

Thirteenth Kerala Legislative Assembly
Bill No. 324

THE KERALA MUNICIPALITY (SECOND AMENDMENT)
BILL, 2014

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1416/2014.

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[Translation in English of “2014-ലെ കേരള മുനിസിപ്പാലിറ്റി (രണ്ടാം ഭേദഗതി) ബിൽ” published under the authority of the Governor.]

THE KERALA MUNICIPALITY (SECOND AMENDMENT)

BILL, 2014

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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-fifth Year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Municipality (Amendment) Act, 2014.

(2) Sections 3, 4 and 5 of the Act shall be deemed to have come into force on 13th day of November, 2014 and section 2 shall come into force at once.

2. *Insertion of new section after section 77.*—In the Kerala Municipality Act, 1994 (20 of 1994) (hereinafter referred to as the principal Act), after section 77, the following section shall be inserted, namely:—

“77A. *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 located.”.

3. *Amendment of section 447.*—In section 447 of the principal Act,—

(1) for the heading “INDUSTRIES, FACTORIES AND OTHER TRADES” before the said section, the heading “INDUSTRIES, FACTORIES, TRADES AND OTHER SERVICES” shall be substituted;

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(2) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) No place within a municipal area shall be used,—

(a) generally for industries, factories, trades, workplaces and other services which directly or indirectly adversely affect public interests such as environment, public safety and public health or cause nuisance;

(b) and particularly for such matters as may be prescribed,—

(i) without payment of licence fee at such rate as may be prescribed by the Government for each purpose or at such rate as the Municipality may fix subject to the said rate by a notification published in such manner as may be prescribed; and

(ii) except in accordance with the terms of the licence granted in such manner as may be prescribed:

Provided that the licence shall be deemed to contain conditions to the effect that anything done in accordance with the licence shall not be detrimental to any public interest and in the matter of services, admission and service to the place wherein it is provided shall be available to any member of the public:

Provided further that if adequate steps for the protection of environment/ public interest have not been taken as per the conditions of the licence, the use of a land for which licence is required under this section for such matters as may be prescribed, if not otherwise proved, shall be deemed to have been causing nuisance:

Provided also that a notification of the Municipality under this section shall come into force on the date of completion of sixty days from the date of its publication.

(3) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The power to grant a licence, after factual verification, on an application requesting sanction for using a place in the municipality area for starting an industry, factory or workplace or for running a trade or service in such manner as may be prescribed or to reject the same in public interest, on reasonable grounds, by an order in writing, shall be vested in the Council and the Secretary shall, after detailed enquiry and collection of information furnish a report to enable the Council to take an appropriate decision in the matter.

The decision of the Council shall be intimated to the applicant within thirty days from the date of receipt of application. In cases where additional information has to be collected from the applicant or other authorities, the aforesaid period shall be deemed to have been extended taking into account the delay for the same. Information regarding such unavoidable delay shall be intimated to the applicant by the Secretary in time.”.

(4) for sub-section (3A) the following sub-section shall be substituted, namely:—

“(3A) All applications for licences for trades and services except those to be considered by the Council under sub-section (3) and those to be considered by the Council among the licences for running trade or for providing services in such manner as may be prescribed, shall be disposed of by the Secretary by an order in writing granting the licence or rejecting the same in public interest and on reasonable grounds, within thirty days from the date of receipt of the same. In cases where additional information has to be collected from the applicant or other authorities, before granting or rejecting the licence, the period for granting the licence shall be deemed to have been extended for a period equivalent to the period required for the same and information regarding such unavoidable delay shall be intimated to the applicant by the Secretary.”.

4. *Amendment of section 448.*—In section 448 of the principal Act,—

(1) for the marginal heading and sub-section (1), the following marginal heading and sub-section shall be substituted, namely:—

“448. *Licence for the construction of industry, factory or other workplace and to use steam power or any other power therein or to install other machineries.*—(1) Any person who intends,—

(a) to use a place to construct an industrial plant, factory or other workplace or to construct or establish an industrial plant or factory in that place or to use steam power, water power, other mechanical power or electrical power therein; or

(b) to install in any premises of the said place other machinery or manufacturing plant run by steam power, water power, other mechanical power or electrical power, not being exempted by this Act or the rules made thereunder, shall apply for a licence of the Municipality under section 447 to use the said place for the said purpose and before constructing an industrial plant or factory or workplace or installing machinery or plant, shall submit an application to the Secretary of the Municipality in such form as may be prescribed, for permission to take up and carry out the proposed work.”.

