

Thirteenth Kerala Legislative Assembly
Bill No. 256

THE KERALA STATE COMMISSION FOR MINORITIES
BILL, 2013

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THE KERALA STATE COMMISSION FOR MINORITIES BILL, 2013

A

BILL

to constitute a State Commission for Minorities and to provide for matters connected therewith or incidental thereto.

Preamble.—WHEREAS, it is expedient to constitute a Commission for the Minorities in the State of Kerala and to provide for matters connected therewith or incidental thereto;

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

CHAPTER I

PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Kerala State Commission for Minorities Act, 2013.

(2) It shall be deemed to have come into force on the 15th day of May, 2013.

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

(a) “Commission” means the Kerala State Commission for Minorities constituted under section 3;

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

(c) “Member” means a member of the Commission and includes the Chairperson;

(d) “Minority” means a community notified by the Central Government under the National Commission for Minorities Act, 1992 (Central Act 19 of 1992);

(e) “prescribed” means prescribed by rules made under this Act.

CHAPTER II

3. *Constitution of the Kerala State Commission for Minorities.*—(1) The Government shall, as soon as may be, after the commencement of this Act, by notification in the Gazette, constitute a body to be known as the “Kerala State Commission for Minorities” to exercise the powers and to perform the functions conferred on it under this Act.

(2) The Commission shall consist of the following members, namely:—

(a) a Chairperson belonging to a minority community in the State, having special knowledge in matters relating to the minority and knowledge in law, nominated by the Government;

(b) a member belonging to another minority community in the State and having special knowledge in matters relating to minority, nominated by the Government;

(c) a woman belonging to minority community in the State having special knowledge in matters relating to minority and who has proved working excellence in such matters, nominated by the Government;

(d) An officer not below the rank of an Additional Secretary to Government, who shall be the Member Secretary and the Chief Executive Officer of the Commission, who shall exercise such powers and discharge such functions as may be authorised by the Commission.

4. *Term of office and conditions of service of Chairperson and Members.*—

(1) Each member may continue in office for a term of three years from the date on which he assumes office.

(2) The Chairperson or member of the Commission may, at any time, by giving intimation to the Government in writing under his hand, resign his office.

(3) The Government shall remove a person from the office of the Chairperson or of a member, if that person,—

(a) becomes an undischarged insolvent; or

(b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude; or

(c) becomes of unsound mind and stands so declared by a competent court; or

(d) refuses to work or becomes incapable to work; or

(e) without obtaining leave of absence from the Commission, does not attend three consecutive meetings of the Commission; or

(f) in the opinion of the Government, has so abused the official position of Chairperson or Member as to render that person's continuance in office detrimental to the interest of minorities or public interest:

Provided that no person shall be removed under this sub-section unless that person has been given an opportunity of being heard in the matter.

(4) A vacancy occurred under sub-section (2) or otherwise shall be filled by fresh nomination.

(5) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

5. *Officers and other employees of the Commission.*—(1) The Government shall provide such officers and employees as may be required for the efficient performance of the Commission.

(2) The salary and allowances payable to, and the terms and conditions of service of the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

6. *Salary, allowances and administrative expenses to be paid out of grants.*—The salary and allowances payable to the Chairperson and Members, and the administrative expenses, including salary, allowances and pension payable to the officers and other employees referred to in section 5, shall be paid out of grant referred to in sub-section (1) of section 15.

7. *Vacancies etc., not to invalidate proceedings of the Commission.*—No act or proceeding of the Commission shall be invalid on the ground of any defect in the constitution of the Commission or the existence of any vacancy in the Commission.

8. *Procedure to be regulated by the Commission.*—(1) The Commission shall meet as and when necessary at such time and place as the Chairperson thinks fit:

Provided that such meeting shall be held at least once in three months.

(2) The Commission shall have the power to regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Member Secretary or any other officer of the Commission duly authorised in writing in this behalf by the Member Secretary.

CHAPTER III

POWERS AND FUNCTIONS OF THE COMMISSION

9. *Functions of the Commission.*—The Commission shall perform the following functions, namely:—

(a) to evaluate the progress of the development of minorities in the State;

(b) to enquire and monitor the manner of functioning of various safeguards provided for, in the Constitution of India or under any other law or under any order of the Government, for the welfare and protection of the minorities in Kerala;

(c) to enquire into specific complaints about deprivation of social, economic, educational and linguistic rights and safeguards of the minorities and to bring such matters into the notice of appropriate authorities;

(d) to participate in, and advise on, the planning proceedings for the socio-economic development of the minorities;

(e) to make recommendations as to the measures to be taken by the Government for the effective implementation of the socio-economic development, welfare and safeguards of the minorities and to make report to the Government annually or at such other time, as the Commission may deem fit;

(f) to cause studies to be undertaken into problems arising out of discrimination against minorities and recommend measures for their removal;

(g) to conduct studies, research and analysis on the issues relating to social, economic and educational progress of minorities;

(h) to suggest appropriate measures to be adopted by the Government in respect of minority;

(i) to submit report to the Government periodically or specially, on any matter pertaining to minorities, particularly in respect of difficulties being faced by them;

(j) to discharge such other functions in relation to the protection, welfare, development and advancement of the minorities, as may be prescribed; and

(k) any other matter pertaining to minorities, entrusted by the Government:

Provided that if any matter stated in this section is dealt with by the National Commission for Minorities, the State Commission for Minorities shall cease to have jurisdiction on such matters.

