

Thirteenth Kerala Legislative Assembly
Bill No. 221

THE KERALA PANCHAYAT RAJ (SECOND AMENDMENT)
BILL, 2013

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THE KERALA PANCHAYAT RAJ (SECOND AMENDMENT) BILL, 2013

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BILL

further to amend the Kerala Panchayat Raj Act, 1994.

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

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 Panchayat Raj (Second Amendment) Act, 2013.

(2) Section 3 of this Act shall be deemed to have come into force on the 17th day of May, 2010, sections 2, 4, 7 and 8 shall be deemed to have come into force on the 14th day of June, 2010 and the remaining sections shall come into force at once.

2. *Amendment of section 1.*—In sub-section (2) of section 1 of the Kerala Panchayat Raj Act, 1994 (13 of 1994) (hereinafter referred to as the principal Act) for the words “Industrial areas”, the words, figures, letter and brackets “areas specified as industrial township under the proviso to clause (1) of Article 243Q of the Constitution” shall be substituted.

3. *Amendment of section 4.*—In section 4 of the principal Act,—

(1) in sub-section (2) and in the proviso, for the words “Village Panchayat” wherever they occur, the words “Village Panchayat or Block Panchayat” shall be substituted;

(2) in sub-section (3), after the words, “in a Village Panchayat”, the words “or Block Panchayat” shall be inserted.

4. *Amendment of section 10.*—In section 10 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) Every order issued by the Delimitation Commission with regard to the delimitation of constituencies under this section shall be published in the Gazette and it shall have the force of law.”.

5. *Insertion of new section after section 21.*—In the Kerala Panchayat Raj Act, 1994 (13 of 1994), after section 21, the following section shall be inserted, namely:—

“21A. *Special provision for the non-resident Indians to get themselves registered in the electoral roll.*—Notwithstanding anything to the contrary contained in other provisions of this Chapter, any citizen of India as stated in section 20A of the Representation of the People Act, 1950 (Central Act 43 of 1950) shall be entitled to get himself registered as an elector in the electoral roll to the constituency in which his place of residence in India as indicated in his passport is situated.”.

6. *Amendment of section 30.*—In sub-section (1) of section 30 of the principal Act, the existing Explanation shall be numbered as “Explanation 1” and after Explanation 1 so numbered, the following Explanation shall be inserted, namely:—

“*Explanation 2:*—For the purpose of this section, the part-time employees, other than Anganawadi employees and Balawadi employees, and those who receive honorarium shall be deemed to be employees.”.

7. *Amendment of section 149.*—In the principal Act, to sub-section (2) of section 149, the following proviso shall be added, namely:—

“Provided that if the context requires, general election may be conducted, in accordance with the request of the State Election Commission, within six months before the occurrence of vacancies so as to make it possible to conduct the general elections to different levels of Panchayats simultaneously.”.

8. *Amendment of section 154.*—In section 154 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Where the President or Vice-President of a Panchayat refuses to hand over charge of his office or any documents or any money or other properties vested in, or belonging to the Panchayat which are in or has come into his possession or control, to his successor in office or other prescribed authority as soon as his term of office as President or Vice-President expires and in the case of the Vice-President, on demand by the President, such President or Vice-President shall, on conviction, be punished with fine not exceeding ten thousand rupees for such offence.”.

9. *Insertion of new sections after section 219U.*—In the principal Act, after section 219U, the following sections shall be inserted, namely:—

“219V. *Management of waste at source.*—(1) Notwithstanding anything contained in sections 219A to 219U of this Act, the owner or the person having

the lawful management or control of trade centres, hospitals, markets, slaughterhouses, chicken stalls, fish stalls, marriage halls, flats, hotels, catering service establishments, houses having a plinth area of more than 400 square meters and such other establishments as may be notified by the Village Panchayat, shall,—

(a) keep the waste originated in such buildings establishment or places, segregated as bio-degradable and non bio-degradable waste at the source itself, in the manner as may be prescribed and as provided for in the bye-laws of the Village Panchayat and set up sufficient systems in this behalf;

