

Fourteenth Kerala Legislative Assembly

Bill No. 222

**THE KERALA MICRO SMALL AND MEDIUM
ENTERPRISES FACILITATION BILL, 2019**

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[Translation in English of “2019-ലെ കേരള സൂക്ഷ്മ ചെറുകിട ഇടത്തരം വ്യവസായ സ്ഥാപനങ്ങൾ സുഗമമാക്കൽ ബിൽ” published under the authority of the Governor.]

**THE KERALA MICRO SMALL AND MEDIUM ENTERPRISES
FACILITATION BILL, 2019**

A

BILL

to provide for exemption from certain approvals and inspections required for the establishment and operation of micro small and medium enterprises in the State and matters connected therewith and incidental thereto.

Preamble.—WHEREAS, it is expedient to give effect to exemption from certain approvals and inspections required for establishment and operation of micro small and medium enterprises in the State and matters connected therewith and incidental thereto;

BE it enacted in the Seventieth Year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Micro Small and Medium Enterprises Facilitation Act, 2019.

(2) It shall come into force at once.

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

(a) “Acknowledgement Certificate” means the Acknowledgement Certificate issued under sub-section (2) of section 5;

(b) “Appellate Authority” means the Appellate Authority constituted under section 11;

(c) “approval” means licenses, permissions, approvals, clearances, registration, consents, no objection certificate and the like, required under any State law in connection with the establishment or operation of micro small and medium enterprise in the State;

(d) "Competent Authority" means any department or agency of the Government, a statutory body, Corporation owned by State, Local Self Government Institutions, Urban Development Authorities, or any other Authority or Agency constituted or established by or under any State law or under the administrative control of the Government, which is entrusted with the powers or responsibilities to grant or issue approval for establishment or operation of enterprises in the State;

(e) "District Board" means the District Board constituted under section 4 of the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (5 of 2000);

(f) "enterprises" means micro small or medium enterprises;

(g) "Government" means the Government of Kerala;

(h) "micro, small or medium enterprises" means the micro, small or medium enterprises, as defined in the Micro Small and Medium Enterprises Development Act, 2006 (Central Act 27 of 2006)

(i) "nodal agency" means nodal agency referred to in section 3;

(j) "notification" means a notification published in the Official Gazette of the Government of Kerala.

(k) "prescribed" means prescribed by rules made under this Act;

(l) "State" means the State of Kerala;

(m) "State Board" means the State Board constituted under section 3 of the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (5 of 2000);

3. *Nodal Agency.*—The District Board constituted under section 4 of the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, shall be the nodal agency for the purpose of this Act.

4. *Powers and functions of nodal Agency.*—(1) Subject to the superintendence, direction and control of the Government, the powers and functions of the nodal agency shall be as follows, namely:—

- (a) to assist and facilitate the establishment of enterprises in the State; and
- (b) to maintain the record of self certification and Acknowledgement Certificate received under sub-section (3) of section 5;
- (c) the Government may assign such other powers and functions to the nodal Agency as it may deem fit for giving effect to the provisions of this Act.

5. *Filing of Self Certification.*—(1) Any person who intends to start an enterprise other than those not included as 'Red Category' by the Kerala State Pollution Control Board, may furnish before the nodal agency a Self Certification to start such an enterprise in such form and in such manner, as may be prescribed.

(2) If any person has filed any application before the competent authority to obtain all or any of the approvals as defined in clause (c) of section 2 before the commencement of this Act, such person may also opt to furnish self certification, of intend to start an enterprise under sub-section (1) ;

(3) On receipt of a self certification completed in all respects, the nodal Agency shall, forthwith, issue an Acknowledgement Certificate, in the prescribed form, to the person who furnished the self certification under sub-section (1).

6. *Effect of the Acknowledgement Certificate.*—(1) An acknowledgement certificate issued under section 5 shall, for all purposes, have effect as if it is an approval as defined in clause (c) of section 2, for a period of three years from the date of its issuance and after the expiry of the said period of three years, such enterprise shall have to obtain required approvals as defined in clause (c) of section 2, within six months from the date of such expiry:

Provided that the acknowledgement certificate shall not entitle a person to use the land contrary to the provisions contained in the Kerala Conservation of Paddy Land and Wetland Act, 2008 (28 of 2008) and it shall also not entitle a person to use the land in deviation to the land use specified in the master plan notified under the Kerala Town and Country Planning Act, 2016 (9 of 2016), wherever such plan is in force.

(2) During the period of three years specified in sub-section (1), no competent authority shall undertake any inspection for the purpose of, or in connection with, any approval as defined in clause (c) of section 2.

7. *Grant of Exemption*.—Where the Government or any authority under it is empowered to exempt any enterprise from any approval or inspection or any provisions relating thereto, under any Central Act, the Government or, as the case may be, any such authority shall, subject to the provisions of such Central Act, exercise such powers to grant such exemption to an enterprise established in the State for a period of three years from the date of issue of the acknowledgement certificate under section 5.

