

Thirteenth Kerala Legislative Assembly
Bill No. 203

THE KERALA LIFTS AND ESCALATORS BILL, 2013

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THE KERALA LIFTS AND ESCALATORS BILL, 2013

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BILL

to provide for the regulation of the erection, maintenance and safe working of Lifts and Escalators and all machinery and apparatus pertaining thereto in the State of Kerala and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS, it is expedient to provide for the regulation of the erection, maintenance and safe working of Lifts and Escalators and all machinery and apparatus pertaining thereto in the State of Kerala and for matters connected therewith or incidental thereto;

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

1. *Short title and commencement.*—(1) This Act may be called the Kerala Lifts and Escalators Act, 2013.

(2) It shall be deemed to have come into force on the 1st day of March, 2012.

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

(a) “escalator” means a power driven continuous moving stairway used for transporting passengers up and down short vertical distances;

(b) “escalator installation” includes the escalator, the track, the trusses or girders, the balustrade, the step treads and landings and all chains, wires and plant, directly connected with the operation of the escalator;

(c) “Government” means Government of Kerala;

(d) “Inspector” means the Electrical Inspector appointed by State Government under sub-section (1) of section 162 of the Electricity Act, 2003 (Central Act 36 of 2003), who has territorial jurisdiction over the place of installation of a lift or escalator;

(e) “licence” means licence granted under section 4;

(f) “lift” means a hoisting mechanism designed to carry passengers or goods or both and equipped with a car which move in a substantial vertical direction and is worked by power, but does not include a hoist or lift to which the Factories Act, 1948 (Central Act LXIII of 1948) applies;

Explanation:—For the purpose of this clause, “power” means electrical energy or any other forms of energy which is mechanically transmitted and is not generated by human or animal energy;

(g) “lift car” means the cage or car of a lift and includes the floor or platform, car frame sling and enclosing body work;

(h) “lift installation” includes the lift car, the lift way, the lift way enclosure and the operating mechanism of the lift and all ropes, cables, wires and plant, directly connected with the operation of the lift;

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

(j) “Rules” means rules made under this Act;

(k) “owner” includes,—

(i) a lessee,

(ii) a licensee,

(iii) a mortgagee in possession; and

(iv) any person or authority to whom or to which the possession of, and control over the affairs of the place in which a lift has been erected and work has been entrusted, whether such person or authority is called a managing trustee, an agent, a correspondent, manager, superintendent, secretary or by any other name whatsoever.

3. *Permission to erect lifts and escalators.*—(1) No owner of a place shall, on and after the commencement of this Act, erect a lift or escalator in such place except under, and in accordance with a permission granted under this Act.

(2) Every application for permission to erect a lift or escalator shall be made in writing to the Inspector in such form and specifying such particulars and accompanied by such fees as may be prescribed.

(3) On receipt of an application under sub-section (2), the Inspector may, after making such enquiry as he deems necessary, either grant or refuse to grant permission. Every permission granted shall be in such form and subject to such terms and conditions as may be prescribed and shall be valid for a period of six months from the date on which it is granted.

(4) Every owner of a place who is granted permission under sub-section (3) shall, within one month after the completion of the erection of such lift or escalator, send a report of completion to the Inspector in such form as may be prescribed.

(5) Where the Inspector refuses to grant permission under sub-section (3), he shall give reasons in writing for such refusal.

4. *Licence for working lifts and escalators.*—(1) No owner of a place shall work or cause to be worked or allow the working of any lift or escalator in such place except under and in accordance with a licence.

(2) Every application for a licence under sub-section (1) shall be made to the Inspector in such form and shall be accompanied by such fees as may be prescribed.

(3) On receipt of an application under sub-section (2), the Inspector, after making such inspection and enquiry as he deems necessary, may, either grant or refuse the licence.

(4) Every licence granted under sub-section (3), shall be in such form and subject to such terms and conditions as may be prescribed.

(5) Every licence granted under sub-section (3), shall be valid for a period of one year from the date on which it is granted and shall be renewable yearly after an inspection and on payment of such fees as may be prescribed.

(6) Where the Inspector refuses to grant licence under sub-section (3), he shall give reasons in writing for such refusal.