(b) process and dispose of in appropriate manner the bio-degradable waste segregated as per clause (a) at the source itself or with the written permission of the Secretary, at the neighbouring place in the ownership of such person, subject to the provisions of the Environment Protection Act, 1986 (Central Act 29 of 1986) and the rules made thereunder and without causing pollution to water, air and sound and if there is space restriction for this purpose, in order to ensure the processing of such waste through the Village Panchayat or through waste processing agencies recognised by the Government, pay such fees to the Village Panchayat, in such manner, as may be prescribed, in accordance with the quantity and type of waste;

(c) in order to deal with the non bio-degradable 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 Village Panchayat during 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 where it cannot be processed scientifically, enter into an agreement with an agency recognised by the Government, which processes waste water scientifically, and shall not allow the waste water to flow into water bodies, drainages or public way or public places.

(2) The buildings, establishments and places specified in sub-section (1) shall have the systems for processing the waste as stated in the said sub-section at the time of their construction itself and the Village Panchayat shall not grant working permit, license or building number in respect of those which do not have such systems and in the case of such existing buildings, establishments and places, the Secretary may allow a period not exceeding one year for making such systems or for rectifying the deficiencies in such systems and cancel the

license, building number or working permit of those institutions which do not make sufficient system, 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 one thousand rupees for each day of continuing violation of the provisions of sub-section (1).

219W. *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 Village Panchayat 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 them free of cost and the Village Panchayat shall take steps to ensure that no institution or person does so;

(b) where an applicant who applies for license under section 232 intends to sell plastic bags or plastic covers through his establishment, such information shall be recorded in the application and the Village Panchayat 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, in accordance with the approximate number or quantity of plastic bags and 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 as provided for in the bye-laws that may be made by the Village Panchayat.

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

219X. *Constitution of Waste Disposal Fund.*—The Village Panchayat shall constitute a special fund, by name, ‘The Waste Disposal Fund’ for the purposes of disposal of waste, especially for the processing of plastic waste, originated within the Village Panchayat area, and,—

(a) the additional fee realised as per clause (b) of sub-section (1) of section 219W ;

(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.”.

10. *Amendment of section 235AB.*—In sub-section (1) of section 235AB of the principal Act, for the word and figures “15th October, 1999”, the word and figures “31st October, 2012” shall be substituted.

11. *Validation.*—(1) Notwithstanding the cesser of operation of the Kerala Panchayat Raj (Amendment) Ordinance, 2011 (33 of 2011) and the Kerala Panchayat Raj (Second Amendment) Ordinance, 2011 (34 of 2011) (hereinafter referred to as the said Ordinances),—

(a) 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 Ordinances shall be deemed to be done or taken as per the provisions of the principal Act as amended by the other sections, other than section 6 of this Act;

(b) anything done or any action taken after the cesser of operation of the said Ordinance and before the date of publication of this Act in the Gazette, except anything done or deemed to have been done or any action taken or deemed to have been taken in the case of Anganawadi employees and Balawadi employees as per Explanation 2 of section 30 of the principal Act as amended by section 5 of Ordinance No. 34 of 2011, shall be deemed to have been done or taken under the principal Act as amended by this Act, as if they would have been done or taken under the principal Act as amended by the said Ordinance.

(2) Notwithstanding the operation of section 30 of the principal Act as amended by Ordinance No. 34 of 2011, the provisions of the said section as so amended shall not be a bar, in so far as it relates to Anganawadi employees and Balawadi employees, to continue in the posts in which they worked, even if they had resigned the job during the period of operation of the said Ordinance for the purpose of contesting election, and the orders issued by the Government in respect of the conditions of their service and wages during the period of operation of the said Ordinance, shall be applicable.

(3) The cesser of operation of the said Ordinances shall not,—

(a) affect any right, liability or power acquired under the principal Act as amended as per their provisions;

(b) affect any legal proceedings or remedial measures in respect of any right, liability, power or exercise of power as stated above and any such legal proceedings or remedial measures may be initiated, continued or enforced as per the provisions of the principal Act in so far as it is not inconsistent with provisions of the principal Act as amended by this Act:

Provided that no person accused of having committed an offence under section 154 of the principal Act as amended by Ordinance number 34 of 2011 during the period from the 13th day of July, 2011 to the date of coming into force of this Act shall not be subjected to conviction.