(2) for the proviso to sub-section (4), the following proviso shall be substituted, namely:—

“Provided that no licence under sections 447 and 448 shall be granted by the Municipality except on being satisfied on the report of the Revenue department, Mining and Geology department and State Pollution Control Board that the construction and working of the proposed factory or industrial establishment shall not adversely affect the environment, water resources and natural characteristics of the place.”

5. *Amendment to First Schedule.*—In the First Schedule of the principal Act, under the heading “FUNCTIONS OF THE MUNICIPALITY” and sub-heading “A. Mandatory Functions”, against item 19, for the words “Issue of licences to dangerous and offensive trades and industries”, the words “Issue of licences to industries, trades and services protecting public interests such as environment, public safety and public health” shall be substituted.

6. *Repeal and Saving.*—(1) The Kerala Municipality (Amendment) Ordinance, 2014 (27 of 2014) is hereby repealed.

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

STATEMENT OF OBJECTS AND REASONS

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 Municipality Act, 1994. In these circumstances, the Government consider that the Kerala Municipality Act, 1994 has to be amended to insert a new section 77A 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 Municipalities at various level, subject to the provisions of section 20A of the Representation of the People Act, 1950.

2. Section 447 of the Kerala Municipality Act, 1994 provides for the issue of licence to industries, factories and other trades. It is proposed to amend the said provision to provide for the issue of licence for using a place in the

municipal area, for providing services also. Section 448 of the said Act provides for the procedure in submitting an application to the Secretary for the construction, establishment or installation of factory, workshop or workplace in which steam or other power is to be used. For the purpose of making timely modifications to the provisions regarding the issue of licence by the Municipalities and Municipal Corporations by ensuring protection of environment, water resources, natural characteristics etc. of the municipal area concerned, a comprehensive amendment is necessary in the abovesaid provisions of the Kerala Municipality Act, 1994. The Kerala Municipality (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 2011 are required to be amended for providing the licence fee payable for services provided in the municipal area. Such an amendment will result in increase in the revenue of Municipalities and Municipal Corporations also.

3. As the Legislative Assembly was not in session, the Governor of Kerala has promulgated the Kerala Municipality (Amendment) Ordinance, 2014 (27 of 2014) on the 12th day of November, 2014 and the same was published in the Kerala Gazette Extraordinary No. 2725 dated 13th November, 2014.

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

FINANCIAL MEMORANDUM

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause (b) of sub-section (1) of section 447 proposed to be inserted in the principal Act by clause 3 of the Bill seeks to empower the Government to prescribe the matters for which a place in a municipal area cannot be particularly used without licence.

2. Clause (b) of sub-section (1) of section 447 of the Act proposed to be inserted in the principal Act by clause 3 of the Bill seeks to empower the Government to prescribe the manner in which the notification fixing the licence fee under the said section is to be published by the Municipality.

3. Clause (b) of sub-section (1) of section 447 of the Act proposed to be inserted in the principal Act by clause 3 of the Bill seeks to empower the Government to prescribe the manner in which licence is to be granted under the said clause.

4. Sub-section (1) of section 448 proposed to be amended in the principal Act by clause 4 of the Bill seeks to empower the Government to prescribe the form of application to be submitted before the Secretary of the Municipality before constructing an industrial plant or factory or workplace or installing machinery or plant for permission to take up and carry out the proposed work.

5. The matters in respect of which rules may be made or notifications may be issued are matters of procedure and are of routine or of administrative 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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77. *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 reasons 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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447. *Purpose for which places may not be used without licence.*—(1) A Municipality may notify by publication in the Gazette or in any other manner as may be prescribed that no place within the Municipal area shall be used for any one or more of the purposes specified ⁴⁰[in the rules made in this behalf] or for any other trade without a licence and except in accordance with the conditions specified therein and where the licence is for running hostels, restaurants, eating houses, coffee houses, Abkari shop, laundries, travel agency or barber saloons, the licence shall always contain and be deemed to contain a condition that admission or service therein shall be available to any member of the public:

Provided that no notification under this sub-section shall take effect before the expiry of sixty days from the date of its publication.

(2) The owner or occupier of every such place shall within thirty days of the publication of the notification apply to the Secretary for a licence for the use of such place for such purpose.

⁴¹[(3) The Council shall, within thirty days from the date of receipt of the application, by order and subject to such terms and conditions as it deems fit, either grant a licence for the use of a place for conducting a dangerous or offensive trade or in the interest of the public refuse to grant such licence.