10. *Certificate.*—The State Government shall, on the recommendation of the State Commission for Minorities, issue Minority Community Certificate to the residents of the State belonging to Minority Communities in the manner and form as may be prescribed.

11. *Laying of Report.*—The State Government shall cause the reports referred to in clause (e) of section 9, to be laid before the Legislative Assembly explaining the action taken or proposed to be taken thereon and also the reasons, if any, for non-acceptance of the recommendations.

12. *Powers of the Commission.*—(1) The Commission, while performing its functions under section 9, shall have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person from any part of the State and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) demanding any public record or copy thereof from any court or office;
- (e) the examination of witnesses and inspection of records; and
- (f) any other matter as may be prescribed.

(2) Subject to the claim that may be raised by any person that he has special powers under any existing law, the Commission shall have the power to require any person to furnish information relating to any matter or subject which in the opinion of the Commission are the basis of, or relevant to, the subject of inquiry and the person so required shall be included within the meaning of sections 176 and 177 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and be deemed to be liable as per law to furnish such information.

(3) If the Commission or any officer not below the rank of Gazetted Officer, who is specially authorised by the Commission in this behalf, has sufficient reason to believe that records connected with the subject under enquiry are likely to be traced, may enter into any building or place at the time as may be prescribed and subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), to the extent they are applicable, seize any such record or take its extracts or copies.

(4) The Commission shall be deemed to be a civil court and where an offence as defined in sections 175, 178, 180 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860) is committed in the presence of the Commission, the Commission shall, after recording the statement of the accused and the facts pertaining to the offence as provided in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the same shall be transferred to the Magistrate having jurisdiction to try it and the Magistrate shall proceed to hear the complaint against the accused as if it has been transferred to him under section 346 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) All the proceedings before the Commission under section 9 shall, for the purposes of section 196 of the Indian Penal Code, 1860 (Central Act 45 of 1860), be deemed to be the judicial proceedings within the meaning of sections 193 and 228 and for all the purposes of Chapter XXVI and section 195 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Commission shall be deemed to be a civil court.

(6) The Commission may, for the purpose of taking evidence in connection with enquiries, utilise the services of any officer of the State Government or investigation agency.

(7) The officer or investigation agency whose services have been utilised under sub-section (6), shall take evidence after making enquiry relating to it and the report thereon shall be submitted to the Commission within the period fixed by the Commission in this behalf.

(8) The Commission shall satisfy itself regarding the correctness of any inferences arrived at in the report or facts in the report submitted under sub-section (7) and for this purpose it may conduct enquiry as it deems fit, including the examination of the person who had taken the evidence or assisted for the same.

13. *Statements given by individuals to the Commission.*—The statement given by an individual about himself at the time of giving evidence before the Commission, shall not be used against the said individual in the proceedings before any civil court or criminal court, except in prosecution proceedings for giving false evidence by such statement:

Provided that such statement shall be,—

(a) given as a reply to a question which is required by the Commission to be answered by that person; or

(b) relevant to the subject matter in which the evidence is taken.

14. *Individuals likely to be affected prejudicially to be heard.*—At any stage of taking evidence, if the Commission,—

(a) is of the opinion that it is necessary to enquire into the conduct of any individual; or

(b) is of the opinion that taking of evidence will prejudicially affect the reputation of any individual;

such person shall be given a reasonable opportunity of being heard and to produce evidence to defend, in the enquiry.

CHAPTER IV

FINANCE, ACCOUNTS AND AUDIT

15. *Grants by the Government.*—(1) The Government shall, after due appropriation made by the State Legislature by law in this behalf, pay to the Commission, by way of grants, such sums of money, which is considered to be necessary for being utilised for the purposes of this Act.

(2) The Commission may spend such sums, out of grants, as it thinks fit, for performing the functions under this Act and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

16. *Accounts and Audit.*—(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed.

(2) The accounts of the Commission shall be audited annually by the auditor entrusted by the Comptroller and Auditor General in this behalf.

(3) All the accounts and other records of the Commission shall be made available to the auditor for the purpose of the audit.

17. *Audit report to be laid before the Legislature.*—The Government shall cause the audit reports to be laid, as soon as may be after they are received, before the Legislative Assembly.

18. *Annual Report.*—The Commission shall, for each financial year, prepare annual report giving complete information of its activities in the previous financial year in the prescribed form and time and shall also forward a copy of it to the Government directly.

CHAPTER V

MISCELLANEOUS

19. *Chairperson, Members and employees of the Commission to be public servants.*—The Chairperson, Members, and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

20. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act, either prospectively or retrospectively.