5. *Provision in respect of existing lifts and escalators.*—(1) Notwithstanding anything contained in this Act but subject to the provisions of sub-section (2), every owner of a place in which a lift or escalator has been erected and is being worked immediately before the commencement of this Act, may continue the working of such lift or escalator at such place.

(2) Every person entitled to continue the working of a lift or escalator under sub-section (1), shall not continue the working of such lift or escalator after the expiry of a period of two months from the date of commencement of this Act unless he obtains a licence under section 4 in respect of such lift or escalator.

(3) Every application for a licence under sub-section (2), shall be in such form and shall be accompanied by such fees, as may be prescribed.

6. *Renewal.* —(1) Every application for the renewal of a licence granted under this Act shall be made not less than three months before the date of expiry of the period of such licence.

(2) The provisions of the Act shall, as far as may be, apply in relation to the renewal of a licence as they apply in relation to the grant of a licence under section 4.

7. *Power to cancel or suspend licence.*—(1) The Inspector may, after giving the holder of a licence an opportunity of being heard, cancel or suspend the licence if he has any reasonable cause to believe,—

(i) that such licence has been obtained by misrepresentation or fraud; or

(ii) that the licensee has contravened or failed to comply with any of the provisions of this Act or the rules made thereunder or any of the terms and conditions of the licence; or

(iii) that the licensee has contravened or failed to comply with, an order passed under this Act or the rules made thereunder; or

(iv) that the lift or escalator, as the case may be, can no longer be safely worked for the purpose, for which the licence was granted:

Provided that the Inspector may, if he is of the opinion that any licence granted under this Act is liable to be cancelled, pending cancellation of the licence and for reasons to be recorded in writing, suspend any licence.

(2) The Inspector may, either *suo motu* or on an application, review any order passed under sub-section (1),—

(i) on the basis of a mistake or error apparent on the face of the record; or

(ii) on the basis of new facts brought to his notice after the order was made; or

(iii) for any other sufficient reasons:

Provided that the Inspector shall not pass an order under this sub-section prejudicial to any person unless such person has been given a reasonable opportunity of being heard.

8. *Addition to or alteration of lift and escalator installation.*—No addition or alteration, other than those required to be made under sub-section (2) of section 10, shall be made to any lift or escalator installation except with the previous permission in writing of the Inspector.

9. *Erection, addition or alteration work of lift and escalator installation to be entrusted to competent persons.*—No owner, erecting, adding to or altering a lift or escalator installation, shall entrust the work to any person other than the manufacturer of such lift or escalator or to a company of Electrical and Mechanical Engineers approved by the Inspector.

Explanation:—For the purposes of this section, “Company” means any body corporate and includes a firm or other association of individuals whether registered or not.

10. *Power of entry.*—(1) the Inspector or any person appointed under sub-section (1) of section 13 to assist him may, at any time after giving reasonable notice to the owner, enter upon any place in which a lift or escalator is erected or is being worked or in connection with which an application for a permission under section 3 or a licence under section 4 has been received, for the purpose of inspecting the site, the erection of lift or escalator installation, as the case may be. The person appointed under section 13 to assist the Inspector shall, after making such inspection, send a report regarding the condition of the lift or escalator installation inspected, to the Inspector for taking action under this Act.

(2) If on such inspection the Inspector is of the opinion that any lift or escalator installation in any place is in an unsafe condition, he may, by order in writing, direct the owner of the place to carry out such repairs or alterations to such lift or escalator as he may deem necessary, within such time as may be specified therein and may if necessary, also direct that the working of such lift or escalator be discontinued until such repairs or alterations, as specified in the order, are made. The owner shall thereupon comply with any such direction within the period specified therein and shall forthwith report in writing to Inspector, his compliance with such direction.

(3) Any person aggrieved by any order or direction made under sub-section (2) may, within thirty days from the date of receipt of such order, appeal to the Appellate Authority appointed in this behalf by the Government and decision of the Appellate Authority thereon shall be final.

(4) Notwithstanding any appeal made under sub-section (3), any direction for the discontinuance of the working of a lift or escalator made under sub-section (2), shall be complied with unless the Appellate Authority has stayed such direction.

11. *Owner to give facilities for inspection.*—Every owner of a place which is entered upon in pursuance of sub-section (1) of section 10 by the Inspector or the person appointed under section 13 shall afford every reasonable facility to such

Inspector or person to perform any function which such Inspector or person is authorised under that section to perform and shall, at his own cost, procure at such inspection, the attendance of the person, if any, to whom the work of erection, addition, alteration or maintenances of the lift or escalator installation has been entrusted or a representative of such person, as the case may be, who is competent to guide the Inspector or the person, in the inspection.

