

THE ESSENTIAL SERVICES MAINTENANCE ACT, 1981

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THE ESSENTIAL SERVICES MAINTENANCE ACT, 1981

ACT NO. 40 OF 1981

[23rd September, 1981.]

An Act to provide for the maintenance of certain essential services and the normal life of the community.

BE it enacted by Parliament in the Thirty-second Year of the Republic of India as follows:—

1. Short title, extent, commencement and duration.—(1) This Act may be called the Essential Services Maintenance Act, 1981.

(2) It extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir in so far as it relates to any essential service connected with matters with respect to which Parliament has no power to make laws for that State.

(3) Sections 8 and 9 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 26th day of July, 1981.

(4) It shall cease to have effect on the expiry of ¹[nine years] from the date on which this Act receives the assent of the President except as respects things done or omitted to be done before such cesser of operation of this Act, and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon such cesser of operation of this Act as if it had then been repealed by a Central Act.

2. Definitions.—(1) In this Act, unless the context otherwise requires, —

(a) “essential service” means—

(i) any postal, telegraph or telephone service, including any service connected therewith;

(ii) any railway service or any transport service for the carriage of passengers or goods by air or any other transport service for the carriage of passengers or goods by land or water with respect to which Parliament has power to make laws;

(iii) any service connected with the operation or maintenance of aerodromes, or with the operation, repair or maintenance of aircraft, or any service in the International Airports Authority of India constituted under section 3 of the International Airports Authority Act, 1971 (43 of 1971);

(iv) any service in, or in connection with the working of, any major port, including any service connected with the loading, unloading, movement or storage of goods in any such port;

(v) any service connected with the clearance of goods or passengers through the customs or with the prevention of smuggling;

(vi) any service in any establishment of, or connected within the armed forces of the Union or, any other establishments or installations connected with defence;

(vii) any service in any establishment or undertaking dealing with the production of goods required for any purpose connected with defence;

(viii) any service in any section of any industrial undertaking pertaining to a scheduled industry on the working of which the safety of such undertaking or the employees employed therein depends.

1. Subs. by Act 49 of 1985, s. 2, for “four years” (w.e.f. 2-9-1985).

Explanation.—For the purposes of this sub-clause, the expressions “industrial undertaking” and “scheduled industry” shall have the meanings respectively assigned to them in clauses (d) and (i) of section 3 of the Industries (Development and Regulation) Act, 1951 (65 of 1951);

(ix) any service in, or in connection with, the working of any undertaking owned or controlled by the Central Government being an undertaking engaged in the purchase, procurement, storage, supply or distribution of food grains;

(x) any service in, or in connection with the working of, any system of public conservancy, sanitation or water supply, hospitals or dispensaries, in any Union territory, cantonment area or undertaking owned or controlled by the Central Government;

(xi) any service in connection with or in relation to banking;

(xii) any service in any establishment or undertaking dealing with the production, supply or distribution of coal, power, steel or fertilizers;

(xiii) any service in any oilfield or refinery or in any establishment or undertaking dealing with the production, supply or distribution of petroleum and petroleum products;

(xiv) any service in any mint or security press;

(xv) any service in connection with elections to Parliament or to the Legislatures of the States;

(xvi) any service in connection with the affairs of the Union, not being a service specified in any of the foregoing sub-clauses;

(xvii) any other service connected with matters with respect to which Parliament has power to make laws and which the Central Government being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification in the Official Gazette, declare to be an essential service for the purposes of this Act;

(b) “strike” means the cessation of work by a body of persons while employed in any essential service acting in combination or a concerted refusal or a refusal under a common undertaking of any number of persons who are or have been so employed to continue to work or to accept work assigned, and includes—

(i) refusal to work overtime where such work is necessary for the maintenance of any essential service;

(ii) any other conduct which is likely to result in, or results in, cessation or substantial retardation of work in any essential service;

(c) words and expressions used in sections 8 and 9 and not defined, but defined in the Industrial Dispute Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.

(2) Every notification issued under sub-clause (xvii) of clause (a) of sub-section (1) shall be laid before each House of Parliament immediately after it is made if it is in session and on the first day of the commencement of the next session of the House if it is not in session, and shall cease to operate at the expiration of forty days from the date of its being so laid or from the re-assembly of Parliament, as the case may be, unless before the expiration of that period a resolution approving the issue of the notification is passed by both Houses of Parliament.

Explanation.—Where the Houses of Parliament are summoned to re-assemble on different dates, the period of forty days shall be reckoned from the later of those dates.

(3) Any reference in this Act to any law which is not in force in any area and to any authority under such law shall, in relation to that area, be construed as a reference to the corresponding law in force in that area and to the corresponding authority under such corresponding law.