(3A) The Secretary shall, within fifteen days from the date of receipt of the application, by order and subject to such terms and condition as he deems fit, either grant licence for using a place to conduct a common trade or in the interest of the public refuse to grant such licence.]

⁴²[(4) The period of licence granted under sub-section (3) and (3A) or a licence deemed to have been granted under sub-section (6) shall, unless a date is specified therein, expire on completion of three years from the date of its issue.

(5) Every application for any licence or permission or for its renewal under this Act or the rules or bye-laws made thereunder, shall be made not less than thirty days and not more than ninety days before the earliest day on which such licence or permission is required or the licence expires.

(6) If the order on an application for any licence or permission are not communicated to the applicant within thirty days after the receipt of the application by the Secretary or within such longer period, as may be prescribed in any class of cases the application shall be deemed to have been allowed for the period required in the application, subject to the Act, rules and bye-laws and all conditions which would have been ordinary imposed.]

(b) to install in any premises any machinery or manufacturing plants driven by steam, water or other power not being machinery or manufacturing plant ⁴⁵[exempted by this Act or the rules made thereunder] shall,

before beginning such construction or establishment make ⁴⁶[an application to the Municipality in the prescribed form addressed to the Secretary] for permission to undertake the intended work.

(2) The application under sub-section (1) shall specify the maximum number of workers proposed to be employed on any day in the factory, workshop, workplace or premises and shall be accompanied by—

(i) a plan of the factory, workshop, workplace or premises prepared in such manner as may be prescribed; and

(ii) such particulars as to the power, machinery, plant or premises as may be required by bye-laws made in this behalf.

⁴⁷[(3) The Secretary shall, as soon as may be, after the receipt of the application, report to the Council if the establishment of the factory or workshop or workplace or the installation of the machinery or manufacturing plant, for which permission is applied for, is objectionable by reason of causing nuisance or pollution due to the density of population in the neighbourhood and the Council shall, after having considered the application and the reports of the Secretary and of such other authorities specified in sub-section (4) and as far as possible, any how, within a maximum period of 45 days from the date of receipt of the application,—

(a) grant the permission applied for absolutely or subject to such conditions as it deems fit; or

(b) refuse the permission for reasons to be recorded;]

⁴⁸[(4) The Council shall, before granting or refusing the permission under sub-section (3), obtain and consider,—

(a) if the factory or workshop or workplace or premises comes within the purview of the Factories Act, 1948 (Central Act 63 of 1948), a report of the Inspector of the Factories appointed under the Factories Act, 1948 (Central Act 63 of 1948) or an officer of the Industries Department not below the rank of the Industries Extension Officer having jurisdiction over the area, regarding the

adequacy of ventilation and light, the sufficiency of the height and dimensions of the rooms and doors, the suitability of the exits to be used in case of fire etc. in the plan of the factory or workshop or workplace or premises and such other matters as may be prescribed;

(b) if the connected load of the machinery proposed to be installed exceeds twenty-five horse power or the machinery and other institutions are of the nature that there is possibility to cause nuisance or pollution or the said industry is the one as specified in the seventh schedule, a report of the District Medical Officer of Health, regarding the possibility to cause nuisance or pollution; and

(c) if the connected load of the machinery proposed to be installed exceeds twenty-five horse power or the said industry is the one included in the eighth schedule, a report of the Divisional Fire Officer or any other officer authorised by him, regarding the sufficiency of the planned fire prevention and fire fighting activities:

Provided that if a declaration is given by the applicant recommended by the officer in the Industries Department or the Kerala State Pollution Control Board authorised for this behalf, to the effect that no pollution is involved in any industry, in respect of such industry report under clause (b) may not be required.]

(5) More than nine workers shall not be employed on any day in any factory, workshop, workplace or premises unless the permission granted in respect thereof under sub-section(3) authorises such employment, or unless fresh permission under the said sub-section authorising such employment has been obtained.

(6) The grant of permission under this section—

(a) shall, in regard to the replacement of machinery, the levy of fees, the conditions to be observed be subject to such restrictions and control as may be prescribed, and

(b) shall not be deemed to dispense with the necessity for compliance with the provisions of section 387 and 389 or sections 398 and 399, as the case may be.

*Explanation:—*The word “worker” in sub-section (2) and (5) shall, in relation to any factory, workshop, workplace or premises have the same meaning as in the Factories Act, 1948 (Central Act 63 of 1948).

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