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

(a) salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members under sub-section (5) of section 4 and of officers and other employees under sub-section (2) of section 5;

(b) the manner and form of issuing Minority Community Certificate by the State Government under section 10;

(c) any other matter under clause (f) of section 12;

(d) the form of annual statement of accounts to be prepared under sub-section (1) of section 16;

(e) the form in, and time at, which the annual report shall be prepared under section 18;

(f) any other matter which is to be, or may be, prescribed.

(3) 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.

21. *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 Gazette, make provisions not inconsistent with the provisions of this Act which appear to it to be necessary or expedient, for removing the difficulty:

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

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

22. *Repeal and saving.*—(1) The Kerala State Commission for Minorities Ordinance, 2013 (44 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.

STATEMENT OF OBJECTS AND REASONS

The conference of the National Minority Commission and the Chairpersons of the State Minority Commissions held on 4th March, 2003 had recommended that all States shall constitute State Minority Commissions conferring statutory status in the form of the National Minority Commission. Considering the additional financial liability, the State Government had temporarily postponed the idea of constitution of the Minority Commission and the same was informed to the National Minority Commission. In the conference of the Chairpersons of the State Minority Commissions held on 8th February, 2004, the need for constituting State Minority Commission in all the States was raised unanimously. Accordingly, for constituting a Commission for Minorities in the State, the Government have decided to make a legislation in the model of the National Commission for Minorities Act, 1992 (Central Act 19 of 1992).

2. Though a Bill to bring an Act of the State Legislative Assembly on this subject was published as Bill No. 173 of the Thirteenth Kerala Legislative Assembly, the same could not be introduced in, and passed by the Legislative Assembly.

3. As the Legislative Assembly was not in session and the above proposal had to be given effect to immediately, the Kerala State Commission for Minorities Ordinance, 2013 (37 of 2013) was promulgated by the Kerala Governor on the 14th day of May, 2013 and the same was published in the Kerala Gazette Extraordinary No. 1350 dated 15th May, 2013.

4. Though a Bill to replace the said Ordinance by an Act of the Kerala Legislature was published as Bill No. 239 of the Thirteenth Kerala Legislative 79/2014.

Assembly, the same could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced on 10th June, 2013 and ended on 9th July, 2013.

5. In order to keep alive the provisions of the said Ordinance, the Kerala State Commission for Minorities Ordinance, 2013 (44 of 2013) was promulgated by the Governor of Kerala on the 18th day of July, 2013 and the same was published in the Kerala Gazette Extraordinary No. 2015 dated, 19th July, 2013.

6. The Bill is intended to replace Ordinance No. 44 of 2013 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

Sub-clause (5) of clause 4 of the Bill provides that the salary and allowances payable to the Chairperson and the members shall be in the manner as may be prescribed. Sub-clause (2) of clause 5 of the Bill provides that the salary and allowances payable to the officers and other employees appointed for the Commission shall be in the manner as may be prescribed. It is provided in clause 6 of the Bill that the salary and allowances payable to the Chairperson and the Members and the administrative expenses including salary, allowances and pension payable to the officers and other employees referred to in clause 5 shall be paid out of the grant referred to in sub-clause (1) of clause 15. Sub-clause (2) of clause 16 of the Bill provides that the accounts of the Commission shall be audited annually by the auditor entrusted by the Comptroller and Auditor General in this behalf.

If the Bill is enacted and brought into operation, the fund required for meeting the above expenses for the effective functioning of the Commission have to be given by the Government by way of grant. Under this item, the minimum recurring expenditure of Rs. 150 lakhs and non recurring expenditure of Rs. 50 lakhs is expected from the consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to empower the Government to constitute the Kerala State Commission for Minorities, by notification in the Gazette.

2. Sub-clause (5) of clause 4 and sub-clause (2) of clause 5 of the Bill seeks to empower the Government to prescribe the salary and allowances payable to the Chairperson and the Members, officers and other employees of the Commission and the other terms and conditions of their service.

3. Clause 10 of the Bill seeks to empower the Government to prescribe by rules, the form and manner of issuing the Minority Community Certificate, by the State Government.

4. Item (f) of sub-clause (1) of clause 12 of the Bill seeks to empower the Government to prescribe any other matter in which the Commission shall have the power of a civil court.

5. Sub-clause (3) of clause 12 of the Bill seeks to empower the Government to prescribe by rules the time to enter in to any building or place by the Commission or the officer authorised by the Commission, in connection with enquiry.

6. Sub-clause (1) of clause 16 of the Bill seeks to empower the Government to prescribe the form in which the annual statement of accounts is to be prepared.

7. Clause 18 of the Bill seeks to empower the Government to prescribe the form and time to prepare annual report of the Commission.

8. Sub-clause (1) of clause 20 of the Bill seeks to empower the Government to make rules, by notification in the Gazette, for implementing the provisions of the Act.

9. Sub-clause (1) of clause 21 of the Bill seeks to empower the Government to issue orders not inconsistent with the provisions of this Act, for the purpose of removing any difficulty arising in implementing the provisions of the Act.

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

MANJALAMKUZHI ALI.