3. Power to prohibit strikes in certain employments.—(1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special order, prohibit strikes in any essential service specified in the Order.

(2) An Order made under sub-section (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the Order.

(3) An Order made under sub-section (1) shall be in force for six months only, but the Central Government may, by a like Order, extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an Order under sub-section (1),—

(a) no employer in relation to an establishment to which the order applies shall commence any lock-out;

(b) any lock-out declared or commenced whether before or after the issue of the order by any employer in relation to an establishment to which the order applies shall be illegal.

4. Dismissal of employees participating in illegal strikes.—Any person,—

(a) who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in, any such strike; or

(b) who instigates or incites other persons to commence, or go or remain on or otherwise take part in, any such strike,

shall be liable to disciplinary action (including dismissal) in accordance with the same provisions as are applicable for the purpose of taking such disciplinary action (including dismissal) on any other ground under the terms and conditions of service applicable to him in relation to his employment.

5. Penalty for illegal strikes.—Any person who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in, any such strike shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

6. Penalty for instigation, etc.—Any person who instigates or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees or with both.

7. Penalty for giving financial aid to illegal strikes.—Any person who knowingly extends or supplies any money in furtherance or support of a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

8. Power to prohibit lock-outs in certain establishments.—(1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special Order, prohibit lock-outs in any establishment pertaining to any essential service specified in the Order.

(2) An Order made under sub-section (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the Order.

(3) An Order made under sub-section (1) shall be in force for six months only, but the Central Government may, by a like Order, extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary so to do.

(4) Upon the issue of an order under sub-section (1),—

(a) no employer in relation to an establishment to which the Order applies shall commence any lock-out;

(b) any lock-out declared or commenced whether before or after the issue of the Order by any employer in relation to an establishment to which the Order applies shall be illegal.

(5) Any employer in relation to an establishment who commences, continues or otherwise acts in furtherance of a lock-out which is illegal under this section, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

9. Power to prohibit lay-off in certain establishments.—(1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special order prohibit lay-off, on any ground other than shortage of power or natural calamity, of any workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of any establishment pertaining to any essential service specified in the Order.

(2) An Order made under sub-section (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the Order.

(3) An Order made under sub-section (1) shall be in force for six months only, but the Central Government may, by a like Order, extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an order under sub-section (1),—

(a) no employer in relation to an establishment to which the order applies shall lay-off or continue the lay-off of any workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of such establishment unless such lay-off is due to shortage of power or to natural calamity and any laying, off or continuation of laying-off shall, unless such laying-off or continuation of laying-off is due to shortage of power or to natural calamity, be illegal;

(b) a workman whose laying-off is illegal under clause (a) shall be entitled to all the benefits under any law for the time being in force as if he had not been laid-off.

(5) Any employer in relation to an establishment who lays-off or continues the laying-off of any workman shall, if such laying-off or continuation of laying-off is illegal under this section, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

10. Power to arrest without warrant.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

11. Offences to be tried summarily.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act shall be tried in a summary way by any Metropolitan Magistrate, or any Judicial Magistrate of the First Class specially empowered in this behalf by the State Government and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that in a case of conviction for any offence in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for any term for which such offence is punishable under this Act.

12. Act to override other laws.—The provisions of this Act and of any order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force.

13. Amendment of Act 41 of 1980.—During the continuance in force of this Act, the Essential Services Maintenance (Assam) Act, 1980, shall have effect as if,—

(a) in section 2,—

(1) in sub-section (1),—

(i) clause (a) had been omitted;

(ii) for clause (b), the following clauses had been substituted, namely: —

(b) “essential service” means—

(i) any transport service for the carriage of passengers or goods, by land or water, with respect to which the Legislative Assembly of the State of Assam has power to make laws;

(ii) any service connected with the production, storage, supply or distribution, as the case may be, of gas or water;

(iii) any service connected with the maintenance of public health and sanitation, including hospitals and dispensaries;

(iv) any public services and posts in connection with the affairs of the State, and also persons appointed to the secretarial staff of the Legislative Assembly of the State of Assam;

(v) any other service or employment or class thereof, connected with matters with respect to which the Legislative Assembly of the State of Assam has power to make laws and which the State Government, being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of the supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification in the Official Gazette, declare to be an essential service for the purpose of this Act;

(bb) “State Government” means the State Government of Assam;

(2) In sub-section (2), for the words, brackets and figures “under sub-clause (xiv)”, words brackets and figure “under sub-clause (v)” had been substituted;

(b) in sections 3 and 9, for the words “appropriate Government”, wherever they occur, the words “State Government” had been substituted.

14. Repeal and saving.—(1) The Essential Services Maintenance Ordinance, 1981 (Ord. 10 of 1981), is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.