STATEMENT OF OBJECTS AND REASONS

As per sub-section (2) of section 1 of the Kerala Panchayat Raj Act, 1994, the said Act is not applicable in the industrial areas. This provision had adversely affected the powers of the Panchayat to intervene in the problems of the general public in such areas. Therefore, the Government have decided to amend sub-section (2) of section 1 of the Act so as not to make the Act applicable to the areas specified as industrial township under clause (1) of Article 243Q of the Constitution. Even though section 4 of the Kerala Panchayat Raj Act, 1994 provides for the integration and reconstitution of the Village Panchayats, it is not empowered for the integration and reconstitution of the Block Panchayats. The Government have decided to integrate and reconstitute certain Block Panchayats. For this, the Government decided to amend section 4 of the said Act by substituting the words 'in Village Panchayats or Block Panchayats' in the place of the word 'in Village Panchayats' and the Government have also decided to amend section 10 of the said Act to provide that every order issued by the Delimitation Commission with regard to the delimitation of constituencies shall be published in the Gazette and it shall have the force of law.

2. As per the new section 20A inserted in the Representation of the People Act, 1950 (Central Act 43 of 1950) through the Representation of the People (Amendment) Act, 2010 (36 of 2010), the non-resident Indians had obtained the right to vote in the general election to the Legislative Assembly. The State Election Commission informed the Government that an amendment similar to the said section should be made in the concerned sections of the Kerala Panchayat Raj Act, 1994. In these circumstances, the Government consider

that the Kerala Panchayat Raj Act, 1994 has to be amended to insert a new section 21A with necessary provisions to give the non-resident Indians the right to get themselves registered as electors in the electoral roll so that they would get the right to vote in the election to the Panchayats at various levels, subject to the provisions of section 20A of the Representation of the People Act, 1950.

3. The Government also decided to amend section 30 of the Act disqualifying the part-time employees and those who receive honorarium from being elected to the Local Self Government Institutions. The Government have further decided to amend sub-section (2) of section 149 of the Act providing to make it possible to conduct general election to different levels of Panchayats simultaneously within six months before the occurrence of the vacancies and to amend section 154 providing for the imposition of a fine not exceeding ten thousand rupees when the President or Vice President of a Panchayat fails to hand over any document or money or other properties which are in his possession or control, to his successor in office or to the prescribed authority, when they vacate their offices.

4. The Government consider that along with the steps being taken for the effective management and disposal of various kinds of wastes 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 Kerala Panchayat Raj Act, 1994 (13 of 1994) for segregating the wastes into bio-degradable and non bio-degradable wastes at the source itself and accordingly to make the arrangements for waste disposal compulsory in trade centres, hospitals, markets, slaughter houses, chicken stalls, fish stalls, marriage halls, flats, hotels, catering service establishments, houses having a plinth area of more than 400 square meters and such other establishments as may be notified by the Village Panchayats, 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 by name "The Waste Disposal Fund" for the disposal of waste, by crediting the additional fee and the fine from cases, being realised in this connection to the Village Panchayats. Besides, the Government consider that in order to make 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. The Government have also decided to amend section 219 in this regard.

5. The Government have also decided to amend section 235AB to regularise, subject to conditions, the unauthorised building constructions carried

out upto the 31st day of October, 2012 so as to avoid the revenue loss caused due to the non regularisation of unauthorised building constructions made after the 15th day of September, 1999.

6. This Bill is intended to achieve the above objects.

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 219V proposed to be inserted by clause 9 of the Bill, empower the Government to prescribe the manner in which the waste originated in buildings and places such as trade centres, hospitals, markets, slaughter houses, chicken stalls, fish stalls, marriage halls, flats, hotels, catering service establishments, houses having a plinth area of more than 400 square meters and such other establishments as may be notified by the Village Panchayat may be disposed and empower the Panchayats to make bye-laws for the same and also to bring such other establishments within the purview of the Act, by notification.

