refuse, special wastes, hazardous wastes or excrementitious and polluted matter accumulated in such premises to be removed and charge the said owner or occupier the cost for such removal at such rate as determined by the Council which and specified in the notice issued under this sub-section for such removal:

Provided that such cost shall not be at a rate less than the unit cost for the removal of such solid wastes (including the cost for servicing, depreciation and other charges, if any, for vehicles or vessels or means for removal) as the Council may determine from time to time.

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