12. *Report of accidents.*—Where any accident occurs in the working of any lift or escalator which results in or is likely to result in loss of life or injury, the owner of the place or installation shall, as soon as may be, after such accident, give notice of the occurrence and of any such loss or injury together with full details of accident in such form as may be prescribed, to the Inspector and also to the District Magistrate or such other Officer as the Government may by order specify in this behalf and the lift or escalator installation shall not be interfered with in any way and the working of such lift or escalator shall not be resumed except with the written permission of the Inspector.

13. *Persons to assist the Inspector.*—(1) The Government may appoint such number of technical and other persons, as may be necessary and possessing such qualifications as may be prescribed, to assist the Inspector.

(2) The powers and functions and other terms and conditions of service of persons appointed under sub-section (1) shall be such as may be prescribed.

14. *Penalty.*— Whoever contravenes any of the provisions of this Act or the rules made thereunder or the terms and conditions of a permission or of a licence or a direction given by the Inspector or any person appointed under section 13 to assist him shall be punishable with fine which may extend to one thousand rupees and in the case of a continuing contravention, with a further fine which may extend to fifty rupees for every day during which such contravention is continue after such conviction.

15. *Offences by Companies.*—(1) Where an offence punishable under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also, be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm, or other associations of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.

16. *Cognizance of offences.*—No court shall take cognizance of any offence punishable under this Act except upon a complaint made by the Inspector having jurisdiction, within three months from the date of commission of the offence came to the knowledge of the Inspector.

17. *Service of notices, order or documents.*—(1) Every notice, order or other document required or authorised to be addressed by or under this Act shall be deemed to be properly addressed to the owner of the place (naming the place) and may be served by post or left,—

(a) where a local authority is the addressee, at the office of the local authority;

(b) where a company is the addressee, at the registered office of the company or, in the event of the registered office of the company not being in India, at the principal place of business of the company in India; and

(c) where any other person is the addressee, at the usual or last known place of abode or business of the person.

18. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against any person for anything, which is done in good faith or intended to be done by or under this Act.

19. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order published in the Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for removing the difficulty.

20. *Saving.*—Nothing contained in this Act shall affect the provisions of the Electricity Act, 2003 (Central Act 36 of 2003).

21. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules either prospectively or retrospectively for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) specifications for lift and escalators;
- (b) the manner in which erection plans of lifts and escalators shall be submitted;
- (c) the manner in which lifts and escalators may be tested;
- (d) the form of application for permission for the erection of lift and escalators and a licence for working such lifts and escalators;
- (e) the form of report of completion to be sent under sub-section (4) of section 3;
- (f) the terms and conditions and restrictions subject to which and the form in which the licence may be granted for the working of lifts and escalators and the fees to be paid in respect of such licence;
- (g) the manner in which and the terms subject to which the lifts and escalators shall be worked;
- (h) the manner in which notice of accidents shall be given;
- (i) the form of notice of accidents to be given under section 12; and
- (j) any other matter which is to be, or may be prescribed.

22. *Rules to be placed before the Legislative Assembly.*—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 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.

23. *Repeal and saving.* —(1) The Kerala Lifts and Escalators Ordinance, 2013 (20 of 2013) 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 said Ordinance, shall be deemed to have been done or taken under this Act:

Provided that no person shall be convicted of an offence alleged to have committed under the provision of this Act during the period from 23rd July, 2012 to 21 st August, 2012, the date of publication of the Kerala Lifts and Escalators Ordinance, 2012 (51 of 2012) in the Gazette.

STATEMENT OF OBJECTS AND REASONS

In the circumstance of increased construction of multi storeyed building in the State, the number of lifts and escalators have also increased. For the safety of the users, safety measures and precautions should be ensured in the working of the lifts and escalators. But there is no proper legislation to regulate the erection, maintenance and safe working of the lifts and the escalators. Therefore, Government have decided to make a legislation in order to provide for the regulation of erection, maintenance and safe working of lifts and escalators and all machinery and apparatus pertaining thereto in the State of Kerala and for matters connected therewith or incidental thereto.