2. Clause (b) of sub-section (1) of section 219V proposed to be inserted by clause 9 of the Bill, empower the Government to prescribe the fees payable by the persons who have the lack of space, for the purpose of ensuring the processing of waste through Village Panchayat.

3. Clause (c) of sub-section (1) of section 219V proposed to be inserted by clause 9 of the Bill, empower the Government to prescribe the rate of fees, to be remitted to the Village Panchayat 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 219W proposed to be inserted by clause 9 of the Bill, empower the Village Panchayats 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 219W proposed to be inserted by clause 9 of the Bill, empower the Government to prescribe the period for realising a fixed amount as additional fee in addition to the usual license fee if an applicant who applies for license as per section 232 intends to sell plastic bags or plastic covers through his establishment.

6. Clause (c) of sub-section (1) of section 219W proposed to be inserted by clause 9 of the Bill, empower the Panchayats to make bye-laws regarding the method of segregation and management of waste plastic bags and covers by the users, from other wastes.

7. Section 219X proposed to be inserted by clause 9 of the Bill, empower the Government to prescribe the manner in which the fund by name "Waste Disposal Fund" shall be managed by the Village Panchayat.

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.

M. K. MUNEER.

EXTRACT OF THE RELEVANT PORTION FROM
THE KERALA PANCHAYAT RAJ ACT, 1994
(13 OF 1994)

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1. *Short title and commencement.*—This Act may be called the Kerala Panchayat Raj Act, 1994.

(2) It extends to the whole of the State of Kerala except the areas which are within the limits of the Cantonments, Nagar Panchayats, Municipal Councils, Municipal Corporations and the Industrial areas of the State.

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4. *Power of the Government to constitute and specify the name and headquarter of Panchayat.*—(1) The Government shall, by notification in the Gazette, constitute with effect from such date as may be specified in the notification,—

(a) a Village Panchayat for each village or for group of villages,

(b) a Block Panchayat at intermediate level; and

(c) a District Panchayat for each District Panchayat are and specify the names and headquarters of such Panchayats.

(2) The Government may, at the request of the panchayat concerned, or after consultation with the panchayat and after previous publication of the proposal by notification,—

(a) increase the area of any Village Panchayat by including within such panchayat area any village or group of villages;

(b) diminish the area of any Village Panchayat by excluding from such panchayat area any village or group of villages;

(c) alter the headquarters of a panchayat at any level;

(d) alter the name of a panchayat at any level:

Provided that any alteration extending or reducing the area of a Village Panchayat under clause (a) or clause (b) shall not be brought into force before the expiry of the term of the existing committee of that panchayat.

(3) The Government may after consultation with the panchayat, pass such orders as they deem fit as to the disposal of any part of the property vested in

a Village Panchayat which has ceased to exercise jurisdiction over any village or group of villages and the discharge of the liabilities of the Village Panchayat relating to such property of arising from such village including all matters connected therewith or incidental thereto.

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10. *Division of Panchayats into Constituencies.*—The Government shall by notification in the Gazette, constitute a Delimitation Commission consisting of the State Election Commission as the Chairman and four Officers, not below the rank of Secretary to Government, as members. The said Delimitation Commission shall, as soon as may be after fixing the strength of a Panchayat at any level under section 6 and after determining the number of seats to be reserved for Scheduled Castes, Scheduled Tribes and for Women,—

(a) divide every Panchayat into as many constituencies as there are seats and fix the boundaries of such constituencies:

Provided that the population of each constituency shall, as far as practicable, be the same throughout the Panchayat area:

Provided further that where that territorial area of a Block Panchayat is divided into constituencies, the boundaries of such constituencies shall not divided any constituency of any Village Panchayat and where the territorial area of a District Panchayat is divided into constituencies the boundaries of such constituencies shall not divided any constituency of any Village Panchayat or of any Block Panchayat, into more that one division.

(1A) The Officers for the functioning of the Delimitation Commission, procedure for the conduct of meeting including quorum and other related matters shall be such, as may be prescribed.

(IB) The State Election Commission or the Officer authorised by it in this behalf shall, on determination by the Government of the number of seats to be reserved, earmarked and constituency or constituencies to be reserved for Scheduled Castes, Scheduled Tribes or Women.