8. *Offences and Penalties*.—(1) If the nodal agency finds that any enterprise, contravened the conditions or undertaking in the self certification given to the nodal agency such enterprise shall be punishable with fine for an amount not exceeding rupees five lakh after considering submission, if any, submitted by such enterprise;

(2) Where an offence under this Act is committed by an enterprise, the enterprise as well as every person in charge of, and responsible to, the enterprise for the conduct of its business at the time of commission of the offence, shall be deemed to be guilty of the offence and liable to be punished under this section:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment contained in this Act, 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.

(3) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or that commission of the offence is attributable to any neglect on the part of proprietor, managing partner, any director, manager, secretary or any other officer, such proprietor, managing partner, director, manager, or any other officer shall also be deemed to be guilty of that offence and shall be liable to be punished under this section.

Explanation.—For the purpose of this section,—

(a) enterprise means any body corporate and includes a firm or other association of individuals.

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

9. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Government or nodal agency or Competent Authority or Appellate Authority or any employee of the Government, for anything which, in good faith, is done or intended to be done under this Act or any rules made thereunder.

10. *Overriding effect of this Act on other laws.*—(1) The provisions of this Act shall have overriding effect, notwithstanding anything inconsistent therewith contained in any other law, for the time being in force.

(2) In particular and without prejudice to the generality of the foregoing provisions of this Act, such provisions shall have effect notwithstanding anything inconsistent therewith contained in the following enactments and the provisions of these enactments shall be read as amended in conformity with the provisions of this Act, namely:—

1. The Kerala Panchayat Raj Act, 1994 (13 of 1994)
2. The Kerala Municipality Act, 1994 (20 of 1994)
3. The Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960)
4. The Kerala Lift and Escalators Act, 2013 (18 of 2013)
5. Travancore-Cochin Public Health Act, 1955 (XVI of 1955)
6. Madras Public Health Act, 1939 (3 of 1939)

11. *Savings.*—Subject to the provisions of section 10, nothing in this Act shall be construed as exempting any enterprise from the application of the provisions of any law for the time being in force, or any regulatory measures and standards prescribed thereunder, except to the extent expressly provided in this Act.

12. *Appellate Authority and powers of the Appellate Authority.*—(1) The Appellate Authority under this Act shall be the State Board constituted under section 3 of the Kerala Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (5 of 2000), who shall exercise the powers of the Appellate Authority under this Act;

(2) Any person aggrieved by the decision of the nodal agency, may within thirty days from the date of such decision, file an appeal before the Appellate Authority, in such manner as may be prescribed.

(3) The Appellate Authority after receipt of appeal may call for additional details or documents as it may considered necessary and on production of such details or documents and after giving an opportunity of being heard to the aggrieved person and the nodal agency, the Appellate Authority shall dispose of such appeal within a period of thirty days from the date of filing of such appeal and the decision of the Appellate Authority on such appeal shall be final.

(4) Notwithstanding anything contained in any other law for the time being in force, the Appellate Authority may, either *suo-motu* or on a reference, examine any order passed by the nodal agency and pass appropriate orders as it deems fit, and such orders shall be final.

13. *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 such provisions not inconsistent with the provisions of this Act, as may appear to it, to be necessary and deemed fit, for removing the difficulty:

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

Every order made under this section shall be laid, as soon as may be, after it is made, before the State Legislature.

14. *Power to make rules.*—(1) The Government may, by a notification in the gazette, make rules, either prospectively or retrospectively, for the purposes of carrying into effect the provisions of this Act;

(2) 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.

STATEMENT OF OBJECTS AND REASONS

The Government have decided to grant exemption from certain approvals and inspections for the establishment and operation of the micro small and medium enterprises in the State with a view to promote industry in the State. The Government have decided to bring a legislation in the State, incorporating the provisions, that a person who intends to establish an enterprise may submit a self certification to the District Board constituted under section 4 of the Industrial Single Window Clearance Boards and Industrial Township Area Development Act (5 of 2000) which is designated as a nodal agency and on receipt of such self certification it shall have effect as an approval, for a period of three years, and after the expiry of said period, within a period of six months, such enterprises shall obtain approvals required for the establishment and operation of enterprise and also for providing other connected matters.

The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of Clause 5 of the Bill seeks to empower the Government to prescribe the manner and form in which the self certification shall be submitted before the nodal agency by an enterprise.

2. Clause 6 of the Bill seeks to empower the Government to prescribe the manner in which the acknowledgement certificate given to the enterprise has the effect of approval.

3. Sub-clause (2) of clause 12 of the Bill seeks to empower the Government to prescribe the manner in which appeal has to be submitted before Appellate Authority, by an aggrieved person by the decision of the nodal agency.

4. Clause 13 of the Bill seeks to empower the Government to make provisions not inconsistent with the provisions of the Act, by order published in the gazette, to remove any difficulty that may arise in giving effect to the provisions of the Act.

5. Clause 14 of the Bill seeks to empower the government, to make rules, by notification in the Gazette, either prospectively or retrospectively to carryout the purposes of the Act.

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

E. P. JAYARAJAN.