2. 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 Lifts and Escalators Ordinance, 2011 was promulgated by the Governor of Kerala on the 23rd day of November, 2011 and published as Ordinance No. 53 of 2011 in the Kerala Gazette Extraordinary No. 2221 dated 25th November, 2011.

3. 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 in its session which commenced on the 9th day of December, 2011 and ended on the same day. Hence in order to keep alive the provisions of the said Ordinance, the Kerala Lifts and Escalators Ordinance, 2012 was promulgated by the Governor of Kerala on the 18th day of January, 2012 and published as Ordinance No. 11 of 2012 in the Kerala Gazette Extraordinary No. 148 dated 20th January, 2012.

4. 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. Hence in order to keep alive the provisions of the said Ordinance, the Kerala Lifts and Escalators Ordinance, 2012 452/2013.

was promulgated by the Governor of Kerala on the 11th day of April, 2012 and published as Ordinance No. 35 of 2012 in the Kerala Gazette Extraordinary No. 737 dated 11th April, 2012.

5. A Bill to replace the said Ordinance 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.

6. Under sub-clause (a) of clause (2) of article 213 of the Constitution of India the Kerala Lifts and Escalators Ordinance, 2012 (35 of 2012) ceased to operate on the 23rd day of July, 2012.

7. As the Kerala Legislative Assembly was not in session and the provisions of the said Ordinance had to be kept alive and for validating anything done or any action taken under the said Ordinance, after the cessor of operation of the said Ordinance, the Kerala Lifts and Escalators Ordinance, 2012 was promulgated by the Governor of Kerala on the 18th day of August, 2012 and the same was published as Ordinance No. 51 of 2012 in the Kerala Gazette Extraordinary No. 1730 dated 21st day of August, 2012.

8. 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 10th day of December, 2012 and ended on the 21 st day of December, 2012. Hence in order to keep alive the provisions of the said Ordinance, the Kerala Lifts and Escalators Ordinance, 2013 was promulgated by the Governor of Kerala on the 9th day of January, 2013 and the same was published as Ordinance No. 2 of 2013 in the Kerala Gazette Extraordinary No. 96 dated 10th January, 2013.

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 1st day of February, 2013 and ended on the 19th day of February, 2013. Hence in order to keep alive the provisions of the said Ordinance, the Kerala Lifts and Escalators Ordinance, 2013 was promulgated by the Governor of Kerala on the 26th day of February, 2013 and the same was published as Ordinance No. 20 of 2013 in the Kerala Gazette Extraordinary No. 559 dated 27th February, 2013.

10. This Bill seeks to replace the Ordinance No. 20 of 2013 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-clause (2) of clause 3 of the Bill seeks to empower the Government to prescribe the form and fee of the application for permission to install a lift or escalator. Sub-clause (3) of the said clause seeks to empower the Government to prescribe the terms and conditions of such application for permission. Sub-clause (4) seeks to empower the Government to prescribe the form of the completion report to be sent to the Inspector after completion of the installation of the Lift and Escalator.

2. Sub-clause (2) of clause 4 of the Bill seeks to empower the Government to prescribe the form and fee of the application for licence. Sub-clause (4) of the said clause seeks to empower the Government to prescribe the terms and conditions and the form for the licence for working of lift and escalator. Sub-clause (5) seeks to empower the Government to prescribe the fees for renewing the licence annually.

3. Sub-clause (3) of clause 5 of the Bill seeks to empower the Government to prescribe the fees and form for obtaining the licence to the existing owners of the lifts and escalators.

4. Clause 12 of the Bill seeks to empower the Government to prescribe the form for reporting to the Inspector and to the District Magistrate the details of accident while functioning the lift or escalator.

5. Clause 13 of the Bill seeks to empower the Government to prescribe the qualification of the persons appointing to assist the Inspector. Sub-clause (2) of the said clause seeks to empower the Government to prescribe the powers and functions and other terms and conditions of services of the persons thus appointed.

6. Clause 19 of the Bill seeks to empower the Government to issue order to make provisions not inconsistent with the provisions of this Act for the purpose of removing difficulties arising while giving effect to the provisions of this Act.

7. Clause 21 of the Bill seeks to empower the Government to make rules either prospectively or retrospectively for the purpose of carrying into effect the provisions of this Act.

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

ARYADAN MUHAMMED.