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(3) An order made by the State Election Commission or the Officer authorised by it or the Delimitation Commission under this section shall not be called in question in any Court of law.

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21. *Meaning of 'ordinarily resident'.*—(1) A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein.

(2) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(3) A Member of Parliament or of the State Legislature or President or Vice-President of a Panchayat at any level shall not during the term of his office cease to be ordinarily resident in the constituency, in the electoral roll of which he is registered as an elector, at the time of his election as such member, or President or Vice-President by reason only of his absence from that constituency in connection with his duties as such member or President or Vice-President, as the case may be.

(4) A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness, or who is detained in prison or other legal custody at any place, shall not by reason thereof only be deemed to be ordinarily resident therein.

(5) If in any case a question arises as to whether a person is ordinarily resident at a place at any relevant time, the question shall be determined by the Election Commission with reference to all the facts of the case and to such rules as may be made in this behalf.

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30. *Disqualification of Officers and employees of Government, local authorities etc.*—(1) No Officer or employee in the service of the State or Central Government or of a local authority or a corporation controlled by the State or Central Government or of a local authority or by the State or Central Government or of a local authority or any company in which the State or Central Government or a local authority has not less than fifty one per cent share or of a statutory Board or of any University in the State shall be qualified, for election or for holding office as a member of a Panchayat at any level.

Explanation:—For the purpose of this section, company means a Government company as defined in section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a Co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969).

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149. *Term of office of members.*—(1) The term of office of members of a village panchayat, a block panchayat or a district panchayat shall be five years from the date fixed for convening the first meeting of that panchayat.

(2) Ordinary vacancies in the office of members of panchayat at any level shall be filled at general elections which shall be fixed by the Government to take place on such day or days within three months before the occurrence of the vacancies as they think fit.

(3) A casual vacancy in the office of a member of panchayat at any level shall be filled by the State Election Commission, within six months after the occurrence of the vacancy, through a bye-election.

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154. *Duty of retiring President, etc. to hand over charge of office.*—(1) On the election of a new President or Vice-President, it shall be the duty of the retiring President or, as the case may be, Vice-President to hand over to him the charge of the respective office, and deliver to him the record and property belonging to the Panchayat concerned and in the latter's custody.

(2) The provisions of sub-section (1) shall apply mutatis mutandis to a retiring member in the matter of handing over of charge of his office.

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219U. *Seizure and confiscation of vehicle used for carrying filth or excreta.*—(1) The Secretary of the Panchayat or an officer of the Panchayat authorized by the Secretary in this behalf or a police officer not below the rank of Sub-Inspector shall, seize a vehicle carrying filth or excreta through public place or public road with the intention or preparation to commit an offence under Section 219S or having reasonable cause to suspect that the vehicle is on its return after being used for such deposit, and shall after following such procedures as may be prescribed produce before the Sub-Divisional Magistrate having jurisdiction.

(2) After conducting such inquiry and following such procedures as may be prescribed, the vehicle so seized may be released or confiscated, as the case may be.

(3) Where the vehicle is confiscated, it shall be auctioned and the amount be credited to the Panchayat Fund.

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235AB. *Power to regularise the unlawful building construction.*—(1) Notwithstanding anything contained in this Act, if any person or institution unlawfully developed any land or constructed any building on or before 15th October, 1999 the Government may, on realisation of a compounding fee as prescribed, regularise such land development or building construction:

Provided that such regularization shall not adversely affect any planning scheme or master plan, approved under the existing provisions of the Town Planning Act:

Provided further that no building construction shall be regularised, which is done in contravention of the provisions in respect of the security arrangements provided in this Act, or the building rules made thereunder.

(2) Application for regularisation under sub-section (1) shall be submitted within such time and in such manner as prescribed.

Explanation:—For the purpose of this Act, unlawful construction means any construction for which the Secretary shall have no power to regularise under section 235W of this Act or any construction or reconstruction done in contravention of the provision of this Act or the building rules made thereunder or in contravention of any approved plan or any construction done in deviation of any exemption order sanctioned by the Government or any condition specified therein.

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